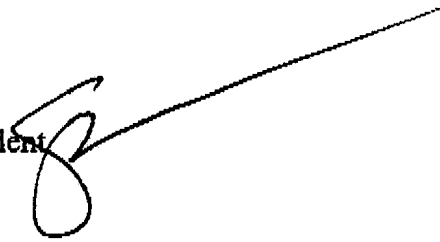


OFFICE OF THE VICE PRESIDENT
Washington, D.C.

FACSIMILE TRANSMISSION

TO: The Honorable Patrick J. Leahy, Chairman
Fax (202) 224-9516
The Honorable Arlen Specter, Ranking Minority Member
Fax (202) 224-5225
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

FROM: Shannen W. Coffin, Counsel to the Vice President
Tel. (202) 456-9089; Fax (202) 456-0387



DATE: August 20, 2007

PAGES: 3 pages (including this page)

NOTE:

Please see letter of today's date attached.



OFFICE OF THE VICE PRESIDENT
WASHINGTON

VIA FAX

August 20, 2007

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to the subpoena issued by the Committee on the Judiciary to the Office of the Vice President dated June 27, 2007 relating to past warrantless electronic surveillance in defense of America against terrorists of global reach, as modified by your letter of August 8, 2007 adjusting the return date of the subpoena to August 20, 2007. This letter follows up on our letter to you of August 10, 2007 explaining the progress to date in response to the subpoena. We remain confident that the Committee and the Office of the President will be able to reach promptly an appropriate accommodation under which the Committee can obtain access under appropriate security measures to the relevant materials.

Given that the return date of August 20, 2007 has arrived before the completion of discussions between the Committee and the Office of the President, and recognizing the necessity of preserving our legal position while discussions continue, I must respectfully respond to your subpoena as follows:

-- The issuance of the subpoena to this Office was procedurally irregular. First, the Committee did not follow the congressional custom of sending a letter to this Office requesting the materials before it sent the Office a subpoena. Secondly, at its business meeting of June 21, 2007, the Committee authorized the Chairman to issue subpoenas to the Executive Office of the President and the Department of Justice, but did not authorize issuance of a subpoena to the Office of the Vice President. The Office of the Vice President reserves all bases for challenge to the validity in whole or in part of the subpoena.

-- The Office of the Vice President reserves the limitations on congressional inquiries set forth in Barenblatt v. United States, 360 U.S. 109 (1959), which makes clear that the power to inquire extends no further than the power to legislate.

-- The Office of the Vice President reserves all legal privileges applicable to the vice presidency, such as the attorney-client privilege and the deliberative process privilege.

-- In the performance of executive functions in support of the President, the Vice President respects the legal privileges afforded by the Constitution to the presidency, such as the Executive Privilege protecting among other things national security secrets and policy deliberations. Similarly, in the performance of legislative functions, the Vice President

respects the legal privileges afforded by the Constitution to the Senate, such as preservation of the confidentiality of a session of the Senate with closed doors over which a Vice President may preside. Thus, the Vice President would follow in this matter a determination by the President that the Executive Privilege applies to responsive materials if one is made.

-- As is consistent with the institutional interests of the Senate, the Office of the Vice President construes the subpoena as seeking responsive records possessed by the Office of the Vice President in the performance of the Vice President's assigned executive functions, but not in the performance of his legislative functions. As a practical matter, the Senate records could not be expected to contain any responsive records.

-- The Office of the Vice President possesses copies of documents that may be responsive to the subpoena, including White House Office documents and Department of Justice documents that we understand to be of the most interest to the Committee and with respect to which a claim of Executive Privilege if made would clearly be valid:

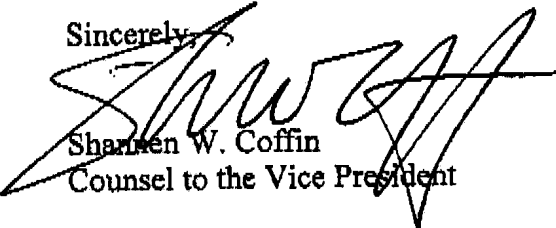
(a) copies of Top Secret/Codeword Presidential Authorizations, each of which was marked "White House Office-controlled Document," dated October 4, November 2, and November 30, 2001; January 9, March 14, April 18, May 21, June 24, July 30, September 10, October 15, and November 18, 2002; January 8, February 7, March 17, April 22, June 11, July 14, September 10, October 15, and December 9, 2003; January 14, March 11 (including as amended by the Presidential Memoranda of March 19 and April 2), May 5, June 23, August 9, September 17, and November 17, 2004; January 11, March 1, April 19, June 14, July 26, September 10, October 26, and December 13, 2005; and January 27, March 21, May 16, July 6, September 6, October 24, and December 8, 2006; and

(b) copies of memoranda issued by the Department of Justice, none of which was rendered to the Office of the Vice President, dated October 4 and November 2, 2001; January 9, May 17, and October 11, 2002; February 25, 2003; March 15, May 6, and July 16, 2004; and February 4, 2005.

We continue our efforts to identify further documents that may be responsive to the subpoena and renew the request made in our letter of August 10, 2007 for an extension of time.

Although it was necessary in this response to your subpoena to preserve our legal position, allow me to emphasize again that we look forward to assisting in the facilitation of an accommodation that protects the constitutional interests of all concerned.

Sincerely,



Shanteen W. Coffin
Counsel to the Vice President

cc: The Honorable Arlen Specter
Ranking Minority Member