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I mailed you a CRS report that, in passing, indicates that White House advisors do not testify on policy matters. I am attaching a summary document as well and also providing some additional info in the text of this e-mail. (Note that this e-mail and the attached summary are for your use only and should not be further distributed to others absent checking back with me.)

The leading Executive Branch interpretation on the constitutional underpinnings of this issue is a 1971 AAG Rehnquist OLC opinion, which states the following: "The President and his immediate advisers -- that is, those who customarily meet with the President on a regular or frequent basis -- should be deemed absolutely immune from testimonial compulsion by a congressional committee. They not only may not be examined with respect to their official duties, they may not even be compelled to appear before a congressional committee."

The basic position as articulated by the Administration over the last few weeks is as follows:

The President's immediate White House advisers and staff, including officials with responsibilities closely analogous to those of Governor Ridge such as the National Security Adviser, ordinarily do not testify before Congress on policy matters. This is a fundamental principle of separation of powers that protects the confidentiality of the President's relationship with his White House advisers and the President's ability to employ advisers who can devote their attention to assisting and advising the President as he sees fit.

The rare historical exceptions to the rule against testimony by White House staff have generally been in circumstances, unlike those here, involving substantial evidence of personal or official misconduct. For example, some have cited three World War II examples, but each of those situations involved allegations of personal or official wrongdoing. And even if there were isolated examples of close Presidential advisers testifying on policy matters, that would not alter the fundamental point: For many decades, Presidents of both parties -- and Congress -- have agreed that the President's White House advisers ordinarily do not testify before Congress on policy matters.

Note also that the Dana Milbank piece was wrong on NSC Advisor Berger and his aide. They did not in fact testify.

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REQUEST FOR GOVERNOR RIDGE TO TESTIFY

Governor Ridge has been asked to testify before Congress. The Administration believes strongly that the Governor – as one of the President’s closest White House advisors – should adhere to the long-standing practice under which such close Presidential advisors do not testify before Congress.

The Administration recognizes the needs of Congress to receive information to perform its constitutional responsibilities. Governor Ridge has offered and held numerous meetings and briefings with Members of Congress. The Governor will continue to work closely with Congress, including the relevant Committees, in a manner consistent with this long-standing practice. Just as significantly, each of the departments and agencies with operational and budget authority will also continue to work with and testify before the Congress.

Why the Director of Homeland Security should not testify

- Presidents of both parties, for at least 50 years, have taken the position that their closest advisers cannot be forced to and ordinarily will not testify before Congress on policy matters. This position, based on the Constitution's separation of powers, has long been accepted by the Congress.
- Governor Ridge is the President’s chief advisor on homeland security issues. As an Assistant to the President, a non-confirmed position, he has no authority to hire or fire, except in his immediate office.
- The Director of Homeland Security serves as a coordinator between various agencies and departments. The National Security Advisor, who has a similar coordinating role between agencies, does not testify, nor do the White House Chief of Staff, Counsel, and other officials.
- Administrations of both parties have adhered to this position, except for instances involving substantial evidence of personal or official wrongdoing. Three examples have been cited where White House officials have testified during WWII, all of which involve congressional investigations of personal or official wrongdoing. Donald Nelson testified in response to an inquiry into numerous allegations of financial corruption within the government’s war effort. Donald Dawson was investigated for accepting cash and other favors for providing favorable treatment on loan applications. Jonathan Daniels was called to testify regarding allegations that he had improperly forced the head of the REA to resign over a particular decision.
- Officials within the Executive Office of the President that serve in Senate confirmed positions in statutorily-created agencies regularly testify before Congress. These offices include the Director of the Office of Management and Budget, the Chairman

of the Council of Economic Advisors, and the Director of the Office of National Drug Control Policy.

Meeting Congress' Need for Information

- The Administration and Governor Ridge have regularly met with Congress and provided extensive information on homeland security.
- Governor Ridge assumed his responsibilities October 8, 2001. Since that time Governor Ridge and his staff have held over 100 meetings with Members of Congress and staff, and briefed various committees in the House and Senate. He has also repeatedly reached out to the bipartisan leadership of the Senate, and most recently met with the Senate caucuses of both parties. And, he has offered to meet with the committees of jurisdiction in a non-testimonial format at their convenience.
- During this short period of time, Governor Ridge has been working with the relevant executive branch departments and agencies on important homeland security issues such as Border Reorganization, the Threat Alert System, anthrax and bioterrorism, food safety, and ensuring security at home at events such as the Olympics, and the Super Bowl.
- Governor Ridge does not have operational or budget authority over any federal agency except his own office within the White House. The Threat Alert System is an example of an initiative that the Governor coordinated with various agencies which was ultimately turned over to DOJ for a period of comment, and DOJ will eventually handle the actual operation of the program.
- Administration officials with operational and budgetary authority, including the Secretary of Defense and the Attorney General, have repeatedly testified before Congress on homeland security matters. They have also provided Members of Congress with periodic briefings.

Moving forward in the future.

- The Administration and Governor Ridge recognize that the country faces significant issues regarding homeland security and that it will take the cooperation of both branches working together to solve them.
- The Administration is committed to meeting Congressional needs for information consistent with the principle of separation of powers.
- Governor Ridge looks forward to continuing to meet with Members of Congress, the 14 committees with jurisdiction over homeland security, and to brief committees on an ongoing basis.