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September 3, 2002

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BERNARD SANDERS, VERMONT,
INDEPENDENT

Mr. Alberto Gonzales
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. Gonzales:

I am writing to inquire about the Executive Branch's apparently inconsistent and selective use of executive privilege to prevent disclosure of information.

Last week, it was reported that the Justice Department is opposing a lawsuit brought by Judicial Watch to obtain records related to President Clinton's January 2001 clemency decisions. Among the documents reportedly being withheld on grounds of the presidential communications privilege are e-mails between the Deputy Attorney General's staff and the pardon attorney's office, requests for information, and summaries of selected cases under consideration. The Washington Post reported that the Administration's position in this case is the most restrictive view of executive privilege ever taken.¹

I take no view on the Administration's legal position in this particular case. But I do have questions about the inconsistent positions that the Administration has taken regarding the release of pardon-related and other documents. While the Administration is opposing the release of the documents involved in the litigation, the Administration has elected not to assert executive privilege over far more sensitive pardon-related records in the past. For example, in August 2001, the Administration permitted this Committee to review and record verbatim notes on three conversations between President Clinton himself and a foreign head of state, Israeli Prime Minister Ehud Barak. These notes, written by members of the National Security Council staff, directly related to President Clinton's consideration of a pending pardon application by Marc Rich. This was reportedly the first time in American history that such a transcript had ever been released.²

¹*Bush Seeks Secrecy for Pardon Discussions*, Washington Post (Aug. 27, 2002).

²*Enron's Many Strands: The White House; Bush Policy on Releasing Records Differs in Case of Clinton Ones*, New York Times (Feb. 1, 2002).

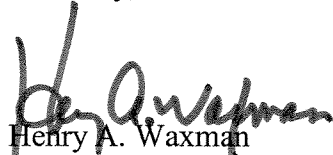
Mr. Alberto Gonzales
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This Administration similarly allowed the release of approximately 2,000 pages of White House e-mails to this Committee on November 21, 2001.³ These e-mails, which related to allegations that foreign persons and companies exerted inappropriate influence on President Clinton and Vice President Gore, included direct communications between the Vice President and his staff and communications between members of the Vice President's senior staff.

It appears that the Administration has chosen to use executive privilege selectively, in some instances revealing communications involving the President and Vice President and in others withholding less sensitive communications among those who are neither advisers to the President nor even members of the White House staff.

I would appreciate an explanation of these seemingly inconsistent positions.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry A. Waxman". The signature is written in a cursive, somewhat stylized font.

Henry A. Waxman
Ranking Minority Member

³Letter from Amy E. Krupsky, Associate General Counsel, National Archives and Records Administration, to David Kass, Committee on Government Reform (undated).