

## HAS ATTORNEY-CLIENT PRIVILEGE DEPARTED THE WHITE HOUSE?

ARTHUR B. CULVAHOUSE, JR.\*

### INTRODUCTION

On March 20, 2007, the Commercial and Administrative Law Subcommittee of the U.S. House of Representatives Committee on the Judiciary authorized the issuance of subpoenas to compel the testimony, under oath, of four White House officials in connection with discussions and events preceding the requested resignations of certain U.S. Attorneys in December 2006.<sup>1</sup> These officials included the former Counsel to the President and the incumbent Deputy Counsel to the President. The following day the U.S. Senate Committee on the Judiciary authorized the issuance of similar subpoenas for three of those White House officials, including the former Counsel to the President.<sup>2</sup>

Those subpoena authorizations had been preceded by communications between the White House and the congressional committees in which the White House asserted that it would allow private interviews of all the officials in question, including the former Counsel to the President and the incumbent Deputy Counsel to the President. However, the White House rejected public testimony under oath as inconsistent with “the requirements of the constitutional separation of powers” and the effective discharge of the President’s constitutional responsibilities.<sup>3</sup> The refusal of the White House to allow public testimony under oath of the four current and former White House officials was justified by the argument that such testimony would be inconsistent with the constitutional doc-

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\* Arthur B. Culvahouse, Jr., is a former White House Counsel and Member of the California, District of Columbia, and New York Bars.

1. See Press Release, U.S. House of Representatives Comm. on the Judiciary, Judiciary Subcomm. Authorizes Chairman Conyers to Issue Subpoenas in US Attorney Investigation (Mar. 20, 2007), <http://judiciary.house.gov/newscenter.aspx?A=789>.

2. See Paul Kane, *Senate Panel Approves Subpoenas for 3 Top Bush Aides*, WASH. POST, Mar. 23, 2007, at A4.

3. Letter from Fred F. Fielding, Counsel to the President, to Sens. Patrick Leahy and Arlen Specter and Reps. John Conyers, Lamar Smith, and Linda Sanchez (Mar. 20, 2007), <http://www.whitehouse.gov/news/releases/2007/03/20070320-9.html>.

trine of “executive privilege,”<sup>4</sup> derived from the supremacy of the executive branch in the exercise of its Article II powers. The testimony of two of those officials was being sought in connection with meetings and conversations in which they participated, as well as documents they prepared or received, in their official capacities as senior government attorneys, *as counsel to the President*. Why then has the White House not also asserted, with respect to the former Counsel to the President and the incumbent Deputy Counsel to the President—the two most senior lawyers in the White House, who provide legal advice to the President and other senior executive branch officials—that their compelled testimony also is precluded by the common law doctrines of attorney-client privilege and attorney work product?

Could it be that White House and executive branch lawyers agree with the long-held but never-litigated position of Congress that the “strong constitutional underpinnings” of the investigative and subpoena power of Congress allow Congress to “deny” claims of attorney-client privilege between senior executive branch officials and White House lawyers?<sup>5</sup> Could it be that White House and executive branch lawyers have all but conceded that legal advice provided by White House lawyers to the President of the United States and other senior executive branch officials, *unlike* legal advice provided by in-house corporate counsel to corporate executives, is not independently protected from compulsory process under the common law doctrine of attorney-client privilege?

#### COUNSEL TO THE PRESIDENT, OR COUNSEL IN THE WHITE HOUSE?

For twenty-two months during the administration of President Ronald Reagan, I served as Counsel to the President (a position informally known as White House Counsel).<sup>6</sup> The most enduring professional and ethical issue that I confronted during my tenure

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4. *See* *United States v. Nixon*, 418 U.S. 683, 705 (1974).

5. *See, e.g.*, FREDERICK M. KAISER ET AL., CONGRESSIONAL OVERSIGHT MANUAL 46 (Cong. Research Serv., CRS Report for Congress Order Code RL30240, May 1, 2007), *available at* <http://www.fas.org/sgp/crs/misc/RL30240.pdf> (“Thus it is well established by congressional practice that acceptance of a claim of attorney-client, work product, or other common law testimonial privilege before a committee rests in the sound discretion of that committee. Such common-law privileges cannot be claimed as a matter of right by a witness, and a committee can deny them simply because it believes it needs the information sought to be protected in order to accomplish its legislative functions.”).

6. March 21, 1987, to January 21, 1989. I joined the White House staff approximately three weeks earlier as Counsel-Designate.

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was the uncertain and untested scope of the attorney-client relationship between me and other attorneys in the White House Counsel Office and President Ronald Reagan, whom we viewed as our “client” in every sense of that profound obligation.<sup>7</sup>

To set the stage briefly, President Reagan announced my appointment as White House Counsel in late February 1987. The announcement was made in the midst of the criminal investigation by Independent Counsel Lawrence E. Walsh<sup>8</sup> and the joint oversight investigations of the U.S. House of Representatives Select Committee to Investigate Covert Arms Transactions with Iran<sup>9</sup> and the U.S. Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition<sup>10</sup> (hereinafter “Congressional Select Committees”) into the sales of U.S. military arms to Iran and the diversion of proceeds from such sales to support the Nicaraguan Democratic Resistance (Contra) forces. The events being investigated by Independent Counsel Walsh and the Congressional Select Committees quickly became better known as the “Iran-Contra Affair.” Prior to my appointment, President Reagan had pledged his complete cooperation with the investigations, including waiving both executive privilege and attorney-client privilege with respect to events occurring prior to the commencement of the investigations.<sup>11</sup> Additionally, the White House had stated that the President would not be retaining personal counsel. Yet commentators suggested that, in the event credible evidence emerged indicating that President Reagan had approved of or otherwise authorized the diversion of Iranian arms sales proceeds to fund the Contras, the President personally would become a target of the Independent Counsel’s investigation and likely would be subject to a formal impeachment inquiry by the U.S. House of Representatives.<sup>12</sup>

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7. See *In re Lindsey*, 158 F.3d 1263, 1267 (D.C. Cir. 1998) (per curiam) (“The attorney-client privilege protects confidential communications made between clients and their attorneys when the communications are for the purpose of securing legal advice or services.”) (citing *In re Sealed Case*, 737 F.2d 94, 98–99 (D.C. Cir. 1984)).

8. See generally LAWRENCE E. WALSH, FINAL REPORT OF THE INDEPENDENT COUNSEL FOR IRAN/CONTRA MATTERS app. B (D.C. Cir., Div. for the Purpose of Appointing Indep. Counsel, Div. No. 86-6, Aug. 4, 1993) (court order indicating the date of appointment of the independent counsel).

9. See H.R. Res. 12, 100th Cong. (1987) (establishing the committee).

10. See S. Res. 23, 100th Cong. (1987) (establishing the committee).

11. See H.R. REP. NO. 100-433, S. REP. NO. 100-216, at xvi (1987) (confirming President Reagan’s cooperation).

12. See, e.g., BOB WOODWARD, SHADOW: FIVE PRESIDENTS AND THE LEGACY OF WATERGATE 128 (1999); Peter Irons, Op-Ed., *The Impeachment Question Is Back; It’s Appropriate to Start Asking What Reagan Didn’t Do*, L.A. TIMES, Feb. 7, 1987, § 2, at 5;

Having previously served as a lawyer and Chief Legislative Assistant on the staff of U.S. Senator Howard H. Baker, Jr. during his tenure as Vice Chairman of the U.S. Senate Select Committee on Presidential Campaign Activities<sup>13</sup>—better known as the Senate Watergate Committee—I was very aware that the doctrine of executive privilege, protecting the confidentiality of conversations between a President and his or her advisors, would not protect the confidentiality of conversations between the President and White House Counsel if they were deemed relevant to Independent Counsel Walsh’s criminal inquiry. The Supreme Court in *United States v. Nixon* unanimously held that a subpoena duces tecum, issued at the request of a special prosecutor for in camera review of recorded Oval Office conversations between the President and his chief advisors, including White House Counsel, prevailed over the “very important interest in confidentiality of Presidential communications,” which the Court found “to derive from the supremacy of each branch within its own assigned area of constitutional duties.”<sup>14</sup> I shared the view, then and now, that the Supreme Court in *Nixon* would have ruled similarly against President Nixon if presented with a subpoena for those same Oval Office tapes issued by the House Judiciary Committee in connection with its impeachment inquiry relating to President Nixon’s role with respect to the Watergate break-in and related cover-up. My understanding was grounded on the theory that the explicit constitutional authority of Congress with respect to impeachment prevails over the compelling interest of the executive branch in protecting the confidentiality of presidential deliberations.<sup>15</sup>

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Morris S. Thompson, *Hamilton Speculates on Impeachment Possibility*, WASH. POST, June 15, 1987, at A6 (reporting that Congressman Lee Hamilton, the chairman of the House of Representatives committee investigating the Iran-Contra affair, said that “if it is determined that President Reagan approved the diversion of funds to Nicaraguan rebels, there would be a ‘demand for impeachment proceedings’”). Independent Counsel Walsh subsequently brought indictments against several former senior Reagan Administration officials for offenses related to the arms sales to Iran, the diversion of funds to the Contras, and/or obstructing his investigation. Those indicted included two former National Security Advisers, a Deputy Director of the Central Intelligence Agency, and a former Secretary of Defense. See WALSH, *supra* note 8, at xxiii.

13. See S. Res. 60, 93rd Cong. (1973) (establishing the committee).

14. 418 U.S. 683, 705–06, 713–14 (1974).

15. In 1974, in a Watergate-related case, the D.C. Circuit decided that the Senate Watergate Committee’s access to the White House tapes was *not* “critical to the performance of its legislative functions.” Senate Select Comm. on Presidential Campaign Activities v. Nixon, 489 F.2d 725, 732 (D.C. Cir. 1974). The court noted that the House of Representatives Committee on the Judiciary had initiated an

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That is not to say that the doctrine of executive privilege was completely irrelevant or without force in the context of the Iran-Contra investigations. There was direct D.C. Circuit Court of Appeals precedent, also emanating from Watergate, that congressional committee subpoenas issued in the context of legislative oversight investigations generally do *not* prevail over the “presumption that the public interest favors confidentiality” of deliberations between the President and those upon whom he directly relies in the performance of his duties.<sup>16</sup> Hence, we felt reasonably comfortable that the judicial branch, in the face of a presidential assertion of executive privilege, would not enforce subpoenas issued by congressional committees conducting oversight investigations of the Iran-Contra Affair to compel production of documents or testimony with respect to communications between the Counsel’s Office and the President and his advisors. Conversely, we also believed that grand jury or judicial subpoenas for the very same information issued in connection with Independent Counsel Walsh’s investigation would presumptively prevail over an assertion of executive privilege. In summary, we in the White House Counsel’s Office assumed that the executive privilege doctrine, without more, would protect our communications with and our legal advice to the President *only* in respect to congressional oversight investigations.

But, aside from executive privilege claims, did any of our communications with the President derive a distinct privilege from common law doctrines? Could an independent counsel’s office, exercising the power of a federal prosecutor, obtain grand jury testimony from a White House lawyer relating to legal advice given the preceding day to the President regarding the scope of a document request? Could the House Judiciary Committee, sitting in an impeachment inquiry, compel the testimony of the Counsel to the President with respect to his or her advice to the President on the scope of the President’s authority as Commander-in-Chief of the Armed Forces? In 1987 and 1988, we thought not, because we believed that such communications were protected by attorney-client privilege. As most of my predecessors apparently had, I believed that an *imperfect, institutional* attorney-client privilege protected my advice to, and conversations with, the President from compulsory

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impeachment inquiry with respect to President Nixon and that “[t]he investigative authority of the Judiciary Committee with respect to presidential conduct has an *express constitutional source*.” *Id.* (citing U.S. CONST., art. I, § 5) (emphasis added).

16. *Id.* at 730.

disclosure to prosecutors, congressional oversight committees, and a congressional impeachment inquiry.

The attorney-client privilege that I believed protected my advice to the President clearly was *imperfect* because the Counsel to the President—like all executive branch officials—is required by statute to report to the Attorney General all violations of federal *criminal* law involving federal government “officers and employees” of which he or she becomes aware.<sup>17</sup> I understood throughout my tenure in the White House—indeed, I had been forewarned by Lloyd Cutler, one of my distinguished predecessors as White House Counsel—that in the event the President or another White House official confided to me that he or she had committed a federal crime, I, like all other government employees, was obligated to report that violation to the Attorney General. It was my belief and experience that the requirements of this statute did not negate an attorney-client relationship between my office and the President and his other advisors because this statutory requirement was, and is, analogous to the “crime or fraud” exception to the attorney-client privilege in the private sector.<sup>18</sup> In fact, one could argue that this federal crime notification obligation merely confirmed that White House attorneys—and all other executive branch employees—owed their duty of loyalty to the United States institutionally and not to any individual, just as corporate counsel represent the corporation and its shareholders and not management.<sup>19</sup>

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17. 28 U.S.C. § 535(b) (Supp. IV 2006) (“Any information, allegation, matter or complaint witnessed, discovered, or received in a department or agency of the executive branch of the Government relating to *violations* of Federal *criminal* law involving Government *officers* and employees shall be expeditiously *reported to the Attorney General* by the head of the department or agency, or the witness discoverer, or recipient, as appropriate . . .”) (emphasis added). This reporting was required unless “the responsibility to perform an investigation with respect thereto is specifically assigned otherwise by another provision of law[,] or[,] as to any department or agency of the Government, the Attorney General directs otherwise with respect to a specified class of information, allegation, or complaint.” 28 U.S.C. § 535(b) (2000 & Supp. IV 2006).

18. *See, e.g.*, *United States v. Bob*, 106 F.2d 37, 40 (2d Cir. 1939) (stating that “communications from a client to an attorney about a crime or fraud to be committed are not privileged”).

19. *See, e.g.*, Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7245 (Supp. IV 2006) (mandating the Securities and Exchange Commission to issue rules requiring attorneys representing public companies before the Commission to report any “material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company” and, if they do not “appropriately respond,” requiring the attorneys “to report the evidence to the audit committee of the board of direc-

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Similarly, the post-government employment restrictions applicable to my position also made clear that my representational relationship to President Reagan was *institutional*; I was not representing him in his personal capacity. Following my White House service, I was (and still am) precluded from representing any person or entity “*except the United States*” with respect to particular matters, such as cases and investigations, in which I was personally and substantially involved while serving as Counsel to the President.<sup>20</sup> For example, I was precluded by those restrictions from representing President Reagan personally with respect to the ongoing Iran-Contra investigations after I left government service.

Those lawyers who have served as Counsel to the President often state that they represent the “Office of the President.” This view that the attorney-client privilege between White House Counsel and the President is “institutional” had been confirmed by the interpretations of the Office of Legal Counsel of the Department of Justice prior to my becoming White House Counsel. In a 1982 opinion, the Assistant Attorney General for the Office of Legal Counsel stated that “the attorney-client privilege . . . functions to protect communications between government attorneys and client agencies or departments . . . much as it operates to protect attorney-client communications in the private sector.”<sup>21</sup> That Office of Legal Counsel opinion favorably cited the Supreme Court’s decision in *Upjohn Co. v. United States*<sup>22</sup> and further noted that “it is likely that, in most instances, the ‘client’ in the context of communications between the President and the Attorney General, and their respective aides, would include a broad scope of White House advisers in the Office of the President.”<sup>23</sup>

Accordingly, it seemed reasonably clear to me during my White House service that my conversations with and legal advice to President Reagan and his advisers in the White House, short of their confiding violations of federal criminal law, were protected by an institutional attorney-client privilege between the Office of the President and the Counsel to the President.<sup>24</sup> I understood my re-

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tors . . . or to another [independent] committee of the board of directors . . . or to the [full] board of directors”).

20. 18 U.S.C. § 207(a) (2000) (emphasis added); 5 C.F.R. § 2637.201(a) (2006).

21. 6 Op. Off. Legal Counsel 481, 495 (1982).

22. 449 U.S. 383, 386 (1981) (upholding attorney-client privilege in context of information provided to corporate counsel by corporate managers).

23. 6 Op. Off. Legal Counsel at 496.

24. See WOODWARD, *supra* note 12, at 136–51 (reporting that my Deputy and I conducted thirteen lengthy interviews of President Reagan with respect to the

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lationship as analogous to the institutional attorney-client relationship recognized by the *Upjohn* Court with respect to the privileged institutional relationship between corporate managers and corporate counsel. In addition, I believed such a privilege could be waived only by the President of the United States, and that it would withstand even grand jury subpoenas issued in connection with an independent counsel investigation as well as congressional subpoenas issued in furtherance of an impeachment inquiry.

Today, the current Counsel to the President cannot so assume. Proving the old axiom that “bad facts make bad law,” in 1997, the U.S. Court of Appeals for the Eighth Circuit, in *In re Grand Jury Subpoena Duces Tecum*, broadly ruled: “We need not decide whether a governmental attorney-client privilege exists in other contexts, for it is enough to conclude that even if it does, the White House may not use the privilege to withhold *potentially relevant information* from a federal grand jury.”<sup>25</sup> The issue presented in the case related to whether notes taken by White House Counsel during meetings with First Lady Hillary Clinton and her personal attorneys, or with those attorneys alone, could be compelled by a grand jury subpoena issued in connection with an independent counsel investigation where the White House asserted that such notes were protected by attorney-client privilege and attorney work product doctrine.<sup>26</sup> The Eighth Circuit’s expansively worded ruling unfortunately ranged far beyond what seemed necessary to address the unique facts of the case before it.<sup>27</sup> Indeed, Judge Kopf began his dissent with the following assertion: “This case involves the institutional capacity of the President of the United States to function with the advice of legal counsel.”<sup>28</sup> Accordingly, notwithstanding its narrow and unusual factual context involving one “independent” arm of the executive branch seeking evidence from the office of the Chief Executive, the Eighth Circuit’s holding created substantial doubt about whether communications between the President and government lawyers are protected at all from any compulsory process, except such lim-

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Iran-Contra Affair and that we advised the President of our belief that our discussions would be privileged).

25. 112 F.3d 910, 915 (8th Cir. 1997) (emphasis added).

26. *Id.* at 915, 922.

27. The majority opinion found the provisions of 28 U.S.C. § 535(b), requiring all executive branch officers and employees to report criminal wrongdoing to the Attorney General to be “significant” in reaching its decision. *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d at 920; *see also supra* note 17 and accompanying text.

28. *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d at 926.



ited protection as is provided under the executive privilege doctrine as enunciated by the Supreme Court in *Nixon*.

In support of the Office of the President's unsuccessful petition to the Supreme Court for a writ of certiorari challenging the Eighth Circuit's decision, two former Attorneys General, three former Counsels to the President (including myself), and a former Secretary of Transportation (and frequent Supreme Court advocate) submitted a brief to the Supreme Court as amici curiae.<sup>29</sup> We asserted that unless the Eighth Circuit's "novel and sweeping" ruling with respect to the White House Counsel's notes concerning Mrs. Clinton was reversed or substantially modified, the opinion would foreclose the availability of the attorney-client privilege to communications between government lawyers and government officials concerning bona fide government business, certainly with respect to a federal grand jury.<sup>30</sup> Even more troubling, in our view, the decision also called into question whether such privilege exists at all in the executive branch of the federal government.<sup>31</sup> Our amici brief further noted that "the ability of government lawyers to give advice or to prepare for litigation or congressional investigations will be curtailed" under the Eighth Circuit's ruling, as it denies the availability of the work product doctrine to the work of government lawyers.<sup>32</sup>

The Supreme Court allowed the Eighth Circuit's decision in *In re Grand Jury Subpoena Duces Tecum* to stand. That decision's broad holding—that there is no attorney-client privilege protecting White House Counsels' advice to the President—must be viewed as the law of the land when such evidence is sought by a federal grand jury or in any related criminal proceeding. Barely a year later, in *In re Lindsey*, the U.S. Court of Appeals for the D.C. Circuit similarly ruled, in the context of a grand jury subpoena issued to a Deputy Counsel to the President, that the attorney-client privilege does not permit a government lawyer to withhold information relating to commission of possible crimes from a federal grand jury.<sup>33</sup> The court stated that "[r]ecognizing that a government attorney-client privilege exists is one thing" but "[f]inding that the Office of the

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29. Brief of William T. Coleman, Jr. et al. as Amici Curiae in Support of Petitioner at 1, *Office of President v. Office of Indep. Counsel*, 521 U.S. 1105 (1997) (No. 96-1783), 1997 WL 33549624. The Supreme Court denied certiorari review in *Office of President v. Office of Indep. Counsel*, 521 U.S. 1105 (1997).

30. *Id.* at 2. We expressed no view as to whether the First Lady was a "government official."

31. *Id.* at 4.

32. *Id.* at 2.

33. 158 F.3d 1263, 1272–73 (D.C. Cir. 1998) (per curiam).

President is entitled to assert it here [to shield information from disclosure to a grand jury] is quite another.”<sup>34</sup> The court found that the requirements of 28 U.S.C. § 535(b) suggested that because all government lawyers are duty-bound not to withhold evidence of federal crimes there is no attorney-client privilege shielding White House lawyer communications with White House officials from disclosure to a grand jury.<sup>35</sup> The court so held, notwithstanding the argument by the White House that Deputy White House Counsel Lindsey’s testimony would disclose legal advice to White House officials that did not constitute evidence of a crime.<sup>36</sup> The *Lindsey* court was careful to note, however, that the issue of whether attorney-client privilege “would generally protect a White House Counsel from testifying at a congressional hearing,” including an impeachment proceeding, was *not* before it.<sup>37</sup>

It is noteworthy that the Congressional Research Service, in its very recent edition of the *Congressional Oversight Manual*, stated that “recent appellate court rulings casting doubt on the viability of common-law privilege claims by executive officials in the face of grand jury investigations, support the position that [congressional] committees may determine, on a case-by-case basis, whether to accept a claim of privilege.”<sup>38</sup> This statement implicitly concedes that the holdings of the Eighth and D.C. Circuits, notwithstanding the Eighth Circuit’s broad language, are limited to the absolute absence of attorney-client privilege in the context of grand jury investigations of violations of federal criminal law. Nonetheless, the Congressional Research Service stated that such opinions provide further support to the long-asserted discretion of Congress to disregard executive branch claims of attorney-client and other common law privileges.<sup>39</sup>

In an era in which political (and “good government”) conventions increasingly demand that a special prosecutor be appointed by the Department of Justice when there are allegations of possible criminal conduct by White House officials,<sup>40</sup> and in which members

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34. *Id.* at 1270.

35. *Id.* at 1274–75.

36. *Id.* at 1270.

37. *Id.* at 1277–78.

38. KAISER, *supra* note 5, at 46; *see also supra* text accompanying note 5.

39. KAISER, *supra* note 5, at 46.

40. *See, e.g.*, Toni Locy, *Attorney General Recuses Himself from CIA Probe*, USA TODAY, Dec. 31, 2003, at A10 (reporting that in order to try “to quiet critics,” the Justice Department appointed Patrick Fitzgerald as special prosecutor to investigate possible violations of statutes that protect the identity of covert Central Intelligence Agency officers).

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of Congress routinely proclaim that the sitting President has violated the law and should be impeached,<sup>41</sup> this interpretation is most unfortunate. As was pointed out in our amici brief, the President and other executive branch officials are required, in executing their duties, to make numerous decisions related to the conduct of their official business “that require legal advice from government lawyers.”<sup>42</sup> The Supreme Court in *United States v. Nixon* found that upholding the confidentiality of executive branch deliberations—including deliberations among non-lawyers—to be in the public interest, subject to qualification with respect to criminal investigation needs and then subject to protective judicial procedures.<sup>43</sup> It would appear to be similarly in the public interest to encourage the President and his subordinates to seek legal advice and facilitate their doing so. The common law attorney-client privilege has been recognized for legal advice provided by private sector attorneys to individuals, for legal advice provided by corporate counsel to corporate employees and executives,<sup>44</sup> for legal advice provided by Counsel to the Senate to any U.S. Senator,<sup>45</sup> and it *should* be recognized for legal advice provided by the White House Counsel to the President of the United States.

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41. See Hope Yen, *Impeachment Issue Raised Over Bush Policy on Iraq*, SEATTLE TIMES, Mar. 25, 2007, at A9 (reporting that members of Congress are considering the impeachment of the President as a result of his policies relating to the Iraq war). The Constitution provides for impeachment when officials are guilty of “high [c]rimes and [m]isdemeanors.” U.S. CONST. art. II, § 4.

42. Brief of Coleman, *supra* note 29, at 3–4.

43. 418 U.S. 683, 711–12, 715 (1974).

44. See, e.g., *Upjohn Co. v. United States*, 449 U.S. 383, 386 (1981); COMM’N ON THE REGULATION OF U.S. CAPITAL MARKETS IN THE 21ST CENTURY, U.S., REPORT AND RECOMMENDATIONS 92–93, (Mar. 2007), available at <http://www.uschamber.com/publications/reports/0703capmarketscomm.htm><http://www.uschamber.com/> (“[A]ttorney-client privilege is a cornerstone of our legal system. It facilitates effective legal advice and corporate compliance by encouraging candor between attorneys and employees seeking guidance on what can very often be difficult and sensitive issues.”).

45. 2 U.S.C. § 288(f) (2000) (“The Counsel and other employees of the Office [of Counsel to the Senate] shall maintain the attorney-client relationship with respect to all communications between them and any Member, officer, or employee of the Senate.”).

