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United States Senate

COMMITTEE ON APPROPRIATIONS
 WASHINGTON, DC 20510-6025
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February 23, 2009

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The Honorable Barack Obama
 The President of the United States
 The White House
 1600 Pennsylvania Avenue, NW
 Washington, D.C. 20500

Dear Mr. President:

I am pleased to know about your commitment to an open and transparent government, and to increasing the flow of information to the American public. As you have rightly noted in a recent memorandum to the executive departments and agencies, "A democracy requires accountability, and accountability requires transparency."

I have been reading, with interest, press accounts about the creation of new White House Offices of Health Reform, Urban Affairs Policy, and Energy and Climate Change Policy, and also about the appointment of White House staff to coordinate executive branch efforts on technology and management performance policies. I am concerned about the relationship between these new White House positions and their executive branch counterparts. Too often, I have seen these lines of authority and responsibility become tangled and blurred, sometimes purposely, to shield information and to obscure the decision-making process.

In some administrations White House staff have had an unfortunate history of assuming too much power. In the Nixon White House, Henry Kissinger directed foreign policy through the National Security Council as an assistant to the president, and Peter Flanigan did the same for economic policy through the newly established Council on International Economic Policy. John Ehrlichman took responsibility for domestic policy through a new Domestic Council. OMB Director Roy Ash and Treasury Secretary George Shultz both held cabinet and White House positions simultaneously. After President Nixon's resignation, a House of Representatives subcommittee studied the issue of presidential staffing, and concluded:

"Whatever their other duties and roles, each of these individuals, as White House personnel, held a high degree of political immunity from accounting for their activities before Congressional Committees. The shadow of executive privilege beclouded normal accountability arrangements."

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In 2001, the Bush Administration revived the Nixon model when it created the White House Office of Homeland Security. President Bush appointed Tom Ridge as director, instructing him to develop a national homeland security strategy across Federal agencies. The President then prohibited the nation's homeland security director from testifying before the Congress, despite repeated requests. In 2007, President Bush appointed Lieutenant General Douglas Lute as Assistant to the President and Deputy National Security Adviser for Iraq and Afghanistan. General Lute was charged with coordinating the efforts of the executive branch to support our commanders and senior diplomats on the ground in Iraq and Afghanistan. Incredibly, this individual, who was coordinating two wars from the White House, was never permitted to testify before the Congress.

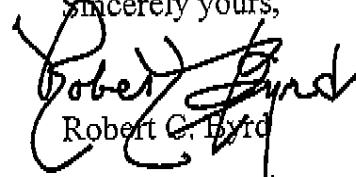
The rapid and easy accumulation of power by White House staff can threaten the Constitutional system of checks and balances. At the worst, White House staff have taken direction and control of programmatic areas that are the statutory responsibility of Senate-confirmed officials. They have even limited access to the president by his own cabinet members. As presidential assistants and advisers, these White House staffers are not accountable for their actions to the Congress, to cabinet officials, and to virtually anyone but the president. They rarely testify before congressional committees, and often shield the information and decision-making process behind the assertion of executive privilege. In too many instances, White House staff have been allowed to inhibit openness and transparency, and reduce accountability.

As you develop your White House organization, I hope you will favorably consider the following: that assertions of executive privilege will be made only by the President, or with the President's specific approval; that senior White House personnel will be limited from exercising authority over any person, any program, and any funding within the statutory responsibility of a Senate-confirmed department or agency head; that the President will be responsible for resolving any disagreement between a Senate-confirmed agency or department head and White House staff; and that the lines of authority and responsibility in the Administration will be transparent and open to the American public.

I appreciate the time and energy you are devoting to this very important subject, and look forward to hearing from you. Your continued devotion to ensuring that our nation remains strong, just, and free is admirable, and I thank you for your dedication in that regard.

With kind regards, I am

Sincerely yours,



Robert C. Byrd

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