

staff that responds to his or her demands and gives the President unvarnished advice, pointing out problems, honestly and openly, without any expectation it is going to be on the front page of the New York Times the next day, for heaven's sake.

So I just want to say, I am sorry and disappointed our chairman, Chairman LEAHY, has utilized the power the committee gave him to decide whether to issue a subpoena or not, to actually issue subpoenas.

So now what has happened? The President said: These subpoenas go too far. Even so, I am not afraid to have my people talk. The President has offered that Harriet Miers come to the Hill and be interviewed by the Judiciary Committee. But in preserving the historic integrity and confidentiality of a President and their own staff, the President does not want to produce confidential communications made to him by his staff. I think it would erode any President's legitimate prerogative, for time immemorial, if Congress were able to do that.

I would suggest we in this Senate can understand that. Who of us would want our chief of staff to be hauled in to some committee when there is no suggestion of a criminal offense having occurred and then being cross-examined on everything our chiefs of staff told us? I just met with my chief counsel, Cindy Hayden, and we talked about these issues. She is an excellent lawyer. We have recently met and talked about the immigration bill that the Senate was debating.

Maybe the White House, which took a different view than mine on immigration, would like to embarrass me by issuing subpoenas to see if they could find out something in memos or documents or conversations we had about the bill and the flawed legislative process that brought it to the floor.

The executive branch has the power of subpoena also. Would our Members over here on the Senate Judiciary Committee be happy if the White House issued subpoenas to find out if any of our Members may have delayed the confirmation process in order to impact the outcome of some case that might be pending before a court of appeals at a given time in a given State?

Would we want to have all that happen to us? If these are criminal things, you get to do that. If they are not criminal things, comity, respect between our branches would suggest that any leader have certain rights to have candid, confidential communications with their own staff about matters of great importance to our Nation. The courts have it. Congress has it. The executive branch has it. There is case law that has addressed this type of privilege. Executive privilege is not something that is made up; it is something that is very real.

Now, I am not one who would want to come in and predict how cases would come out, but based on the openness the President has shown with regard to

providing to the Congress his staff people for interviews, I am not sure there is a legal basis for this.

Yes, in the meantime, it will look good politically. Those who issued the subpoenas—and are proud of themselves, knowing the President probably will never be able to accept this and would have to resist and have to object—can accuse him of hiding. They can accuse him of stonewalling. They can say he is in denial, that he will not cooperate with the Congress, that he is operating in secrecy. These baseless accusations will just further fuel the charges people have made about this good man who is trying to serve the country the best he can. I certainly believe that.

So here we are. Chairman LEAHY issued the subpoenas. Now the President has objected, which he has a perfect right to do. What happens now? There are several options, one of which is to litigate. If that path is chosen, a court will have decide it. It will go to the courts, and there will be an argument whether there is a legitimate evoking of executive privilege.

I wish it had not happened. That is all I am saying. We, I believe, have overreached in this instance. I cannot imagine we would want to demand that the President's own lawyer, Harriet Miers, be required to produce every memo she gave to the President and every conversation she had about any matter in the White House unless it amounted, as I said, to some criminal offense, which nobody is suggesting has occurred here. It is just not good policy, and we have to be bigger than short-term politics in this Senate. We have to be bigger than that.

I want to say, in my best judgment, we should not have shoved it this far. We have overreached. The President does have a legitimate claim of executive privilege. Over 8,500 documents and e-mails that went from the White House to the Cabinet Department, the Department of Justice, have been produced. It is only those conversations and communications between the President's closest advisers and the President himself which the White House feels should not be produced because of the historical implications of it for Presidents in the future. In this instance, I think the President is within his rights.

My best judgment, based on what I know today, is that this is not legitimate under our current law, and it is absolutely not justified under our discretion as Members of Congress. We ought to have more respect for the other branch than to push this request beyond the limits to the point we have today.

So, Madam President, I want to be on record to say that I understand why the President would object to making these disclosures of internal communications between the President and his own personal, closest staff, after, of course, having produced communications between he and his staff and the

Department of Justice that have been produced and making those staff members available for private inquiry among the leadership of the Congress. I think that was a real strong gesture of openness, but that was promptly rejected because I think some in the Congress—Senate and House—would rather have a fight and try to make a political point than actually get to the truth of those matters.

Madam President, I thank the Chair and yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

IRAQ

Mr. REID. Madam President, this Sunday is the halfway mark of the year 2007. It is also the 2-month mark since President Bush vetoed the supplemental appropriations bill we sent to him which would have set a responsible path to reduce our combat operations, save lives, and finally change course in Iraq. President Bush called our bill a "recipe for chaos."

Now that 2 months have passed, here is what has happened under the President's escalation plan. It is clearly chaos: 126 brave Americans died in May alone, and more than 100 in June. This quarter has been the deadliest in the entire war. Sectarian killings have not declined. Yesterday, more than 20 Iraqis were beheaded. There is little evidence the Iraqi Government will meet any of the political benchmarks they have set for themselves. The surge was supposed to create the space for Iraq's political leaders to make the difficult decisions to unite their country. That has not occurred.

I have said from the beginning that as long as President Bush remains obstinate and the Republicans in Congress continue to toe his line, this tragic war will continue. There is no sign of President Bush awakening to the devastating reality of this intractable war. But this week, there is new reason for optimism in that my Republican colleagues in the Senate are finally willing to join in calling for a new direction.

A couple of days ago, on Tuesday, I congratulated the ranking member of the Foreign Relations Committee, Senator RICHARD LUGAR, for courageously breaking ranks with President Bush and calling for the war to end. Senator LUGAR said, among other things:

Persisting indefinitely with the surge strategy will delay policy adjustments that have a better chance of protecting our vital interests over the long term.

I agree with those words.