

Time to negotiate

by The San Diego Union-Tribune

President Bush and the Democratic Congress are heading toward a constitutional clash, and it does not need to happen.

Citing their oversight functions, last month the Senate and House Judiciary committees issued a flurry of subpoenas to the White House and the Justice Department. The committees are investigating two areas: the dismissal of nine U.S. attorneys for what may have been political reasons; and the administration's authorization of warrantless domestic wiretaps.

The panels are seeking to interview White House political adviser Karl Rove and former White House Counsel Harriet Miers, among others. Fred Fielding, the current White House counsel and a veteran of the Nixon White House, has offered to allow Rove and others to be interviewed by senior committee members, but only in private and only if the witnesses are not placed under oath and no transcript is made.

The committee chairmen were right to reject this offer and issued the subpoenas after the White House indicated this was their best offer. Now the White House is declaring executive privilege, something every president since George Washington has cited, rightly pointing out the need for presidents to be able to have frank discussions with aides and others in confidence. But executive privilege proved to be a loser for Richard Nixon over the Watergate tapes, and Bill Clinton over Monica Lewinsky. As it turned out in both these cases, presidents were merely trying to hide either embarrassing or incriminating evidence.

The fact is that since World War II, presidential aides have testified before congressional committees 74 times, some under subpoena, some not. Clinton administration officials were served dozens of subpoenas during investigations of Whitewater and various other alleged scandals.

In this fight, both the White House and Congress have legitimate arguments. Executive privilege is a legitimate tool. But Congress' oversight function is fundamental in our constitutional system.

If no agreement is reached, the next step could be the issuance of contempt of Congress citations, which would take years to resolve in the courts. That would accomplish little. It's time for some hard negotiating, and compromise, the route most administrations have taken.

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