Statement by Louis Fisher,
The Constitution Project,
Before the
House Committee on Oversight and Government Reform,
"Obstruction of Justice: Does the Justice Department Have to Respond to Lawfully Issued and Valid Congressional Subpoenas?"
June 13, 2011

Mr. Chairman, thank you for the invitation to testify on congressional access to executive branch documents, sought in this case through the subpoena process. Presidents and their advisers often claim that information requested by Congress is covered by the doctrine of executive privilege and other principles, including the protection of the "deliberative process" and "active litigation files." Those are opening, not closing, arguments. In a system of separated powers, one branch does not have any necessary superiority over the other. Various precedents and judicial rulings are interesting but hardly dispositive. What usually breaks the deadlock is a series of political decisions: the determination of lawmakers to use the coercive tools available to them, and calculations by the executive branch whether a continued standoff carries heavy and intolerable losses for the administration.

By and large, the two branches will generally fashion a compromise that promotes their interests – sometimes antagonistic, sometimes not. Political understandings and settlements can keep executive-legislative conflicts over information to a manageable level. Legal and constitutional principles serve as guides, but no more than that. Attempts to announce precise boundaries on what Congress may and may not have are not realistic or even desirable. Disputes over information invariably come with their own unique qualities, characteristics, and histories, both legal and political, and not likely to be governed solely by past practices.

Congress has the theoretical advantage because of the abundant tools at its disposal. To convert that theoretical edge to actual success requires from lawmakers an intense motivation, the staying power to cope with a long and frustrating battle, and an abiding commitment to honor their constitutional purpose. Antonin Scalia, while serving as head of the Office of Legal Counsel, put the matter well during a congressional hearing in 1975. When congressional and presidential interests collide, the answer is likely to lie in the "hurly-burly, the give-and-take of the political process between the legislative and the executive. . . . [W]hen it comes to an impasse the Congress has the means at its disposal to have its will prevail."[1]

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[1] "Executive Privilege – Secrecy in Government," hearings before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations, 94th Cong., 1st Sess. 87 (1975).

Constitutional Principles

In their struggles over information, Congress and the executive branch rely not on clearly enumerated powers but on implied powers: the implied power of Congress to investigate in order to legislate in an informed manner, and the implied power of the President to withhold certain documents to protect executive interests. It is tempting to see executive-legislative clashes only as a confrontation between two branches, yielding a loser and a winner. It is more than that. Congressional access represents part of the framers' belief in representative government. When lawmakers are unable (or unwilling) to obtain executive branch information needed for congressional deliberations, the loss extends to the public, democracy, and constitutional government.

No constitutional language authorizes the President to withhold documents from Congress, nor does any provision empower Congress to demand and receive information from the executive branch. Although the Supreme Court frequently claims that the Constitution "creates a Federal Government of enumerated powers,"[2] the government is not confined solely to express and enumerated powers. The Supreme Court has recognized the constitutional power of Congress to investigate and the President's power to withhold information.[3] Those powers would exist with or without judicial rulings. How do we resolve a collision between these two implied powers?

A lengthy study by Herman Wolkinson in 1949, expressing the executive branch position, asserted that federal courts "have uniformly held that the President and the heads of departments have an uncontrolled discretion to withhold the information and papers in the public interest, and they will not interfere with the exercise of that discretion."[4] That statement, incorrect when written, is even less true today as a result of litigation and political precedent established over the past half century. Similarly inaccurate is his claim that "in every instance where a President has backed the refusal of a head of a department to divulge confidential information to either of the Houses of Congress, or their committees, the papers and the information were not furnished."[5] Through the

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[2] United States v. Lopez, 514 U.S. 549, 552 (1995). See also Boerne v. Flores, 521 U.S. 507, 516 (1997) ("Under our Constitution, the Federal Government is one of enumerated powers.")

[3] McGrain v. Daugherty, 273 U.S. 135, 175 (1927) ("A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to effect or change."); United States v. Nixon, 418 U.S. 683, 711 (1974) ("To the extent this interest relates to the effective discharge of a President's powers, it is constitutionally based.").

[4] Herman Wolkinson, "Demands of Congressional Committees for Executive Papers" (Part I), 10 Fed'l Bar. J. 103, 103 (1949). At the time he wrote this article, Mr. Wolkinson served as an attorney with the U.S. Department of Justice.

[5] Id. at 104.

appropriations power, impeachment, the appointment process, subpoenas, and the contempt power, Congress has prevailed in many instances.[6]

When executive-legislative clashes occur, they are seldom resolved judicially. Accommodations are usually entered into without the need for litigation. In 1982, President Ronald Reagan set forth the governing procedure for responding to congressional requests for information: "Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches."[7]

On those rare occasions where executive-legislative disputes enter the courts, judges typically reject sweeping claims of privilege by elected officials while encouraging the two branches to find a satisfactory compromise. The model for this process is illustrated by the efforts of Judge Harold Levinson in the AT&T cases of the 1970s.[8] The outcome is more likely decided by the persistence of Congress and its determination to sanction executive noncompliance. Congress can win most of the time if it has the will to do so.

Long before there were any judicial precedents to guide interbranch struggles over information, Congress and the executive branch began to develop some understandings and accommodations: the House inquiry during the First Congress on the conduct of Robert Morris as Superintendent of Finance during the Continental Congress, a 1790 congressional investigation into an annuity for Baron von Steuben, and of course the House inquiry into the heavy losses military losses suffered by the troops of Maj. Gen. Arthur St. Clair to Indian tribes.[9] The first use of the contempt power came in 1795, when the House found it necessary to investigate an effort by private parties to corrupt the integrity of lawmakers. The Senate in 1800 conducted similar investigations to protect the dignity and reputation of its institution.[10]

Congressional Subpoenas

The Supreme Court has described the congressional power of inquiry as "an essential and appropriate auxiliary to the legislative function."[11] The issuance of a subpoena pursuant to

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[6] Louis Fisher, The Politics of Executive Privilege 27-134 (2004).
[7] Memorandum from President Reagan to the Heads of the Executive Department and Agencies, "Procedures Governing Responses to Congressional Requests for Information," November 4, 1982, paragraph 1.
[8] United States v. AT&T, 567 F.2d 121 (D.C. Cir. 1977); United States v. American Tel. & Tel. Co., 551 F.2d 384 (D.C. Cir. 1976).
[9] Fisher, The Politics of Executive Privilege, at 6-10.
[10] Id. at 14-17.
[11] McGrain v. Daugherty, 272 U.S. 135, 174 (1927).

an authorized investigation is "an indispensable ingredient of lawmaking."[12] To be legitimate, a congressional inquiry need not produce a bill or legislative measures. "The very nature of the investigative function – like any research – is that it takes the searchers up some 'blind alleys' and into nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result."[13]

Lawmakers and their committees usually obtain the information they need for legislation or oversight without threats of subpoenas. They understand that committee investigations have to satisfy certain standards. Legislative inquires must be authorized by Congress, pursue a valid legislative purpose, raise questions relevant to the issue being investigated, and inform witnesses why questions put to them are pertinent.[14] Congressional inquiries may not interfere with the independence of decisionmakers in adjudicatory proceedings before a department or agency.[15]

Federal courts give great deference to congressional subpoenas. If the investigative effort falls within the "legitimate legislative sphere," the congressional activity – including subpoenas – is protected by the absolute prohibition of the Speech or Debate Clause, which prevents members of Congress from being "questioned in any other place. In a 1975 case, the Supreme Court ruled that such investigative activities are immune from judicial interference.[16]

As a tool of legislative inquiries, both houses of Congress authorize their committees and subcommittees to issue subpoenas to require the production of documents and the attendance of witnesses regarding matters within the committee's jurisdiction. Committee subpoenas "have the same authority as if they were issued by the entire House of Congress from which the committee is drawn."[17] If a witness refuses to testify or produce papers in response to a committee subpoena, and the full committee votes to report a resolution of contempt to the floor, the full House or Senate may vote in support of the contempt citation.

Committees and subcommittees are authorized to request, by subpoena, the attendance and testimony of witnesses and the production of books, records, correspondence, and other documents as it considers necessary. A congressional subpoena identifies the name of the committee or the subcommittee; the date, time, and place of the hearing a witness is to attend; and the particular kind of document sought. A subpoena

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[12] Eastland v. United States Servicemen's Fund, 421 U.S. 491, 505 (1975).
[13] Id. at 509.
[14] Wilkinson v. United States, 365 U.S. 399, 408-09 (1961); Ashland Oil, Inc. v. FTC, 409 F.Supp. 297, 305 (D.D.C. 1976).
[15] Pillsbury Co. v. FTC, 354 F.2d 952, 963 (5th Cir. 1966).
[16] Eastland v. United States Servicemen's Fund, 421 U.S. at 501.
[17] Id. at 515.

may state that if the documents are delivered by a particular date, the person who has custody over documents need not appear. It is rare for an executive official to wholly sidestep a congressional subpoena. In 1989, a House subcommittee issued a subpoena to former Housing and Urban Development Secretary Samuel Pierce. He appeared but invoked his constitutional right not to incriminate himself. He became the first former or current Cabinet official to invoke the Fifth Amendment since the Teapot Dome scandal of 1923.[18] In 1991, Secretary of Commerce Robert Mosbacher became the first sitting Cabinet officer to refuse to appear before a congressional committee to explain why he would not comply with a subpoena.[19]

In 1981, Attorney General William French Smith issued an opinion that analyzed how the administration should respond to a congressional subpoena. He concluded that when Congress issues a subpoena as part of a "legislative oversight inquiry," access by Congress has less justification than when it seeks information for legislative purposes."[20] He acknowledged that Congress "does have a legitimate interest in obtaining information to assist it in enacting, amending, or repealing legislation." Yet "the interest of Congress in obtaining information for oversight purposes is, I believe, considerable weaker than its interest when specific legislative proposals are in question."[21] This distinction between legislation and oversight is strained and unconvincing. Congress has as much right to oversee the execution of laws as it does to pass them. Moreover, even if such an artificial distinction could be drawn, Congress could easily erase it by introducing a bill to "justify" every oversight proceeding. There is no reason for Congress to act in that manner.

The Inslaw Affair

In 1990, the House and the Justice Department engaged in a showdown over access to documents concerning the Inslaw Affair. On December 5, Chairman Jacks Brooks of the Judiciary Committee convened a hearing to review the refusal of Attorney General Richard Thornburgh to provide the committee with access to all documents regarding a civil dispute brought by Inslaw, Inc., a computer company. Inslaw charged that high-level officials in the Justice Department conspired to force Inslaw into bankruptcy and have its computer software program, called PROMIS, transferred or bought by a rival company to help the company keep track of civil and criminal cases. Federal Bankruptcy Judge

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[18] Valerie Richardson and Jerry Seper, "House Committee Subpoenas Pierce," Washington Times, September 21, 1989, at A5; Gwen Ifill, "Pierce Invokes Fifth Amendment," Washington Post, September 27, 1989, at A1; Haynes Johnson, "Teapot Dome of the '80s," Washington Post, September 29, 1989, at A2.
[19] Susan B. Glasser, "Secretary Spurns Census Subpoena," Roll Call, December 12, 1991, at 1.
[20] 5 Op. O.L.C. 27, 29-30 (1981).
[21] Id. at 30.

George Bason had already ruled that the Justice Department "took, converted, and stole" Inslaw's proprietary software, using "trickery, fraud, and deceit."[22]

The Justice Department denied those charges, claiming that what was at stake was a contract dispute. Chairman Brooks said that the controversy reached the highest levels of the department, including at least two Assistant Attorneys General, a Deputy Attorney General, and Attorney General Edwin Meese. Because House and Senate investigating committees had been denied access to documents needed to establish the department's guilt or innocence, Brooks concluded that he was "even more convinced that the allegations concerning INSLAW must be fully and independently investigated by the committee."[23]

The ranking member of the committee, Hamilton Fish (R-N.Y.), pointed out that the department had given considerable assistance to the legislative investigation, arranging for over 50 interviews with departmental employees, handing over "voluminous written materials," and providing space for congressional staff.[24] In a letter to Rep. Fish, Assistant Attorney General W. Lee Rawls noted that in an accommodation with House Judiciary, "the Department did not insist on its usual practice of having a Department representative at these interviews."[25] Committee staff also had access, pursuant to a confidentiality agreement, "to the files reflecting investigations by the Office of Professional Responsibility, and we have provided documents generated during investigations by the Criminal Division into allegations of wrongdoing relating to Inslaw."[26] Committee staff were allowed to depose departmental employees "without the presence of Department counsel," and were given access to the Civil Division's files on the Inslaw litigation. Out of tens of thousands of documents, the department "withheld only a minute fraction, which are privileged attorney work product that would not be available to a party in litigation with the United States."[27]

At the hearing, the committee heard testimony from Steven R. Ross, House General Counsel, who analyzed the Attorney General's decision to withhold documents because of pending civil litigation and the need for the department to protect litigation strategy and agency work products.[28] Ross took exception to the position advanced by Rawls in his letter to Rep. Fish that congressional investigations "are justifiable only as a means of facilitating the task of passing legislation." Such a standard, Ross said, would "eradicate

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[22] "The Attorney General's Refusal to Provide Congressional Access to 'Privileged' Inslaw Documents," hearing before a subcommittee of the House Committee on the Judiciary, 101st Cong., 2d Sess. 1 (1990).
[23] Id. at 2.
[24] Id. at 3.
[25] Id. at 163.
[26] Id. at 164.
[27] Id
[28] Id. at 77.

the time-honored role of Congress of providing oversight, which is a means that has been upheld by the Supreme Court on a number of occasions, by which the Congress can assure itself that previously passed laws are being properly implemented."[29] Fish interrupted at that point to agree that the sentence by Rawls was "not a technically correct statement of the power of the Congress" and was "far too narrow."[30]

Ross also challenged the claim by the Justice Department that it could deny Congress documents to protect pending litigation. Ross reviewed previous decisions by the Supreme Court to demonstrate that information could not be withheld from Congress simply because of "the pendency of lawsuits."[31] The congressional investigation of Anne Gorsuch, EPA Administrator, was cited by Ross as another example of the Justice Department labeling documents as "enforcement sensitive" or "litigation sensitive" to keep materials from Congress.[32]

On July 25, 1991, a subcommittee of House Judiciary issued a subpoena to Attorney General Thornburgh. A newspaper story said that the night before the subcommittee was scheduled to vote on the subpoena, the Justice Department indicated that it was willing to turn over the Inslaw documents. Chairman Brooks, given recent departmental promises, said he was too skeptical to accept the offer.[33] He wanted access to the documents to decide whether the department had acted illegally by engaging in criminal conspiracy. When the committee failed to receive the materials, Brooks said that the committee would consider contempt of Congress proceedings against the department.[34]

At that point, several hundred documents were delivered to the committee, which later released a formal investigative report on the Inslaw Affair.[35] The committee gained access to sensitive files of the Office of Professional Responsibility and received more than 400 documents that the department had described as related to "ongoing litigation and other highly sensitive matters and 'protected' under the claims of attorney-client and attorney work product privileges."[36]

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[29] Id. at 78.
[30] Id.
[31] Id. at 79.
[32] Id. at 80-81. For details on the Gorsuch investigation by Congress, see Fisher, The Politics of Executive Privilege, at 126-30.
[33] Joan Biskupic, "Panel Challenges Thornburgh Over Right to Documents," CQ Weekly Report, July 27, 1991, at 2080. See also David Johnston, "Administration to Fight House Panel's Subpoena," New York Times, July 30, 1991, at A12.
[34] Susan B. Glasser, "Deadline Passes, But Justice Dept. Still Hasn't Given Papers to Brooks," Roll Call, September 19, 1991, at 12.
[35] H. Rept. No. 857, 102d Cong., 2d Sess. (1992).
[36] Id. at 92-93.

FBI Corruption in Boston

Toward the end of 2001, President George W. Bush invoked executive privilege for the first time. He acted in response to subpoenas issued by the House Government Reform Committee covering two issues: campaign finance and FBI corruption in Boston. He advised Attorney General John Ashcroft not to release the documents to the committee because disclosure "would inhibit the candor necessary to the effectiveness of the deliberative processes by which the Department makes prosecutorial decisions." He argued that giving the committee access to the documents "threatens to politicize the criminal justice process" and undermine the fundamental purpose of the separation of powers doctrine, which "was to protect individual liberty."[37]

This kind of sweeping language, grounded in fundamental constitutional principles, appeared to shut the door in the face of the committee. In fact, Bush's statement made it clear he was ready to negotiate. He advised the Justice Department to "remain willing to work informally with the Committee to provide such information as it can, consistent with these instructions and without violating the constitutional doctrine of separation of powers."[38] In the end, Bush succeeded in withholding the campaign finance documents but folded on the Boston materials.

There could hardly be a subject area less attractive for Bush's first use of executive privilege than FBI's conduct in Boston. During hearings on May 3, 2001, the House Government Reform Committee laid out the basic facts. It wanted documents concerning the FBI's role in a 30-year-old scandal in Boston that sent innocent people to prison for decades and allowed mobsters to commit murder. The FBI tolerated this injustice because it wanted to preserve access to informers, while at the same time knowing that the individuals imprisoned were innocent of the charges. During this crime spree, some FBI agents took cash from the mobsters.[39] This sordid record promoted the committee investigation, and it was on such a dispute that President decided to invoke executive privilege.

On December 13, 2001, the day following Bush's decision to assert executive privilege, the committee held further hearings on the Boston matter. Michael Horowitz, appearing on behalf of the Justice Department, defended the use of executive privilege to keep from the committee documents regarding the department's decision to prosecute or decline to prosecute. The reason for withholding these pre-decisional documents was "to

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[37] 37 Weekly Comp. Pres. Doc. 1783 (2001).
[38] Id.
[39] "Investigation Into Allegations of Justice Department Misconduct in New England – Volume 1," hearings before the House Committee on Government Reform, 107th Cong,, 1st-2d Sess. 1-4 (2001-02).

protect the integrity of Federal prosecutive decisions" and to make sure that such decisions are based on "evidence and the law, free from political and other improper influences."[40] Releasing such documents to the committee, he said, "would undermine the integrity of the core executive branch decisionmaking function."[41]

This testimony was far too abstract and rigid to survive as departmental doctrine. Six days after the hearings, the department wrote a much more conciliatory letter to the committee chairman. It now stated "that the Department and the Committee can work together to provide the Committee additional information without compromising the principles maintained by the executive branch. We will be prepared to make a proposal as to how further to accommodate the Committee's needs as soon as you inform us in writing of the specific needs the Committee has for additional information."[42]

On January 10, 2002, White House Counsel Alberto R. Gonzales wrote to the committee, noting that it was a "misimpression" that congressional committees could never receive deliberative documents from a criminal investigation. "There is no such bright-line policy, nor did we intend to articulate any such policy." Instead, the department would treat such documents "through a process of appropriate accommodation and negotiation to preserve the respective constitutional roles of the two Branches." The committee's subpoenas "sought a very narrow and particularly sensitive category of deliberative matters – prosecution and declination memoranda – as well as the closely related category of memoranda to the Attorney General regarding the appointment of a special prosecutor" for the campaign finance investigation. Yet Gonzales signaled that such materials, under certain conditions, might be shared with the committee: "Absent unusual circumstances, the Executive Branch has traditionally protected those highly sensitive deliberative documents against public or congressional disclosure."[43]

The dispute had clearly moved away from fixed departmental principles to the specific question of whether "unusual circumstances" were absent or present. Clearly it was the latter. Gonzales said that the administration "recognizes that in unusual circumstances like those present here, where the Executive Branch has filed criminal charges alleging corruption in the FBI investigative process, even the core principles of confidentiality applicable to prosecution and declination memoranda may appropriately give way, to the extent permitted by law, if Congress demonstrates a compelling and specific need for the memoranda."[44] The White House was now "prepared to accommodate the Committee's interest in a manner that should both satisfy the

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[40] Id. at 379.
[41] Id. at 380.
[42] Letter from Assistant Attorney General Daniel J. Bryant to Rep. Dan Burton, chairman of the House Committee on Government Reform, December 19, 2001, at 2.
[43] Letter from Alberto R. Gonzales, Counsel to the President, to Rep. Dan Burton, January 10, 2002, at 1.
[44] Id. at 2.

Committee's legitimate needs and protect the principles of prosecutorial candor and confidentiality."[45]

The committee held hearings a third time, on February 6, 2002, to hear testimony from experts who cited specific instances of the executive branch giving congressional committees access to prosecutorial memoranda for both open and closed investigations.[46] Under these multiple pressures, the Bush administration agreed to give the Government Reform Committee prosecutorial memos on FBI conduct in Boston. Some of the documents were released within one hour of the committee's decision to hold President Bush in contempt.[47]

Conclusions

Congressional subpoenas represent the first volley from a committee that has decided that executive branch documents are necessary to fulfill legislative responsibilities, and that informal negotiations between the two branches have failed. Issuance of a subpoena is usually successful in dislodging the documents, particularly when the committee request enjoys broad bipartisan support, as was the case with the probe into FBI operations in Boston. If that step is ineffective, the committee can deliberate on the necessity of going the next step by holding an executive official in contempt. The decision to invoke the contempt power has been generally effective in compelling executive agencies to cooperate and release documents to investigative committees.[48]

In its April 8, 2011 letter to Chairman Issa, the Justice Department stated that many of the committee's requests for records relate to ongoing criminal investigations: "Based upon the Department's long-standing policy regarding the confidentiality of ongoing criminal investigations, we are not in a position to disclose such documents, nor can we confirm or deny the existence of records in our ongoing investigative files."[49] That claim sweeps too broadly. As indicated in my statement, Congress has often obtained records related to ongoing criminal investigations.

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[45] Id. at 3.

[46] "Investigation Into Allegations of Justice Department Misconduct in New England – Volume 1," at 520-604 (testimony by Morton Rosenberg and Charles Tiefer).

[47] Vanessa Blum, "White House Caves on Privilege Claim," Legal Times, March 18, 2002, at 1. See Charles Tiefer, "President Bush's First Executive Privilege Claim: The FBI/Boston Investigation," 33 Pres. Stud. Q. 201 (2003).

[48] For specific examples of the contempt power being invoked from 1975 to the present, see Fisher, The Politics of Executive Privilege, at 112-33.

[49] Letter from Ronald Weich, Assistant Attorney General, Office of Legislative Affairs, U.S Department of Justice,to Chairman Darrell Issa, House Committee on Oversight and Government Reform, April 8, 2011, at 1.

BIOSKETCH

Louis Fisher is Scholar in Residence at the Constitution Project. Previously he worked for four decades at the Library of Congress as Senior Specialist in Separation of Powers (Congressional Research Service, from 1970 to 1996) and Specialist in Constitutional Law (the Law Library, from 2006 to 2010. During his service with CRS he was research director of the House Iran-Contra Committee in 1987, writing major sections of the final report.

His books include *President and Congress* (1972), *Presidential Spending Power* (1975), *The Constitution Between Friends* (1978), *The Politics of Shared Power* (4th ed. 1998), *Constitutional Conflicts Between Congress and the President* (5th ed. 2007), *Constitutional Dialogues* (1988), *American Constitutional Law* (with Katy J. Harriger, 9th ed. 2011), *Presidential War Power* (2d ed. 2004), *Political Dynamics of Constitutional Law* (with Neal Devins, 4th ed. 2006), *Congressional Abdication on War and Spending* (2000), *Religious Liberty in America: Political Safeguards* (2002), *Nazi Saboteurs on Trial: A Military Tribunal & American Law* (2003; 2d ed. 2005), *The Politics of Executive Privilege* (2004), *The Democratic Constitution* (with Neal Devins, 2004), *Military Tribunals and Presidential Power: American Revolution to the War on Terrorism* (2005), In the *Name of National Security: Unchecked Presidential Power and the* Reynolds *Case* (2006), *The Constitution and 9/11: Recurring Threats to America's Freedoms* (2008), *The Supreme Court and Congress: Rival Interpretations* (2009), and *On Appreciating Congress: The People's Branch* (2010). His textbook in constitutional law is available in two paperbacks: *Constitutional Structures: Separation of Powers and Federalism* and *Constitutional Rights: Civil Rights and Civil Liberties*. With Leonard W. Levy he edited the four-volume *Encyclopedia of the American Presidency* (1994). He has twice won the Louis Brownlow Book Award (for *Presidential Spending Power* and *Constitutional Dialogues*). The encyclopedia he co-edited was awarded the Dartmouth Medal. In 1995 he received the Aaron B. Wildavsky Award "For Lifetime Scholarly Achievement in Public Budgeting" from the Association for Budgeting and Financial Management. In 2006 he received the Neustadt Book Award for *Military Tribunals and Presidential Power.*

He received his doctorate in political science from the New School for Social Research (1967) and has taught at Queens College, Georgetown University, American University, Catholic University, Indiana University, Johns Hopkins University, the College of William and Mary law school, and the Catholic University law school.

Dr. Fisher has been invited to testify before Congress about 50 times on such issues as war powers, state secrets privilege, NSA surveillance, executive spending discretion, presidential reorganization authority, Congress and the Constitution, the legislative veto, the item veto, the Gramm-Rudman deficit control act, executive privilege, executive lobbying, CIA whistleblowing, covert spending, the pocket veto, recess appointments, the budget process, the balanced budget amendment, biennial budgeting, and presidential impoundment powers.

He has been active with CEELI (Central and East European Law Initiative) of the American Bar Association, traveling to Bulgaria, Albania, and Hungary to assist constitution-

writers, participating in CEELI conferences in Washington, D.C. with delegations from Bosnia-Herzegovina, Lithuania, Romania, and Russia, serving on CEELI "working groups" on Armenia and Belarus, and assisting in constitutional amendments for the Kyrgyz Republic. As part of CRS delegations he traveled to Russia and Ukraine to assist on constitutional questions. For the International Bar Association he helped analyze the draft constitutions for Swaziland and Zimbabwe.

Dr. Fisher's specialties include constitutional law, war powers, budget policy, executive-legislative relations, and judicial-congressional relations. He is the author of more than 400 articles in law reviews, political science journals, encyclopedias, books, magazines, and newspapers. He has been invited to speak in Albania, Australia, Belgium, Bulgaria, Canada, China, the Czech Republic, Denmark, England, France, Germany, Greece, Israel, Japan, Macedonia, Malaysia, Mexico, the Netherlands, Oman, the Philippines, Poland, Romania, Russia, Slovenia, South Korea, Sweden, Taiwan, Ukraine, and the United Arab Emirates.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: Louis Fisher

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

None

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

I am Scholar in Residence with the Constitution Project, 1200 18th Street, N.W., Suite 1000, Washington, D.C. 20036.

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None

I certify that the above information is true and correct.
Signature: Louis Fisher Date: June 8, 2011