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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

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January 28, 2010

The Honorable John Brennan
Assistant to the President for Homeland Security and
Counterterrorism and Deputy National Security Advisor
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear John:

We were very disappointed to read your letter dated January 26, 2010, concerning the Executive Branch's failure to comply with our requests for witnesses and documents as part of the Committee on Homeland Security and Governmental Affairs's investigation into the events surrounding the November 5, 2009, attack at Fort Hood, Texas. We were particularly concerned to read your letter in the media despite the fact our letter of January 22, 2010, to you was private.

First, your statement that the Administration took the "extraordinary step of briefing the bipartisan, bicameral leadership" including us about the attack is an affront to the role of the Congress as set forth in Article I of the Constitution. As you know, the Congress is a co-equal branch of government responsible for ensuring domestic tranquility and providing for the common defense. We are surprised that you consider a briefing to Members of Congress about a terrorist attack on U.S. soil that killed 13 individuals and wounded 43 others to be an "extraordinary step."

Second, your letter assumes that briefings by senior Executive Branch officials to the Congress suffices for the Congress to exercise its Constitutional oversight role of Executive Branch activity. Congress has a clear Constitutional responsibility to conduct independent oversight, which means interviewing government officials at all levels who were direct participants in the matters Congress is investigating and reviewing the documents related to those matters. We appreciate the briefings provided by the Department of Defense, but at the Department's insistence, facts concerning the perpetrator were not discussed, only DoD policies. We also appreciate the briefing by the Federal Bureau of Investigation's Deputy Director on the FBI's preliminary lessons-learned and initial steps taken to remedy the problems exposed by the attack. However, these briefings are in no way a substitute for direct Congressional oversight of this incident – particularly when, by all accounts, government performance was seriously flawed. Certainly no investigative body within the Executive Branch would accept general briefings or

summaries in place of talking with witnesses and reviewing documents; the Executive Branch should not expect that Congress will accept the same.

Third, your characterization of cooperation by DoD and the FBI in responding to our multiple requests for documents and witnesses is not accurate. Your statement that DoD is "in the process of producing a large collection of materials this week" is contrary to what our staff was told in a meeting with the Department's representatives yesterday. They produced seven publicly available documents, said that there had been no decision whether to produce any additional documents or any witnesses, and could not provide a date at which DoD would even describe the Department's response much less fulfill our requests. We also still await compliance by the FBI with our document and witness requests. As we noted in our January 22, 2010, letter to you, while Congress has received little cooperation from the Executive Branch, the internal investigations led by DoD, the FBI and the National Security Council have proceeded with seemingly extensive access to witnesses and documents in a manner that will not compromise the criminal prosecution – a goal that we share.

We urge the Executive Branch in the strongest possible terms to comply expeditiously with our requests. Otherwise, we will begin the process of issuing subpoenas to compel compliance.

Sincerely,



Joseph I. Lieberman
Chairman



Susan M. Collins
Ranking Member

cc: The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Robert M. Gates
Secretary
U.S. Department of Defense
1000 Defense Pentagon, Room 3E718
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