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FACE THE NATION

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GUESTS: Sen. CHARLES SCHUMER (D-NY)
Judiciary Committee

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Judiciary Committee

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***FACE THE NATION - CBS NEWS
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JIM AXELROD, host:

Today on FACE THE NATION, the standoff between the White House and Congress on executive privilege. Plus, the commutation of White House aide "Scooter" Libby's prison sentence. Did President Bush go too far?

The White House has decided to claim executive privilege in defying Congress' request for information regarding the firing of nine US attorneys. How will Congress react? And there was an uproar last week after President Bush commuted the sentence of White House aide Scooter Libby. Why did the president do what he did? And is a pardon out of the question? We'll ask two members of the Judiciary Committee, Democrat Chuck Schumer of New York and Republican Orrin Hatch of Utah.

Then we'll turn to campaign '08 and the politics of the week. And we'll talk to David Yepsen, who writes for the Des Moines Register, Vaughn Ververs of cbsnews.com, and Jeanne Cummings of politico.com.

But first, the White House vs. Congress on FACE THE NATION.

Announcer: FACE THE NATION, with chief Washington correspondent Bob Schieffer. And now from Washington, substituting for Bob Schieffer, CBS News chief White House correspondent Jim Axelrod.

AXELROD: And welcome again to the broadcast. Bob Schieffer is off this morning.

Joining us now from Long Island, New York, Senator Chuck Schumer. And with us here in our studio...

Senator CHARLES SCHUMER (Democrat, New York; Judiciary Committee): Hi.

AXELROD: ...Senator Orrin Hatch. Gentlemen, thank you both for being with us.

Senator Hatch, let's start with you. And I'd like to discuss this executive privilege battle that really seems to be intensifying between Congress and the White House. Now, tomorrow is a congressional deadline for the White House to provide a justification for not complying with a subpoena, as well as a log of the documents that it'll be withholding. You got a problem with the White House position on this?

Senator ORRIN HATCH (Republican, Utah; Judiciary Committee): I don't have any problem with that position. I think that--I think they're asserting executive privilege properly. And frankly, I think they have a pretty strong case. The White House has cooperated fully. They've given over almost 10,000 pages of documents to the committee on this US attorney matter. They give over--given over 200,000 documents on virtually all the matters. They've put the attorney general, the deputy attorney general, a whole raft of other people up here to testify under oath. They offered to put Karl Rove and others to come up, but off the record, so that you could--the committee could find out just exactly

what they--ask any questions they wanted and find out just exactly what was going on.

But there comes a point where the White House has to say, `Hey, look, there are certain confidential things in the White House that we're not going to share with Congress,' just like there are confidential things in Congress we're not going to share with the White House.

AXELROD: But there are ways to do that. And, for instance, not providing a log of documents, that's not exactly standard operating procedure. So it would seem as though the White House must be very sure of itself, to say the least, but also making this especially difficult.

Sen. HATCH: The logs have been provided in the past, but I think the White House is sure of itself. I think they have a very good case. I don't think--if you read the letter from Fred Fielding, the counsel in the White House, it's a pretty strong, very, very articulate, good letter. And I think he outlines it about as well as it can be outlined.

AXELROD: Chuck Schumer, where is this going to end? Is this going to end with criminal contempt of Congress?

Sen. SCHUMER: Well, let me just say I don't think the claim of privilege is very strong. There are three reasons. First and foremost, this is not a general fishing expedition, but rather it's to look at a specific act of wrongdoing. The courts have looked more favorably on privilege when that's the case. Second, some documents related to this have already been revealed. That weakens the case of privilege. And third, there's nowhere else to get the information. So we think that if it should go to court, we'll prevail. But what usually happens in these, Jim, is Congress does invoke contempt. Both Chairman Leahy and Chairman Conyers have said they would. And then there's a negotiation, and the person almost always, in the past, has come before the Congress and testified. And that's where I think it's going to end up.

AXELROD: Senator Hatch just mentioned what the White House considers to be a generous offer. And I know that the Senate, the Judiciary Committee has said you're fine on conducting the testimony in private, you're fine with not doing it under oath, it's the transcripts that seem to be the sticking point. Is that right?

Sen. SCHUMER: Exactly. And even Arlen Specter, the Republican ranking member of the Judiciary Committee, has said that, without a transcript, it's meaningless. It means no accountability. And what they've done--Orrin is right--they've given us a lot of documents related to the Justice Department. But, as you know, everyone in the Justice Department--Gonzales, McNulty and everyone on down--said, `We didn't do it.' It looks like the White House did it. They won't give us any documents from the White House. They won't let us talk to anyone with a transcript or under oath or in public. You know, when somebody claims these--this kind of secrecy on these kinds of specific acts, it's usually because they have something to hide.

AXELROD: Senator Hatch, explain this to me about the transcripts, though. It's sort of standard operating procedure to have a written record of what's said anytime somebody testifies.

Sen. HATCH: Not on top White House employees. The White House has to guard its right to have confidential communications on the best advice they can get from their employees. You know, this is a big tempest in a teapot. First of all, the president has an absolute right to discharge any US attorney at any time. The fact of the matter is they did it--I think it was heavily handled, it wasn't well done, and that's, I think, a criticism that is justified. But in all of the hearings we've had and all the requests for documents, the demand of people to come up and testify before the committee, which the White House has cooperated in, there hasn't been one indication of any real impropriety. There's been no interference with an ongoing investigation or an ongoing case. And it just looks--I disagree with Chuck--it is a fishing expedition. And the White House says, `We're not--just not going to go along with it any further, especially with regard to internal White House communications that, really, every White House believes ought to be confidential.

AXELROD: All right, let's move along to what has been probably the burning issue this week in Washington, which is the commutation of Scooter Libby's sentence.

Sen. HATCH: Right.

AXELROD: Are you disputing that this was special treatment given to a top administration official?

Sen. HATCH: I don't think it was special treatment. I think the president has an absolute right--I think Chuck would agree with that--an absolute right to commute sentences or grant pardons. The only thing I was disappointed in, I think he should've been pardoned.

AXELROD: But the president has done 113 times pardoned somebody, three times commuted a sentence.

Sen. HATCH: No, four.

AXELROD: Always, always vetted through the Justice Department. Not this time. How can you say it's not special treatment?

Sen. HATCH: Well, it's no different from what President Clinton did when he--when he granted 140 pardons and 36 commutations on the last day of his tenure in office. Now, I didn't disagree with most all of those, but we did have some problems at the time because the Marc Rich, Pincus Green, those pardons were granted to two fugitives from justice. Now, the president gave a reasonable explanation in his article in The New York Times. But really, what really upset me was the two felons, one of whom was a cocaine dealer that wasn't--the other wasn't any better. And they both got pardons. They both

got pardons after they had given \$200,000 each to Hugh Rodham, Senator Clinton's brother.

AXELROD: Senator Schumer, in your view, is there any difference between a commutation and a pardon?

Sen. SCHUMER: Yes. And this is the real difference here. It hasn't really been brought out. Under commutation, the person who's commuted has much greater Fifth Amendment rights, and so it means that if there were a pardon, Libby could be called before Congress to testify on a whole bunch of things. Commutation makes it much, much harder to do that. And I think that's an unspoken reason why the president did this.

AXELROD: You're saying that commutation...

Sen. SCHUMER: Let me just say one other thing.

AXELROD: Senator Schumer, just let me make sure I got my arms around this.

Sen. SCHUMER: Yeah.

AXELROD: You're saying what a commutation does is, in essence, insulate the White House further from Scooter Libby being a...

Sen. SCHUMER: To a far greater extent, yes. To a far greater extent than pardon, commutation, you're allowed to keep your Fifth Amendment rights and, therefore, you can ask--you have--you don't have to answer many questions at all. And I think that may be one of the reasons here that they commuted rather than pardoned. Most Republicans, as Orrin said, preferred pardon.

AXELROD: I asked Senator Hatch about President Bush, and he answered by using President Clinton's example. Is there a difference in your view between what President Bush has done this week and what Republicans call the sort of fire sale pardons of the Clintons on their way out the White House door?

Sen. SCHUMER: Well, look, I think most people, most Democrats, myself included, at the time said the Clinton pardons were wrong. These are wrong also and, you know, that's just looking backward. I mean, the issue here is the Libby pardon, 64 percent of America--the Libby commutation--is the issue. Sixty-four percent of the American people said it was wrong. And they're just trying to create a diversion as always.

And let me just say one other thing, Jim. One thing, and I've spoken to Senator Leahy about this, that we're thinking of doing is calling Patrick Fitzgerald, the prosecutor, before us. You know, he's not allowed to talk about what happened before the grand jury, but he did interview the president and the vice president not before a grand jury, and he might have some very interesting things to say. He issued a rare statement after the commutation that was very harsh in condemning it, and with good reason. The average guidelines, the Justice Department guidelines in these types of situations call for 30 to 37 months in prison. That's what Libby got, and so there are

thousands and thousands of people who committed the same crime who are sitting in jail, and Scooter Libby is not. And that's just not fair. That's not equal justice before the law.

AXELROD: When would you like to see Patrick Fitzgerald come to Capitol Hill?

Sen. SCHUMER: Well, you know, this would be Senator Leahy's call, but I talked to him about it yesterday and he seemed inclined to do it. It would be very interesting, and we'd like to hear what he has to say. Obviously, he can't talk about anything that occurred in the grand jury, but there's a lot else that he might be able to tell us because, obviously, with the commutation of Libby and with no one else meeting a criminal standard, but still something terrible being done, the name of an agent being leaked, and, you know, I started this--I called for the original investigation, we sure want to get more answers.

AXELROD: Senator Hatch, is--does what the president did this week, does that just sort of amount to a gift to defense lawyers all over the country who can now sort of file a Libby motion and--when they have clients that are facing similar charges and similar sentences?

Sen. HATCH: No more than it's done for any other commutation. The fact of the matter is, is that Libby had given a lifetime of service to our country. He certainly was--is not a criminal. He's a person who has--who has sacrificed throughout his lifetime to serve this country, and he certainly has been doing it over the last number of years.

AXELROD: He was also convicted.

Sen. HATCH: He was not a--he was not a threat to leave the country, he was not a threat to--in any way. And it was an appropriate thing to do. And I disagree with Chuck. I think both President Clinton and President Bush had an absolute right to grant pardons if they wanted to constitutionally. The only difference between the Clinton and the Bush pardons is in the case of the FALM, the Puerto Rican terrorists, case of Rich and Pinkus Green. In the case of the two, who paid \$200,000 to Hugh Rodham, these--two of them were fugitives from justice, 16 of them were terrorists, and the other two, it seemed to me, may have bribed their way through.

AXELROD: Right. We--right.

Sen. HATCH: And that's what really caused the problem here.

AXELROD: We just got about two minutes.

Sen. HATCH: But they both had an absolute right to grant pardons.

AXELROD: We've got about a minute and a half left.

Sen. SCHUMER: Well, one thing, Jim, two wrongs don't make a right. That's the bottom line.

Sen. HATCH: Well, and by the way--by the way, they still have constitutional rights after a pardon as well as a commutation.

AXELROD: Gentlemen--gentlemen, let's...

Sen. HATCH: I think that has to be clarified.

AXELROD: ...let's just leave it there for a second because I want to get your thoughts on the war very, very quickly now.

Pete Domenici comes out this week and calls for a further reduction in troops and of combat missions by next spring.

Senator Hatch, is the drip, drip, drip bursting the dam and becoming a steady stream of Republicans leaving the president?

Sen. HATCH: Well, there's a lot of discontent with the war. But on the other hand, Pete Domenici was not calling for us to immediately leave. He's calling us to work towards withdrawing the troops over there, and I think--I think that's different from what the president really wants, and there are a few others doing that. But on the other hand, I don't think any Republican, major Republican, is calling for us to just precipitously leave there and leave that place in a mess.

AXELROD: Senator Schumer, you got about 20 seconds here. Your reaction to Senator Domenici this week.

Sen. SCHUMER: Yup. Yup. I think the dam is about to burst. Republican senators who have been holding up a reasonable change in policy on this war are going home and getting hammered by their constituents. And they're beginning to change. If not this July, by September there will be real change forced upon the president by a bipartisan Senate.

AXELROD: And we're going to leave it there. Chuck Schumer, Orrin Hatch, thank you both for joining us. When we return, we'll talk politics with our roundtable guests. And we're back in just a minute.

(Announcements)

AXELROD: Joining us now from Des Moines, Iowa, David Yepsen of the Des Moines Register. With us here, Jeanne Cummings of politico.com, and our own Vaughn Ververs, senior political editor for cbsnews.com.

David Yepsen, let's start with you. You had a chance to watch the Clintons. Vaughn, myself and you were all in Iowa this week watching Hillary and Bill Clinton. First thoughts, how did it seem to you, the energy level, the whole show? How was the package out there?

Mr. DAVID YEPSEN (The Des Moines Register): Well, it was very intense. I think the Clinton campaign has been behind in Iowa. She leads in national

polls; she does not lead here. They had to jump-start that campaign, and so they played their trump card early. He had--he generated great crowds. They ran out of food at some events. They ran out of sign-up sheets for people to sign in. This is--this is a game, as you know, of finding activists who are going to turn out for you on caucus night. And what better way to harvest those names than to bring in a star attraction like President Clinton? So it was a big plus for them.

AXELROD: Vaughn Ververs, you know, the Clintons strike me as the ultimate political Rorschach test. If you like them, then it's magic. And if you don't like them, this week was like watching a tired old act.

Mr. VAUGHN VERVERS (Senior Political Editor, CBSNews.com): I think that's right. I think the crowd that they were attracting in Iowa liked them very much. I think it's an evolving act that we're going to be seeing over time. You know, people in Iowa, they like to watch their candidates over a long period of time. The people I talked to there were very impressed with the professionalism, the way that the campaign rolled out Bill Clinton this week. I think they would like to hear them talk a little bit more to them, answer questions. These are people who traditionally want to hear candidates and talk to them, and listen to their responses, and have an interaction with them. I know that the senator has done some of that. I think they're going to expect a lot more of that in the future. But this is a good first step. This is a campaign that just weeks ago had been--there was a leaked memo that suggested they may skip the Iowa caucuses. This is a very strong statement that they're in it, they're in it to play and, if they win it, they could run the whole table.

AXELROD: David, did--do you--you touched on this briefly, but did you see the Clinton campaign pulling Bill Clinton out this early as a real sign of worry?

Mr. YEPSEN: Sure, absolutely. I mean, as Vaughn mentioned, I mean, there was talk of pulling out of Iowa, of not competing here. Senator Clinton leads in national polls of this race. If she can win in Iowa, she can roll up the nomination very quickly. If she loses in Iowa to John Edwards or to Barack Obama, she's in real trouble. She's going to have to be the comeback girl in New Hampshire if that happens. They don't want that. They want to win Iowa. They played this big card early, and they'll play it again and again because it works. It draws out activists, helps them find supporters.

AXELROD: Jeanne Cummings, the other big story politically this week in terms of campaigns was the financial statements being released. And John McCain's got serious trouble, doesn't he? Is this the beginning of a death spiral for his campaign?

Ms. JEANNE CUMMINGS (Politico.com): It could be. They--it was very bad news for him. Ironically, the amount of money that he raised in the second quarter, \$11 million, is not such a bad number. But the problem was he only had \$2 million in the bank when it was done. He spent--he has just spent like crazy, and he is just essentially broke. And so he's already retooled his campaign once; they're retooling it again. But, at some point, there are

going to be donors who get nervous about investing any more money in his campaign, and so he has a great challenge in convincing people that they can still have confidence in his campaign.

AXELROD: And yet, there are some people who draw a parallel between McCain in December 2007 and John Kerry in December of 2003, beset by money trouble as well. Do you buy this?

Ms. CUMMINGS: Well, I know that that's the--that is the plan that the McCain people hope will happen. And, as we all know, Kerry fell well behind. He ultimately loaned his campaign some money and managed to survive and win Iowa, and then wrap up the nomination. Frankly, I don't think that they are parallel situations. I think that John Kerry's problem with his base was one of degrees. They didn't view him as being sufficiently anti-war. Dean was very anti-war, so they really liked that. But when Dean faltered on other policy issues and in performance, they turned back to Kerry, who had moved to become a more of an anti-war candidate. I don't see John McCain as nimble as that. His issues go deeper. He can't move on immigration. He can't move very well on the war.

AXELROD: Now, if John McCain was the big loser financially, fund-raising this week, the big winner was Barack Obama.

David Yepsen, you saw Barack in Iowa this week. What did you make of Senator Obama? Ready for prime time out there?

Mr. YEPSEN: Yeah, he's getting better. Practice makes perfect. He--his stump speech is much improved over what it was early, much more polished. His campaign operations, they're doing the mechanics of this much better than they were before. I mentioned earlier this whole business of signing up supporters. That's what these rallies are all about. It's finding people to turn out for you. And I think Senator Obama's campaign is doing a much better job of finding those people and potentially--they're going to try, anyway--getting them turned out on caucus night. And that's the name of the game. They're after Democrats who are looking for change and a fresh face and to turn the page. And they're trying to combat this notion that he's too green. So, on balance, I think he had a very successful tour.

AXELROD: Senator Obama, Vaughn, said, when asked about the disparity in the polls and how he converts the money into narrowing the polling gap, said, 'Look, he's right where he wants to be. It's all about name recognition at this point.' Do you--do you buy that? And how does he do that? How does he convert the money to the--to the polls?

Mr. VERVERS: That's right. To some extent, it is a little bit about name recognition, although the Obama campaign would be hard pressed to say that a lot of people haven't heard about him at this point. Certainly 250,000 donors to his campaign have heard about him. I think that the problem for Obama is, are Democrats going to be willing to take that risk? You know, both of the--both the Clinton campaign and the Obama campaign are pitching a version of change. The Clinton campaign is change is a familiar change, back to the

Bill Clinton of the '90s type of change, things that people are familiar with. The Obama change is a little bit more radical. It's a little more transcendental.

AXELROD: Mm.

Mr. VERVERS: And are Democrats, in a--in a year where they're very energized, they believe that they're going to win this White House in 2008, are they willing to take that extra leap and go with Barack Obama, or are they going to take what seems to be the safer course and stay with Hillary Clinton?

AXELROD: I heard Bill Clinton say on the stump this week, 'If we're yesterday's news, yesterday's news was pretty good.'

Anyway, we're going to continue our conversation when we come back in just a minute.

(Announcements)

AXELROD: We're back again with our political roundtable.

Jeanne Cummings, Fred Thompson continues to flirt, but he won't make a date here. When are--when is he finally going to get in?

Ms. CUMMINGS: I think we're finally going to see him announce his candidacy by the end of this month. His campaign right now is organizing, they're--he's bringing in people. And he's got to--he's got to present himself quite well at that first event. And then after that he's got a lot of work to do, and we don't know yet if he's got the fire in the belly that's really required to become president. His reputation in the Senate was that he was smart and affable and--but that he didn't work really, really hard. And nobody gets handed the presidency of the United States. You have to fight like crazy to win this position, and he's got to be ready to do that.

AXELROD: And needs to establish right off the mark that he's got what you're calling this fire in the belly.

Ms. CUMMINGS: Exactly. I think that's one of the first tests. He's going to have to show that he's willing to fight for it, and then he's also got to sharpen his speeches and his messages and give everyone a clear reason of why he decided to get into the race late.

AXELROD: And I suppose, David Yepsen, the first place he'd go to do this, or among the first places, obviously, would be Iowa. What kind of appetite is there in Iowa among Republicans who are not happy with the choices they have right now?

Mr. YEPSEN: I think...

AXELROD: What is Fred Thompson likely to do out there?

Mr. YEPSEN: I think there's a lot of interest in Fred Thompson's candidacy. There's a lot of dissatisfaction and grumbling among rank and file Republicans about their choice. I saw some polling, national polling, that showed 60 percent of Democrats like the choices they have. Only 30 percent of Republicans like the choices that they have. So this Republican race is very fluid. Mitt Romney's ahead. But, you know, as we've talked, John McCain is in a something of a political tailspin here. There's just a lot of dissatisfaction among rank-and-file Republicans. They're not happy. Nobody's exciting them. They're worried about losing. They lost in '06. They're demoralized. And so on paper Senator Thompson looks pretty good. But, you know, he's--he looks good in the showroom. He's not been out here on the trail, and I think that's going to be a big test for him.

Mr. VERVERS: In a lot of ways, Jim, you know, having Tiger Woods being in Washington, DC, this weekend, watching the phenomenon that he's brought to this area, it's sort of reminiscent. I think one of the reasons that Tiger is so popular of an athlete is because he's been able to live up to expectations. The problem for Fred Thompson is, is he going to be able to live up to the expectations that've been set for him? He's been called everything from Ronald Reagan to, you know, the next, you know, the next coming of the great thing. And I think that that's a very hard thing to live up to.

AXELROD: And I guess any campaign would rather the stories continue to be sort of glowing because you're theoretical. Once he has to, to continue your metaphor, sink a few putts and win a few championships, then, you know, that's when the rubber hits the road.

Mr. VERVERS: That's right.

AXELROD: What do you anticipate, knowing what you do about Fred Thompson's political skill set? What do you think'll actually when he hits the trail?

Mr. VERVERS: Well, I think Thompson is--obviously he's very comfortable in front of a camera. He's been an actor his entire career. He'll be a very recognizable face to people. He's got a folksy, homey attitude that I think plays well among the Republican base. The problem is going to be when the issues start to come into fore, when he starts to put forward policy positions on certain things. On immigration, where is he exactly going to go? We know he was against the Senate bill. What is his solution to that? On the war, what's his--that's where it's going to begin into trouble for him.

AXELROD: Why don't we finish up this morning where we started, which is this notion of commutation. Political fallout. Why doesn't everybody give me about 20 seconds here. The political fallout of the commutation.

Jeanne, what do you see here?

Ms. CUMMINGS: Well, I think for the Democrats it was a gift. It energized their base even further, angering them, wanting to get rid of the Republicans. For the Republican presidential candidates, I think it was a wash. It's not their issue. They could just stick with the president or not, it doesn't

matter. For President Bush, it was a big problem. His base wanted a pardon; he only gave him half of that and so they're even more unhappy with him.

AXELROD: David, is it a big deal in Iowa?

Mr. YEPSEN: No, not very. I mean, I think the activists in both parties have strong opinions about it, but the average Iowan, even the average Iowa activist, they want to move on. They--the issues of Iraq and health care and all these other issues are far more important to determining the--and electability--are far more important to determining the outcome of the caucuses than this thing.

AXELROD: Vaughn, you get the last word.

Mr. VERVERS: In the bigger picture, it's another quiver in the--in the Democrats' bow to shoot at Republicans and another rock around the Republican Party's neck.

AXELROD: OK. Vaughn Ververs, Jeanne Cummings, David Yepsen, thank you so much.

That's our broadcast. Bob Schieffer'll be back next Sunday. Thanks for watching FACE THE NATION.