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Congress of the United States

House of Representatives

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July 24, 2008

The Honorable John L. Withers II
U.S. Ambassador to Albania
9510 Tirana Place
Dulles, VA 20189

Dear Ambassador Withers:

I am writing regarding a request I made more than a month ago asking for your voluntary participation in a transcribed interview with Committee staff. Despite multiple requests, I have still not received an answer as to whether you will cooperate.

I first asked for your interview on June 23, 2008, in a letter to Secretary of State Condoleezza Rice. In that letter, I explained that Major Larry D. Harrison, the Chief of the Office of Defense Cooperation in Albania, had informed the Committee that you approved removing evidence of the illegal Chinese origins of ammunition being shipped from Albania to Afghanistan by a U.S. contractor, AEY, Inc., during a late night meeting with the Albanian Defense Minister on November 19, 2007. As I stated in that letter, Major Harrison told the Committee: "the Ambassador agreed that this would alleviate the suspicion of wrongdoing." I requested your interview by July 11, 2008.¹

On July 7, 2008, officials from the State Department legislative affairs office informed my staff that you had obtained private counsel. When we contacted your counsel, he would not answer whether you intended to participate in the voluntary interview. During this time, I understand that you traveled to the United States from Albania and held several meetings regarding this topic. I also understand that you were contacted by the U.S. Attorney in Florida regarding this issue and that several of your staff have already testified before the grand jury.

On July 14, 2008, you were quoted extensively in an article that appeared in the *Los Angeles Times*. According to that article, you acknowledged that the November 19, 2007, meeting occurred; that there were discussions about how to respond to a request by the *New York Times* to visit a site in Albania where AEY, Inc., repackaged ammunition to remove evidence of

¹ Letter from Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, to Secretary of State Condoleezza Rice (June 23, 2008).

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its Chinese origins; and that the Albanian Defense Minister suggested in your presence removing the Chinese packaging from the site before the visit by the *New York Times* reporter. According to the article, you disputed Major Harrison's assertion that you agreed with the defense minister's suggestion.²

Later that day, I received a letter from you requesting a private meeting with me. The letter was dated July 11, 2008.³ I responded to you the same day, July 14, and I agreed to meet with you. I made clear, however, that this meeting was not in lieu of the Committee's request for a transcribed interview. I asked that you respond by July 16, 2008.⁴

On July 16, your counsel informed Committee staff that he had not yet consulted with you about this issue, that he was busy with a separate matter, and that he would need until July 18 to answer this relatively simple question. In an effort to further accommodate your interests, we agreed to wait. Your counsel then proposed that he meet with Committee staff on July 22 to discuss this issue. Again, the Committee agreed to this request.

On Tuesday, your counsel met with Committee staff. He stated that although you wanted to cooperate with the Committee's inquiry, he had not yet secured your agreement to participate in a transcribed interview. He then contended that you should be exempted from this process. He made the novel argument that you are not required by the Constitution to submit to a Committee interview because you are not an employee of the State Department or the Executive Branch.

Previously, only officials in the Vice President's office have made this argument, but your counsel has now asserted it on several occasions. In an earlier e-mail to Committee staff, he stated:

I am certainly aware that Committee staff has interviewed very high level Government officials in the past. A sitting United States Ambassador, however, enjoys a dignity bestowed upon him or her by the United States Constitution. Ambassador Withers is not an employee of the Department of State or of the Executive Branch of the Government.⁵

² *Army Fraud Inquiry Takes a Political Turn*, Los Angeles Times (July 14, 2008).

³ Letter from U.S. Ambassador John L. Withers II to Henry A. Waxman, Chairman, House Oversight and Government Reform Committee (July 11, 2008).

⁴ Letter from Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, to U.S. Ambassador John L. Withers II (July 14, 2008).

⁵ E-mail from Counsel to U.S. Ambassador John L. Withers II to Staff, House Oversight and Government Reform Committee (July 16, 2008).

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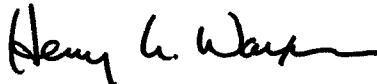
I am aware of no support for this argument in the Constitution or the precedents of the House of Representatives or this Committee. Because the Constitution specifically mentions "Ambassadors" does not mean they are exempt from congressional oversight.

Your counsel suggested that your constitutional concerns might be mitigated if the Committee agreed to create a special exception to its procedures and provide him a copy of the transcript of your interview regardless of any public release by the Committee. Committee staff explained that both you and your counsel would have access to a copy of the transcript in the Committee offices in order to make technical or other corrections necessary to create an accurate record. Committee staff also explained that the Committee could not create a special exception in this case when it had not created similar exceptions for any other government officials who participated in voluntary interviews in the past. In response, your counsel argued that he could take this case to court and prevail on the merits of the constitutional claims.

I do not know to what extent you have consulted with your attorney on this case. I also do not know to what extent his views reflect the official legal position of the Department of State. The Committee's interest is in finding the truth about what happened in Albania. Therefore, in order to ensure that you have had adequate time to fully consider your options and consult with your attorney, I will extend the Committee's deadline yet again. I ask that you inform the Committee by noon on Friday, July 25, whether you intend to participate voluntarily in a transcribed interview pursuant to standard Committee procedures. If you choose not to cooperate voluntarily, I will begin the process of compulsory process at that time.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. If you have any questions about this request, please contact David Rapallo or Theodore Chuang of the Committee staff at (202) 225-5420. I look forward to your reply.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member