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Congress of the United States

House of Representatives

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July 27, 2004

The Honorable Tom Davis
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

There is a stark contrast between your refusal to pursue allegations of wrongdoing by Bush Administration officials and your recent decision to investigate allegations of wrongdoing by former Clinton National Security Advisor Samuel R. "Sandy" Berger. I am writing to urge evenhandedness in your investigative decisions.

Under your predecessor, our Committee was widely condemned for abusing its investigative powers. When you became Chairman of the Committee in 2003, you promised a new approach, and in many respects, you have kept that commitment. Unfortunately, it now appears that the Committee is poised to repeat some of the abuses of the Burton years.

Chairman Burton's Precedents

The six-year chairmanship of Dan Burton brought widespread disrepute upon our Committee. Norman Ornstein of the American Enterprise Institute wrote that the Committee's investigation of the Clinton Administration would be "remembered as a case study in how not to do a congressional investigation and as a prime example of investigation as farce."¹ According to the *New York Times*, the Committee's efforts were a "House investigation travesty" and a "parody of a reputable investigation."² The *Washington Post* called Mr. Burton's investigation "its own cartoon, a joke and a deserved embarrassment."³

¹ *House Probe of Campaign Fund-Raising Uncovers Little*, Los Angeles Times (May 2, 1998).

² *A House Investigation Travesty*, New York Times (Apr. 12, 1997).

From 1997 to 2000, no allegation involving the Clinton Administration was too small for the Committee to investigate. Chairman Burton issued over 1,000 unilateral subpoenas to investigate whether the White House misused its holiday card list, whether President Clinton endorsed the candidacy of a foreign leader in exchange for political contributions, whether White House video tapes or e-mail databases were doctored to remove incriminating information, and whether the President or the Vice President used official resources for fundraising, among a wide range of other issues. The Republican leadership in Congress supported and funded these efforts.⁴

After the election of President Bush and Vice President Cheney, the Committee completely reversed course. In 2001 and 2002, the Committee refused to investigate matters that would have triggered exhaustive investigations had they occurred during the Clinton years. For example, the Committee did not examine the allegations that the Vice President's energy task force granted special access to Enron and other political contributors; that President Bush's top political advisor, Karl Rove, violated conflict of interest standards by meeting with executives of companies in which he owned stock; or that Vice President Cheney improperly used his taxpayer-funded residence for political fundraising.

Indeed, with one exception, Chairman Burton did not even respond to my written inquiries regarding whether the Committee would be investigating these and other similar matters.⁵

³ *Mr. Burton Should Step Aside*, Washington Post (Mar. 20, 1997).

⁴ Many of these investigations are summarized in *Unsubstantiated Allegations of Wrongdoing Involving the Clinton Administration*, Minority Staff Report, House Committee on Government Reform (Mar. 2001) (available online at http://www.house.gov/reform/min/pdfs/pdf_com/pdf_clinton_allegations_rep.pdf). During the course of the investigations, the Committee obtained over a million pages of documents; took testimony from dozens of White House officials, including multiple White House chiefs of staff and White House counsels; and reviewed notes of conversations between President Clinton and a foreign head of state and internal e-mails from the Office of the Vice President. See *Congressional Oversight of the Clinton Administration*, Minority Staff, House Committee on Government Reform (available online at www.house.gov/reform/min/pdfs/pdf_com/pdf_clinton_doc_prodoc_rep.pdf).

⁵ See Letter from Rep Henry A. Waxman to Chairman Dan Burton (June 25, 2001) (responding to the Chairman's letter on Karl Rove); Letter from Rep. Henry A. Waxman to Chairman Dan Burton (June 15, 2001) (regarding whether Chairman Burton intended to investigate allegations concerning a meeting between Karl Rove and Intel, in which Mr. Rove held stock); Letter from Rep. Henry A. Waxman to Chairman Dan Burton (June 5, 2001) (regarding whether Chairman Burton intended to investigate allegations relating to the Vice President's energy task force); Letter from Rep. Henry A. Waxman to Chairman Dan Burton (May 21, 2001) (regarding whether Chairman Burton

Recent Precedents

Since January 2003, the Bush Administration has also been shielded from scrutiny under your chairmanship. Our Committee is the principal investigative committee in the House. Yet despite this responsibility, we have failed to examine numerous instances of serious misconduct. For example:

- The Committee has held no hearings on the hundreds of misleading statements made by President Bush and his top advisors about Iraq's weapons of mass destruction and ties to al Qaeda;
- The Committee has held no hearings on the prison abuses at Abu Ghraib or at other facilities in Iraq, Afghanistan, and Guantanamo Bay;
- The Committee has held no hearings on who leaked the identity of covert CIA agent Valerie Plame or whether the leak was retribution directed at her husband, former Ambassador Joseph Wilson;
- The Committee has held no hearings on the evidence that the Bush Administration misled Congress about the costs of the Medicare bill and withheld important cost estimates prepared by the Office of the Actuary in the Department of Health and Human Services;
- The Committee has held no hearings on the mounting evidence that Bush Administration officials have politicized science by stacking scientific advisory committees, distorting and suppressing scientific information, and interfering with scientific research;
- The Committee has held no hearings on the mounting evidence that regulated industries have wielded inappropriate influence in the development of environmental regulations, including writing passages of agency proposals and presentations, regarding mercury air pollution, formaldehyde, industrial towels, and farm pollution; and
- The Committee has held no hearings on the mounting evidence of misconduct by Attorney General John Ashcroft, such as his false accusations regarding former Deputy Attorney General Jamie Gorelick and his role in violations of campaign finance laws.

intended to investigate the use of the Vice President's residence for a fundraising event); Letter from Rep. Henry A. Waxman to Chairman Dan Burton (May 10, 2001) (regarding whether Chairman Burton intended to investigate the use of Administration resources to assist Republican campaigns).

The most significant investigation conducted by the Committee has been the series of hearings into contracting abuses in Iraq, which have helped uncover widespread overcharging and systemic accounting problems. Yet even in this area, you have protected White House officials from scrutiny. At a Committee hearing on March 11, eight generals and other Administration witnesses testified that there were no communications between the Defense Department and the Vice President's office about the sole-source contracts secretly awarded to Halliburton. But when new evidence showed that these assertions were false — and that the Vice President's office had, in fact, been briefed at senior levels prior to the award of the contracts — you refused to investigate the extent of the Vice President's involvement.

In many instances, you have justified your refusal to investigate on the grounds that the matter in question was already being examined by executive branch agencies. You told me that the reason the Committee would not investigate the outing of Ms. Plame was that there was an ongoing Justice Department probe. You also justified the Committee's failure to investigate the withholding of the Medicare cost estimates on the grounds that this matter "is under investigation by the inspector general of the Department of Health and Human Services."⁶

Indeed, this principle was invoked twice in the last week alone to block minority requests for information. At the Iraq contracting hearing on July 22, Halliburton witnesses were asked repeatedly by Reps. Dutch Ruppersberger and Stephen Lynch about evidence that company employees took kickbacks to steer subcontracts to a Kuwaiti company. You permitted the witnesses to refuse to answer the question based on their assertion that "[t]here is an ongoing Justice Department investigation."⁷

Similarly, your staff rejected my request that we write a joint letter to Defense Secretary Rumsfeld about the allegations that a political appointee, John A. Shaw, Deputy Under Secretary of Defense for International Technology Security, steered Iraq contracts to friends and business associates. Your staff informed the minority that "the Chairman thinks that since the matter is currently the subject of an FBI investigation that, at least for now, we will not join on your request."⁸

⁶ Thomas M. Davis III, *Minding the Store in Congress*, Washington Post (July 22, 2004).

⁷ House Committee on Government Reform, *Hearing on Contracting and the Rebuilding of Iraq: Part IV* (July 22, 2004).

⁸ E-mail from House Government Reform Committee majority staff to House Government Reform Committee minority staff (July 23, 2004).

The Berger Decision

Against this backdrop, your decision to investigate the allegations that Mr. Berger took classified information from the National Archives is hard to understand. Mr. Berger's actions are currently being investigated by the Justice Department. Under the standards you have articulated, there should be no Committee inquiry while the Justice Department investigation is pending. Without question, the risks of interfering in a pending criminal investigation apply just as much to Mr. Berger's situation as they do to the Valerie Plame matter or the Halliburton kickbacks.

Moreover, in contrast to the matters the Committee has refused to investigate, Mr. Berger's actions do not involve the misuse of classified information to lead our nation into war, the torture or abuse of foreign nationals, the withholding of information from Congress, or the public disclosure of sensitive national security secrets such as the identity of a covert CIA agent.

Last week, the September 11 Commission released its long-awaited report on terrorism in the United States. The Commission called for a major restructuring of the intelligence-gathering agencies, a matter that falls within our Committee's jurisdiction. Yet the press release you issued called for an investigation into Mr. Berger — not Committee action on the Commission's recommendations.⁹ These are not the priorities of the American public.

Unfortunately, Mr. Berger's case is not the only recent decision that calls into question your investigative priorities. Two weeks ago, you issued a subpoena to investigate whether the United Nations mismanaged Iraq's Oil for Food program, but refused my request to subpoena documents that would show whether the United States mismanaged the Development Fund for Iraq (DFI), the successor of the Oil for Food program. I am not opposed to an investigation of the United Nations and the Oil for Food program, but I do not see how we can justify investigating the United Nations if we refuse to investigate the growing evidence that our own government cannot account for how it handled billions in Iraqi oil proceeds.¹⁰ Particularly in light of current world opinion, we should be demonstrating our commitment to fairness and impartiality at every opportunity.

⁹ News Release, *Davis to Investigate Berger Allegations*, House Committee on Government Reform (July 21, 2004).

¹⁰ See KPMG Audit & Risk Advisory Services, *Independent Auditors' Report: Development Fund for Iraq* (July 14, 2004) (prepared on behalf of the International Advisory and Monitoring Board) (online at www.iamb.info/dfiaudit.htm); see also Letter from Rep. Henry A. Waxman, Ranking Minority Member, to Rep. Tom Davis, Chairman, House Government Reform Committee (July 9, 2004) (online at www.house.gov/reform/min/pdfs_108_2/pdfs_inves/pdf_admin_iraq_dfi_kpmg_audit_july_9_let.pdf).

The Way Forward

The Committee is in danger of setting a double-standard: one for investigations of Republicans and a different one for investigations of Democrats. When Republicans are involved, the principle seems to be that we can never inquire into a matter that the Justice Department or any other agency is investigating. But when Democrats are involved, the principle seems to be the more investigations the better. Obviously, this is not a sustainable position.

There are two options for maintaining credibility in the Committee's investigative work: (1) open investigations into the examples of Bush Administration wrongdoing cited in this letter or (2) drop the investigation into the Berger matter. The other option — allowing partisan considerations to dictate the Committee's investigative agenda — is the path the Committee took under your predecessor. It led the Committee into well-deserved opprobrium, and it will do so again.

If you decide to pursue Mr. Berger, moreover, the inquiry should not be limited to Mr. Berger's actions alone. Recent news accounts have indicated that White House officials were briefed about the FBI's investigation of Mr. Berger, and there have been allegations that the officials leaked the investigation to distract attention from the report of the September 11 Commission.¹¹ Indeed, after first denying any White House knowledge, then asserting "a few individuals" in the White House Counsel's office had been informed of the probe, a White House spokesman finally was forced to acknowledge that senior officials beyond the White House Counsel's office were tipped off about the investigation months ago.¹²

The decision by the Justice Department to brief the White House — and the possibility that the White House may have leaked news of the investigation — are serious matters. If you are determined to examine Mr. Berger's conduct, these issues cannot be ignored.

Conclusion

Mr. Chairman, we have had a constructive relationship during your tenure as head of the Committee. As you know, I have expressed my appreciation on numerous occasions for the approach you have brought to the Committee and for your commitment to run the Committee in a bipartisan fashion.

¹¹ *See Berger Probe Not News to White House*, New York Times News Service (July 22, 2004).

¹² *Id.*; *More Revelations in Berger Inquiry*, Washington Post (July 23, 2004).

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That is why I feel so strongly about this matter and have written this letter. Having lived through the previous six years, I know the damage that partisan investigations can do to the Committee. I hope we do not go down that road again.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is written in a cursive, flowing style.

Henry A. Waxman
Ranking Minority Member