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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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July 16, 2007

Mr. Patrick J. Fitzgerald
Special Counsel
United States Department of Justice
Bond Building
1400 New York Avenue, Ninth Floor
Washington, DC 20530

Dear Mr. Fitzgerald:

On March 16, 2007, the Committee held a hearing that examined the leak of the employment status of the Central Intelligence Agency (CIA) officer Valerie Plame Wilson that resulted in the permanent termination of the CIA's ability to use Ms. Wilson as a covert officer and the endangerment of CIA sources and information connected to Ms. Wilson during the course of her career.

I continue to have questions about the circumstances surrounding this leak of classified national security information by personal advisors to the President and Vice President. In particular, I am interested in understanding what went wrong that allowed the leak to occur, whether the White House took adequate steps to address the leak and sanction the individuals involved, and what actions are needed to ensure that such leaks of classified information by the White House do not occur in the future.

In considering these questions, I am mindful of the fact that your office conducted an extensive criminal investigation into the leak and gathered a large amount of documentary and testimonial evidence, most of which has not been released to the public. Although your investigation clearly had a different purpose, I believe that some of the information gathered is relevant to the Committee's separate and distinct questions. In order to minimize the impact of its investigation on witnesses and agencies, I am requesting that you provide the Committee with all information which you are legally able to provide that would assist the Committee in its inquiry.

Patrick J. Fitzgerald
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Specifically, I request that you produce the following documents in the possession or control of the Office of Special Counsel:

1. Documents relating to the existence of systems or practices at the White House to ensure that classified information would be protected, such as any systems or practices of informing White House personnel of (a) the classified status of information; (b) how to treat such information; or (c) how to treat information originating from the CIA.
2. Documents describing the transmission of information about Valerie Plame Wilson's CIA employment status to or from any official at the White House, Office of the Vice President, Central Intelligence Agency, or State Department, including documents describing whether the recipient was made aware that the information was classified, confidential, sensitive, or not subject to public disclosure.
3. Documents relating to whether the disclosure of Ms. Wilson's identity was inadvertent or deliberate, the result of a systemic failure in the White House security procedures or practices, or part of a concerted effort or common understanding among one or more individuals to disclose Ms. Wilson's CIA employment status to the media.
4. Documents relating to any internal investigation, inquiry, evaluation, informal fact gathering, or other action by the White House Security Office or any other entity or individual within the Executive Office of the President or Office of the Vice President in response to the leak of Ms. Wilson's CIA employment status to the media, including but not limited to actions taken to (1) consider sanctions individuals for breach of security clearance obligations; or (2) consider corrective action to address systemic flaws in the White House security procedures.
5. Documents reflecting any analysis or assessment of the adequacy of existing laws and requirements governing the handling of classified information and the sanctioning of individuals for disclosing such information.
6. Transcripts, reports, notes, and other documents relating to any interviews outside the presence of the grand jury of any of the following individuals:
 - a. President George W. Bush
 - b. Vice President Dick Cheney
 - c. Andrew Card
 - d. Stephen Hadley
 - e. Karl Rove
 - f. Dan Bartlett
 - g. Scott McClellan

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7. All e-mails sent to or from personnel of the White House or Office of the Vice President relating to the disclosure of Ms. Wilson's CIA employment status or any internal White House investigation into that leak.

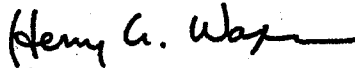
In requesting this information, the Committee is not seeking any transcripts or notes relating to witness testimony before the grand jury. The Committee also is not seeking any information on whether or how any documents or information subject to this request were presented to or used by the grand jury.

The Committee requests that you provide the requested information on a rolling basis, with all responsive documents to be produced as expeditiously as possible.

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. An attachment to this letter provides additional information on how to respond to the Committee's request.

If you have any questions regarding this request, please contact David Rapallo or Theodore Chuang of the Committee staff at (202) 225-5420.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member



Office of Special Counsel

Patrick J. Fitzgerald
Special Counsel

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Please address all correspondence to the Washington Office

August 16, 2007

Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515-6143

Dear Mr. Chairman:

This responds to your letter, dated July 16, 2007, which requested documents and other information in connection with the Committee's oversight investigation regarding a leak of classified information and the management of such information by the White House.

Enclosed is the first production of documents responsive to your request. These documents consist of reports of FBI interviews, sometimes referenced as 302s, which, pursuant to the Department's usual practice, have been reviewed by agencies having equities in the content of the documents and processed to redact information that implicates individual privacy interests, such as social security numbers and home addresses, as well as a limited amount of classified information not responsive to your request. Also enclosed are an "Inventory Sheet" and a "Deletion Codes" key to identify the basis for particular redactions in these documents. In providing you these documents, we caution that we cannot and do not warrant that they provide a complete and accurate version of what the investigation determined, or even a complete and accurate version of the account of any particular witness, given that the accounts reflected in these reports may have been supplemented, amended or contradicted by later witness statements or other information which we cannot disclose, based upon Rule 6(e) of the Federal Rules of Criminal Procedure, pertaining to matters occurring before a grand jury.

We are currently reviewing additional reports of FBI interviews for responsiveness to your request. With regard to documents obtained during the investigation, as we have discussed with Committee staff, we have developed and used electronic search terms designed to identify potentially responsive documents. We also are now reviewing the documents identified through our electronic search to determine whether those documents are responsive to your letter.¹ In addition, we are

¹As discussed previously with your staff, certain internal CIA emails which may have been captured by our electronic search but are not pertinent to your inquiry will be excluded from production. In addition, our electronic search captured a large number of routine emails circulating daily media highlights to large

Honorable Henry A. Waxman
Chairman, Committee on Oversight & Government Reform
August 16, 2007
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conducting a separate review of documents we previously identified as most pertinent to our own investigation to determine whether any of those documents are responsive to your request, even if they do not contain (and thus would not be captured using) the electronic search terms. Finally, we are also in the process of manually searching certain handwritten documents since those documents cannot be searched electronically.

With respect to our ongoing review, given that responsive documents in our possession were developed and obtained in the course of litigation that remains pending on appeal,² our response to your request necessarily is informed, in part, by the need to avoid any prejudice to the ongoing litigation, as well as by our continuing obligation to protect information covered by Rule 6(e), pertaining to matters occurring before a grand jury. As we have discussed with your staff, the question of whether information obtained outside the presence of the grand jury constitutes a matter occurring before the grand jury is a fact-sensitive inquiry that must be determined on a case-by-case basis. In addition, consistent with established practice, as additional documents are processed, the Department will consult with various agencies, as well as the White House and the Office of the Vice President, where those agencies and entities have equities in the content of particular documents.

Additional responsive FBI reports and responsive documents obtained during the investigation will be produced on a rolling basis and in accordance with the process described above. Some documents responsive to your request already are publicly available. For example, with regard to the first item in your letter, we note that we are not producing responsive documents that are already part of the public record, including the following: (i) Executive Order 12958, as it was amended in March 2003; (ii) the testimony of Ari Fleischer at Mr. Libby's trial; (iii) a non-disclosure agreement signed by I. Lewis Libby which was admitted at Mr. Libby's trial, and (iv) a sentencing letter submitted by John Bolton, dated May 14, 2007.

We note that the Department of Justice has substantial confidentiality interests in internal deliberative memoranda and documents that (a) set forth the attorneys' confidential assessments, mental impressions, conclusions and legal theories relating to the evidence compiled during the course of the criminal investigation or (b) reflect discussions and recommendations relating to

distribution groups. We will exclude these from our production as well.

² The matter of *United States v. I. Lewis Libby*, Crim. No. 05-934, remains pending in the United States Court of Appeals for the District of Columbia Circuit. Mr. Libby was sentenced to 30 months of imprisonment, 400 hours of community service, and a \$250,000 fine on June 5, 2007. Subsequently, Mr. Libby filed a formal notice of appeal. On July 2, 2007, the President commuted that part of Mr. Libby's sentence which required to him to serve 30 months of incarceration. However, the commutation of Mr. Libby's sentence of imprisonment did not extinguish the four felony convictions or the remainder of the sentence and, thus, Mr. Libby's appeal remains pending.

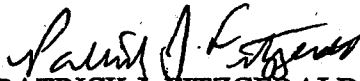
Honorable Henry A. Waxman
Chairman, Committee on Oversight & Government Reform
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potential investigatory and prosecutive steps, including evaluations, opinions and recommendations regarding whether to initiate or forego prosecution. Consistent with the Department's longstanding policy and practice, we will respectfully decline to produce such materials prepared by the Office of Special Counsel during the course of the investigation and prosecution, including discussions of various statutes, as requested in the fifth item of your letter.

With respect to the fourth item in your letter, we advise you that we have a discrete set of responsive documents consisting of several disclosures made to the President pursuant to Rule 6(e)(3)(D) of the Federal Rules of Criminal Procedure specifically to assist the President in the performance of his official duties. We do not intend to produce information in those disclosures to the extent we determine that such information is either protected by Rule 6(e) or constitutes the internal analysis of the investigative team. Otherwise, we will review these documents in accordance with the process described above.

Our efforts to identify and process documents responsive to your request are continuing and we will supplement this response as additional information becomes available. We hope that this information is helpful.

Very truly yours,


PATRICK J. FITZGERALD
Special Counsel

Enclosures

cc: Honorable Tom Davis
Ranking Minority Member

Brian Benczkowski
Principal Deputy Assistant Attorney General
Office of Legislative Affairs
Department of Justice



Office of Special Counsel

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Special Counsel*

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(202) 514-1187*

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September 6, 2007

Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515-6143

Dear Mr. Chairman:

This supplements our prior response to your letter, dated July 16, 2007, which requested documents and other information in connection with the Committee's oversight investigation regarding a leak of classified information and the management of such information by the White House.

Enclosed are 35 pages of FBI records of interviews with current and former Department of State (State) employees. They bear modest redactions of information that implicates individual privacy interests, personal information that would identify law enforcement personnel, and FBI administrative data, all as set forth in the deletion code sheet included with these materials. In accordance with established third agency practice, the FBI has consulted with State about these documents and that agency has asked that the documents be considered "For Official Use Only" and that the Committee respect the sensitive nature of these documents in storing and handling them. Further, State requested that the Committee not publicly disclose the documents or their contents without first consulting with State to ensure that privacy concerns and other sensitivities are properly addressed. Our August 16, 2007 production of documents also contained documents designated as "For Official Use Only" by the CIA, and that agency makes the same requests regarding storage, handling, and disclosure of those documents.

Honorable Henry A. Waxman
Chairman, Committee on Oversight & Government Reform
September 6, 2007
Page 2

Our efforts to locate and review documents responsive to your request are continuing and we will supplement this response when additional information becomes available. We hope that this information is helpful.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patrick J. Fitzgerald". The signature is written in a cursive style with a large initial "P".

PATRICK J. FITZGERALD
Special Counsel

Enclosures

cc: Honorable Tom Davis
Ranking Minority Member

Brian Benczkowski
Office of Legislative Affairs
Department of Justice

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BILL SALI, IDAHO
JIM JORDAN, OHIO

December 3, 2007

The Honorable Michael B. Mukasey
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I am writing to seek your assistance in the Oversight Committee's investigation into the circumstances surrounding the leak of the covert identity of CIA officer Valerie Plame Wilson. As the recent disclosure from former White House Press Secretary Scott McClellan underscores, there remain many unanswered questions surrounding this incident and the involvement of the President, the Vice President, and other senior White House officials in the security breach and the White House response.

The Special Counsel, Patrick Fitzgerald, has been cooperating with the Committee's investigation. Over the summer, Mr. Fitzgerald agreed to provide relevant documents to the Committee, including records of interviews with senior White House officials. Unfortunately, the White House has been blocking Mr. Fitzgerald from providing key documents to the Committee.

I hope you will not accede to the White House objections. During the Clinton Administration, your predecessor, Janet Reno, made an independent judgment and provided numerous FBI interview reports to the Committee, including reports of interviews with President Clinton, Vice President Gore, and three White House Chiefs of Staff. I have been informed that Attorney General Reno neither sought nor obtained White House consent before providing these interview records to the Committee. I believe the Justice Department should exercise the same independence in this case.

I have been careful in my dealings with Special Counsel Fitzgerald to narrow the Committee's request to documents that would not infringe on his prosecutorial independence or intrude upon grand jury secrecy. Before the Committee requested any documents, my staff, Justice Department staff, and Mr. Fitzgerald's staff discussed the types of documents that could

The Honorable Michael B. Mukasey
December 3, 2007
Page 2

be properly provided to the Committee. Mr. Fitzgerald's staff agreed that the Committee's request was appropriate and has already produced a number of the requested documents relating to CIA and State Department officials and other individuals. To date, however, Mr. Fitzgerald has been frustrated in his attempts to transmit documents relating to White House officials to the Committee.

Equal application of the law means that there should not be one standard applied by the Justice Department to congressional investigations of Democratic administrations and another standard applied to congressional investigations of Republican administrations. I ask that you personally look into this matter and authorize the production of the documents to the Committee without any further delay.

Background

On March 16, 2007, the Committee held a hearing to examine the leak of Valerie Plame Wilson's covert identity. Witnesses at the hearing included Ms. Wilson; James Knodell, the Director of the White House Security Office; and William Leonard, the Director of the Information Security Oversight Office at the National Archives. As I announced in my opening statement at the hearing, the purpose of the Committee's inquiry is to examine three questions:

- (1) How did such a serious violation of our national security occur?
- (2) Did the White House take the appropriate investigative and disciplinary steps after the breach occurred?
- And (3) what changes in White House procedures are necessary to prevent future violations of our national security from continuing?¹

Following the hearing, my staff engaged in discussions with Justice Department officials representing Mr. Fitzgerald and Mr. Fitzgerald's staff to determine an appropriate way for Mr. Fitzgerald to assist the Committee's inquiry without jeopardizing Mr. Fitzgerald's prosecutorial independence or grand jury secrecy. These discussions resulted in a formal document request that I sent to Mr. Fitzgerald on July 16, 2007, a copy of which is enclosed. Both the Justice Department and Mr. Fitzgerald's staff agreed that the final document request was reasonable and appropriate.

This document request sought seven categories of documents. Some of the requests, such as the request for "[d]ocuments relating to the existence or systems at the White House to ensure that classified information would be protected," require the Special Counsel to conduct

¹ House Committee on Oversight and Government Reform, *Hearing on White House Procedures for Safeguarding Classified Information*, 110th Cong. (Mar. 16, 2007).

document searches.² Other requests asked for enumerated documents. One important request sought:

Transcripts, reports, notes, and other documents relating to any interviews outside the presence of the grand jury of any of the following individuals:

- a. President George W. Bush
- b. Vice President Dick Cheney
- c. Andrew Card
- d. Stephen Hadley
- e. Karl Rove
- f. Dan Bartlett
- g. Scott McClellan³

Since the Committee's letter was sent on July 16, Mr. Fitzgerald and his staff have cooperated with the Committee's investigation and have produced a number of responsive documents to the Committee. Among the documents that Mr. Fitzgerald has produced to the Committee are "FBI 302 reports" of interviews with CIA and State Department officials and other individuals.

Production of Records of White House Interviews

According to a Justice Department official, Mr. Fitzgerald has also designated for production to the Committee reports of interviews of certain White House officials. However, to date, four months after the Committee's request, he has been unable to produce these documents to the Committee because the White House has not consented to their production. Committee staff has asked Justice Department staff to provide, but has not received, a date by which the White House will determine whether it will allow Mr. Fitzgerald to produce the documents.

There is no legitimate basis for the withholding of these documents. Mr. Fitzgerald has apparently determined that these documents can be produced to the Committee without infringing on his prosecutorial independence or violating the rules of grand jury secrecy. As records of statements made by White House officials to federal investigators, outside the framework of presidential decision-making, the documents could not be subject to a valid claim of executive privilege.

Moreover, there is direct precedent for the production of these records to the Committee. During the Clinton Administration, the Justice Department provided the Committee with dozens

² Letter from Henry A. Waxman, Chairman, to Patrick J. Fitzgerald, Special Counsel (July 16, 2007).

³ *Id.*

The Honorable Michael B. Mukasey
December 3, 2007
Page 4

of FBI 302 reports of interviews with White House officials. No White House official — including the President and the Vice President — was exempted from the production. Among the White House officials whose FBI 302 reports were provided to the Committee were:

- President Clinton
- Vice President Gore
- Erskine Bowles (Chief of Staff to the President)
- Mack McLarty (Chief of Staff to the President)
- Leon Panetta (Chief of Staff to the President)
- Roy Neel (Chief of Staff to the Vice President)
- Jack Quinn (Counsel to the President)
- Steven Ricchetti (Deputy Chief of Staff to the President)
- Bruce Lindsey (Assistant to the President and Deputy Counsel to the President)
- Harold Ickes (Assistant to the President)
- Doug Sosnik (Assistant to the President)
- Cheryl Mills (Deputy Counsel to the President)

In the case of the Clinton Administration interview records, former Attorney General Janet Reno made her own determination that they were relevant to the Committee's inquiries and produced them to the Committee. I understand that she neither requested nor received White House approval before transmitting the documents.

Request for Assistance

The Committee is conducting a vitally important inquiry into whether the White House followed the required safeguards in protecting Ms. Wilson's identity and responding to an exceptionally serious breach of national security. As Mr. McClellan, the former White House Press Secretary, now asserts:

I had unknowingly passed along false information. And five of the highest ranking officials in the administration were involved in my doing so: Rove, Libby, the Vice President, the President's chief of staff and the President himself.⁴

Because of the implications of Mr. McClellan's assertions, I am asking for your personal assistance in obtaining the documents being withheld by the White House. These documents are directly relevant to the Committee's investigation, and they have been determined by Mr. Fitzgerald to be appropriate for release to the Committee. I believe they should be provided to the Committee without any additional delay and without redactions or other limitations dictated by the White House.

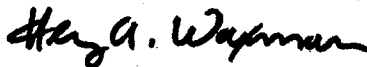
⁴ *Ex-Aide: Bush, Cheney Involved in Misleading Media*, CNN.com (Nov. 21, 2007).

The Honorable Michael B. Mukasey
December 3, 2007
Page 5

I recognize that President Bush and his counsel may not want this information provided to Congress. But the role of the Attorney General is to administer the laws with impartiality. The Justice Department provided the exact same information to Congress during the Clinton Administration. There is no special standard for President Bush that exempts him and his senior advisors from responsible congressional oversight.

If you have any questions regarding my request, please contact me personally or ask your staff to contact David Rapallo or Theodore Chuang of the Committee staff at (202) 225-5420.

Sincerely,



Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

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December 18, 2007

The Honorable Michael B. Mukasey
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

On December 3, 2007, I wrote you to request documents from the Department of Justice from Special Counsel Patrick J. Fitzgerald's investigation into the leak of the covert identity of CIA officer Valerie Plame Wilson. I have not received a response from you to my inquiry.

Since I wrote you on December 3, Lewis I. "Scooter" Libby has dropped the appeal of his criminal conviction arising from the Fitzgerald investigation.¹ With that action, there remains no further pending litigation associated with the Fitzgerald investigation.

I do not regard the existence of an on-going investigation or pending litigation as a sufficient reason to withhold information from Congress. Now that Mr. Fitzgerald's investigation and Mr. Libby's appeal have both ended, however, there should be no basis for further delay in responding to the Committee's request. Thus, I request that you provide the Committee by January 3, 2008, with the documents requested in the Committee's July 16 letter to Mr. Fitzgerald, including the reports of interviews with President Bush, Vice President Cheney, and other White House officials.

Last week, you wrote several congressional committees about the investigation into the destruction of the CIA interrogation tapes. You resisted providing information to the committees because of your concern that providing information could undermine the Justice Department's on-going investigation. In the Plame matter, there is no pending Justice Department investigation and no pending Justice Department litigation. Whatever the merits of the position you are taking in the CIA tapes inquiry, those considerations do not apply here.

¹ *Libby Decides to Drop Appeal*, Washington Post (Dec. 11, 2007).

The Honorable Michael B. Mukasey
December 18, 2007
Page 2

There remain important questions about the leak of Ms. Wilson's identity and the White House response that have not been answered by the prosecution and conviction of Mr. Libby and the commutation of his sentence. I urge you to cooperate with Congress' investigation into these unanswered questions

If you have any questions regarding my request, please contact me personally or ask your staff to contact David Rapallo or Theodore Chuang of the Committee staff at (202) 225-5420.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member



Office of Special Counsel

Patrick J. Fitzgerald
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Washington, DC NW 20530
(202) 514-1187

Please address all correspondence to the Washington Office

January 18, 2008

The Honorable Henry A. Waxman
Chairman, Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Mr. Chairman:

This letter is in further response to your letter to me of July 16, 2007. As you are aware, I previously wrote you on August 16, 2007, to provide you with partial production of the documents you requested and to advise you in writing of how we intended to proceed in responding to your request. We have proceeded consistent with the process described in my August 16 letter to you, with one modification: we will not withhold materials from Congress because of any perceived risk to the prosecution of I. Lewis Libby, which had been pending on appeal at the time of the August 16 letter. As you are well aware, Mr. Libby moved to dismiss his appeal in December 2007 and the Court of Appeals for the District of Columbia granted that motion. Thus, there is no longer a pending criminal matter.

At the time of the August 16 letter, the Committee was provided with documents we had initially obtained from the State Department. I wrote a further letter to you of September 6, 2007, which accompanied the production to the Committee of documents initially obtained from the Central Intelligence Agency ("CIA"). Subsequent to that last production of documents to you, we have continued to review documents we obtained from the White House and the Office of Vice President (hereafter collectively referred to as the "White House") as well as various federal agencies and also private individuals and entities, to determine, first, whether they are responsive to the Committee's requests set forth in the July 16 letter and, second, whether production of such documents to Congress by the Office of Special Counsel is prohibited by Rule 6(e) of the Federal Rules of Criminal Procedure, which is the rule governing grand jury secrecy.

As I indicated in my August 16 letter, we have provided the White House and the other executive branch agencies with equities in the relevant documents an opportunity to review the materials we determined were not protected by Rule 6(e), in order to determine whether there are executive branch confidentiality interests that will be asserted. (We have not forwarded responsive documents we have determined are protected by grand jury secrecy.) In December 2007, we

The Honorable Henry A. Waxman
Chairman, Committee on Oversight and Government Reform
January 18, 2008
Page 2

completed review of all documents responsive to Category Six of your July 16 request and produced to the White House all responsive documents we determined were not protected by Rule 6(e). We have also been providing materials responsive to the other categories of requests to the White House and the relevant agencies on a rolling basis and anticipate that our production to them of the balance of materials responsive to those other requests should be completed by the end of today.

I am aware that you await a response concerning the materials the White House has been reviewing, and note that you have separately written letters dated December 3 and December 18, 2007, to Hon. Michael B. Mukasey, the Attorney General, addressing this matter. In that regard, I wish to make clear the scope of the responsibilities of the Special Counsel regarding the Committee's requests. As you are aware, I was appointed Special Counsel by then Deputy Attorney General James B. Comey on December 30, 2003. (Mr. Comey was acting at the time in his capacity as Acting Attorney General for the matter, following the recusal of then Attorney General John Ashcroft. Mr. Ashcroft was succeeded by Attorney General Alberto Gonzales, who also recused himself from the matter. Judge Gonzales was succeeded by Attorney General Mukasey, who is not recused from this matter.) Mr. Comey's December 30, 2003 appointment letter to me delegated "all the authority of the Attorney General with respect to the Department's investigation into the alleged unauthorized disclosure of a CIA employee's identity." Mr. Comey later issued a February 6, 2004 clarification which made clear that my authority was "plenary and includes the authority to investigate and prosecute violations of ... federal criminal laws ...; to conduct appeals arising out of the matters being investigated and/or prosecuted; and to pursue administrative remedies and civil sanctions (such as civil contempt) that are within the Attorney General's authority to impose or pursue."

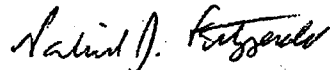
Under Mr. Comey's delegation of authority, my responsibilities as Special Counsel encompass making decisions on matters normally incident to the execution of prosecutorial authority for the assigned matter, including making determinations of what information is protected by the rules of grand jury secrecy. However, I have concluded that neither the December 2003 delegation nor the February 2004 clarification delegated to me the authority of the Attorney General to provide counsel to the White House concerning the assertion of executive branch confidentiality interests in response to possible Congressional oversight, or to represent such executive branch interests in responding to an oversight request. (I note in that regard that even if Mr. Comey's delegation had conferred such authority, I believe that I would be obliged to forego representing the interests of the White House to avoid an apparent conflict of interest in representing an entity whose personnel Special Counsel investigated and, in one case, prosecuted. This is particularly so where the delegation of authority was intended to avoid even the appearance of a conflict of interest.)

Accordingly, the Office of Special Counsel will complete our work providing responsive materials to the White House and other appropriate agencies after assuring ourselves that such materials are not protected by grand jury secrecy. We will also continue to transmit to you the

The Honorable Henry A. Waxman
Chairman, Committee on Oversight and Government Reform
January 18, 2008
Page 3

materials to which the White House or other agencies do not assert executive branch confidentiality interests. To the extent there are materials we forward to the White House for which the executive branch asserts confidentiality interests, we will not be acting as attorneys for the executive branch in that regard. I am advised that the Department's Office of Legislative Affairs will correspond with you today regarding those interests.

Respectfully submitted,



PATRICK J. FITZGERALD
Special Counsel

cc: Honorable Michael B. Mukasey



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 18, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter, dated December 3, 2007, consistent with Special Counsel Patrick Fitzgerald's letter of today's date, regarding your request for copies of FBI reports of interviews provided by the President, the Vice President, and presidential and vice presidential staff in connection with the investigation into the disclosure of Valerie Plame Wilson's identity.

In accordance with established executive branch practice, we have consulted with the White House regarding your request for these documents. Our consultation as to some of the documents is complete. The executive branch has substantial confidentiality interests in these documents and would like to accommodate the Committee's information needs consistent with those interests. We understand, based upon your letter, dated December 18, 2007, that your interest in these materials relates to the Committee's inquiry into "the leak of [Valerie Plame Wilson's covert] identity and the White House response." We recognize that these records contain some information about those matters and therefore, based on our consultation with the White House, we are prepared to make available for the Committee staff's review at the Department slightly redacted copies of the interview reports of presidential and vice presidential staff. The request for reports of interviews with the President and Vice President, the two constitutional officers of the executive branch, raises serious separation of powers and heightened confidentiality concerns. We believe, however, that the extensive reports that will be available for staff review will satisfy the Committee's needs.

These reports are largely unredacted. The limited redactions concern information implicating particularly sensitive confidentiality interests, such as candid comments about members of the media and colleagues, presidential and vice presidential communications, comments on subjects unrelated to the Committee's inquiry, and personal information. (Examples of the personal information we have redacted include home addresses, telephone numbers, and birthdates from each interview report, as well as discussions about whether individuals would submit to polygraph examinations.)

The Honorable Henry A. Waxman
Page Two

Finally, we are continuing to consult with the White House regarding FBI reports of several additional interviews with White House staff and documents obtained by the Special Counsel from the White House and from Bush-Cheney '04, Inc. We will supplement this response as soon as this review is completed.

We hope that this information is helpful. Please do not hesitate to contact this office if you would like additional assistance regarding this matter.

Sincerely,



Brian A. Benczkowski
Principal Deputy Assistant Attorney General

cc: Honorable Tom Davis
Ranking Minority Member

HENRY A. WAXMAN, CALIFORNIA,
CHAIRMAN

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ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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FACSIMILE (202) 225-4784
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BILL SALI, IDAHO
JIM JORDAN, OHIO

June 3, 2008

The Honorable Michael B. Mukasey
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

On December 3, 2007, I wrote to request that you arrange for the production of documents relating to Special Counsel Patrick Fitzgerald's investigation into the leak of the covert identity of CIA officer Valerie Plame Wilson, including copies of FBI interview reports of White House officials. I appreciate that you have since made redacted versions of the interview reports of Karl Rove, I. Lewis "Scooter" Libby, and other senior White House officials available to the Committee.

I am writing now to renew the Committee's request for the interview reports with President Bush and Vice President Cheney and to request unredacted versions of the interviews with Karl Rove, Scooter Libby, Condoleezza Rice, Scott McClellan, and Cathie Martin. I also request that the Department provide all other responsive documents that were approved for release to the Committee by Mr. Fitzgerald.

In his interview with the FBI, Mr. Libby stated that it was "possible" that Vice President Cheney instructed him to disseminate information about Ambassador Wilson's wife to the press.¹ This is a significant revelation and, if true, a serious matter. It cannot be responsibly investigated without access to the Vice President's FBI interview.

The interviews with senior White House officials also raise other questions about the involvement of the Vice President. It appears from the interview reports that Vice President Cheney personally may have been the source of the information that Ms. Wilson worked for the CIA. Mr. Libby specifically identified the Vice President as the source of his information about Ms. Wilson. None of the other White House officials could remember how they learned this information.

¹ FBI 302 Report of Interview of Scooter Libby (Nov. 26, 2003).

The Honorable Michael B. Mukasey

June 3, 2008

Page 2

New revelations by former White House Press Secretary Scott McClellan raise additional questions about the actions of the President and the Vice President. Mr. McClellan has stated that “[t]he President and Vice President directed me to go out there and exonerate Scooter Libby.”² He has also asserted that “the top White House officials who knew the truth — including Rove, Libby, and possibly Vice President Cheney — allowed me, even encouraged me, to repeat a lie.”³ It would be a major breach of trust if the Vice President personally directed Mr. McClellan to mislead the public.

In his FBI interview, Mr. McClellan told the FBI about discussions he had with the President and the Vice President. These passages, however, were redacted from the copies made available to the Committee. Similar passages were also redacted from other interviews.

There are no sound reasons for you to withhold the interviews with the President and the Vice President from the Committee or to redact passages like Mr. McClellan’s discussions with the President and the Vice President. Mr. Fitzgerald’s investigation is closed and he has indicated that it would be appropriate to share these records with the Committee. There has been no assertion of executive privilege.

Moreover, withholding these documents would create an unfortunate double standard. During the Clinton Administration, the Committee requested the records of FBI interviews with President Clinton and Vice President Gore in 1997 and 1998 as part of the Committee’s campaign finance investigation. These records were turned over to the Committee by the Justice Department without any consultation with the White House.

The Committee is conducting an important investigation to answer questions that Mr. Fitzgerald’s criminal inquiry did not address. As I explained at the Committee’s hearing last year, the purpose of the Committee’s investigation is to examine:

- (1) How did such a serious violation of our national security occur?
- (2) Did the White House take appropriate investigative and disciplinary steps after the breach occurred?
- And (3) what changes in White House security procedures are necessary to prevent future violations of our national security from occurring?⁴

The information that you are withholding may hold answers to these questions. The FBI interview reports that you have shared with the Committee raise the possibility that Vice President Cheney may be implicated in the release of Ms. Wilson’s identity. Mr. McClellan’s

² *The Today Show*, NBC (May 28, 2008).

³ *In Ex-Spokesman’s Book, Harsh Words for Bush*, New York Times (May 28, 2008).

⁴ House Committee on Oversight and Government Reform, *Hearing on White House Procedures for Safeguarding Classified Information* (Mar. 16, 2007).

The Honorable Michael B. Mukasey

June 3, 2008

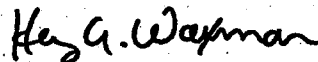
Page 3

recent disclosures indicate that both President Bush and Vice President Cheney played a role in directing the White House response. The Committee cannot complete its inquiry into these matters without receiving the reports of their FBI interviews.

I therefore urge you to follow Justice Department precedents and provide the records of the FBI interviews with President Bush and Vice President Cheney to the Committee by June 10. I also ask that you provide to the Committee, at the same time, the unredacted interviews with Karl Rove, Scooter Libby, Condoleezza Rice, Scott McClellan, and Cathie Martin, as well as the other responsive records requested by the Committee.

If you have any questions, please contact me personally or ask your staff to contact David Rapallo or Theodore Chuang of the Committee staff at (202) 225-5420.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member



U.S. Department of Justice
Office of Legislative Affairs

Washington, D.C. 20530

June 11, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter of June 3, 2008, regarding the Committee's request for documents related to Special Counsel Patrick Fitzgerald's investigation of the Valerie Plame Wilson matter.

As your letter acknowledges, the Department has made substantial efforts to accommodate the Committee's requests for information, including making available for the Committee's review a number of FBI reports ("302s") summarizing interviews of senior White House officials. In addition, pursuant to established Executive Branch practice, we are consulting with the White House about the remaining 302s for White House staff and other White House documents requested by the Committee. We expect to complete these consultations in the next few weeks.

In keeping with this spirit of accommodation, we are considering your request regarding the 302s that have been reviewed by Committee staff and are prepared to discuss this request with the staff. However, as we stated in our letter of January 18, 2008, your request for reports on interviews with the President and Vice President, the two constitutional officers of the Executive Branch, raises serious separation of powers and heightened confidentiality concerns. Although these reports will not be made available to the Committee, we remain open to any reasonable suggestions on how to provide information that the Committee believes it may need. It continues to be our belief that the extensive interview reports for White House staff and other documents that have been and may be made available for review will satisfy the Committee's needs.

Please do not hesitate to contact this office if you would like additional assistance regarding this matter.

Sincerely,



Keith B. Nelson

Principal Deputy Assistant Attorney General

cc: The Honorable Tom Davis
Ranking Minority Member

SUBPOENA

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE
CONGRESS OF THE UNITED STATES OF AMERICA**

Hon. Michael B. Mukasey, Attorney General; Serve: Faith Burton, Office of Legislative Affairs, U.S.
To Department of Justice

You are hereby commanded to be and appear before the Committee on Oversight and Government Reform

of the House of Representatives of the United States at the place, date and time specified below.

- to testify touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

- to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2157 Rayburn House Office Building, Washington, DC 20515

Date: June 23, 2008

Time: 12:00 noon

To United States Marshals Service or any Oversight Committee staff member

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States,
at the city of Washington, this 12th day of June, 2008.

Attest:

Robert F. Hewes, Deputy Clerk
Clerk

[Signature]
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for Hon. Michael B. Mukasey, Attorney General; Serve: Faith Burton, Office of
Legislative Affairs, U.S. Department of Justice

Address U.S. Department of Justice

950 Pennsylvania Avenue, N.W., Washington, DC 20530

before the Committee on Oversight and Government Reform

*U.S. House of Representatives
110th Congress*

Served by (print name) _____

Title _____

Manner of service By fax [REDACTED] (by prior agreement)

Date _____

Signature of Server _____

Address 2157 Rayburn House Office Building, Washington, DC 20515

SCHEDULE

All documents from the office of former Special Counsel Patrick J. Fitzgerald described below for which the former Special Counsel has not determined that disclosure would be barred by Federal Rule of Criminal Procedure 6(e) governing grand jury secrecy:

1. Unredacted versions of transcripts, reports, notes, and other documents relating to any interviews outside the presence of the grand jury of President George W. Bush.
2. Unredacted versions of transcripts, reports, notes, and other documents relating to any interviews outside the presence of the grand jury of Vice President Richard Cheney.
3. Unredacted versions of FBI 302 interview reports relating to interviews of:
 - a. Karl Rove
 - b. Scooter Libby
 - c. Condoleezza Rice
 - d. Scott McClellan
 - e. Cathie Martin
4. Unredacted versions of all other documents, not previously produced, that are responsive to the Committee's July 16, 2007, letter request to Special Counsel Patrick Fitzgerald, a copy of which is attached hereto as Attachment A.

Schedule Instructions

1. In complying with the subpoena, you shall produce all responsive documents in the possession, custody, or control of the Department of Justice or any of its components.
2. Documents responsive to the subpoena shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the subpoena has been, or is currently, known by any other name than that herein denoted, the subpoena shall be read also to include them under that alternative identification.
4. Each document produced shall be produced in a form that renders the document capable of being copied.
5. When you produce documents, you shall identify the paragraph or clause in the Committee's subpoena to which the documents respond.
6. Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this subpoena was issued. To the extent that documents were not

stored with file labels, dividers, or identifying markers, they shall be organized into separate folders by subject matter prior to production.

7. Each folder and box shall be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the subpoena to which the documents are responsive, shall be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.
9. If any of the subpoenaed information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you shall consult with Committee staff to determine the appropriate format in which to produce the information.
10. The Committee accepts electronic documents in lieu of paper productions. Documents produced in electronic format shall be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Electronic document productions shall be prepared according to the following standards:
 - (a) The production should consist of single page TIF files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
11. In the event that a responsive document is withheld on any basis, you shall provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
12. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, you shall identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
13. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you shall produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. This subpoena is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date shall be produced immediately upon location or discovery subsequent thereto.
15. All documents shall be bates-stamped sequentially and produced sequentially. The cover letter accompanying the documents shall include a total page count for the entire production, including both hard copy and electronic documents.
16. Two sets of documents shall be delivered, one set to the majority staff and one set to the minority staff. The majority set shall be delivered to the majority staff in Room 2157 of the Rayburn House Office Building, and the minority set shall be delivered to the minority staff in Room B350A of the Rayburn House Office Building. You shall consult with Committee staff regarding the method of delivery prior to sending any materials.
17. Upon completion of the document production, you shall submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, whether classified or unclassified, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or

reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
6. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

Attachment A

HENRY A. WADSWAN, CALIFORNIA,
CHAIRMAN

TOM DAVIS, VIRGINIA,
RANKING MINORITY MEMBER

ONE HUNDRED TENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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JOHN P. SARBANES, MARYLAND
PETER WELCH, VERMONT

July 16, 2007

Mr. Patrick J. Fitzgerald
Special Counsel
United States Department of Justice
Bond Building
1400 New York Avenue, Ninth Floor
Washington, DC 20530

Dear Mr. Fitzgerald:

On March 16, 2007, the Committee held a hearing that examined the leak of the employment status of the Central Intelligence Agency (CIA) officer Valerie Plame Wilson that resulted in the permanent termination of the CIA's ability to use Ms. Wilson as a covert officer and the endangerment of CIA sources and information connected to Ms. Wilson during the course of her career.

I continue to have questions about the circumstances surrounding this leak of classified national security information by personal advisors to the President and Vice President. In particular, I am interested in understanding what went wrong that allowed the leak to occur, whether the White House took adequate steps to address the leak and sanction the individuals involved, and what actions are needed to ensure that such leaks of classified information by the White House do not occur in the future.

In considering these questions, I am mindful of the fact that your office conducted an extensive criminal investigation into the leak and gathered a large amount of documentary and testimonial evidence, most of which has not been released to the public. Although your investigation clearly had a different purpose, I believe that some of the information gathered is relevant to the Committee's separate and distinct questions. In order to minimize the impact of its investigation on witnesses and agencies, I am requesting that you provide the Committee with all information which you are legally able to provide that would assist the Committee in its inquiry.

Patrick J. Fitzgerald

July 16, 2007

Page 2

Specifically, I request that you produce the following documents in the possession or control of the Office of Special Counsel:

1. Documents relating to the existence of systems or practices at the White House to ensure that classified information would be protected, such as any systems or practices of informing White House personnel of (a) the classified status of information; (b) how to treat such information; or (c) how to treat information originating from the CIA.
2. Documents describing the transmission of information about Valerie Plame Wilson's CIA employment status to or from any official at the White House, Office of the Vice President, Central Intelligence Agency, or State Department, including documents describing whether the recipient was made aware that the information was classified, confidential, sensitive, or not subject to public disclosure.
3. Documents relating to whether the disclosure of Ms. Wilson's identity was inadvertent or deliberate, the result of an systemic failure in the White House security procedures or practices, or part of a concerted effort or common understanding among one or more individuals to disclose Ms. Wilson's CIA employment status to the media.
4. Documents relating to any internal investigation, inquiry, evaluation, informal fact gathering, or other action by the White House Security Office or any other entity or individual within the Executive Office of the President or Office of the Vice President in response to the leak of Ms. Wilson's CIA employment status to the media, including but not limited to actions taken to (1) consider sanctions individuals for breach of security clearance obligations; or (2) consider corrective action to address systemic flaws in the White House security procedures.
5. Documents reflecting any analysis or assessment of the adequacy of existing laws and requirements governing the handling of classified information and the sanctioning of individuals for disclosing such information.
6. Transcripts, reports, notes, and other documents relating to any interviews outside the presence of the grand jury of any of the following individuals:
 - a. President George W. Bush
 - b. Vice President Dick Cheney
 - c. Andrew Card
 - d. Stephen Hadley
 - e. Karl Rove
 - f. Dan Bartlett
 - g. Scott McClellan

Patrick J. Fitzgerald
July 16, 2007
Page 3

7. All e-mails sent to or from personnel of the White House or Office of the Vice President relating to the disclosure of Ms. Wilson's CIA employment status or any internal White House investigation into that leak.

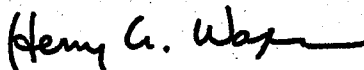
In requesting this information, the Committee is not seeking any transcripts or notes relating to witness testimony before the grand jury. The Committee also is not seeking any information on whether or how any documents or information subject to this request were presented to or used by the grand jury.

The Committee requests that you provide the requested information on a rolling basis, with all responsive documents to be produced as expeditiously as possible.

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. An attachment to this letter provides additional information on how to respond to the Committee's request.

If you have any questions regarding this request, please contact David Rapallo or Theodore Chuang of the Committee staff at (202) 225-5420.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member



Office of Special Counsel

Patrick J. Fitzgerald
Special Counsel

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(312) 353-5300

Washington Office: Bond Building
1400 New York Avenue, Ninth Floor
Washington, DC NW 20530
(202) 514-1187

Please address all correspondence to the Washington Office

June 18, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515-6143

Dear Mr. Chairman:

This responds to your letter, dated July 16, 2007 ("letter request"), which requested documents and other information in connection with the Committee's oversight investigation regarding a leak of classified information and the management of such information by the White House. We incorporate herein the information contained in prior letters, dated August 16, 2007, September 6, 2007, and January 18, 2008.

Enclosed with this letter is the third production of documents responsive to your letter request. These documents consist of reports of FBI interviews (Docs 1 - 24, 26, 27), sometimes referenced as "302s," as well as handwritten notes of former CIA Director of Public Affairs Bill Harlow (Doc 25). As described in our prior letters, these documents were provided to agencies having equities in the content of the documents, and were processed to redact information that implicates individual privacy interests, such as medical information, social security numbers and home addresses, as well as a limited amount of classified and other information not responsive to the letter request. The documents in this production were reviewed by our office, the State Department and CIA, and were then provided to the FBI for processing, which was completed last week.

Also enclosed are an "Inventory Sheet" and a "Deletion Codes" key to identify the basis for particular redactions in these documents. In providing you these documents, we caution that we cannot and do not warrant that they provide a complete and accurate version of what the investigation determined, or even a complete and accurate version of the account

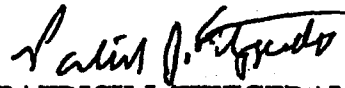
The Honorable Henry A. Waxman

June 18, 2008

Page 2

of any particular witness, given that the accounts reflected in these reports may have been supplemented, amended or contradicted by later witness statements or other information which we cannot disclose, based upon Rule 6(e) of the Federal Rules of Criminal Procedure, pertaining to matters occurring before a grand jury. We will transmit to you other responsive documents after the relevant executive branch components have completed their review and returned them to us.

Very truly yours,



PATRICK J. FITZGERALD
Special Counsel

Enclosures

cc: Honorable Tom Davis
Ranking Minority Member

Keith B. Nelson
Office of Legislative Affairs
Department of Justice



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

June 24, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to the Committee's subpoena, dated June 12, 2008, which we received on June 16, 2008, regarding documents from the files of the Department's investigation into the leak of classified information.

We are disappointed that the Committee issued the subpoena. As acknowledged in your letter of June 3, 2008, the Executive Branch has made substantial efforts to accommodate the Committee's oversight interests, including by producing or making available for the Committee's review dozens of Federal Bureau of Investigation reports summarizing interviews with senior White House, the State Department, and the Central Intelligence Agency officials. As indicated in our letter of June 11, 2008, we are consulting with the White House about the remaining 302s for White House staff and other White House documents sought by the Committee. We expect to complete our consultations soon, and we anticipate offering to make the remaining interview reports sought by the Committee (other than those of the President and the Vice President) available for the Committee's review on the same basis as the reports previously reviewed by Committee staff. We also expect that other White House documents sought by the subpoena (beyond the interview reports) will likely be offered for Committee review with limited redactions.

As we have explained in letters and informal communications with the Committee, we have been, and remain, open to considering all reasonable accommodations that might satisfy the Committee's requests for information. In particular, we are prepared to discuss with Committee staff the possibility of making available for review, upon a showing of particularized need, specific redacted portions of the White House staff interview reports previously reviewed by the Committee. In seeking to accommodate the Committee's requests, however, we must take into account core Executive Branch confidentiality interests and fundamental separation of powers principles, and we must avoid taking steps that could compromise the effectiveness of future criminal investigations involving White House personnel. Consequently, as we have informed the Committee, we are not prepared to provide or make available any reports of interviews with

the President or the Vice President from the leak investigation. To do so would allow Congress to obtain through access to Justice Department investigative files information that it otherwise could not gather through its own inquiry because of separation of powers.

Your various letters on this matter have explained that the Committee's legislative purpose for its inquiry concerns the review of White House procedures for handling classified information. We have attempted to accommodate this interest by permitting the Committee to review the reports of interviews of senior White House staff, which contain some information relevant to this subject. However, these reports also contain considerable information detailing the internal White House deliberations and communications of senior White House staff concerning how they should respond on behalf of the President to public assertions challenging the accuracy of a statement made in the President's State of the Union Address. The Executive Branch has important institutional interests in the confidentiality of such White House deliberations and communications, and we therefore accommodated the Committee's interests by making interview reports of senior White House staff available for review but not copying, with limited redactions of presidential and vice presidential communications and personal information not germane to the leak investigation.

We are not prepared to make the same accommodation for reports of interviews with the President and Vice President because the confidentiality interests relating to those documents are of a greater constitutional magnitude. The President and the Vice President are the two nationally elected constitutional officers under our Government. The President heads the Executive Branch and, as the Congress has by law recognized, the Vice President often advises and assists the President in the President's performance of his executive duties. It is settled as a matter of constitutional law, reflected in court decisions, and congressional and Executive Branch practice, that the communications of the President and the Vice President with their staffs relating to official Executive Branch activities lie at the absolute core of executive privilege. The interview reports sought by the Committee deal directly with internal White House deliberations and communications relating to foreign policy and national security decisions faced by the President and his immediate advisers. Congressional access to those reports would intrude into one of the most sensitive and confidential areas of presidential decision-making.

Moreover, from the institutional perspective, the Committee's request for copies of FBI reports of interviews with the President and the Vice President raises a very serious additional separation of powers concern relating to the integrity and effectiveness of future law enforcement investigations by the Department. There is an admirable tradition, extending back through Administrations of both political parties, of full cooperation by the White House with criminal investigations. In keeping with this tradition, the President and the Vice President (as well as the White House staff) cooperated voluntarily with the Special Counsel's leak investigation and agreed to be interviewed informally outside the presence of the grand jury. Were future Presidents and Vice Presidents (or their staffs) to perceive that providing such voluntary interviews would create records that would likely be made available to Congress, there is a clear and unacceptable risk that they might limit the scope of any voluntary interview or insist that they

will only testify pursuant to a grand jury subpoena and subject to the protection of the grand jury secrecy provision, Rule 6(e) of the Federal Rules of Criminal Procedure. Thus, if the Department were to make available records of voluntary interviews with the President and the Vice President (or release copies of the interview reports of senior White House staff), this precedent could create an unfortunate disincentive for voluntary cooperation with future Department criminal investigations involving official White House actions. Such a result would significantly impair the Department's ability to conduct future law enforcement investigations where such investigations would benefit from full White House cooperation.

We are aware that in 1999 the Department made available to this Committee the FBI reports of interviews with President Clinton and Vice President Gore that were taken during the Department's campaign finance investigation. We consider that situation to be fundamentally different from the present situation. We understand that the intrusion on Executive Branch confidentiality interests was significantly less because the Clinton Administration interview reports presumably did not involve the substance of internal White House deliberations and communications concerning official White House business, but rather concerned campaign-fundraising political activities.

In closing, we want to reiterate that we remain ready to work to accommodate the Committee's legitimate legislative interests. Although we will not make available records of any interviews of the President and Vice President in the leak investigation or produce copies for public release of the reports of interviews with senior White House staff, we remain prepared to discuss alternative accommodations that will address the Committee's needs in a manner consistent with the Executive Branch's confidentiality and separation of powers concerns. Please do not hesitate to contact this Office if you would like additional assistance regarding this matter.

Sincerely,



Keith B. Nelson
Principal Deputy Assistant Attorney General

cc: The Honorable Tom Davis
Ranking Minority Member

HENRY A. WAXMAN, CALIFORNIA,
CHAIRMAN

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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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JIM JORDAN, OHIO

June 27, 2008

Mr. Patrick J. Fitzgerald, Esq.
Special Counsel
U.S. Department of Justice
Bond Building
1400 New York Avenue, Ninth Floor
Washington, DC 20530

Dear Mr. Fitzgerald:

On July 16, 2007, I requested documents from your office that are relevant to the Oversight Committee's investigation into the circumstances surrounding the leak of the cover identity of CIA officer Valerie Plame Wilson. The requested documents included:

Transcripts, reports, notes, and other documents relating to any interviews outside the presence of the grand jury of any of the following individuals:

- a. President George W. Bush
- b. Vice President Dick Cheney¹

According to your letter of January 18, 2008, you "provided the White House and the other executive branch agencies with equities in the relevant documents an opportunity to review the materials we determined were not protected by Rule 6(e)," which is the rule governing grand jury material.² From discussions with the Justice Department, we understand that the FBI 302 interview reports of your interviews with the President and Vice President were included among those documents forwarded to the White House as not protected by grand jury rules.

On June 16, 2008, having been informed in writing by the Justice Department that it would not produce the interview reports of the President and Vice President, the Committee issued a subpoena for those interview reports, as well as other responsive documents not previously produced, with a return date of June 23, 2008. On June 24, 2008, the Justice Department informed the Committee by letter that it would not comply with the subpoena and

¹ Letter from Henry A. Waxman, Chairman, to Patrick J. Fitzgerald, Special Counsel (July 16, 2007).

² Letter from Patrick J. Fitzgerald, Special Counsel, to Henry A. Waxman, Chairman (Jan. 18, 2008).

Mr. Patrick J. Fitzgerald
June 27, 2008
Page 2

would not "provide or make available any reports of interviews with the President or the Vice President from the leak investigation."³

To assist the Committee in evaluating the Department's position, I request that you produce the following information to the Committee no later than July 3, 2008:

1. Documents sufficient to show the date and terms of all agreements, conditions, and understandings between the Office of Special Counsel or the Federal Bureau of Investigation and the President of the United States, regarding the conduct and use of the interview or interviews of the President conducted as part of the Valerie Plame Wilson leak investigation.
2. Documents sufficient to show the date and terms of all agreements, conditions, and understandings between the Office of Special Counsel or the Federal Bureau of Investigation and the Vice President of the United States, regarding the conduct and use of the interview or interviews of the Vice President conducted as part of the Valerie Plame Wilson leak investigation.

If such agreements, conditions, and understandings were not memorialized in writing, I request that you submit a written description of the date and terms of any such agreements, conditions, and understandings.

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. An attachment to this letter provides additional information on how to respond to the Committee's request. If you have any questions regarding this request, please contact David Rapallo or Theodore Chuang of the Committee staff at (202) 225-5420.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

³ Letter from Keith B. Nelson, Principal Deputy Assistant Attorney General, to Henry A. Waxman, Chairman (June 24, 2008).



Office of Special Counsel

Patrick J. Fitzgerald
Special Counsel

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Washington Office: Bond Building
1400 New York Avenue, Ninth Floor
Washington, DC NW 20530
(202) 514-1187

Please address all correspondence to the Washington Office

July 3, 2008

The Honorable Henry A. Waxman
Chairman, Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Mr. Chairman:

I write in response to your letter of June 27, 2008. I incorporate by reference my earlier letters to you of August 17, 2007; September 6, 2007; January 18, 2008; February 8, 2008; and June 18, 2008; all addressing the issues raised in your July 16, 2007, letter to me.

In your most recent letter, you requested documents concerning "all agreements, conditions and understandings between the Office of Special Counsel or the Federal Bureau of Investigation" and the President of the United States "regarding the conduct and use of the interview or interviews of the President conducted as part of the Valerie Plame Wilson leak investigation."

Similarly, you also sought documents concerning "all agreements, conditions and understandings between the Office of Special Counsel or the Federal Bureau of Investigation" and the Vice President of the United States "regarding the conduct and use of the interview or interviews of the Vice President conducted as part of the Valerie Plame Wilson leak investigation."

As set forth in the above referenced letters, in responding to requests by your Committee concerning witness interviews (and related documents), we have endeavored as to all witnesses interviewed at any time to separate out interviews that are protected by Rule 6(e) of the Federal Rules of Criminal Procedure (the rule providing for grand jury secrecy) and those that are not so protected. As to the former, we have declined to provide any information whatsoever and have not forwarded responsive documents to other agencies to review as such documents would be protected by Rule 6(e).

As to interviews which we have determined are not protected by Rule 6(e), we have provided responsive information to you, after allowing the appropriate executive branch agencies to review the documents consistent with the process described in my earlier letters. As discussed in prior

correspondence, the Special Counsel team is not responsible for determining whether executive branch confidentiality interests will be asserted in response to particular requests by the Committee.

Consistent with the above process, I can advise you that as to any interviews of either the President or Vice President not protected by the rules of grand jury secrecy, there were no "agreements, conditions and understandings between the Office of Special Counsel or the Federal Bureau of Investigation" and either the President or Vice President "regarding the conduct and use of the interview or interviews."

Very truly yours,



PATRICK J. FITZGERALD
Special Counsel

cc: The Honorable Tom Davis
Ranking Minority Member

Keith B. Nelson
Principal Deputy Assistant Attorney General
Office of Legislative Affairs
Department of Justice

HENRY A. WAXMAN, CALIFORNIA,
CHAIRMAN

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Congress of the United States

House of Representatives

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JIM JORDAN, OHIO

July 8, 2008

The Honorable Michael B. Mukasey
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

On June 16, 2008, the Committee on Oversight and Government Reform issued a subpoena to you for the production of documents relevant to the Committee's investigation of the leak of the covert identity of CIA officer Valerie Plame Wilson. You have neither complied with this subpoena by its returnable date nor asserted any privilege to justify withholding documents from the Committee. In light of your actions, I am writing to inform you that the Committee will meet on July 16, 2008, to consider a resolution citing you for contempt of Congress. I strongly urge you to comply with the duly issued subpoena before then.

For more than one year, the Oversight Committee has been seeking documents from the Department of Justice relevant to our investigation into the leak of Ms. Wilson's identity. Special Counsel Patrick Fitzgerald has cooperated with the Committee's investigation, providing documents directly to the Committee and releasing others to you for production to the Committee. Two of the documents that Mr. Fitzgerald has provided to you for production to the Committee are the reports of the FBI interviews of President Bush and Vice President Cheney. Despite the Committee's repeated requests, you have consistently refused to provide these reports to the Committee or unredacted versions of the reports of FBI interviews with White House staff. In response to the Committee's June 16 subpoena, you wrote: "we are not prepared to provide or make available any reports of interviews with the President or Vice President from the leak investigation" because of "core Executive Branch confidentiality interests and fundamental separation of powers principles."

In deference to your concerns and in a further attempt at accommodation, the Committee will not seek access to the report of the FBI interview of President Bush at this time. The report of the FBI interview with Vice President Cheney needs to be produced, however. The Vice President's former chief of staff, I. Lewis "Scooter" Libby, told the FBI that it is "possible" that the Vice President instructed him to disseminate to the press information about the identity of

The Honorable Michael B. Mukasey
July 8, 2008
Page 2

Ms. Wilson. The Committee cannot complete its inquiry into this serious matter without the report of the Vice President's FBI interview.

The arguments you have raised for withholding the interview report are not tenable. When the FBI interview with the Vice President was conducted, the Vice President knew that the information in the interview could be made public in a criminal trial and that there were no restrictions on Special Counsel Fitzgerald's use of the interview. Mr. Fitzgerald clarified this key point last week, writing to the Committee that "there were no agreements, conditions, and understandings between the Office of Special Counsel or the Federal Bureau of Investigation and either the President or Vice President regarding the conduct and use of the interview or interviews."

Vice President Cheney's attorneys have consistently maintained that he is not an "entity within the executive branch." Whether this unusual claim is accurate or not, I am aware of no freestanding vice presidential communications privilege, let alone one that covers voluntary and unrestricted conversations with a special counsel investigating wrongdoing. There certainly was no such understanding when our Committee sought the FBI interview report of an interview with Vice President Gore. The Justice Department produced the interview to the Committee despite the fact that it contained discussion of official White House business.

In his closing remarks in the criminal trial of Mr. Libby, Special Counsel Fitzgerald stated: "There is a cloud over what the Vice President did that week." Your cooperation in this matter could go a long way to dispelling this notion or perhaps confirming Mr. Fitzgerald's fears. Either way, this Committee and the American people are entitled to know what happened. For similar reasons, you should also produce the unredacted versions of the interviews with White House staff that the Committee has subpoenaed.

Background

On July 16, 2007, I wrote to Special Counsel Patrick Fitzgerald to request documents from the Special Counsel investigation that are relevant to the Oversight Committee's investigation into the leak of the identity of Valerie Plame Wilson, a covert CIA agent. The Committee's letter included a request for "transcripts, reports, notes, and other documents relating to any interviews outside the presence of the grand jury" of President George W. Bush, Vice President Richard B. Cheney, and members of the White House staff.¹

On August 16, 2007, and September 6, 2007, Special Counsel Fitzgerald produced a number of documents responsive documents to the Committee. These documents consisted of FBI interviews of federal officials who did not work in the White House, as well as interviews of

¹ Letter from Henry A. Waxman, Chairman, to Patrick J. Fitzgerald, Special Counsel (July 16, 2007).

The Honorable Michael B. Mukasey
July 8, 2008
Page 3

relevant private individuals.² Mr. Fitzgerald did not provide any records of interviews with White House officials because of objections raised by the White House. As he explained in a January 18, 2008, letter to the Committee:

my responsibilities as Special Counsel encompass making decisions on matters normally incident to the execution of prosecutorial authority for the assigned matter, including making determinations of what information is protected by the rules of grand jury secrecy. However, I have concluded that neither the December 2003 delegation nor the February 2004 clarification delegated to me the authority of the Attorney General to provide counsel to the White House concerning the assertion of executive branch confidentiality interests in response to possible Congressional oversight, or to represent such executive branch interests in responding to an oversight request. ...

Accordingly, the Office of Special Counsel will complete our work providing responsive documents to the White House and other appropriate agencies after assuring ourselves that such materials are not protected by grand jury secrecy. We will also continue to transmit to you the materials to which the White House or other agencies do not assert executive branch confidentiality interests. To the extent there are materials we forward to the White House for which the executive branch asserts confidentiality interests, we will not be acting as attorneys for the executive branch in that regard. I am advised that the Department's Office of Legislative Affairs will correspond with you ... regarding those interests.³

On December 3, 2007, I wrote to you to request that you make an "independent judgment" as the Attorney General and produce the White House interview reports and the other requested materials.⁴ I renewed this request on December 18, 2007.⁵

On January 18, 2008, you agreed to allow Committee staff to review redacted versions of reports of FBI interviews of White House staff, but refused to permit any access to the interview

² Letter from Patrick J. Fitzgerald, Special Counsel, to Henry A. Waxman, Chairman (Aug. 16, 2007); Letter from Patrick J. Fitzgerald, Special Counsel, to Henry A. Waxman, Chairman (Sept. 6, 2007).

³ Letter from Patrick J. Fitzgerald, Special Counsel, to Henry A. Waxman, Chairman (Jan. 18, 2008).

⁴ Letter from Henry A. Waxman, Chairman, to Michael B. Mukasey, Attorney General (Dec. 3, 2007).

⁵ Letter from Henry A. Waxman, Chairman, to Michael B. Mukasey, Attorney General (Dec. 18, 2007).

The Honorable Michael B. Mukasey
July 8, 2008
Page 4

reports of the President and Vice President, citing "serious separation of powers and heightened confidentiality concerns."⁶

On June 3, 2008, I wrote you to inform you that the review of the redacted versions of the FBI interviews of White House staff raised questions about the conduct of both the President and Vice President. Accordingly, I renewed the Committee's request for the interview reports of the President and Vice President, as well as unredacted versions of some of the interview reports shown to Committee staff.⁷

On June 11, 2008, you responded to my June 3, 2008, letter by again refusing to produce the interview reports of the President and Vice President based again on alleged "serious separation of powers and heightened confidentiality concerns."⁸

On June 16, 2008, the Committee issued a subpoena requiring the production of the interview reports of the President and Vice President, unredacted versions of five interview reports previously shown to Committee staff, and all remaining responsive documents that had not been determined to be subject to grand jury secrecy rules, with a return date of June 23, 2008.

On June 24, 2008, after producing some additional interview reports unrelated to White House personnel, you informed the Committee by letter that the Justice Department would not "provide or make available any reports of interviews with the President or the Vice President from the leak investigation."⁹ The Department's letter asserted that "communications of the President and the Vice President with their staffs relating to official Executive Branch activities lie at the absolute core of executive privilege."¹⁰ The letter suggested that you might be willing to provide the Committee with additional access to the redacted portions of interviews with White House staff, but efforts by the Committee staff to arrange for a review of these passages have proven unsuccessful.

At no point has the President formally asserted executive privilege over these documents.

⁶ Letter from Brian A. Benzckowski, Principal Deputy Assistant Attorney General, to Henry A. Waxman, Chairman (Jan. 18, 2008).

⁷ Letter from Henry A. Waxman, Chairman, to Michael B. Mukasey, Attorney General (June 3, 2007).

⁸ Letter from Keith B. Nelson, Principal Deputy Assistant Attorney General, to Henry A. Waxman, Chairman (June 11, 2008).

⁹ Letter from Keith B. Nelson, Principal Deputy Assistant Attorney General, to Henry A. Waxman, Chairman (June 24, 2008).

¹⁰ *Id.*

The Committee's Need for the Vice President's Interview Report

In deference to your concerns, the Committee will not seek access to the FBI interview of President Bush at this time. I hope you will appreciate that this is a significant accommodation given that the Committee is entitled to the President's FBI report and there is precedent to support its production to Congress.

The Vice President's interview, however, is another matter. In Mr. Libby's interview with the FBI, which you made available to the Committee, Mr. Libby said that it was "possible" that the Vice President instructed him to leak the identity of Ms. Wilson.¹¹ Since Ms. Wilson was a covert CIA officer, this would be an exceptionally serious breach of national security if it occurred. According to a statement cleared for public release by CIA Director Michael Hayden, Ms. Wilson "worked on some of the most sensitive and highly secretive matters handled by the CIA," including "the prevention of the deployment and use of weapons of mass destruction against the United States," and "faced significant risks to her personal safety and her life," with the result that the disclosure of her covert status "placed her professional contacts at greater risk" and "undermined the trust and confidence with which future CIA employees and sources hold the United States."¹² The Committee cannot responsibly investigate this matter without access to the Vice President's interview with the FBI.

Other evidence before the Committee also raises questions about Vice President Cheney's conduct. The leak of the CIA employment of Valerie Plame Wilson followed the publication of a *New York Times* op-ed column authored by her husband, former Ambassador Joseph Wilson, who had traveled to Niger to investigate allegations that Iraq had sought uranium from Africa.¹³ According to trial testimony of Cathie Martin, the Assistant to the Vice President for Public Affairs, she, Mr. Libby, and the Vice President all participated in a press strategy to discredit Ambassador Wilson's account.¹⁴ Moreover, it appears that it was the Vice President who first informed Mr. Libby about Ms. Wilson's CIA employment.¹⁵

¹¹ FBI Report of Interview of I. Lewis Libby (Nov. 26, 2003).

¹² Opening Statement of Henry A. Waxman, *Hearings on Disclosure of CIA Agent Valerie Plame Wilson's Identity and White House Procedures for Safeguarding Classified Information*, 110th Cong. (Mar. 16, 2007).

¹³ Joseph Wilson, *What I Didn't Find in Africa*, *New York Times* (July 6, 2003).

¹⁴ Testimony of Cathie Martin (Jan. 25, 2005), *United States v. Libby*, 495 F.Supp.2d 49 (D.D.C. 2007).

¹⁵ Grand Jury Testimony of I. Lewis Libby (Mar. 5, 2004), *United States v. Libby*, 495 F.Supp.2d 49 (D.D.C. 2007).

The conduct of the Vice President after the release of Ms. Wilson's identity also raises serious concerns. Scott McClellan, the former White House press secretary, has said: "[the] Vice President directed me to go out there and exonerate Scooter Libby"¹⁶ and "the top White House officials who knew the truth — including Rove, Libby, and possibly Vice President Cheney — allowed me, even encouraged me, to repeat a lie."¹⁷ Needless to say, it would be a breach of the public trust if the Vice President personally directed Mr. McClellan to mislead the public.

Special Counsel Fitzgerald has recognized that the criminal prosecution of Mr. Libby inevitably left major questions about Vice President Cheney unanswered. In his closing remarks to the jury, he said:

There is a cloud over what the Vice President did that week. He wrote those columns. He had those meetings. He sent Libby off to Judith Miller at the St. Regis Hotel. At that meeting, the two-hour meeting, the defendant talked about the wife. We didn't put that cloud there. That cloud remains.¹⁸

The Committee's investigation seeks to penetrate this cloud surrounding Vice President Cheney's conduct. The Committee also seeks to answer important questions about how the White House safeguards national security secrets and responds to breaches, and to make legislative recommendations to ensure appropriate handling of classified information by White House officials, including officials in the Office of the Vice President. This oversight cannot be completed without the production of the FBI interview report with the Vice President. It also requires production of the unredacted reports of the FBI interviews with other White House staff.

No Valid Basis for Withholding

In contrast to the Committee's compelling oversight needs, there is no valid basis for continuing to withhold Vice President Cheney's interview and the unredacted versions of the interviews with White House staff. Contrary to the Department's letter, the Committee is not seeking previously undisclosed communications between the President and his staff "relating to official Executive Branch activities" that may "lie at the absolute core of executive privilege."¹⁹

¹⁶ *The Today Show*, NBC (May 28, 2008).

¹⁷ Scott McClellan, *What Happened: Inside the Bush White House and Washington's Culture of Deception* (2008).

¹⁸ Closing Argument for the Prosecution (Feb. 20, 2007), *United States v. Libby*, 495 F.Supp.2d 49 (D.D.C. 2007).

¹⁹ Letter from Keith B. Nelson, Principal Deputy Assistant Attorney General, to Henry A. Waxman, Chairman (June 24, 2008).

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Rather, it is seeking information which the President and Vice President previously disclosed to the FBI without asserting privilege of any kind — executive or otherwise.

Mr. Fitzgerald removed any doubt about this important point last week. He wrote the Committee that “there were no agreements, conditions, and understandings between the Office of Special Counsel or the Federal Bureau of Investigation and either the President or Vice President regarding the conduct and use of the interview or interviews.”²⁰

It is now clear that the Vice President knew when the interview was conducted that its contents could be made public in a criminal trial. This makes any assertion of a “confidentiality interest” untenable. Executive privilege cannot be asserted over the contents of communications voluntarily disclosed outside the White House.²¹

The Oversight Committee has specific precedent on this issue. During the Clinton Administration, the Committee received reports of the FBI interviews of both President Clinton and Vice President Gore. Your letter acknowledges this precedent, but states that the Clinton Administration precedent is “fundamentally different” because “the Clinton Administration interview reports presumably did not involve ... communications concerning official White House business.”²² In fact, your speculation about presumed differences is misplaced. The FBI interview with Vice President Gore did involve several official matters, including the award of federal contracts and grants.

The Committee is not seeking to examine sensitive questions of foreign policy or national security. Instead, our focus is understanding what role, if any, the Vice President and others in the White House played in the leak of the identity of a covert CIA officer and what steps, if any, the Vice President and others took to investigate and respond to the leak after it occurred. There is no reason to believe that the Special Counsel’s interview went beyond these questions and into areas relating to presidential decisionmaking about foreign policy or national security.

I am not aware of any precedent in which executive privilege has been asserted over communications between a vice president and his staff about vice presidential decisionmaking. Courts have carved out a presidential communications privilege, but they have limited it quite narrowly to communications had directly with the President or certain advisers directly on his behalf about presidential decisionmaking. Moreover, the communications in this case were communications with a special counsel investigating the behavior of Executive Branch officials.

²⁰ Letter from Patrick J. Fitzgerald, Special Counsel, to Henry A. Waxman, Chairman (July 3, 2008).

²¹ *In re Sealed Case*, 121 F.3d 729, 741 (D.C. Cir. 1997).

²² Letter from Keith B. Nelson, Principal Deputy Assistant Attorney General, to Henry A. Waxman, Chairman (June 24, 2008).

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These communications would not be protected by a privilege even if they were conversations by the President himself.

There is a particular irony in the resistance of the Vice President to production of his interview report. As the Committee revealed last year, the Office of the Vice President has taken the position that the Vice President is not an "entity within the executive branch."²³ This position was reaffirmed last month when the Vice President's Chief of Staff, David Addington, testified before the Judiciary Committee that "the Vice President belongs neither to the executive nor the legislative branch."²⁴ If the Vice President is indeed outside the executive branch, as he seems to contend, it is hard to understand what basis there could be for asserting executive branch confidentiality interests in his communications.

Finally, the claim that compliance with the subpoena "would significantly impair the Department's ability to conduct future law enforcement investigations" by causing future Presidents and Vice Presidents to "insist that they will only testify pursuant to a grand jury subpoena and subject to the grand jury secrecy provision" is also unavailing.²⁵ In this instance, President Bush and Vice President Cheney cooperated voluntarily with the Special Counsel despite recent precedent in which the interview reports of President Clinton and Vice President Gore were provided to the Oversight Committee. Future presidents and vice presidents will surely do the same.

Conclusion

The Committee has waited almost a full year for the Justice Department to produce the documents responsive to the Committee's request. You have had ample opportunity to provide the documents, and White House counsel has had ample opportunity to review the withheld documents for executive privilege concerns. Yet despite the issuance of a subpoena by the Committee, you are persisting in withholding responsive documents that the Committee needs to meet its oversight and legislative duties without any assertion of executive privilege by the President.

²³ Letter from Henry A. Waxman, Chairman, to Richard B. Cheney, Vice President (June 21, 2007).

²⁴ House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, *Hearing on From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules, Part III*, 110th Cong. (June 26, 2008).

²⁵ Letter from Keith B. Nelson, Principal Deputy Assistant Attorney General, to Henry A. Waxman, Chairman (June 24, 2008).

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I regret that your failure to produce responsive documents has created this impasse, but Congress has a constitutional duty to conduct oversight of the executive branch. Therefore, unless all responsive documents, with the exception of the FBI interview report of President Bush, are provided to the Committee or a valid assertion of executive privilege is made, the Committee will meet on July 16 to consider a resolution citing you in contempt. I strongly urge you to reconsider your position and comply with the duly issued subpoena.

If you have any questions, please contact me personally or ask your staff to contact David Rapallo or Theodore Chuang of the Committee staff at (202) 225-5420.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member