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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

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.*

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.

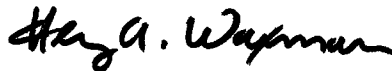
⁴ *Ex-Aide: Bush, Cheney Involved in Misleading Media*, CNN.com (Nov. 21, 2007).

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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