RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES FIND MICHAEL B. MUKASEY, ATTORNEY GENERAL OF THE UNITED STATES, IN CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY WITH A SUBPOENA DULY ISSUED BY THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

REPORT
OF THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

The form of the resolution that the Committee on Oversight and Government Reform would recommend to the House of Representatives for citing Michael B. Mukasey, Attorney General of the United States, for contempt of Congress pursuant to this report is as follows:

> *Resolved,* That Michael B. Mukasey, Attorney General of the United States, shall be found to be in contempt of Congress for failure to comply with his subpoena.
>
> *Resolved,* That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House of Representatives shall certify the report of the Committee on Oversight and Government Reform, detailing the refusal of Michael B. Mukasey, Attorney General of the United States, to produce documents to the Committee on Oversight and Government Reform as directed by a subpoena, to the United States Attorney for the District of Columbia, to the end that Mr. Mukasey be proceeded against in the manner and form provided by law.
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> *Resolved,* That the Speaker of the House shall otherwise take all appropriate action to enforce the subpoena.

I. INTRODUCTION

The Oversight and Government Reform Committee has been investigating the leak of the employment status of Central Intelligence Agency 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. The investigation seeks to understand how the leak occurred, whether the White House took adequate steps to safeguard classified information 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.

The investigation led the Committee to seek documents from the Justice Department and Special Counsel Patrick J. Fitzgerald, who conducted a criminal investigation into the leak that resulted in the prosecution and conviction of I. Lewis "Scooter" Libby, Chief of Staff to the Vice President, for perjury, obstruction of justice, and making false statements. Mr. Fitzgerald reviewed the relevant files, identified responsive documents not covered by grand jury secrecy rules, and made them available to the White House and other executive branch agencies to

review prior to release. Although Mr. Fitzgerald and the Justice Department have produced 224 pages of documents, Attorney General Michael B. Mukasey has refused to allow the production of interview reports of the President, Vice President, and White House staff and has refused to allow the Committee any access to the interview reports of the President and the Vice President. These actions have impeded the Committee's investigation and prevented the Committee from understanding why the leak occurred, what the White House did after the leak occurred, and what changes are necessary to prevent future leaks.

Because of the Attorney General's continued refusal to provide these documents to the Committee, the Committee subpoenaed the documents on June 16, 2008. Despite the Committee's subpoena, the Attorney General has continued to withhold the documents without any assertion of executive privilege by the President.

II. BACKGROUND

Prior to July 2003, Valerie Plame Wilson was a covert CIA officer who worked in senior management positions in the CIA. She had served at various times overseas and had worked on the prevention of the development and use of weapons of mass destruction against the United States.[1] Her husband is Ambassador Joseph Wilson.

In February 2002, Vice President Cheney reviewed a Defense Intelligence Agency document which reported that "Niger had agreed to deliver 500 tons of yellowcake uranium to Iraq."[2] The Vice President then asked the CIA for its analysis of the issue.[3] On February 26, 2002, the CIA sent Ambassador Wilson to Niger to make inquiries into the allegation. Ambassador Wilson concluded in a report to the CIA that there was "nothing to the story" and that his sources refuted "both the possibility that Niger could have sold uranium to Iraq and that Iraq approached Niger to purchase uranium."[4]

In October 2002, Congress voted to provide President Bush authorization for the use of force to ensure that Iraq was complying with U.N. resolutions governing weapons of mass destruction. Many members of Congress voted for this resolution because of the Administration's insistence that Iraq was on the verge of nuclear capability.

On January 28, 2003, President George W. Bush delivered his State of the Union address in which he made the case for going to war with Iraq. As part of his effort to justify his

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[1] Opening Statement of Henry A. Waxman, Chairman, House Committee on Oversight and Government Reform, *Hearing on White House Procedures for Safeguarding Classified Information*, 110th Cong. (Mar. 16, 2007) (H. Rept. 110-28).

[2] Senate Select Committee on Intelligence, *Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on* Iraq, 108th Cong. (2004).

[3] *Id.*

[4] *Id.*

conclusion that war was necessary, President Bush stated, "the British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa."[5]

On March 7, 2003, the International Atomic Energy Agency announced that a key part of the Administration's evidence — its claim that Iraq sought uranium from Niger — consisted of crudely forged documents.[6] On March 17, 2003, just days before the war, Rep. Henry A. Waxman, then Ranking Minority Member, wrote to President Bush. In that letter, he stated:

> Upon your order, our armed forces will soon initiate the first preemptive war in our nation's history... . In the last ten days, however, it has become incontrovertibly clear that a key piece of evidence you and other Administration officials have cited regarding Iraq's efforts to obtain nuclear weapons is a hoax. What's more, the Central Intelligence Agency questioned the veracity of the evidence at the same time you and other Administration officials were citing it in public statements. This is a breach of the highest order, and the American people are entitled to know how it happened.[7]

The President never responded to this letter.

On May 6, 2003, Nicholas Kristof wrote an op-ed in the *New York Times,* in which he disclosed that a U.S. envoy to Niger had concluded that the reports about Iraq seeking uranium from Niger were "unequivocally wrong."[8] A month later, on June 9, 2003, *Newsweek* reported that the State Department's Bureau of Intelligence Research had also reached the same conclusion as the U.S. envoy: the uranium claim was "implausible."[9] And on June 12, 2003, the *Washington Post* reported: "A key component of President Bush's claim in his State of the Union address last January that Iraq had an active nuclear weapons program — its alleged attempt to buy uranium in Niger — was disputed by a CIA-directed mission to the central African nation in early 2002."[10]

On July 6, 2003, in a *New York Times* op-ed, Ambassador Joseph Wilson publicly identified himself as the "envoy" that investigated the uranium claims. In the op-ed, he wrote that he had concluded "it was highly doubtful that any such transaction had ever taken place." He then stated:

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[5] President George W. Bush, *State of the Union Address* (Jan. 28, 2003).

[6] IAEA Director General Dr. Mohamed ElBaradei, *The Status of Nuclear Inspections in Iraq: An Update* (Mar. 7, 2002).

[7] Letter from Rep. Henry A. Waxman, Ranking Minority Member, House Government Reform Committee, to President George W. Bush (Mar. 17, 2003).

[8] Nicholas Kristof, *Missing In Action: Truth*, New York Times (May 6, 2003).

[9] *(Over)selling the World on War*, Newsweek (June 9, 2003).

[10] *CIA Did Not Share Doubt on Iraq Data; Bush Used Report of Uranium Bid*, Washington Post (June 12, 2003).

> The vice president's office asked a serious question. I was asked to help formulate the answer. I did so, and I have every confidence that the answer I provided was circulated to the appropriate officials within our government. ... If, however, the information was ignored because it did not fit certain preconceptions about Iraq, then a legitimate argument can be made that we went to war under false pretenses.[11]

Following the initial reporting about the Ambassador's trip to Niger, three different White House officials disclosed Ms. Wilson's CIA employment to the media on eight separate occasions between June 23, 2003, and July 12, 2003. These officials included Deputy Chief of Staff Karl Rove, Vice Presidential Chief of Staff Scooter Libby, and White House Press Secretary Ari Fleischer, who together revealed or confirmed this information to the *New York Times*, the *Washington Post*, NBC News, Time Magazine, and Robert Novak of the *Chicago Sun-Times*.[12]

On July 14, 2003, Robert Novak publicly disclosed that Ms. Wilson worked for the CIA in a column in the *Chicago Sun-Times*. In the column, Mr. Novak wrote that "Valerie Plame is an agency operative on weapons of mass destruction" and that "senior administration officials told me that Wilson's wife suggested sending him to Niger to investigate."[13]

In July 2003, the CIA referred this security breach to the Department of Justice. According to CIA spokesman Bill Harlow: "People spend years in the business developing business contacts overseas who can be placed in danger. This sets a precedent which can result in people being targeted and killed."[14]

On December 30, 2003, the Department of Justice appointed Patrick J. Fitzgerald as Special Counsel to investigate whether any criminal statutes were violated by the disclosure. On October 28, 2005, a federal grand jury returned a five-count indictment charging Mr. Libby with perjury, obstruction of justice, and making false statements, for lying to investigators and the grand jury during the course of the investigation. On March 6, 2007, following a six-week trial, a federal jury convicted Mr. Libby on four of the charged counts.

On June 5, 2007, Mr. Libby was sentenced to 30 months of imprisonment, a $250,000 fine, and two years of supervised release. On July 2, 2007, President Bush commuted Mr. Libby's sentence to eliminate the prison term.[15]

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[11] Joseph C. Wilson, IV, *What I Didn't Find in Africa*, New York Times (July 6, 2003).

[12] Majority Staff, House Committee on Oversight and Government Reform, *Discussions of Valerie Plame Wilson's Identity by White House Officials* (Mar. 16, 2007).

[13] Robert D. Novak, *Mission to Niger*, Chicago Sun-Times (July 14, 2003).

[14] *U.S. Probes Leak of CIA Agent's Identity,* USA Today (Sept. 29, 2003).

[15] President George W. Bush, Grant of Executive Clemency (July 2, 2007).

II. THE COMMITTEE'S INVESTIGATION

By its nature, Special Counsel Fitzgerald's investigation had a narrow scope. His investigation was a criminal investigation focused on the narrow legal question whether any federal criminal statutes were violated by White House officials. His investigation did not answer numerous other important questions, such as how the leak occurred, whether there was a concerted effort by the White House or Office of the Vice President to leak Ms. Wilson's CIA employment to the media, whether senior White House officials complied with requirements governing the handling of classified information, whether the White House took appropriate action following the leak, and whether additional legislation or regulations are required to ensure against future leaks.

The Committee initiated an investigation to answer these questions in March 2007 and held a hearing on March 16, 2007. In his opening statement at the hearing, Chairman Waxman explained the purpose of the Committee's investigation:

> In June and July 2003, one of the nation's most carefully guarded secrets — the identity of covert CIA agent Valerie Plame Wilson — was repeatedly revealed by White House officials to members of the media.
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> This was an extraordinarily serious breach of our national security. President George W. Bush's father, the former President Bush, said — and I quote — "I have nothing but contempt and anger for those who ... expos[e] the name of our sources. They are, in my view, the most insidious, of traitors."
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> Today, we will be asking 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 occurring?
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> For more than three years, a special prosecutor, Patrick Fitzgerald, has been investigating the leak for its criminal implications. By definition, Mr. Fitzgerald's investigation had an extremely narrow criminal focus. It did not answer the broader policy questions raised by the release of Ms. Wilson's identity. Nor did it seek to ascribe responsibility outside of the narrow confines of the criminal law.
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> As the chief investigative committee in the House of Representatives, our role is fundamentally different than Mr. Fitzgerald's. It is not our job to determine criminal culpability. But it is our job to understand what went wrong, to insist on accountability, and to make recommendations to prevent future abuses.[16]

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[16] Opening Statement of Henry A. Waxman, Chairman, House Committee on Oversight and Government Reform, *Hearing on White House Procedures for Safeguarding Classified Information*, 110th Cong. (Mar. 16, 2007) (H. Rept. 110-28).

A. The March 16, 2007, Hearing

At the hearing on March 16, 2007, several important new facts emerged. First, from a statement cleared for public release by CIA Director Michael Hayden, the Committee learned definitively that Ms. Wilson had worked at the CIA "on the prevention of the development and use of weapons of mass destruction against the United States" and had taken "serious risks on behalf of her country," that at the time of the public disclosure of her CIA employment, she was "covert," and that her "employment status with the CIA was classified information prohibited from disclosure under Executive Order 12958."[17] The Committee learned that "maintaining her cover was critical to protecting the safety of both colleagues and others" and that the disclosure of her employment "placed her professional contacts at greater risk" and "undermined the trust and confidence with which future CIA employees and sources hold the United States."[18]

Second, the Committee heard the first public testimony of Valerie Plame Wilson. She told the Committee that contrary to the account in Mr. Novak's op-ed, she did not recommend Ambassador Wilson for the Niger assignment. She also testified that as a result of the disclosure of her employment status, "I could no longer do the work which I had been trained to do" because it permanently terminated her covert job opportunities. The leak put "the people and the contacts I had all in jeopardy" and "had a very negative effect" on the trust and confidence of CIA employees and present and future sources.

Ms. Wilson testified:

> We in the CIA always know that we might be exposed and threatened by foreign enemies. It was a terrible irony that administration officials were the ones who destroyed my cover. Furthermore, testimony in the criminal trial of Vice President Cheney's former chief of staff, who has now been convicted of serious crimes, indicates that my exposure arose from purely political motives.[19]

Third, the Committee learned that the White House did not take the actions required under an Executive Order after the security breach occurred. Under Executive Order 12958 and applicable regulations, the White House must investigate security breaches, implement prompt corrective action to deter future violations, and punish violators.[20] Federal employees who commit security violations can be subject to a range of administrative sanctions, including reprimand, suspension without pay, denial of access to classified information, and termination.[21]

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[17] *Id.*

[18] *Id.*

[19] Testimony of Valerie Plame Wilson, House Committee on Oversight and Government Reform, *Hearing on White House Procedures for Safeguarding Classified Information*, 110th Cong. (Mar. 16, 2007) (H. Rept. 110-28).

[20] Exec. Order No. 12958, *Classified National Security Information,* as amended by Executive Order 13292, § 5.5 (Mar. 25, 2003).

[21] *Id.* § 5.5(c).

However, James Knodell, the director of the White House Security Office, testified at the hearing:

- The Office of Security for the White House never conducted any investigation of the disclosure of Ms. Wilson's identity;
- Under the applicable executive order and regulations, Karl Rove, Scooter Libby, and other senior White House officials were required to report what they knew about the disclosure of Ms. Wilson's identity, but they did not make any such report to the White House Office of Security; and
- There has been no suspension of security clearances or any other administrative sanction for Mr. Rove and other White House officials involved in the disclosure.[22]

B. The Committee's Initial Document Requests

On July 16, 2007, Chairman Waxman wrote to Special Counsel Patrick Fitzgerald to request documents from the Special Counsel investigation that are relevant to the Committee's investigation into the leak of the identity of Valerie Plame Wilson.[23] 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.[24]

On August 16, 2007, and September 6, 2007, Special Counsel Fitzgerald produced a number of documents responsive 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 relevant private individuals.[25] 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:

> [M]y 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

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[22] Testimony of James Knodell, Hearing House Committee on Oversight and Government Reform, *Hearing on White House Procedures for Safeguarding Classified Information*, 110th Cong. (Mar. 16, 2007) (H. Rept. 110-28).

[23] Committee correspondence regarding its document requests in this investigation are attached in Appendix A.

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

[25] 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).

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.[26]

On December 3, 2007, Chairman Waxman wrote to Attorney General Mukasey to request that he make an "independent judgment" as the Attorney General about producing the White House interview reports and the other requested materials.[27] On December 18, 2007, Chairman Waxman renewed this request in a second letter to the Attorney General.[28]

On January 18, 2008, the Justice Department 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 reports of the President and Vice President, citing "serious separation of powers and heightened confidentiality concerns."[29]

Over the next few weeks, Committee staff and Department of Justice officials had numerous discussions regarding the terms under which Committee staff review of requested documents would take place. On March 31 and April 7, 2008, the Department of Justice made available for Committee staff review a subset of the requested documents in redacted form. These documents were the reports of the FBI interviews with Andrew Card, Karl Rove, Condoleezza Rice, Stephen Hadley, Scooter Libby, Dan Bartlett, Scott McClellan, and 10 other White House or Office of the Vice President officials.

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

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

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

[29] Letter from Brian A. Benczkowski, Principal Deputy Assistant Attorney General, to Henry A. Waxman, Chairman (Jan. 18, 2008).

C. The Committee's June 3, 2008, Letter

The Committee staff's review of the reports of the FBI interviews with White House staff and other developments raised significant questions about the involvement of President Bush and especially Vice President Cheney in the leak and the White House response. For this reason, Chairman Waxman wrote the Attorney General on June 3, 2008, to renew the Committee's request for information the Attorney General had been withholding.

In this letter, Chairman Waxman explained:

> 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.
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> 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.[30] 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.
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> 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.
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> 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."[31] 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."[32] It would be a major breach of trust if the Vice President personally directed Mr. McClellan to mislead the public.
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> 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

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[30] FBI 302 Report of Interview of Scooter Libby (Nov. 26, 2003).

[31] *The Today Show*, NBC (May 28, 2008).

[32] *In Ex-Spokesman's Book, Harsh Words for Bush*, New York Times (May 28, 2008).

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?[33]

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 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.[34]

On June 11, 2008, the Justice Department responded to the June 3, 2008, letter by again refusing to produce the interview reports of the President and Vice President, again citing "serious separation of powers and heightened confidentiality concerns."[35]

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

[34] Letter from Henry A. Waxman, Chairman, to Michael B. Mukasey, Attorney General (June 3, 2008).

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

D. The Committee's June 16, 2008, Subpoena and July 8, 2008, Letter

On June 16, 2008, the Committee served a subpoena on Attorney General Mukasey 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 been determined not to be subject to grand jury secrecy rules, with a return date of June 23, 2008.[36]

On June 24, 2008, the Justice Department informed the Committee by letter that it would not "provide or make available any reports of interviews with the President or the Vice President from the leak investigation."[37] The Department's letter alluded to the "constitutional magnitude" of the "confidentiality interests" relating to these interview reports, and 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."[38] The Justice Department also argued that providing the interviews to the Committee would undermine future law enforcement investigations, as future Presidents or Vice Presidents "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."[39] The letter suggested that the Justice Department 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 were unsuccessful.

Chairman Waxman responded to the Attorney General on July 8, 2008. As an accommodation to issues the Department raised, Chairman Waxman stated that the Committee would refrain from seeking the report of the FBI interview with the President at this time. However, noting the serious questions that remained unanswered regarding the Vice President's conduct in the leak of Valerie Plame's status as a CIA agent, he reiterated the Committee's demand for the report of the FBI interview with the Vice President.[40]

In the letter, Chairman Waxman explained the need for the report of the Vice President's interview by quoting from Special Counsel Fitzgerald:

> 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:

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[36] Committee on Oversight and Government Reform, *Subpoena to Attorney General Michael B. Mukasey* (served June 16, 2008).

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

[38] *Id.*

[39] *Id.*

[40] Letter from Chairman Henry A. Waxman to Attorney General Michael B. Mukasey (July 8, 2008).

> "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."[41]

> The Committee's investigation seeks to penetrate this cloud surrounding Vice President Cheney's conduct. ... 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. [42]

In the July 8, 2008, letter, Chairman Waxman also responded to arguments made by Attorney General Mukasey to justify withholding the report of Vice President Cheney's FBI interview. Chairman Waxman wrote:

> 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."[43] 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."[44]
>
> 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.[45]

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

[42] Letter from Henry A. Waxman, Chairman, to Michael B. Mukasey, Attorney General (July 8, 2008).

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

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

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

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."[46] 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. 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."[47] 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."[48] 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.

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

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

[48] 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).

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.[49] 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.[50]

In the July 8, 2008, letter, Chairman Waxman advised the Attorney General that the Committee would meet on July 16, 2008, to consider a resolution citing the Attorney General in contempt unless all responsive documents with the exception of the FBI interview report of President Bush had been provided to the Committee or a valid assertion of executive privilege had been made.

Attorney General Mukasey has not responded to Chairman Waxman's July 8, 2008, letter.

III. AUTHORITY AND PURPOSE

The Committee on Oversight and Government Reform is a standing committee of the House of Representatives, duly established pursuant to the rules of the House of Representatives, which are adopted pursuant to the Rulemaking Clause of the Constitution.[51] House Rule X grants to the Committee broad oversight jurisdiction, including authority to "conduct investigations of any matter without regard to clause 1, 2, 3, or this clause [of House Rule X] conferring jurisdiction over the matter to another standing committee."[52] The rules direct the Committee to make available "the findings and recommendations of the committee ... to any other standing committee having jurisdiction over the matter involved."[53]

House Rule XI specifically authorizes the Committee to "require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary."[54] The rule also provides that the "power to authorize and issue subpoenas" may be delegated to the

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

[50] Letter from Henry A. Waxman, Chairman, to Michael B. Mukasey, Attorney General (July 8, 2008).

[51] U.S. Const., art. I, § 5, clause 2.

[52] House Rule X, clause (4)(c).

[53] *Id.*

[54] House Rule XI, clause (2)(m)(1)(B).

Committee chairman.[55] The subpoena discussed in this report was issued pursuant to this authority.

The Committee's investigation into the White House involvement into the leak of the employment status of Central Intelligence Agency officer Valerie Plame Wilson is being undertaken pursuant to the authority delegated to the Committee under House Rule X as described above.

The oversight and legislative purposes of the investigations are to determine: (1) how the Valerie Plame Wilson leak occurred, including whether there was a concerted effort to disclose such classified information; (2) whether senior White House officials complied with requirements governing the handling of classified information; (3) whether the White House took appropriate steps to address the leak and sanction the individuals involved; and (4) what legislative or other actions are needed to ensure appropriate handling of classified information by White House officials so that such leaks do not occur in the future.

[55] House Rules XI, clause 2(m)(3)(A)(I).