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Report of the Committee on Oversight and Government Reform U.S. House of Representatives Regarding President Bush's Assertion of Executive Privilege in Response to the Committee Subpoena to Attorney General Michael B. Mukasey

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**FBI Interview Reports:
Executive Privilege Appropriate;
Other Aspects Requiring Committee Investigation
Identified**

**Additional Views
U.S. House of Representatives
110th Congress
Committee on Oversight and Government Reform**

**Tom Davis, Ranking Member
October 23, 2008**

Regarding the Committee's access to FBI notes (colloquially known as "302s") from others interviewed in connection with the Plame investigation, the Majority believes too little material has been provided by the Attorney General, and that which has been proffered is of limited use. The Minority disagrees. The Attorney General has made significant accommodations to the Committee's requests. There is no reason to believe the modest amount of information withheld would alter the interpretation of the details at hand. Under these circumstances, the President's invocation of executive privilege is a legitimate exercise of Constitutional prerogatives not overcome by the Committee's legislative or oversight needs – needs which could have been met through less confrontation and obtrusive means.

The information made available by the Administration has enabled several important conclusions to be reached. On the one hand, no evidence has been forthcoming which shows White House officials knew Valerie Plame Wilson was an undercover CIA employee during the period in question. Conversely, the material provided has raised questions about the identity, motivation, and actions of other individuals involved. In addition, Ms. Plame Wilson provided testimony before this Committee as part of this investigation which conflicts in important ways with other information. Finally, the Majority's activities have also helped to reveal dysfunction within the Central Intelligence Agency in connection with pre-war nuclear intelligence. Such dysfunction directly affected policy-makers' understanding of intelligence about Iraq's possible nuclear program, and influenced later assessments of how that intelligence was handled. Rather than lodge ill-founded complaints about the extent to which the Administration has been cooperative in this query, the Committee should turn its investigatory energies to these matters.

The Investigation and Accommodation Process

Following the Committee's request to Special Counsel Peter Fitzgerald for FBI interview reports obtained in the course of his inquiry, the Administration agreed that the Committee should be provided with copies of 224 pages of records of interviews with thirty-one individuals. These included a former Secretary, Deputy Secretary, Undersecretary, and two Assistant Secretaries of State, and other former or current CIA and State Department officials, including the Vice President's CIA briefer. These 302s had some redactions, including "medical information,"¹ "social security numbers and home addresses," and "a limited amount of classified information" considered "not responsive" to the Committee's request.²

The Administration subsequently arranged for Committee staff to review and take notes from 104 pages of additional interview reports, in a process known as "in camera" review. These were from the Director of Central Intelligence, White House Chief of Staff Andy Card, presidential advisors Karl Rove, Condoleezza Rice, Stephen Hadley,

¹ Letter from Patrick Fitzgerald, Special Counsel, U.S. Department of Justice, to Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, Jun. 18, 2008.

² Letter from Patrick Fitzgerald, Special Counsel, U.S. Department of Justice, to Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, Aug. 16, 2007.

and Scott McClellan and eleven other Administration officials, including the Vice President's chief of staff, deputy chief of staff, national security advisor, and employees who supported these individuals. These 302s were "largely unredacted."³ However, excisions that did exist covered "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" such as "home addresses, telephone numbers, and birthdates."⁴ Also omitted were "discussions about whether individuals would submit to polygraph examinations."⁵

On June 3, 2008, Chairman Waxman wrote to the Attorney General requesting "unredacted versions of the interviews" with Messrs. Rove, Libby, and McClellan, and Dr. Rice and presidential aide Cathie Martin.⁶ When replying on June 24, 2008, the Department of Justice emphasized "we have been, and remain, open to considering all reasonable accommodations that might satisfy the Committee's request for information."⁷ This included "the possibility of making available for review, upon a showing of particularized need, specific redacted portions of White House interview reports previously reviewed by the Committee."⁸ In summary, the Department explained to Chairman Waxman:

Your various letters on this matter have explained 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.⁹

³ Letter from Brian Benczkowski, Principal Deputy Assistant Attorney General, U.S. Department of Justice, to Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, Jan. 18, 2008.

⁴ *Id.*

⁵ *Id.*

⁶ Letter from to Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, to Michael B. Mukasey, Attorney General, U.S. Department of Justice, Jun. 3, 2008.

⁷ Letter from Keith B. Nelson, Principal Deputy Assistant Attorney General, U.S. Department of Justice, to Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, Jun. 24, 2008.

⁸ *Id.*

⁹ *Id.*

In the same letter, Justice officials further explained that “we anticipate offering” still other “remaining interview reports to the Committee” for an “in camera” evaluation.¹⁰

On July 16, 2008, the Department of Justice wrote to Chairman Waxman again. “If the Committee refrains from citing the Attorney General for contempt,” the Principal Deputy Attorney General declared, “the Department is prepared to continue the accommodation approach we have been taking in this matter by making available for Committee review, under the same terms we have previously made reports available, the remaining interview reports . . . and other subpoenaed documents.”¹¹ The same day, the Committee was informed that the President was invoking executive privilege over subpoenaed materials, including those which “reflect frank and candid deliberations among senior presidential advisors” and between the president and his staff.¹²

The Administration has been forthcoming with a large amount of material from top-level officials and their aides which bears upon the question putatively being investigated by the Committee. The Department of Justice has offered a sound recourse to obtain additional information, and the modest amount and type of material which continues to be withheld seems unobjectionable. The executive privilege claim appears to be valid. Significantly, there is no indication that the small amount of withheld data would in any way alter the interpretation of the large volume of information which was made available.

In addition, the Committee never pursued Justice’s offer of other interview reports. The Majority’s apparent disinterest in obtaining access to this material seems to demonstrate that it is more concerned with pursuing confrontational and high-profile activities, rather than methodically gathering information which may actually elucidate the topics being examined. This may be because the voluminous information already gathered by the Committee fails to substantiate oft-repeated allegations, and in many important ways, supports a countervailing narrative.

Material Provided Does Not Indicate Revelation of Covert Status was Intentional

It is incontrovertible that none of the many interview reports delivered or made available to the Committee suggest that any White House official or employee knew that Valerie Plame Wilson was a covert CIA employee at the time they discussed her identity. This provides further context to former Deputy Secretary of State Richard Armitage’s admission that he provided information about Ms. Wilson to columnist Robert Novak and to Mr. Novak’s declaration that neither Mr. Armitage nor CIA representatives informed

¹⁰ *Id.*

¹¹ Letter from Keith B. Nelson, Principal Deputy Assistant Attorney General, U.S. Department of Justice, to Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, Jul. 16, 2008.

¹² Letter from Michael B. Mukasey, Attorney General, U.S. Department of Justice, to George W. Bush, U.S. President, Jul. 15, 2008.

him that Ms. Wilson was undercover at the time he published the op-ed in which she was mentioned.¹³

Most CIA employees are not undercover; discussing their identity is legal. Neither former vice presidential chief of staff Lewis I. “Scooter” Libby, nor any other individual, was prosecuted for leaking classified data.¹⁴ The 302s provide additional evidence supporting the contention that Administration staffers did not knowingly reveal the identity of a CIA employee who they knew to be covert.

At the Committee’s March 2007 hearing, Chairman Waxman acknowledged this possibility. In inquiring about any formal notification given to classified information custodians, the Chairman declared White House officials “may not have known at the time they disclosed this information to the press.”¹⁵ Now that the Committee has obtained information which supports this scenario, a fair and complete inquiry necessitates making this finding absolutely clear.

Inquiry Raises Questions about Valerie Plame Wilson’s Testimony

While the materials provided to the Committee help to clarify White House actions, other information obtained by the Committee in the course of this investigation raises different concerns. Taking sworn testimony from Ms. Plame Wilson in an open Committee hearing was a component of the Committee’s inquiry into this matter.¹⁶ However, questions have been raised about remarks Ms. Plame Wilson made under oath at that time which appear to conflict with statements she previously made elsewhere.

White House officials were not informed about Ambassador Joseph Wilson’s mission before he anonymously spoke about it in the press in May 2003.¹⁷ In light of the media attention provided to Mr. Wilson’s allegations of wrongdoing, it is understandable that Administration officials subsequently sought to learn about his trip, including the circumstances of his selection. They knew Mr. Wilson’s statements varied from assessments provided to them by the CIA.

¹³ See R. Jeffrey Smith, *Armitage Says He Was Source of CIA Leak; He Says He Did Not Know Covert Status*, WASH. POST (Sep. 8, 2006) A3; Robert D. Novak, *The Prince of Darkness* 5, 7-8, 9-10 (2007).

¹⁴ See Indictment, *United States v. I. Lewis Libby*, (2d Cir. Oct. 31, 2003) (*available at* <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/28/AR2005102801086.html> [last visited Sep. 26, 2008]).

¹⁵ *Hearing on White House Procedures for Safeguarding Classified Information before the House Oversight and Government Reform Committee* (Mar. 16, 2007) at Draft Tr. 92 (statement of Henry A. Waxman, Chairman, House Oversight and Government Reform Committee).

¹⁶ Letter from Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, to Patrick Fitzgerald, Special Counsel, U.S. Department of Justice, Jul. 16, 2007.

¹⁷ S. Rep. No. 108-301, at 43, 46, and 74 (Jul. 9, 2004) (*Report of the [Senate] Select Committee on U.S. Intelligence* [hereinafter “SSCI”] *Community’s Prewar Intelligence Assessments on Iraq with Additional Views*) [hereinafter “Jul. 9, 2004 SSCI Report”]. [Portions of the text on page 74 of the *Jul. 9, 2004 SSCI Report* are redacted; the relevant unredacted text is available at S. Rep. No. 110-57, at 220 (May 25, 2007) (*Report of the [Senate] Select Committee on Intelligence on Prewar Intelligence Assessments about Postwar Iraq together with Additional Views* [hereinafter “May 25, 2007 SSCI Report”] (included in Additional Views of SSCI Vice Chairman Bond, Sen. Hatch, and Sen. Burr)].

A 2004 report of the Senate Select Committee on Intelligence (SSCI) discussed the circumstances in which Ambassador Wilson was dispatched by the CIA to Niger in 2002. The unanimous, bipartisan Committee study declared that “interviews and documents provided to the Committee” demonstrated that Ms. Plame Wilson “suggested his name for the trip.”¹⁸ However, when testifying under oath before the Oversight and Government Reform Committee, Ms. Wilson testified categorically: “I did not recommend him. I did not suggest him;” someone else “suggested well, why don’t we send Joe?”¹⁹ As a result of Ms. Plame Wilson’s sworn declarations before the Committee, on May 25, 2007, SSCI released the text of a February 12, 2002 memorandum from Ms. Plame Wilson which supports SSCI’s conclusion.²⁰

In light of the apparent contradiction, Ranking Member Davis and Chairman Waxman sent a letter on May 11, 2007 to the CIA Director reiterating previous individual requests for information which would allow Ms. Plame-Wilson’s testimony to be evaluated.²¹ The CIA responded that making this information available was the responsibility of the House Permanent Select Committee on Intelligence (HPSCI).²²

In a July 17, 2008 letter to Chairman Waxman, Mr. Davis renewed his request that the Oversight and Government Reform Committee turn its attention to Ms. Plame Wilson’s testimony.²³ Mr. Davis pointed out that:

[P]roviding consistent testimony to this or any other Congressional Committee is our absolute concern and can not be balanced against any other. Where there is a strong concern that a witness may not have

¹⁸ *Jul. 9, 2004 SSCI Report* at 31.

¹⁹ *Mar. 16, 2007 Hearing* at Draft Tr. 51-52 (statement of Valerie Plame Wilson).

²⁰ *May 25, 2007 SSCI Report* at 207 (quoting full text of e-mail from Valerie Plame Wilson to CI/DO/[office 1] (Feb. 12, 2002)) [hereinafter “Feb. 12, 2002 Plame e-mail”]. Specifically, the *Feb. 12, 2002 Plame e-mail* concludes with:

Now, with this report, it is clear that the IC is still wondering what is going on... my husband has good relationships with both the PM and the former Minister of Mines (not to mention lots of French contacts), both of whom could possibly shed light on this sort of activity. To be frank with you, I was somewhat embarrassed by the Agency’s sloppy work last go around and I am hesitate to suggest anything again. However, [my husband] may be in a position to assist. Therefore, request your thoughts on what, if anything to pursue here.

(*Feb. 12, 2002 Plame e-mail*) (ellipses in original).

²¹ Letter from Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, and Tom Davis, Ranking Member, House Oversight and Government Reform Committee, to General Michael Hayden, Director, Central Intelligence Agency (May 11, 2007).

²² *Id.* (cited in Letter from Christopher Walker, Director, Congressional Affairs, Central Intelligence Agency, to Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, and Tom Davis, Ranking Member, House Oversight and Government Reform Committee, May 3, 2007).

²³ Letter from Tom Davis, Ranking Member, House Oversight and Government Reform Committee, to Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, Jul. 17, 2008 [hereinafter “Jul. 17, 2008 Davis Letter”].

provided this Committee with full and complete information or unclear testimony, it is the duty and obligation of this Committee to inquire and resolve the matter. The truth about the matters in question will further elucidate the circumstances of Mr. Wilson's trip to Niger.²⁴

Although Chairman Waxman never replied to this letter, on September 16, 2008, Messrs. Davis and Christopher Shays asked that HPSCI make available certain responsive documents.²⁵ HPSCI has not responded to this request.

302s Raise Other Questions

The 302s made available to the Committee raise important questions, albeit not those the Majority seeks to emphasize. Some of the FBI reports pertain to the circumstances and background of Robert Novak's encounter on July 8, 2003, with an individual on a Washington, D.C., street corner, a few blocks from the Department of State, just minutes after Mr. Novak departed a meeting with Deputy Secretary Armitage in which Mr. Armitage mentioned Ms. Wilson's place of employment.²⁶

Ranking Member Davis also wrote to Chairman Waxman on this point on July 17, 2008. Mr. Davis declared:

Certainly serendipity is part and parcel of human existence. Coincidences, random occurrences, and accidents of timing happen regularly. This could certainly be the case here. On the other hand, if this individual somehow had reason to suspect that Mr. Armitage had spoken about Ms. Wilson to Mr. Novak minutes before his and Mr. Novak's encounter, and if he met up with Mr. Novak with the hopes of confirming this fact, then Mr. Wilson, even before the onset of the FBI's investigation, had reason to believe that Mr. Novak's source of information about Ms. Wilson's place of employment was in fact *not* in the White House.²⁷

In light of the relevance of the 302s to this query, Mr. Davis urged Chairman Waxman to investigate this aspect further.²⁸ As indicated above, Chairman Waxman has not replied to Mr. Davis' July 17, 2008 letter.

²⁴ *Id.*

²⁵ Letter from Tom Davis, Ranking Member, House Oversight and Government Reform Committee, and Christopher Shays, Ranking Member, National Security Subcommittee of the House Oversight and Government Reform Committee, to Silvestre Reyes, Chairman, House Permanent Select Committee on Intelligence, and Peter Hoekstra, Ranking Member, House Permanent Select Committee on Intelligence, Sep. 16, 2008.

²⁶ *Jul. 17, 2008 Davis Letter.*

²⁷ *Id.*

²⁸ *Id.*

Other Related Issues Should be Investigated

The FBI interview records and other data available contribute to the Committee's understanding of how the Central Intelligence Agency interpreted and communicated Iraq-related nuclear intelligence before the war. The unanimous bipartisan SSCI evaluation concluded in 2004 that "[f]or most analysts," the written summation of Ambassador Joseph Wilson's trip to Niger, which was circulated to CIA evaluators, "lent more credibility" to the intelligence reports that Iraq had been seeking yellowcake.²⁹ Indeed, SSCI found that all "CIA Iraq analysts who had analyzed the Niger uranium reporting" from various sources believed "until at least March 2003" that "Iraq was seeking uranium from Africa."³⁰

These beliefs seem sincere. SSCI and the Robb-Silberman Commission (formally the "Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction") investigated the possibility that intelligence estimates were skewed because of the influence of Administration officials. The bipartisan unanimous SSCI report declared the "Committee did not find any evidence that intelligence analysts changed their judgments as a result of political pressure, altered or produced intelligence products to conform with Administration policy, or that anyone even attempted to coerce, influence or pressure analysts to do so."³¹ Similarly, the Robb-Silberman panel concluded the "analysts who worked Iraqi weapons issues universally agreed that in no instance did political pressure cause them to skew or alter any of their analytical judgments."³²

The CIA's analytical confidence with the Niger intelligence is additionally demonstrated by SSCI's further conclusion that the doubt expressed by the Agency to the White House, the Senate, and the British government in September and October 2002 about the yellowcake intelligence was erroneous. SSCI identified communication and procedural flaws which led to these missteps.³³

Mr. Davis' July 17, 2008 letter to Chairman Waxman noted the "enormous" ramifications of these errors which "allowed allies, policy-makers, and legislative overseers to be misinformed."³⁴ He said, "a failure to comprehend

²⁹ *Jul. 9, 2004 SSCI Report* at 73. [Portions of the text on page 73 of the *Jul. 9, 2004 SSCI Report* are redacted; the relevant unredacted text is available at *May 25, 2007 SSCI Report* at 219-20 (included in Additional Views of SSCI Vice Chairman Bond, Sen. Hatch, and Sen. Burr).]

³⁰ *Id.* at 78-79. [Portions of the text on page 78-79 of the *Jul. 9, 2004 SSCI Report* are redacted; the relevant unredacted text is available at *May 25, 2007 SSCI Report* at 220-22 (included in Additional Views of SSCI Vice Chairman Bond, Sen. Hatch, and Sen. Burr).]

³¹ *Id.* at 273; 273-283.

³² Report to the President of the United States from the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction [hereinafter "the Commission"], Mar. 31, 2005, at 11. The Commission continues: "It is hard to deny that conclusion that intelligence analysts worked in an environment that did not encourage skepticism about the conventional wisdom." *Id.*

³³ *Jul. 9, 2004 SSCI Report* at 78-79 [Portions of the text on page 78-79 of the *Jul. 9, 2004 SSCI Report* are redacted; the relevant unredacted text is available at *May 25, 2007 SSCI Report* at 220-22 (included in Additional Views of SSCI Vice Chairman Bond, Sen. Hatch, and Sen. Burr).]

³⁴ *Jul. 17, 2008 Davis Letter*.

this miscommunication, led others to later propagate the myth that CIA analysts took exception to intelligence about potential Iraqi efforts to obtain uranium.”³⁵ In his correspondence, Ranking Member Davis implored Chairman Waxman to direct the Committee to “investigate what procedures or policies the I[n]telligence C[ommunity] has put in place to prevent such a situation from recurring.”³⁶ This, too, seems like an appropriate and fertile area for Committee inquiry. As noted, Chairman Waxman has not replied to Mr. Davis’ request.

³⁵ *Id.*.

³⁶ *Id.*