TOM DAVIS, VIRGINIA,
CHAIRMAN

CHRISTOPHER SHAYS, CONNECTICUT
DAN BURTON, INDIANA
ILEANA ROS-LEHTINEN, FLORIDA
JOHN M. McHUGH, NEW YORK
JOHN L. MICA, FLORIDA
GIL GUTKNECHT, MINNESOTA
MARK E. SOUDER, INDIANA
STEVEN C. LATOURETTE, OHIO
TODD RUSSELL PLATTS, PENNSYLVANIA
CHRIS CANNON, UTAH
JOHN J. DUNCAN, JR., TENNESSEE
CANDICE MILLER, MICHIGAN
MICHAEL R. TURNER, OHIO
DARRELL ISSA, CALIFORNIA
VIRGINIA BROWN-WAITE, FLORIDA
JON C. PORTER, NEVADA
KENNY MARCHANT, TEXAS
LYNN A. WESTMORELAND, GEORGIA
PATRICK T. McHENRY, NORTH CAROLINA
CHARLES W. DENT, PENNSYLVANIA
VIRGINIA FOXX, NORTH CAROLINA

ONE HUNDRED NINTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
FACSIMILE (202) 225–3974
MINORITY (202) 225–5051
TTY (202) 225–6852

http://reform.house.gov

HENRY A. WAXMAN, CALIFORNIA,
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA
MAJOR R. OWENS, NEW YORK
EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
CAROLYN B. MALONEY, NEW YORK
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
DANNY K. DAVIS, ILLINOIS
WM. LACY CLAY, MISSOURI
DIANE E. WATSON, CALIFORNIA
STEPHEN F. LYNCH, MASSACHUSETTS
CHRIS VAN HOLLEN, MARYLAND
LINDA T. SANCHEZ, CALIFORNIA
C.A. DUTCH RUPPERSBERGER, MARYLAND
BRIAN HIGGINS, NEW YORK
ELEANOR HOLMES NORTON, DISTRICT OF COLUMBIA

BERNARD SANDERS, VERMONT,
INDEPENDENT

November 16, 2005

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

Dear Chairman Davis:

In your November 1, 2005, letter rejecting my fourth request for Committee hearings on the leak of the identity of Valerie Plame Wilson, you asserted that while you are "not averse to asking tough questions of this Administration," you believe the criminal investigation by Special Prosecutor Patrick Fitzgerald should first run its course. I have no doubt that your decision reflects careful thought and consideration. But the approach to congressional oversight articulated in your response is inconsistent with precedent and would hobble this Committee from meeting its responsibility to act as a meaningful check on executive branch abuses.

Now more than ever vigorous oversight by Congress — and the Government Reform Committee in particular — is urgently needed. Ethical standards at the White House and in Congress have deteriorated and the new rule appears be that misconduct by top government officials merits review or rebuke only if it is criminal. President Bush provided a prominent example of this trend a few months ago. Despite previous Administration statements that those found to be involved in the Wilson leak would lose their jobs,[1] the President announced in July that he would fire officials involved in the leak only "if someone committed a crime."[2]

I believe we should expect more out of our government than simply assurance that our leaders won't commit crimes. The American public wants and deserves a government that operates ethically, efficiently, and effectively. As the primary investigative body in the U.S. House of Representatives, the Government Reform Committee should be promoting that standard with vigorous and continuous review of executive branch conduct.

---

[1] *See, e.g.,* The White House, *Press Briefing with Scott McClellan* (Sept. 29, 2003) (in which the President's spokesman stated, with respect to the Plame leak, "If anyone in this administration was involved in it, they would no longer be in this administration").

[2] *Bush: CIA Leaker Would Be Fired if Crime Committed,* Reuters (July 18, 2005).

In previous letters I have laid out in detail the various unanswered questions raised by the leak of Ms. Wilson's identity that go beyond the issue of whether a crime occurred. The information that has emerged in the indictments only underscores the need for review of these questions. In summary, key unanswered questions include:

- Does the egregious national security violation that occurred with the leak of Valerie Plame Wilson's identity indicate that the White House has an inadequate system in place to control the use and disclosure of classified information?

- Why did the President fail to follow Executive Order 12958, which requires "appropriate and prompt corrective action" to investigate security breaches and terminate the security clearances of employees who disclose classified information to individuals who are not authorized to receive it?

- The indictment chronicles discussions of Ms. Wilson among several senior Administration officials in the days following her husband's public criticism of the Administration. Regardless of whether criminal laws were violated, did the leak of Ms. Wilson's identity reflect a concerted effort by the White House to intimidate a whistleblower?

- How does the leak relate to the misuse of intelligence that provided the rationale for going to war in Iraq?

- What role did the Vice President play in the leak and the misuse of intelligence about Iraq?

- Why did the White House make misleading statements to the public in 2003 denying the involvement of Mr. Libby and Karl Rove in the leak and what assurances can the White House make so that the American public can trust the accuracy of future White House statements?

Special Prosecutor Fitzgerald is not tasked with examining any of these matters except to the extent criminal conduct may have occurred. It is therefore difficult to understand your assertions that a Committee inquiry would be "redundant" with Mr. Fitzgerald's investigation.

Our Committee has authority to take up these issues regardless of whether there is an ongoing criminal investigation. As the Supreme Court has held, "surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding … or when crime or wrongdoing is disclosed."[3]

---

[3] *Hutcheson v. United States*, 369 U.S. 599, 618 (1962).

Reflecting this principle, Congress has frequently exercised its oversight powers to examine matters that were also the subject of ongoing criminal probes. Examples of congressional investigations that occurred concurrently with criminal investigations during the Clinton Administration include the following:

- The Whitewater investigation;[4]
- The investigation of the White House travel office;[5]
- The investigation of allegations of misuse of FBI files;[6]
- The investigation of allegations of campaign finance law violations;[7]
- The investigation of allegations of fundraising improprieties involving the Teamsters;[8] and

---

[4] A Senate special committee investigation occurred in 1995-1996 and the Independent Counsel Kenneth Starr investigated this matter from 1994-1999. *See* Special Committee to Investigate Whitewater Development Corporation, *Final Report* (June 17, 1996) (S. Rept. 104-280); Congressional Research Service, *Independent Counsels Appointed under the Ethics in Government Act of 1978, Costs and Results of Investigations*, Report 98-19 (updated June 12, 2003).

[5] In 1996, the House Government Reform Committee investigated this matter at the same time that Independent Counsel Kenneth Starr empanelled a grand jury for a criminal investigation of this matter. *See White House Obtained FBI Data on Fired Travel Chief*, Washington Post (June 6, 1996); *GOP Slams White House in FBI Files Report*, Washington Post (Sept. 25, 1996).

[6] In 1996, the House Government Reform and Oversight Committee and Independent Counsel Kenneth Starr both investigated this matter. *See White House Obtained FBI Data on Fired Travel Chief*, Washington Post (June 6, 1996); Congressional Research Service, *Independent Counsels Appointed Under the Ethics in Government Act of 1978, Costs and Results of Investigations*, Report 98-19 (updated June 12, 2003).

[7] The House Government Reform Committee, the Senate Governmental Affairs Committee, and other congressional committees investigated this matter concurrent with the Justice Department's 1996-1999 criminal probe of allegations of campaign finance law violations during the 1996 campaign. *See Campaign Fund Probe Winds Down*, Washington Post (May 30, 1999); *DNC to Resist House's 'Wild Goose Chase' Subpoenas*, Washington Post (Dec. 12, 1997); *Senate Campaign Probers Release Findings*, Washington Post (Mar. 6, 1998).

[8] From 1997 to 1999, the House Education and the Workforce Subcommittee on Oversight and Investigations examined this issue concurrently with an investigation of the matter by the U.S. Attorney for the Southern District of New York. *See* House Committee on Education and the Workforce, Subcommittee on Oversight and Investigations, *Report on the Financial, Operating, and Political Affairs of the International Brotherhood of Teamsters* (Feb. 24, 1999).

- The investigation of allegations relating to Chinese espionage.[9]

There are multiple other examples of congressional investigations occurring simultaneously with criminal investigations in recent years. These include the investigation of the collapse of Enron,[10] the investigation of insider trading by Martha Stewart,[11] and the investigation of the lobbying activities of Jack Abramoff.[12] Even our own Committee — under

---

[9] In June 1998, the House of Representatives established the Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China to investigate allegations that China had acquired nuclear expertise and technology from United States sources. H. Res. 463, 105th Cong. The Senate Judiciary Committee also conducted investigative hearings and issued subpoenas investigating similar allegations of Chinese espionage. *See* Senate Judiciary Committee, Subcommittee on Administrative Oversight and the Courts, *Continuation of Oversight of the Wen Ho Lee Case*, S. Hrg. 106-1040, at 87 (Sept. 17 & Oct. 3, 2000). These congressional inquiries proceeded concurrently with a Justice Department criminal investigation of mishandling of classified information at Department of Energy facilities, which led to the indictment of Wen Ho Lee. *See* Press Release, Federal Bureau of Investigation, *FBI Announces the Indictment of Wen Ho Lee* (Dec. 10, 1999).

[10] In late 2001, the Department of Justice launched an inquiry into allegations of potentially illegal actions by Enron that soon resulted in a broad criminal probe. *See Justice Looking at Enron*, Washington Post (Dec. 7, 2001); *Government Opens Criminal Investigation of Enron*, Associated Press (Jan. 9, 2002). Simultaneously, the House Energy and Commerce Committee conducted a comprehensive investigation of Enron that encompassed subjects DOJ was examining. For example, on January 24, 2002, the Committee's Oversight and Investigations Subcommittee held a hearing on the destruction of Enron-related documents by Arthur Andersen and obtained documents from Arthur Andersen on this matter. *See* House Committee on Energy and Commerce Subcommittee on Oversight and Investigations, *Hearing on the Destruction of Enron-R elated Documents by Andersen Personnel*, 107th Cong. (Jan. 24, 2002). The Department of Justice prosecuted Arthur Andersen on obstruction of justice charges relating to the destruction of Enron documents. *See Arthur Anderson LLP v. United States*, 544 U.S. __ (2005).

[11] In January 2002, the House Energy and Commerce Committee launched an investigation into whether Martha Stewart had engaged in insider trading of stock in Imclone Systems, Inc. The congressional investigation proceeded at the same time as a criminal investigation by the Justice Department and a civil investigation by the Securities and Exchange Commission. *See* Letter from Reps. Billy Tauzin and John Dingell to Attorney General John Ashcroft (Sept. 10, 2002); *Company Said to Seek Chief to Replace Martha Stewart,* New York Times (Sept. 4, 2002); *Probes Close in on Martha Stewart*, Cox News Service (Aug. 8, 2002).

[12] The Justice Department, FBI, IRS, and Interior Department have been investigating the lobbying activities of Jack Abramoff and his associates since 2004. See *Abramoff Cited Aid of Interior Official; Conflict of Interest Probe is Underway,* Washington Post (Aug. 28, 2005); *Abramoff Indictment May Aid D.C. Inquiry*, Washington Post (Aug. 13, 2005). The Senate

your leadership — has conducted congressional investigations into subjects being examined by federal prosecutors. Two examples are the investigation of the U.N. Oil for Food Program[13] and the investigation of allegations of falsified data relating to the Yucca Mountain nuclear waste depository.[14]

There should not be a special exemption from congressional scrutiny applicable to President Bush, Vice President Cheney, and their top aides. I urge you to revisit your thinking about our Committee's oversight of the role of White House officials in the leak of Ms. Wilson's identity and the manipulation of intelligence.

Sincerely,

Henry A. Waxman
Ranking Minority Member

Indian Affairs committee is investigating the same topic and has held investigative hearings while the criminal investigation has been ongoing. *See Administration Official, Coushatta Tribal Leaders to Testify in Lobbyist Probe*, Associated Press (Nov. 2, 2005).

[13] The U.S. Attorney for the Southern District of New York is conducting a criminal investigation of corruption in the U.N. Oil for Food program that resulted in several indictments and guilty pleas beginning in January 2005. *See* U.S. Department of Justice, Press Release, *Businessman Pleads Guilty to Charges of Receiving Oil-for-Food Contracts as Payment for Work as Unregistered Agent of Iraq* (Jan. 18, 2005) (online at http://www.usdoj.gov/opa/pr/2005/January/05_crm_020.htm). The House Government Reform, Energy and Commerce, and Appropriations Committees, as well as the Senate Homeland Security and Governmental Affairs Committee, have held investigative hearings on the Oil for Food program during 2005. *See, e.g.,* House Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, *Hearing on the U.N. Oil-for-Food Program: The Inevitable Failure of U.N. Sanctions* (Apr. 12, 2005).

[14] The House Government Reform Subcommittee on the Federal Workforce and Agency Organization in 2005 has been investigating allegations that scientists falsified data relating to the Yucca Mountain nuclear waste repository. At the same time, the Department of Energy inspector general and the Department of Justice are conducting criminal investigations into the same issues. *See* Letter from Rep. Jon Porter to Samuel Bodman, Secretary of the Department of Energy (July 13, 2005).