



## Office of Special Counsel

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March 14, 2007

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 Congressman Waxman:

I write in response to your letter of March 8, 2007, which invited me to meet with you and Ranking Member Davis to discuss the possibility of my testifying before the Committee. I believe it is important to advise you promptly of the limits on any assistance I could provide to the Committee.

Your March 8 letter outlines specific areas of potential testimony, including my views on: (1) whether particular persons "complied with the requirements governing the handling of classified information," and "whether the White House took appropriate remedial action;" (2) whether "ultimate responsibility for the outing of Ms. Wilson" rests with persons other than Mr. Libby; and (3) more broadly, whether existing administrative requirements safeguarding classified information are sufficient to protect against future leaks.

As an initial matter, I note that the matter of *United States v. I. Lewis Libby*, 05-CR-394, is still pending in the United States District Court for the District of Columbia. Mr. Libby has recently been convicted but has not yet been sentenced. The defense is scheduled to file a motion for a new trial prior to the sentencing date. Obviously, any putative appeal by Mr. Libby has neither been filed nor resolved. Based upon consultation with the Department of Justice, I have been advised of its long-standing policy of declining to provide non-public information about pending law enforcement matters, including briefings. Additionally, as you note, I would not be in position to share with you information covered by Rule 6(e) of the Federal Rules of Criminal Procedure. We have scrupulously adhered to the requirements of the Rule throughout this proceeding and must continue to do so.

I also do not believe it would be appropriate for me to offer opinions, as your letter suggests the Committee may seek, about the ultimate responsibility of senior White House officials for the disclosure of Ms. Wilson's identity, or the sufficiency of the remedial measures that White House officials took after the leak. Prosecutors traditionally refrain from commenting outside of the

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judicial process on the actions of persons not charged with criminal offenses. Such individuals have significant privacy and due process interests that deserve protection as do the internal deliberations of prosecutors relating to their conduct. Moreover, any opinions that I might offer on these topics would be grounded in significant part on grand jury information that remains protected by Rule 6(e). In that vein, I do not think I could offer cogent views or opinions on the adequacy of the current statutes and administrative regulations that address improper disclosures of classified information, while at the same time stripping from such views any references to particular persons whose conduct was at issue in the investigation but who were not charged with a crime or references to Mr. Libby, whose case is still pending.

You may wish to review the substantial information gathered during our investigation, (especially as it concerned Mr. Libby in particular), which has become a matter of public record as a result of court proceedings and the trial. Many of the court filings are publicly docketed and, of course, the trial testimony and all trial exhibits are matters of public record.

I appreciate the Committee's important oversight interests, but also trust that you will appreciate my position in this matter, particularly while the criminal case remains pending and in light of the confidentiality and privacy interests at stake.

Very truly yours,



PATRICK J. FITZGERALD  
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cc: The Honorable Tom Davis  
Ranking Minority Member  
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