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July 18, 2005

The President
The White House
Washington, DC 20500

Dear Mr. President:

In June 2004, you said that you would fire anyone found to be involved in the disclosure of Valerie Wilson's identity as a covert CIA agent.¹ Today, you significantly changed your position, stating that you would remove Karl Rove or other White House officials involved in the security breach only "if someone committed a crime."²

Your new standard is not consistent with your obligations to enforce Executive Order 12958, which governs the protection of national security secrets. The executive order states: "Officers and employees of the United States Government ... shall be subject to appropriate sanctions if they knowingly, willfully, or negligently ... disclose to unauthorized persons information properly classified."³ Under the executive order, the available sanctions include "reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions."⁴

Under the executive order, the President may not wait until criminal intent and liability are proved by a prosecutor. Instead, the President has an affirmative obligation to take "appropriate and prompt corrective action."⁵ And the standards of proof are much different. A criminal violation of the Intelligence Identities Protection Act, which Special Prosecutor Fitzgerald is investigating, requires a finding that Mr. Rove "intentionally disclose[d]" the

¹ White House, *Press Conference of the President After G8 Summit, International Media Center, Savannah, Georgia* (June 10, 2004).

² *Bush: CIA Leaker Would Be Fired if Crime Committed*, Reuters (July 18, 2005); *Bush: Any Criminals in Leak to Be Fired*, Associated Press (July 18, 2005).

³ Executive Order 12958, sec. 5.5(b).

⁴ *Id.* at sec. 5.5(c).

⁵ *Id.* at sec. 5.5(e).

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identity of a covert agent.⁶ In contrast, the administrative sanctions under Executive Order 12958 can be imposed without a finding of intent. Under the executive order, the President is required to impose administrative sanctions — such as removal of office or termination of security clearance — if Mr. Rove or other officials acted “negligently” in disclosing or confirming information about Ms. Wilson’s identity.⁷

I have enclosed a fact sheet on Karl Rove’s Nondisclosure Agreement and its legal implications, which provides additional detail about the President’s national security obligations. I urge you to act in compliance with Executive Order 12958 and your responsibility to safeguard national security secrets.

Sincerely,



Henry A. Waxman
Ranking Minority Member

Enclosure

⁶ 50 U.S.C. sec. 421(a).

⁷ Executive Order 12958, sec. 5.5(b).



REP. HENRY A. WAXMAN
RANKING MINORITY MEMBER
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
JULY 15, 2005

Fact Sheet

Karl Rove's Nondisclosure Agreement

Today, news reports revealed that Karl Rove, the White House Deputy Chief of Staff and the President's top political advisor, confirmed the identity of covert CIA official Valerie Plame Wilson with Robert Novak on July 8, 2003, six days before Mr. Novak published the information in a nationally syndicated column. These new disclosures have obvious relevance to the criminal investigation of Patrick Fitzgerald, the Special Counsel who is investigating whether Mr. Rove violated a criminal statute by revealing Ms. Wilson's identity as a covert CIA official.

Independent of the relevance these new disclosures have to Mr. Fitzgerald's investigation, they also have significant implications for: (1) whether Mr. Rove violated his obligations under his "Classified Information Nondisclosure Agreement" and (2) whether the White House violated its obligations under Executive Order 12958. Under the nondisclosure agreement and the executive order, Mr. Rove would be subject to the loss of his security clearance or dismissal even for "negligently" disclosing Ms. Wilson's identity.

KARL ROVE'S NONDISCLOSURE AGREEMENT

Executive Order 12958 governs how federal employees are awarded security clearances in order to obtain access to classified information. It was last updated by President George W. Bush on March 25, 2003, although it has existed in some form since the Truman era. The executive order applies to any entity within the executive branch that comes into possession of classified information, including the White House. It requires employees to undergo a criminal background check, obtain training on how to protect classified information, and sign a "Classified Information Nondisclosure Agreement," also known as a SF-312, promising not to reveal classified information.¹ The nondisclosure agreement signed by White House officials such as Mr. Rove states: "I will never divulge classified information to anyone" who is not authorized to receive it.²

THE PROHIBITION AGAINST "CONFIRMING" CLASSIFIED INFORMATION

Mr. Rove, through his attorney, has raised the implication that there is a distinction between releasing classified information to someone not authorized to receive it and confirming classified information from someone not authorized to have it. In fact, there is no such distinction under the nondisclosure agreement Mr. Rove signed.

One of the most basic rules of safeguarding classified information is that an official who has signed a nondisclosure agreement cannot confirm classified information obtained by a reporter. In fact, this obligation is highlighted in the “briefing booklet” that new security clearance recipients receive when they sign their nondisclosure agreements:

Before ... confirming the accuracy of what appears in the public source, the signer of the SF 312 must confirm through an authorized official that the information has, in fact, been declassified. If it has not, ... **confirmation of its accuracy is also an unauthorized disclosure.**³

THE INDEPENDENT DUTY TO VERIFY THE CLASSIFIED STATUS OF INFORMATION

Mr. Rove’s attorney has implied that if Mr. Rove learned Ms. Wilson’s identity and occupation from a reporter, this somehow makes a difference in what he can say about the information. This is inaccurate. The executive order states: “Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.”⁴

Mr. Rove was not at liberty to repeat classified information he may have learned from a reporter. Instead, he had an affirmative obligation to determine whether the information had been declassified before repeating it. The briefing booklet is explicit on this point: “before disseminating the information elsewhere ... the signer of the SF 312 must confirm through an authorized official that the information has, in fact, been declassified.”⁵

“NEGLIGENT” DISCLOSURE OF CLASSIFIED INFORMATION

Mr. Rove’s attorney has also implied that Mr. Rove’s conduct should be at issue only if he intentionally or knowingly disclosed Ms. Wilson’s covert status. In fact, the nondisclosure agreement and the executive order require sanctions against security clearance holders who “knowingly, willfully, or negligently” disclose classified information.⁶ The sanctions for such a breach include “reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions.”⁷

THE WHITE HOUSE OBLIGATIONS UNDER EXECUTIVE ORDER 12958

Under the executive order, the White House has an affirmative obligation to investigate and take remedial action separate and apart from any ongoing criminal investigation. The executive order specifically provides that when a breach occurs, each agency must “take appropriate and prompt corrective action.”⁸ This includes a determination of whether individual employees improperly disseminated or obtained access to classified information.

The executive order further provides that sanctions for violations are not optional. The executive order expressly provides: “Officers and employees of the United States Government ... shall be subject to appropriate sanctions if they knowingly, willfully, or negligently ... disclose to unauthorized persons information properly classified.”⁹

There is no evidence that the White House complied with these requirements.

ENDNOTES

¹ Executive Order No. 12958, *Classified National Security Information* (as amended), sec. 4.1(a) (Mar. 28, 2003) (online at www.archives.gov/isoo/policy_documents/executive_order_12958_amendment.html).

² *Classified Information Nondisclosure Agreement, Standard Form 312* (Prescribed by NARA/ISOO) (32 C.F.R. 2003, E.O. 12958) (online at [http://contacts.gsa.gov/webforms.nsf/0/03A78F16A522716785256A69004E23F6/\\$file/SF312.pdf](http://contacts.gsa.gov/webforms.nsf/0/03A78F16A522716785256A69004E23F6/$file/SF312.pdf)).

³ Information Security Oversight Office, National Archives and Records Administration, *Briefing Booklet: Classified Information Nondisclosure Agreement (Standard Form 312)*, at 73 (emphasis added) (online at www.archives.gov/isoo/training/standard_form_312.pdf).

⁴ Executive Order No. 12958, sec. 1.1(b).

⁵ *Briefing Booklet*, *supra* note 3, at 73.

⁶ Executive Order No. 12958, sec. 5.5(b) (emphasis added).

⁷ *Id.* at 5.5(c).

⁸ *Id.* at 5.5(e)(1).

⁹ *Id.* at 5.5(b).