

United States Senate

WASHINGTON, DC 20510

June 26, 2012

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

The numerous national security leaks reportedly originating out of the Executive Branch in recent months have been stunning. If true, they reveal details of some of our Nation's most highly classified and sensitive military and intelligence matters, thereby risking our national security, as well as the lives of American citizens and our allies. If there were ever a case requiring an outside special counsel with bipartisan acceptance and widespread public trust, this is it.

Press reports indicate that there could be many sources to the leaks within the Administration. In fact, in Jo Becker and Scott Shane's *New York Times* story, "Secret 'Kill List' Proves a Test of Obama's Principles and Will" the reporters state they interviewed, "three dozen of [Obama's] current and former advisers." Tom Ricks' recent *New York Times* review of David Sanger's Confront and Conceal mentions that "Mr. Sanger clearly has enjoyed great access to senior White House officials, most notably to Thomas Donilon, the national security adviser. Mr. Donilon, in effect, is the hero of the book, as well as the commenter of record on events."

You have an important role as a member of the President's national security team, and no Administration should be expected to investigate itself impartially on such a grave and sensitive matter in the midst of an election. Therefore, your recent announcement that two U.S. Attorneys would lead criminal investigations into the instances of unauthorized disclosures of classified information does not ensure a full and thorough investigation free of influence. The U.S. Attorneys are under your personal supervision. An outside special counsel, with the appropriate independence and authority,

would ensure that the investigation remains untainted by even the appearance of a politics or undue influence.

Our request for a special counsel is in keeping with the precedent of asking for a neutral investigation when there is either a possible conflict of interest or extraordinary circumstances. In 2005, when President Obama was a sitting senator, he requested a special counsel to investigate the Jack Abramoff scandal, saying “FBI officials have said the Abramoff investigation ‘involves systemic corruption within the highest levels of government.’ Such an assertion indicates extraordinary circumstances and it is in the public interest that you act under your existing statutory authority to appoint a special counsel.”¹

In fact, in the Valerie Plame matter, then-Senator Obama went beyond the call for a special counsel, seeking a Congressional investigation, arguing in a letter:

“[t]he United States Congress has a constitutional responsibility to provide oversight of the executive branch, whether a law has been broken or not. It is time for Congress to fulfill that constitutional responsibility in this matter by initiating a thorough investigation. We recognize that a criminal investigation is underway and that a special prosecutor continues to present testimony before a grand jury. These actions in no way preclude Congress responsibility to provide oversight. We urge you to exercise your authority as Congressional leaders by requesting the appropriate committees to begin oversight hearings and an investigation immediately.”²

In 2007, then-Senator Biden called for a special counsel to investigate the destruction of the CIA enhanced interrogation tapes, stating that the “easiest, straightest thing to do is to take it out of the political realm, appoint a special prosecutor and let them decide, and . . . call it where it is. Is there a criminal violation? If there is, proceed. If not, don’t.”³

¹ 36 Senators Urge Gonzales To Appoint Special Counsel To Lead Abramoff Scandal Case (February 2, 2006), available at http://www.schumer.senate.gov/Newsroom/record_print.cfm?id=259406

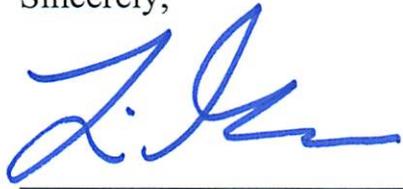
² Senators Urge Congressional Investigation Into Leak of CIA Agent Plames Name (July 25, 2005), available at <http://www.kerry.senate.gov/press/release/?id=1f3975c6-b667-42bf-a6bd-9bbb0e1fb890>

³ *This Week*. ABC. December 9, 2007. Television.

In 2003, then-Senator Biden joined a letter calling for an outside special counsel in the Valerie Plame investigation, concluding that, "Public confidence in the integrity of this investigation would be substantially bolstered by the appointment of a special counsel."⁴ Then-Senator Biden maintained that even if that case were being handled by professional career prosecutors, the integrity of the inquiry might be called into question if individuals with a vested interest in protecting the White House were still involved in any matter related to the investigation.

If the bar for an outside special counsel were met in the cases of Valerie Plame and Jack Abramoff, it is far exceeded here. We are not talking about a single, isolated instance of a leak; rather, we are looking at "an avalanche of leaks" on national security matters. On a matter of this seriousness, there is clear precedent to appoint an outside special counsel when there is the potential for a conflict of interest, the specter of political influence, or other extraordinary circumstances. As this is clearly the case here, we request that you appoint an outside special counsel immediately.

Sincerely,



Joe Biden



Mitt McConnell



John McCain



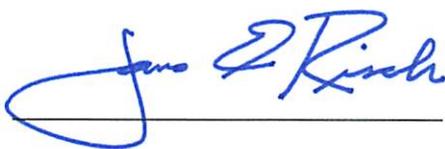
Lindsey O'Rourke



Chuck Grassley



Tom Coburn



James R. Inhofe



Kay Hagan

⁴ Available at http://www.fas.org/irp/congress/2003_cr/leakletter.html

Jeff Lemons

Rob Partagan

Jerry Moran

Mike Enji

Mike Johnson

Jani DeMont

Kelly Ayotte

John Housen

John Thum

Lyndy Wicker

Laura Alexander

John Barrasso

Susan M Collins

Mike Cryso

Clara Kim

Lee Nechaska

D. D. Hill

John Conyer

Pat Rooney

John Bozman

Mr R

Rand Paul

Pat Roberts