

DRAFT
ADDITIONAL VIEWS OF CHAIRMAN HENRY A. WAXMAN

The bipartisan Committee report focuses on President Bush's July 16, 2008, assertion of executive privilege with respect to a single document: a report of an interview conducted with Vice President Richard B. Cheney by Special Counsel Patrick J. Fitzgerald and FBI investigators. The Committee report finds that the President's assertion of executive privilege over the Vice President's interview is "legally unprecedented and an inappropriate use of executive privilege."

The FBI report of its interview with the Vice President is particularly important because Special Counsel Fitzgerald himself said there was a "cloud" surrounding the Vice President's conduct in the disclosure of the identity of CIA employee Valerie Plame Wilson; the Vice President's chief of staff Scooter Libby said it was "possible" that the Vice President instructed him to disseminate information about Ms. Wilson to the press; and former White House spokesman Scott McClellan said that Mr. Libby, Senior Advisor to the President Karl Rove, and "possibly Vice President Cheney" directed him to lie about this matter.

These additional views concern other documents the Administration is improperly withholding from the Committee pursuant to the President's July 16, 2008, assertion of executive privilege.

The Committee subpoenaed Attorney General Michael B. Mukasey on June 16, 2008, for documents relating to the Committee's investigation of the leak by White House officials of the employment status of Central Intelligence Agency officer Valerie Plame Wilson in June and July of 2003.¹ In his July 15, 2008, letter to the President making the case for asserting executive privilege, Attorney General Mukasey identified additional documents that are being withheld, including Special Counsel Fitzgerald's interview of the President, redacted portions of interviews with other White House officials, and other documents the Administration previously provided the Special Counsel during his investigation.²

The President's arguments for asserting executive privilege over all of these documents are flawed. All of these documents were shared outside the White House with the Special Counsel, not one of these documents was subject to grand jury secrecy rules, and the Administration has failed to cite a single judicial opinion upholding a President's assertion of executive privilege over documents provided to law enforcement authorities in cases that are closed. Regardless, the Committee's legislative and oversight interests in the withheld documents outweigh any executive interest in confidentiality.

¹ Committee on Oversight and Government Reform, *Subpoena to Attorney General Michael B. Mukasey* (served June 16, 2008).

² Letter from Attorney General Michael B. Mukasey to President George W. Bush (July 15, 2008).

In fact, the Attorney General's arguments for executive privilege in this case have been subject to ridicule and skepticism by legal experts and former prosecutors. As reported by *Newsweek*:

“As far as I know, this is an utterly unprecedented executive privilege claim,” said Peter Shane, an Ohio State University law professor who is an expert on executive privilege and separation of powers issues. “I’ve never heard this claim before.” “Creative is a good word to describe it,” said Mark Rozell, another executive privilege expert who is a professor at George Mason University’s School of Public Policy. “This is really an argument to protect the White House’s own political interests and save it from embarrassment.”³

The Administration’s refusal to comply with the Committee’s subpoena for these documents impairs the Committee’s ability to investigate the manner and extent to which the White House breached national security by disclosing publicly Ms. Plame’s CIA employment. The Administration’s refusal to provide basic information about the withheld documents also hinders the ability of the Committee to further analyze the merits of the executive privilege claim.

³ *Closing the Door: An Unusual New Privilege Claim Shields Cheney in Plame Probe*, *Newsweek* (July 16, 2008).