Congress of the United States
Washington, DC 20515

January 26, 2004

The Honorable David M. Walker
Comptroller General
U.S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Walker:

We are writing to request that the General Accounting Office investigate whether the White House complied with important administrative requirements to safeguard classified information in the matter of covert CIA operative Valerie Plame, the wife of Ambassador Joseph Wilson. Specifically, we request that GAO determine whether (1) in the period before Ms. Plame's identity was leaked to the media, the White House followed the applicable administrative procedures for protecting information about Ms. Plame's covert identity and (2) in the period after Ms. Plame's identity was leaked to the media, the White House complied with administrative requirements to ensure that this security breach was investigated and remedial action taken.

The relevant administrative requirements limited who within the White House was entitled to be informed of Ms. Plame's identity; they required those who were informed of Ms. Plame's identity to take steps to safeguard this information; and they required the White House to take prompt steps to ensure that the leak was thoroughly investigated after it occurred. Based on what has been reported about this matter, serious doubts have been raised about whether the White House complied with these basic administrative procedures in protecting Ms. Plame's identity and responding to the leak. We believe a GAO investigation of these issues is essential to restoring public confidence in the integrity of the White House.

Our request is fundamentally different from the ongoing investigation being conducted by the Department of Justice. We are not asking GAO to assess whether any criminal statutes have been violated. Instead, we are requesting that GAO examine the separate — but equally important — question of whether the White House followed appropriate internal procedures for protecting Ms. Plame's identity from disclosure and for responding to the leak after it occurred.

GAO has examined White House compliance with administrative security requirements in previous administrations. In a report issued in 1998, for example, GAO evaluated the Clinton Administration's compliance with these administrative requirements in response to a request from two Republican members of Congress.[1] We are seeking a similar review of the practices of the Bush White House, with a special focus on the Valerie Plame leak.

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[1] U.S. General Accounting Office, *Executive Office of the President: Procedures for Acquiring Access to and Safeguarding Intelligence Information* (Sept. 1998) (GAO/NSIAD-98-245).

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Given President Bush's recent direction to his staff regarding this issue, we anticipate full cooperation from White House employees in response to this request.[2]

The Procedures for Safeguarding Classified Information

There are a host of administrative rules that govern how federal agencies, including the White House, are supposed to safeguard the nation's most crucial secrets. These administrative rules, many of which are included in Executive Order 12958, set forth specific requirements to be followed to prevent leaks from occurring and for investigating and responding to leaks after they occur. These rules apply to the White House.[3]

E.O. 12958 requires agencies to establish an effective system to restrict access to classified information to only those employees with an official "need to know."[4] The executive order defines a "need to know" as "a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function."[5]

E.O. 12958 also requires that persons with access to classified information receive appropriate training on their obligations to protect the information.[6] This security training includes instruction on how to store classified information, as well as instruction on what constitutes an impermissible disclosure. The executive order makes clear that confirming the accuracy of classified information, or calling attention to classified information that has appeared publicly, is considered just as much a violation as an unauthorized leak.[7] Persons with access to classified information need to be informed of this obligation.

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[2] *White House Briefing,* Federal News Service (Jan. 6, 2004) (quoting White House Press Secretary Scott McClellan as saying that "the president made it very clear that he wants the White House to cooperate fully in this investigation").

[3] Exec. Order No. 12972 (defining the term "agency" to include "any other entity within the executive branch that comes into possession of classified information").

[4] Exec. Order No. 12958 (as amended), sec.4.1(a)(3).

[5] *Id.* at sec. 6.1(z).

[6] *Id.* at sec. 4.1(b) ("Every person who has met the standards for access to classified information . . . shall receive contemporaneous training on the proper safeguarding of classified information and on the criminal, civil, and administrative sanctions that may be imposed").

[7] *Id.* at sec. 1.1(b) ("Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information"). *See also* Information Security Oversight Office, National Archives and Records Administration, *Briefing Booklet: Classified Information Nondisclosure Agreement (Standard Form 312)* (undated):

Additional administrative requirements direct agencies to establish procedures to restrict access to classified information to employees who have undergone background checks and signed Classified Information Nondisclosure Agreements, which are contracts in which employees agree not to divulge classified information.[8]

After a leak occurs, another set of procedures requires agencies to investigate the security breach, take administrative actions against employees who violate these rules, and adjust procedures in order to prevent similar security breaches in the future. E.O. 12958 specifically provides that when a violation or infraction of the administrative rules occurs, each agency must "take appropriate and prompt corrective action."[9] This may include a determination of whether individual employees improperly disseminated or obtained access to classified information. If employees violated their nondisclosure agreements, sanctions may be warranted.[10] The executive order requires that "at a minimum," the agency must "promptly remove the classification authority of any individual who demonstrates reckless disregard or a pattern of error in applying the classification standards."[11]

Remedial action also may include an analysis of the effectiveness of the processes in place to prevent security breaches. The executive order requires agencies to monitor adherence to standards, assess compliance with access controls, and assess whether these controls are effective.[12]

Question 19: If information that a signer of the SF 312 knows to have been classified appears in a public source, for example, in a newspaper article, may the signer assume that the information has been declassified and disseminate it elsewhere?

Answer: No. Information remains classified until it has been officially declassified. Its disclosure in a public source does not declassify the information. Of course, merely quoting the public source in the abstract is not a second unauthorized disclosure. However, before disseminating the information elsewhere or 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, further dissemination of the information or confirmation of its accuracy is also an unauthorized disclosure.

[8] Exec. Order No. 12958 (as amended), sec. 4.1(a).

[9] *Id.* at sec. 5.5(e).

[10] *Id.* at sec. 5.5(c) ("Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions").

[11] *Id.* at sec. 5.5(d).

[12] *Id.* at sec. 4.1 and 4.2.

Requests to GAO

In the case of Valerie Plame, serious questions have been raised about whether the White House complied with these administrative procedures. We request that GAO investigate this matter thoroughly.

One set of questions that GAO should examine is whether the White House followed the proper internal procedures for safeguarding Ms. Plame's identity prior to its release. Under E.O. 12958, the White House should have ensured that only those with a "need to know" had access to Ms. Plame's covert identity. Press accounts have suggested, however, that Karl Rove, the President's political advisor, may have had access to this information.[13] If true, this does not seem consistent with the "need to know" requirement. Regardless of whether Mr. Rove was the source of the leak, it is difficult to see what compelling "need to know" would justify sharing such sensitive information about Ms. Plame's identity with him.

There have also been suggestions in the press that some senior White House officials may have known of Ms. Plame's role at the CIA but not been informed that this information was classified.[14] If this were true, it would appear to violate the administrative requirement that the authorized holder of this information determine that recipients require official access and that it is properly safeguarded after transfer.

There are also other administrative procedures that may not have been followed by the White House in handling Ms. Plame's identity. For example, media reports suggest that White House officials may have directed reporters to the classified information in Mr. Novak's column after it was published.[15] While this may not be a criminal violation, it would, if true, appear to

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[13] *See, e.g., Secrets and Leaks,* Newsweek (Oct. 13, 2003).

[14] *See, e.g., Justice Could Decide Leak Was Not a Crime,* Washington Post (Jan. 2, 2004) ("The Justice Department investigation into the leak of a CIA agent's identity could conclude that administration officials disclosed the woman's name and occupation to the media but still committed no crime because they did not know she was an undercover operative").

[15] *Probe Focuses on Month before Leak to Reporters,* Washington Post (Oct. 12, 2003) (White House Press Secretary Scott McClellan "has denied that Rove was involved in leaking classified material but has refused to discuss the possibility of a campaign to call attention to the revelations in Novak's column"); *see also Secrets and Leaks, supra* note 13 (reporting that Karl Rove spoke directly to Chris Matthews, the host of the MSNBC show *Hardball*, about the Novak column and Ms. Plame: "A source familiar with Rove's conversation acknowledged that Rove spoke to Matthews a few days after Novak's column appeared" and further acknowledged that Mr. Rove said it "was reasonable to discuss who sent Wilson to Niger"). *See also Privilege Claim Is Possible in Leak Probe,* Los Angeles Times (Oct. 7, 2003) (reporting that White House officials have "attempted to draw a distinction between leaking the name of an operative and

violate the administrative requirement against further dissemination of classified information or confirming the accuracy of classified information in a public source.

The second set of questions that GAO should examine is whether the White House responded properly after the leak was disclosed. Under E.O. 12958, the White House should have taken "prompt" action to ensure that the breach was investigated and to determine whether Nondisclosure Agreements were violated, whether individuals without security clearance obtained classified information, and whether national security information was compromised. The White House also should have assessed its systems for safeguarding classified information and taken any corrective action necessary to prevent future security breaches.

In this case, press accounts indicate that the White House may not have followed these procedures in the immediate aftermath of the leak. In fact, in the weeks immediately following the publication of the agent's identity, the White House was dismissive regarding questions about whether it would investigate the matter, emphasizing that it was difficult to look into reports of sources that were not named specifically.[16] If high level White House officials were

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thereby breaking the law, and calling the attention of reporters to that information after it already has been made public").

[16] When asked on July 22, 2003, whether the White House would "support an investigation" of the exposure of the CIA agent, the following exchange ensued:

> White House Spokesman: [L]let me make it very clear, that's just not the way this White House operates.
>
> Reporter: Could you look into it?
>
> White House Spokesman: I'm sorry. I'll be available later.

The White House, *Press Briefing by Scott McClellan* (July 22, 2003). On the next day, July 23, 2003, a reporter asked whether the White House was doing an internal investigation to find out whether White House officials disclosed the agent's identity:

> White House Spokesman: I have no reason to believe that there is any truth that that has happened. So if I thought that there was any reason to believe that something like that had happened, I would —
>
> Reporter: So you're saying that reporters just made it up?

implicated, as press accounts have suggested, it may not have been appropriate for the White House to conduct the leak investigation itself. At a minimum, however, it should have insured that such an investigation was conducted by a properly independent body.

Relationship to the Justice Department Investigation

We are aware that there is an ongoing Justice Department investigation. That is why we have carefully crafted this request to GAO to address matters that are not the subject of the criminal investigation. The focus of this request is on whether the White House complied with the applicable administrative procedures, not on who actually disclosed Ms. Plame's identity or whether the disclosure violated the specific requirements of the criminal law. Our request asks GAO to investigate what internal procedures the White House followed in handling Ms. Plame's identity and responding to the leak and to assess whether those procedures met the requirements of the applicable administrative rules.

As we are sure you are aware, there is ample precedent for this request. GAO is frequently called upon to investigate administrative issues that are intertwined with ongoing Justice Department investigations. One example is the GAO's investigation of White House security procedures during ongoing FBI and NSA investigations of John Huang regarding alleged security-related disclosures.[17] Reps. Porter Goss and Gerald Solomon requested this GAO investigation "after the story surfaced of a security clearance obtained by [John Huang,] a central figure in the dispute over White House fund raising."[18] GAO issued its report in 1998, criticizing the Clinton Administration's compliance with administrative requirements for safeguarding classified information.[19]

White House Spokesman: — try to get to the bottom. Campbell, I just said that anonymous is someone I would like to know who that is, but it's usually a fruitless search.

The White House, *Press Briefing by Scott McClellan* (July 23, 2003).

[17] *FBI Checks Clinton's Chinese Connection,* Sunday Times (U.K.) (Feb. 23, 1997) (noting that the "[t]he FBI put 27 agents on the case" and that the "National Security Agency is now going back over messages intercepted between Peking and Washington to see if information passed on by Huang from the 37 classified intelligence briefings he received may have compromised national security").

[18] *GAO Charges That White House Mishandles Secret Information,* Associated Press (Oct. 7, 1998).

[19] U.S. General Accounting Office, *Executive Office of the President: Procedures for Acquiring Access to and Safeguarding Intelligence Information* (Sept. 1998) (GAO/NSIAD-98-245). *See also GAO Faults Security Clearance Process; Review Finds Some Procedural Lapses but No Loss of Secrets,* Washington Post (Oct. 27, 1998) ("the investigative arm of Congress chastised the Executive Office of the President . . . for not issuing more explicit guidelines").

Another example is GAO's investigation of the White House Travel Office under the Clinton Administration. Between 1994 and 1996, GAO investigated financial management issues within the White House Travel Office. At the time, there were numerous ongoing investigations, including a criminal investigation by the Department of Justice, as well as other investigations by the Internal Revenue Service, the Treasury Department Inspector General, and the Office of Professional Responsibility. In taking on this work, GAO made clear that it would not interfere inappropriately with law enforcement activities:

> Executive branch law enforcement authorities object to any activity by GAO that might interfere with a criminal investigation, and it is our longstanding policy to avoid such activity. Consistent with that policy, we obtained no information about the FBI investigation.[20]

GAO noted that because of the ongoing criminal investigation, it faced several challenges. For example, according to GAO, "some delays occurred in our scheduling interviews with many of the White House and other officials."[21] However, GAO was able to institute "work arounds" and proceed with its investigation, issuing numerous reports to Congress on this issue over the course of several years.[22]

In addition to the Travel Office investigation, GAO investigated the provision of military assistance to civilian authorities during the 1993 Branch Davidian stand-off in Waco, Texas, while this matter was under investigation by Justice Department Special Counsel John Danforth. GAO issued reports in August of 1999 and August of 2000, while the Special Counsel issued reports in July and November of 2000.[23] Similarly, during the Justice Department's ongoing

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[20] U.S. General Accounting Office, *White House Travel* (Sept. 18, 1996) (GAO/AIMD-96-138R).

[21] *Id.*

[22] *Id.; See also* U.S. General Accounting Office, *White House Travel* (Jan. 23, 1996) (GAO/AIMD-96-19R); U.S. General Accounting Office, *White House Travel Office Review* (Oct. 24, 1995) (GAO/T-GGD-96-33); U.S. General Accounting Office, *White House: Travel Office Operations* (May 2, 1994) (GAO/GGD-94-132).

[23] U.S. General Accounting Office, *Department of Defense: Military Assistance Provided at Branch Davidian Incident* (Aug. 1999) (GAO/NSIAD/OSI-99-133); U.S. General Accounting Office, *Department of Defense: Military Assistance During the Branch Davidian Incident* (Aug. 21, 2000) (GAO/NSIAD-00-240R); Special Counsel John C. Danforth, *Interim Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas* (July 21, 2000); Special Counsel John C. Danforth, *Final Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas* (Nov. 8, 2000).

espionage investigation of Wen Ho Lee, a scientist formerly employed at the Los Alamos National Laboratory, GAO issued a report evaluating the actions of an FBI official investigating that case. In 2001, GAO concluded that Neil J. Gallagher, the Assistant Director of the FBI's National Security Division, provided inaccurate and misleading testimony to Congress when he failed to disclose that the FBI's Albuquerque Field Office had serious concerns about including Wen Ho Lee in its investigation.[24]

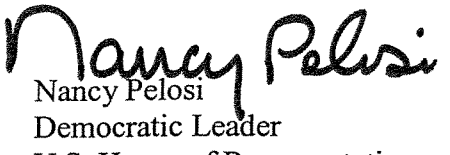
Conclusion

Protecting our nation's secrets is essential to protecting our nation's security. Safeguarding the identities of covert intelligence officers is especially critical to protecting their lives and the lives of everyone they come into contact with. As President George H.W. Bush stated: "we need more protection for the methods we use to gather intelligence and more protection for our sources, particularly our human sources, people that are risking their lives for their country."[25]

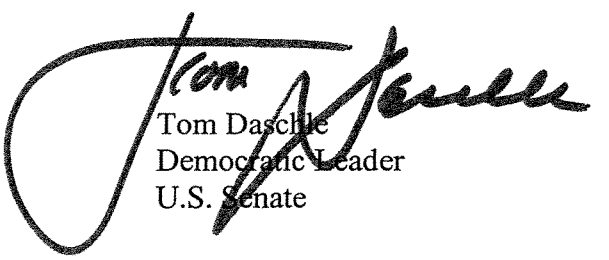
The disclosure of Valerie Plame's covert CIA identity calls into doubt the adequacy of the procedures that the White House has followed to safeguard these vital national secrets. GAO's thorough and prompt investigation into this matter is necessary so that the deficiencies in the White House procedures can be identified and corrected. This is an essential step in restoring public confidence in how the White House handles national security secrets.

We would be happy to discuss the parameters and timeline for this investigation at your convenience.

Sincerely,



Nancy Pelosi
Democratic Leader
U.S. House of Representatives



Tom Daschle
Democratic Leader
U.S. Senate

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[24] U.S. General Accounting Office, *FBI Official's Congressional Testimony Was Inaccurate Because He Failed to Present Certain Information That Had Been Made Available to Him about the Wen Ho Lee Investigation* (June 28, 2001) (GAO-01-869R).

[25] George H.W. Bush, *Dedication Speech*, George Bush Center for Intelligence (Apr. 16, 1999).

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