

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND)
ETHICS IN WASHINGTON,)
)
Plaintiff)
)
v.)
)
U.S. DEPARTMENT OF JUSTICE,)
)
Defendant.)
_____)

No. 1:08-cv-01468 (EGS)
Hon. Emmet G. Sullivan

DECLARATION OF LANNY A. BREUER,
ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

I, Lanny A. Breuer, declare as follows:

1. I am the Assistant Attorney General of the Criminal Division at the United States Department of Justice. In this position, I oversee the operations of the Criminal Division, which develops, enforces, and supervises the application of all federal criminal laws, except those specifically assigned to other divisions.

2. There have been law enforcement investigations by Independent Counsel and the Department of Justice that have involved obtaining information from high-level White House officials in nearly every administration since the Johnson Administration. Given this history, the Department of Justice believes that there is a reasonable probability of future law enforcement investigations by the Department of Justice that will require and benefit from obtaining information from White House officials, possibly at the highest level of government.

3. In any such investigation, it will be important that White House officials be able to provide law enforcement officials with a full account of relevant events. Any such investigation may delve into or require a full accounting of internal White House deliberations or

other government operations. Questions may cover, for example, conversations between the President or Vice President and senior advisors, the decision-making process on specific policy matters, advice given to the President or direction provided by the President, and internal discussions relating to White House interactions with other Executive Branch entities and with Congress. Particularly during the early stages of an investigation, questioning can range over a wide variety of subjects, many of which may ultimately prove to be unrelated to or without value to the investigation.

4. In any law enforcement investigation, interviews are a powerful investigatory tool, in large part because such interviews allow law enforcement to efficiently gather information in a non-public setting, very early in an investigation, without the formalities of the grand jury process. As a general matter, the non-public nature of law enforcement interviews can be a significant factor in securing the voluntary cooperation of witnesses. Indeed, it is not uncommon for prosecutors and law enforcement investigators to inform witnesses that, subject to applicable statutes, regulations and rules, they will attempt to maintain the confidentiality of information provided. A non-public interview can be particularly important in gaining the cooperation of senior-level White House officials given the public role of such witnesses, the sensitive nature of the subject matters that may be discussed, the potential politicization of these sensitive issues, and the possibility that whatever matter is being investigated ultimately may not warrant any law enforcement action.

5. In addition, as a general rule, a prosecutor cannot tell a White House official how long he or she believes an investigation may last, and the official may thus believe that information provided could become public while the official is still in office. Therefore, if law

enforcement interviews of the President, Vice President or other senior White House officials become subject to routine public disclosure, even upon the conclusion of an investigation, there is an increased likelihood that such officials could feel reluctant to participate in voluntary interviews or, if they agree to such voluntary interviews, could decline to answer questions on certain topics.

6. A White House official's reluctance to submit voluntarily to an interview or share certain information in an interview could hamper an investigation in several important ways. A law enforcement investigation often benefits from conducting interviews early in an investigation, well before a grand jury has been convened. Indeed, obtaining such evidence early in an investigation often assists law enforcement agents in obtaining important background information relevant to understanding the allegations being investigated. Voluntary interviews also help law enforcement investigators determine where to concentrate or focus the investigation, not only for the collection of evidence, such as documents, but also the most likely candidates for interview. Indeed, voluntary interviews might obviate the need to convene a grand jury at all or circumscribe the focus of the grand jury's inquiry. A law enforcement investigation based upon interviews subject to an expectation of confidentiality also benefits from senior officials more inclined to provide identifiable leads, name percipient witnesses, offer credibility assessments of the accuser or other witnesses, and even articulate inferences, insight or hunches that can be invaluable to a law enforcement investigator. A law enforcement investigation could lose these potential benefits if the senior official believes his or her statement will be subject to public disclosure.

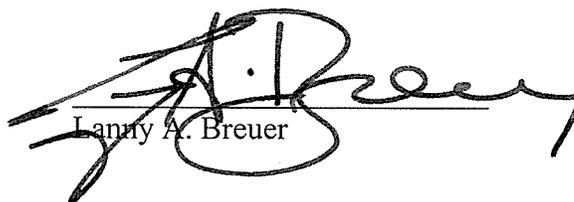
7. Moreover, if interviews of senior-level White House officials become subject to routine public disclosure, the White House official may agree to talk only in response to a grand jury subpoena in order to obtain the confidentiality protection of Rule 6(e) of the Federal Rules of Criminal Procedure. Such a decision could impose considerable practical difficulties and burdens upon investigators and prosecutors that at best could prolong investigations and at worst thwart investigations. As described above, as a general rule, law enforcement investigators interview witnesses in the early stages of an investigation to help focus the investigation and as a means of predicated document requests. Absent such interviews, prosecutors could have to confront and choose from several undesirable choices, including: (a) grand jury appearances for witnesses too early in an investigation, including at a stage when prosecutors are still developing a factual record to understand the background and basis for the potential criminal allegations, identifying leads and potential witnesses, predicated documents requests, and conducting other preliminary, investigative steps normally best left for voluntary interviews; (b) relaying information developed in the grand jury to law enforcement investigators to pursue identifiable leads or predicate document requests without the benefit of the investigators having obtained that information first-hand; (c) multiple grand jury appearances for some witnesses as the investigation uncovers relevant documents and conducts other grand jury sessions in order to correct or refine previously sworn testimony; and (d) grand jury appearances for other witnesses who simply have no information relevant to the allegations being investigated; or, alternatively, (e) delaying the grand jury appearances of all witnesses to some later, undefined phase of the investigation in order to prevent the creation of unproductive, potentially inaccurate grand jury testimony. All of these choices are unproductive and inefficient, and impose burdens,

inconveniences and stretches of unavailability on senior officials who may have pressing national security and other issues to address on a daily basis.

8. In addition, forcing White House officials to be brought before grand juries could have the effect of injecting the law enforcement investigation itself into the political process, which could intrude upon government operations at the highest level of government, and which could risk the perception that the investigation itself was political, thus undermining public faith in the impartiality of the judicial system. Baseless, partisan allegations that easily could be investigated and dismissed through voluntary interviews now may have to be investigated through the specter of the grand jury process. In addition, if law enforcement interviews are routinely subject to public disclosure, there could be a significant risk of politicization of law enforcement files and investigations, which could undermine the integrity and effectiveness of, and public confidence in, those investigations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 1, 2009.


Larry A. Breuer