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INDEPENDENT

July 17, 2001

Mr. Alberto R. Gonzales
Counsel to the President
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Mr. Gonzales:

I am writing in response to your June 29, 2001, letter regarding Karl Rove's involvement in matters in which he had a financial interest. While I appreciate your effort to address my June 15 and June 25 letters, your letter raises many more questions than it answers.

On repeated occasions, according to news accounts, Mr. Rove met with or had telephone conversations with executives of companies in which he had significant stock holdings. The point of my inquiries was to seek information about what transpired during these meetings and conversations. Unfortunately, your letter fails to respond to my requests for specific information about whom Mr. Rove met or talked with, what Mr. Rove said, and whether Mr. Rove participated in other meetings or discussions regarding policies affecting these companies.

Instead, your letter states your conclusions that "Mr. Rove . . . took care to comply with applicable conflict of interest rules," that "Mr. Rove took care to avoid any such impropriety," and that "Mr. Rove either had passing, inconsequential contacts or participated in broad policy discussions, neither of which presents an ethical problem under applicable regulations."

I have closely reviewed the law governing conflicts of interest, investigated precedents from prior Administrations, and consulted with experts. If the news reports of Mr. Rove's conduct are accurate, Mr. Rove discussed federal policies with senior executives of companies in which he had substantial investments. This is exactly the type of conflict of interest that the ethics laws are designed to prevent.

The regulations governing conflicts of interest are clear. Under both 18 U.S.C. §208(a) and 5 C.F.R. §2635.502(d), an executive branch official faced with either a financial conflict of interest or an appearance of a conflict must take one of two actions: (1) recuse himself from the matter; or (2) seek a waiver of the conflict of interest rules. There are no exceptions to these requirements.

Your letter makes clear, however, that after being informed about his ethical obligations, Mr. Rove neither recused himself nor sought a waiver. Instead, he continued to participate in discussions about federal policy with executives of companies in which he held stock. To be fair to Mr. Rove, it is not possible to assess the seriousness of his actions or his intent based on the little information that has been made public. Under any objective interpretation, however, Mr. Rove's conduct would surely violate the federal conflict of interest laws.

President Bush promised that his Administration will "maintain the highest standards of integrity in government."[1] But I do not believe that the interpretation in your June 29 letter meets even the minimal legal requirements, much less the standard set by President Bush. In the Clinton Administration, allegations were made that National Security Advisors Sandy Berger and Anthony Lake may have violated conflict of interest rules by holding stock in energy companies. In these cases, there were no allegations that Mr. Berger or Mr. Lake ever met with or discussed federal policy with executives of the companies. Nevertheless, your predecessor, Judge Abner Mikva, referred the cases to the Department of Justice. According to Mr. Mikva, he "had no choice under federal law but to refer the matter to the Justice Department's public integrity division."[2] Both Mr. Berger and Mr. Lake were ultimately required to pay fines.

As you know, federal law establishes a low threshold for referrals to the Department of Justice. Pursuant to 28 U.S.C. §535(b), all executive branch departments and agencies, including the White House, are required to report "[a]ny information, allegation, or complaint" involving potential criminal conduct by an employee to the Department of Justice. The rationale for this low threshold is clear: Congress appropriately believed that the Department of Justice would be in a better position to render an impartial judgment than the employee's own department or agency.

I am not aware of any reason why Mr. Rove should receive special treatment that would exempt him from the independent and impartial investigation envisioned by 28 U.S.C. §535(b). For this reason, I believe you have an obligation under the law to refer Mr. Rove's case to the Public Integrity Section at the Department of Justice. In addition, because of the many unanswered questions, I renew my request for specific information about Mr. Rove's involvement in issues affecting his stock holdings.

I. News Accounts Raise Serious Ethical Questions

A series of news reports on Mr. Rove's conduct raises serious questions about his involvement in matters affecting his stock portfolio prior to the sale of his stocks on June 7,

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[1]White House Office of the Press Secretary, *Memorandum for the Heads of Executive Departments and Agencies Regarding Standards of Official Conduct* (Jan. 20, 2001).

[2]*Justice Dept. Investigating Berger's Investments*, Washington Post (Dec. 13, 1996).

2001. These articles have reported that he had discussions about federal policies with executives of companies in which he held significant amounts of stock or had discussions about federal policies that affect these companies. At least three companies in particular have been identified in the news reports: Enron, Intel, and General Electric.

A. Enron

According to news accounts, Kenneth Lay, the CEO of Enron, has played an active role in shaping the Administration's energy proposals. In addition to being a major fundraiser for President Bush, "Mr. Lay is on a first-name basis with a half-dozen members of the Bush cabinet and knows many senior White House staffers from their days in the Texas governor's mansion with Mr. Bush."[3] Apparently, one such White House official is Mr. Rove.

According to *Newsweek*, Mr. Rove "has spoken frequently about energy policy" with Mr. Lay.[4] Mr. Rove was also contacted by Mr. Lay when Enron was lobbying for Nora Mead Brownell, a Pennsylvania utility regulator, to be appointed to the Federal Energy Regulatory Commission (FERC). According to the *Wall Street Journal*, when Ms. Brownell's appointment ran into some opposition, "Mr. Lay says he phoned Karl Rove, the White House's top political strategist, to tell him that 'she was a strong force in getting the right outcome' in Pennsylvania."[5] Ms. Brownell was subsequently appointed to FERC.

Mr. Lay also telephoned Mr. Rove when the Administration was shaping its position on global warming. The *Wall Street Journal* reported that Mr. Lay called Mr. Rove "to urge him to talk to Fred Krupp, the head of the moderate Environmental Defense Fund."[6] Mr. Rove and Mr. Krupp subsequently spoke about global warming.

During the period in which these contacts with Mr. Lay occurred, Mr. Rove owned over $60,000 of Enron stock. Mr. Rove did not request a waiver from the conflict of interest laws.

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[3]*Power Politics: In Era of Deregulation, Enron Woos Regulators More Avidly than Ever,* Wall Street Journal (May 18, 2001).

[4]*Taking Stock of Karl Rove*, Newsweek (June 25, 2001).

[5]*Power Politics: In Era of Deregulation, Enron Woos Regulators More Avidly than Ever,* Wall Street Journal (May 18, 2001).

[6]*Id.*

B. Intel

On March 12, 2001, Mr. Rove met with senior Intel executives, including Intel's CEO Craig Barrett, even though Mr. Rove owned $110,000 of stock in Intel at the time and had not requested a waiver from the conflict of interest laws. According to news accounts, Mr. Rove and the Intel executives discussed a range of subjects including "export controls on software."[7] The Intel executive also raised the subject of a merger between Silicon Valley Group, an Intel supplier, and ASML, a Dutch company, for which Intel was seeking government approval.[8]

Mr. Rove continued to receive correspondence related to the proposed merger until it was approved in May. On April 16, Mr. Barrett wrote to three Cabinet secretaries about the merger and sent a copy to Mr. Rove.[9] After the merger was approved, an industry executive sent a letter to senior Administration officials thanking them for their "perseverance and hard work" and sent a copy to Mr. Rove.[10]

C. General Electric

On March 20, 2001, Mr. Rove met with nuclear power executives about the Administration's energy policy.[11] At the time, Mr. Rove owned about $80,000 of stock in General Electric, which has a nuclear power division. The president of the Nuclear Energy Institute, the trade group representing GE's nuclear interest, attended the March 20 meeting as well.[12]

D. The Need for Additional Information

Because of the concerns raised in these news reports, I wrote to Mr. Rove on June 15 and to you on June 25 seeking detailed information about Mr. Rove's involvement in these matters. I specifically stated that I was not making any accusations about Mr. Rove's conduct, only seeking more information so that members of Congress could make an informed judgment.

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[7] *Bush Aide Who Held Intel Stock Met Executives Seeking Merger*, Washington Post (June 14, 2001).

[8] *Id.*

[9] *Intel Pitched Proposed Merger to Rove*, Associated Press (June 14, 2001).

[10] *Taking Stock of Karl Rove*, Newsweek (June 25, 2001).

[11] *Intel Pitched Proposed Merger to Rove,* Associated Press (June 14, 2001).

[12] *Task Force's Leanings Questioned*, Las Vegas Sun (May 17, 2001).

Unfortunately, your letter does not provide this specific information. It merely states the conclusion that Mr. Rove did not engage in inappropriate conduct, but does not provide the factual background that would enable others to evaluate whether or not this is a reasonable conclusion.

For this reason, I am still requesting information on the following matters:

(1) *Whether Mr. Rove had any meetings, discussions, or phone conversations with representatives of any of the companies in which he held stock and, if so, the date of the meetings, discussions, or phone conversations, the persons involved, the subject matters discussed, and Mr. Rove's best recollection of any views he expressed.* Despite my request, your letter provides no information about the nature of Mr. Rove's contacts with Enron executives, including Mr. Lay. Moreover, although your letter does address Mr. Rove's March 12, 2001, meeting with Intel executives, it simply states that Mr. Rove "was noncommittal and offered no substantive response" and that he had only "passing contact" with the matter. Your letter does not address precisely what Mr. Rove said at the meeting and what his "passing contact" entailed. Moreover, your letter does not provide information on meetings with executives or representatives from other companies in which Mr. Rove held stock.

(2) *Whether Mr. Rove participated in any meetings, discussions, or phone conversations in which Enron or energy policies advocated by or affecting Enron were discussed and, if so, the date of the meetings, discussions, or phone conversations, the persons involved, the subject matters discussed, and Mr. Rove's best recollection of any views he expressed.* Your letter concedes that Mr. Rove was involved in the formulation of the Administration's energy policy, stating that Mr. Rove "did participate in a number of other meetings at which the contours of the Administration's energy policy were discussed." But your letter does not provide any specific information about the nature of Mr. Rove's involvement. Many of the Administration's energy proposals have a direct impact on Enron and were in fact advocated by Enron. To enable members of Congress to review whether Mr. Rove participated in discussions of these policies, specific information must be provided about Mr. Rove's involvement in any meetings, discussions, or phone conversations in which energy policy was discussed.

(3) *Whether Mr. Rove has been involved in any other meetings, discussions, phone conversations, or decisions that might have had a direct impact on the stocks in his portfolio and, if so, the date of the meetings, discussions, or phone conversations, the persons involved, the subject matters discussed, and Mr. Rove's best recollection of any views he expressed.* Press accounts indicate that Mr. Rove participated in other discussions potentially affecting his stock holdings, such as meeting with nuclear power executives. Your letter, however, does not respond to my request for specific information about these discussions.

II. The White House Legal Conclusions Appear to Be Flawed

I have serious concerns about the legal conclusions reached in your letter. I am particularly troubled by your statement that "pending the divestiture of his stockholdings, Mr. Rove took care to avoid such impropriety. Accordingly, he did not seek a waiver." This statement turns the conflict of interest regulations on its head.

Federal conflict of interest laws establish clear guidelines for federal officials like Mr. Rove. Under 18 U.S.C. §208(a), executive branch employees are prohibited from "participat[ing] personally and substantially" in a matter in which the employee has "a financial interest." As an example of an impermissible conflict of interest, the regulations prohibit an employee holding stock in pharmaceutical companies from participating in the drafting of a health care bill that controls drug prices. The regulations specifically state that a "health care bill limiting the amount that can be charged for prescription drugs is sufficiently focused on the interests of pharmaceutical companies that it would be a particular matter" for purposes of the regulations.[13]

White House precedent establishes strict standards for senior White House officials. For example, Sandy Berger, President Clinton's National Security Advisor, was required by the Justice Department to pay over $20,000 in fines because he held stock in Amoco, an energy company. I am not aware of any evidence in Mr. Berger's case that he ever met with Amoco officials or discussed federal policy with them. Rather, the basis of the fine was that Mr. Berger's duties as National Security Advisor affected federal energy policy.[14] Anthony Lake, Mr. Berger's predecessor as National Security Advisor, was forced to pay $5,000 in fines for similar reasons.[15]

If there is any question about the appropriateness of an official's involvement in an issue, the official is required to seek a waiver. According to 5 C.F.R. §2635.502(d), an employee must seek a waiver when the employee's conduct "would raise a question in the mind of a reasonable person about his impartiality." The standard for seeking a waiver is intended to be minimal. The goal is to ensure that federal officials consult with their agency's ethics officer whenever there is any appearance of impropriety.

Measured against these standards, Mr. Rove's unilateral decision to discuss federal

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[13]5 C.F.R. §2640.103(a)(1)(example 8).

[14]*Berger to Pay Civil Penalties for Failure to Sell Oil Stocks*, Washington Times (Nov. 11, 1997).

[15]Office of Government Ethics, *1996 Conflict of Interest Prosecution Survey* (Aug. 12, 1997).

policies with executives of companies in which he held stock seems highly questionable. Assuming that the news reports of Mr. Rove's actions are accurate, the Berger and Lake precedents suggest that Mr. Rove's conduct violated the ethics laws. In particular, the energy policies that Mr. Rove apparently discussed with Mr. Lay and participated in formulating would appear to affect Enron, thus triggering the conflict of interest regulations. In fact, it is difficult to imagine a more clear-cut example of government policy affecting the value of a company's stock. By emphasizing increased production over increased efficiency and by favoring greater deregulation, the Administration's energy policy plainly advances positions advocated by Enron that enrich Enron and other large energy companies.

Moreover, even if there were no prohibition against Mr. Rove's discussions with Mr. Lay of Enron, Mr. Rove's subsequent involvement in shaping the Administration's energy policy, or Mr. Rove's discussions with Mr. Barrett of Intel, these actions surely create an appearance of impropriety. Under the regulations, this alone would be sufficient to require Mr. Rove to seek a waiver from the White House ethics officer.

I believe the arguments in your letter rest on a flawed reading of the law. Regarding Enron's interest in the Administration's energy policy, you concede that Mr. Rove participated in meetings at which the Administration's energy policy was discussed. However, you contend that "[g]eneral policy discussions" are not a "particular matter" that falls within the conflict of interest regulations. Although that statement might be true in some cases, its application to these facts is highly questionable. As I pointed out above, the regulations specifically state that general legislation that has an impact on the interests of a company, like health care legislation limiting drug company prices, is considered a "particular matter" affecting the company.[16]

You also argue that the energy proposals in which Mr. Rove was involved were not "self-executing" because they required further action by the President, Congress, and the executive branch. Your argument seems to be contradicted by news accounts of Mr. Rove's stature within the White House. Mr. Rove has been described as the "most influential presidential aide in two decades,"[17] who "has a hand in virtually every decision the president makes."[18] If, under your overly narrow interpretation, Mr. Rove's involvement in policy is not significant enough to trigger the conflict of interest regulations, I am hard-pressed to think of an executive branch official's whose actions would.

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[16]5 C.F.R. §2640.103(a)(1)(example 8).

[17]*Washington Memo: Political Soul Mates Since 1973*, Newsweek (Aug. 18, 2001).

[18]*Taking Stock of Karl Rove*, Newsweek (June 25, 2001); *see also Karl Rove, President's Focus Engineer, Finds Self in Spotlight*, Washington Post (July 15, 2001) ("Rove, by choice, is involved in most everything the White House does"); *Rove Heard Charity Plea on Gay Bias*, Washington Post (July 12, 2001) ("Literally nothing occurs around [the White House] without his blessing").

Regarding the Intel matter, your letter states that Mr. Rove had only "passing contact" with the merger sought by Intel, since "[r]esponsibility for that matter rested with an interagency review panel on which Mr. Rove did not sit and in which he played no part." Under the conflict of interest regulations, it is immaterial whether Mr. Rove was a member of the interagency review panel. Mr. Rove's "passing contact" can trigger these regulations if "the employee's involvement is of significance to the matter . . . even though it is not determinative of the outcome of a particular matter."[19]

The factual context of the merger suggests that the White House played a major role in whether the merger would be approved. According to news accounts, the interagency review panel was deadlocked on whether to approve the merger.[20] The fact that the Administration approved the merger less than two months after Mr. Rove met with Mr. Barrett of Intel would appear to "raise a question in the mind of a reasonable person about [Mr. Rove's] impartiality."[21]

III. <u>The White House Should Refer Mr. Rove's Case to the Department of Justice</u>

Regardless of whether you believe Mr. Rove's conduct violated any laws, the White House is under a legal obligation to seek an independent review of Mr. Rove's conduct by the Public Integrity Section of the Department of Justice.

A consistent theme of federal conflict of interest laws is their emphasis on ensuring an impartial review of the conduct federal employees. For example, as noted above, the regulations require employees to seek an independent review by federal ethics officers whenever their conduct could create even an appearance of impropriety.

The law follows a similar principle when there are allegations of wrongdoing by a federal official. Under 28 U.S.C. §535(b), an executive branch agency, including the White House, is required to refer possible violations of law by employees to the Department of Justice for an independent review. The threshold here is extremely low. Under the statute, "[a]ny information, allegation, or complaint" involving a potential criminal violation of law by a government "shall be expeditiously reported to the Attorney General by the head of the department or agency."

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[19] 5 C.F.R. §2635.402(b)(4).

[20] *White House Split over Selling of Tech Firm to Dutch*, Washington Times (Apr. 25, 2001).

[21] 5 C.F.R. §2635.502(d).

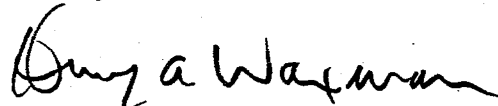
During the Clinton Administration, the White House Counsel's Office referred to the Justice Department matters involving conduct similar to Mr. Rove's conduct. In August 1995, then-White House Counsel Abner Mikva asked the Justice Department to determine whether Anthony Lake had violated the conflict of interest regulations. Even though Mr. Mikva considered Mr. Lake's conduct to be a "technical violation and not intentional," he felt compelled by law to make the referral because "[t]here is an incredibly low threshold."[22] Likewise, Judge Mikva referred Sandy Berger's case to the Justice Department's public integrity division. Judge Mikva took this action even though in these cases there was no evidence that either Mr. Lake or Mr. Berger ever discussed federal policies with the chief executives of the companies in which they held stock.

I have also recently learned that former Clinton White House Counsel Jack Quinn referred a potential violation of the conflict of interest regulations involving Mark Middleton, a mid-level White House employee, to the Justice Department in March 1996. Mr. Quinn made the referral because Mr. Middleton owned 100 shares of Tyson Foods stock at the same time he participated in discussions on food labeling regulations. The value of Mr. Middleton's stock was approximately $2,000, well under the value of Mr. Rove's holdings and well under the $5,000 threshold necessary to trigger the ethics regulations.[23] After a thorough investigation, the Justice Department declined to prosecute Mr. Middleton in October 1997.

If President Bush is going to succeed in ensuring that his Administration will "maintain the highest standards of integrity in Government," it is important that the White House Counsel's Office aggressively enforce the conflict of interest laws. Unfortunately, the legal interpretation in your June 29 letter would effectively eviscerate these laws: White House employees would no longer have to recuse themselves from matters affecting companies in which they held stock; they would no longer have to seek waivers prior to meeting with executives of those companies; both general and specific discussions of policy would be allowed by employees with a financial self-interest in the policy; and if there were an actual conflict, the employees could always claim that their involvement was not self-executing. The cumulative effect of your reinterpretation of the ethics laws would make a mockery of the President's pledge.

I ask that you review this matter once again and provide the specific information that I sought in my June 25 letter. I would appreciate a response by July 24, 2001. Thank you.

Sincerely,



Henry A. Waxman
Ranking Minority Member

cc: Members of the Government Reform Committee

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[22] *Justice Dept. Probes Lake's Sale of Stock*, Washington Post (Dec. 12, 1996).

[23] *See* 5 C.F.R. §2640.202(a)(2).