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October 22, 2008

The Honorable Michael B. Mukasey
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I write concerning Principal Deputy Assistant Attorney General Keith Nelson's letter to me of October 16, 2008, regarding the Department's handling of matters related to the Interior Department oil and gas leasing scandal, which I consider an incomplete and entirely unsatisfactory response to my earlier letter on this subject. Frankly, I am shocked that you approved the sending of this letter which does not address the questions that I asked, does not respond to my request for documents and a staff briefing, and does not explain or justify the Department's conduct in this matter.

Specifically:

1. I asked you if the investigation of criminal activity disclosed by the Interior Department Inspector General (DOI IG) was ongoing – Mr. Nelson did not answer this question or provide a reason for declining to answer it.
2. Where prosecutions have been declined, I asked for "an explanation of the basis for the Department's decision." Regarding one case, Mr. Nelson noted that the DOI IG agreed with Department prosecutors that there was insufficient evidence to prosecute. However, regarding the other substantially more controversial declinations – the ones that prompted the DOI IG to withdraw his support from a Department task force in protest – the letter simply states "those declinations were based on a detailed and careful analysis of the facts and law." That boilerplate is not an explanation of the basis for the Department's decision, it is pure filler.

I appreciate that there will be sensitivity within the Department to discussing the basis for a declination decision. However, this is not an ordinary case given the public dispute

between your Department and the Interior Department's Inspector General. As always, I stand ready to consider reasonable accommodations regarding the manner and circumstances in which such information will be shared with the Committee, but I will not accept the type of brush off offered by Mr. Nelson here.

3. Regarding the *Maxwell* qui tam case, Mr. Nelson's letter claims that the McClatchy piece I referenced contains "misinformation," but does not identify where McClatchy got it wrong. I would welcome an explanation from you or Mr. Nelson as to how the Judiciary Committee's oversight interests are advanced by this vague pronouncement. If McClatchy's facts are wrong, what purpose is possibly served by Mr. Nelson's refusal to identify and correct the misinformation? Furthermore, if false information has been published by a major news service, I would expect the Department to seek a correction so that the public can be accurately informed. Has the Department sought a correction from McClatchy on this matter and, if not, why not?

4. Mr. Nelson's letter offers a short defense of the Department's handling of this case. It does not address what appears to have been a strong disagreement between the local prosecutors who wanted to intervene on behalf of the taxpayer and Main Justice officials who overruled them. Furthermore, the timeline it offers suggests that the Department ran out of time before it could decide whether or not to join the case, but from the timeline presented in the McClatchy piece, it appears that the government would have had ample time to make this decision both before and after the trial went to verdict. Perhaps the public reporting on the timeline of events here is incorrect, but Mr. Nelson's cursory response is inadequate.

5. Finally, and most significantly, my letter asked for a staff briefing with the Department decisionmakers who overruled the Colorado U.S. Attorney on this issue and access to the relevant documents. Mr. Nelson simply ignores this request. That is unacceptable. If the Department's position is that the requested information will not be made available to Congress unless compelled by subpoena, then it was your responsibility to say so directly and not skirt and avoid the matter.

The need for accurate information on this matter is obvious. In light of the Department's recent history and the ongoing criminal investigation into matters related to the politicization of the United States attorney corps, a case such as this one where local prosecutors have acknowledged being overruled and suggested that politics were at play demands our utmost attention. Here, my concern is heightened because, in addition to the comments reported by McClatchy, a government watchdog group has asserted that "the Interior Department may have urged the Justice Department not to intervene in the whistleblower suits."¹ As you know, the

¹http://pogoblog.typepad.com/pogo/2007/01/whistleblower_w.html

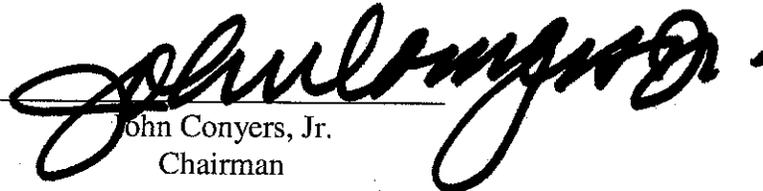
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Interior Department's leadership during the relevant time has come under substantial criticism, and former number two official (and former energy industry lobbyist) J. Steven Griles was implicated in various Department controversies and served 10 months in prison for obstructing a Congressional investigation of the Abramoff matter. The charge that politically-connected Interior Department officials may have pressured the Department to overrule the local prosecutor's judgment on this matter is a grave one indeed.

Notwithstanding the fact that we are near the end of this Administration, our responsibilities to the American public are ongoing and the Judiciary Committee will carry on its work until the last day of this Congress. Accordingly, I request that you re-review my letter of September 23rd and send a further reply that actually responds to the questions and requests that I have made no later than Monday, October 29, 2008.

Thank you for your attention to this matter. Please direct your response to the Judiciary Committee Office at 2138 Rayburn House Office Building (tel: 202-225-3951, fax: 202-225-7680).

Sincerely,


John Conyers, Jr.
Chairman

cc: Hon. Lamar S. Smith
Keith B. Nelson