September 15, 2005

Ms. Judith Miller
c/o Mr. Robert S. Bennett, Esq.
Skadden, Arps

Dear Judy,

Your reporting, and you, are missed. Like many Americans, I admire your principled stand. But, like many of your friends and readers, I would ~~welcome you back~~ among the rest of us, doing what you do best – reporting.

A few days ago, your counsel, Mr. Bennett, asked that I repeat for you the waiver of confidentiality that I specifically gave to your counsel over a year ago. His request surprised me, but I am pleased to comply, if it will speed your return.

I was surprised at Mr. Bennett's request, because my counsel had reassured yours well over a year ago that I had voluntarily waived the confidentiality of discussions, if any, we may have had related to the Wilson-Plame matter. As you know, in January 2004 I waived the privilege for purposes of allowing certain reporters identified by the Special Counsel to testify before the Grand Jury about any discussions I may have had related to the Wilson-Plame matter. The Special Counsel identified every reporter with whom I had spoken about anything in July 2003, including you. My counsel then called counsel for each of the reporters, including yours, and confirmed that my waiver was voluntary. Your counsel reassured us that he understood this, that your stand was one of principle or otherwise unrelated to us, and that there was nothing more we could do. In all the months since, we have never heard otherwise from anyone on your legal team, until your new counsel's request just a few days ago.

In case you have any concerns about this letter, I note that the Special Counsel wrote to my attorney last week. In his letter, the Special Counsel offered that he would welcome my reaching out to you to reaffirm my earlier waiver. As you may know by now, my counsel responded to the Special Counsel, repeating all that we had done over a year ago, but offering to do so again. Finally, this letter has been approved by my counsel and will only reach you after your lawyer's review.

In the spirit of your counsel's and the Special Counsel's request, I would like to dispel any remaining concerns you may have that circumstances forced this waiver upon me. As noted above, my lawyer confirmed my waiver to other reporters in just the way he did with your

lawyer. Why? Because, as I am sure will not be news to you, the public report of every other reporter's testimony makes clear that they did not discuss Ms. Plame's name or identity with me, or knew about her before our call. I waived the privilege voluntarily to cooperate with the Grand Jury, but also because the reporters' testimony served my best interests. I believed a year ago, as now, that testimony by all will benefit all.

I admire your principled fight with the Government. But for my part, this is the rare case where this "source" would be better off if you testified. That's one reason why I waived over a year ago, and in large measure, why I write again today. Consider this the Miller Corollary: "It's okay to testify about a privileged communication, when the person you seek to protect has waived the privilege and would be better off if you testify." If you can find a way to testify about discussions we had, if any, that relate to the Wilson-Plame matter, I remain today just as interested as I was over a year ago.

You went into jail in the summer. It is fall now. You will have stories to cover – Iraqi elections and suicide bombers, biological threats and the Iranian nuclear program. Out West, where you vacation, the aspens will already be turning. They turn in clusters, because their roots connect them. Come back to work – and life.

Until then, you will remain in my thoughts and prayers.

With admiration,

Scooter Libby

Lewis Libby

Dechert LLP

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September 16, 2005

Patrick J. Fitzgerald, Esquire
Office of Special Counsel
Dirksen Federal Building
219 South Dearborn Street, Fifth Floor
Chicago, IL 60604

Dear Mr. Fitzgerald:

I am in receipt of your letter of September 12, 2005. To say I am surprised at its content is an understatement. We have followed closely the news reports of Ms. Miller's incarceration, comforted that this was a choice she was making based on personal principles and to protect others with whom she may have spoken. I had told Ms. Miller's counsel over a year ago that our waiver was voluntary, and he had assured me that there was nothing my client or I could do that would change her position.

You express a concern in your letter that she may be in jail because of her misunderstanding of Mr. Libby's waiver and that her incorrect impression cannot be cured because counsel may be concerned that any communication between counsel, or directly by the clients, might be viewed as obstructing the investigation. I assure you those are not the facts.

You recite quite correctly the facts regarding Mr. Libby's cooperation with your office and with the grand jury. Mr. Libby did voluntarily provide your team with the written waiver immediately when it was presented to us, well over a year ago. On several occasions, when counsel for other reporters reported to you that they were concerned that the waiver was coerced, you or members of your team reached out to me and asked me to allay their concern. I, with Mr. Libby's approval, did just that. In addition, there were others who asked for such assurances and I gave them. Our position has always been that it is in Mr. Libby's best interest for the reporters to testify fully.

With regard to Ms. Miller, we provided the same assurances long ago. Her attorney and I had several conversations about this matter. Over a year ago, I assured him that Mr. Libby's waiver was voluntary and not coerced and she should accept it for what it was. He assured me that he understood me completely. From these discussions I understood quite clearly that her position was not based on a reluctance to testify about her communications with Mr. Libby, but rather went to matters of journalistic principle and to protecting others with whom she may have spoken. That view was confirmed in my mind since I never received a telephone call from you or members of your team, as I had on prior occasions, urging me to allay her concerns, which I would willingly have done again. Neither my client nor I have imagined that her decision to go to jail could be affected by anything we could do.

I am dismayed that you had the impression that I had not spoken to counsel for Ms. Miller or that we did not want her to testify. If you had followed your earlier practice of calling me, you would have learned that we had already spoken to her counsel and allayed her concerns. You also would have known that we encouraged her to testify -- over a year ago -- believing that her testimony, when added to those of other reporters who have testified, will benefit my client.

(One final clarification to your letter may also be useful. Contrary to the implication in your letter, I was the one who related that our waiver was voluntary and covered Mr. Cooper. I offered that clarification to Mr. Cooper's attorney. Mr. Cooper first called Mr. Libby about this matter. Mr. Libby thanked Mr. Cooper for the courtesy of the call, but told Mr. Cooper that -- out of an excess of caution -- it would be better if any such discussions were held between the lawyers. I then clarified to Mr. Cooper's attorney -- who was also Ms. Miller's attorney -- that the waiver specifically covered Mr. Cooper. This is the practice I have followed with every reporter.)

I reiterated our waiver to her counsel yet again only a few weeks ago. But because you have expressed these concerns, I will reach out again to Ms. Miller's counsel and assure him and her that Mr. Libby's waiver was voluntary and not coerced. I will send him a copy of this letter and ask him to provide it to Ms. Miller so that she will not be under any misimpressions, if she is. Our hope is that she will be released as soon as possible and that her testimony, when added to those of the other reporters who had called Mr. Libby will assure you and the grand jury that Mr. Libby acted properly and lawfully in all respects.

Please call me if you have any further concerns.

Sincerely,

Joseph A. Tate

Joseph A. Tate

JAT/dt

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*ADMITTED IN DC, TX, VA ONLY

September 29, 2005

Dear Joe:

I have read your letter to Patrick J. Fitzgerald dated September 16, 2005 and Lewis Libby's letter to Judith Miller dated September 15, 2005. Because those letters contain certain mischaracterizations of certain discussions you and I had over a year ago concerning the positions of our respective clients, I feel compelled to set the record straight.

It is true that in discussions with me late last summer you told me that Mr. Libby had no objection to Ms. Miller testifying before the grand jury about her meeting with him in early July of 2003. In our conversations, however, you did *not* say that Mr. Libby's written waiver was uncoerced. In fact, you said quite the opposite. You told me that the signed waiver *was* by its nature, coerced and had been required as a condition for Mr. Libby's continued employment at the White House. You compared the coercion to that inherent in the effective bar imposed upon White House employees asserting the Fifth Amendment. A failure by your client to sign the written waiver, you explained, like any assertion by your client of the Fifth Amendment, would result in his dismissal. You persuasively mocked the notion that any waiver signed under such circumstances could be deemed voluntary.

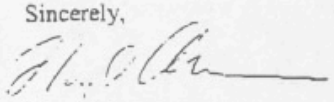
You also state in your letter that I "assured" you during our conversations of last summer "that there was nothing [Mr. Libby or you] could do" that would change Ms. Miller's position. That is simply inaccurate. Not only have I never said that, but I have never said anything even resembling that to you. I did say — more than once, and quite accurately — that Ms. Miller was acting out of principle and that I fully expected her to continue to refuse to reveal the identity of any confidential source; but you neither asked for, nor received any "assurances" about any steps Mr. Libby might take in the future or their consequences. Your similar assertions in your letter of September 16, 2005 that you told me that you and your client "encouraged" Ms. Miller to testify "over a year ago" are similarly inaccurate.

It is certainly true, as your letter suggests, that there were several factors that led Ms. Miller to conclude that she could not testify before the grand jury consistent with her journalistic principles. However, as to the issue of Mr. Libby's waiver, the message you sent to me was viewed by Ms. Miller as inherently "mixed" (*i.e.*, saying that Mr. Libby's written waiver had been coerced on the one hand but that he had no objection to her testifying on the other). The context in which you relayed that message made it even less clear precisely what Mr. Libby wanted of Ms. Miller. And, notwithstanding that Ms. Miller had known Mr. Libby for some time, the fact that he made no effort to contact Ms. Miller directly about this matter (even, as it turned out, when he was specifically and publicly requested by a member of Congress to provide a personalized waiver to her), led her to conclude that Mr. Libby's waiver was not voluntary. Nor, in fact was there any public or private response by him or you in the face of repeated public statements by Ms. Miller and myself to the effect that no satisfactory personal waiver had been obtained. Although, as you have indicated in your letter to Mr. Fitzgerald, other reporters may have been satisfied with representations from you about the voluntary nature of Mr. Libby's "waiver," Ms. Miller was not. Her public statements on the matter could not have been clearer. In the absence of what she could confidently treat as a truly uncoerced personal waiver from her source, when she heard nothing but silence from Mr. Libby for the many months and days leading up to (and then long after) her incarceration, she concluded that she could not fully rely and act upon the information you provided.

Mr. Libby's September 15, 2005 letter to Ms. Miller adopts the same erroneous characterizations of our conversations as those in your September 16, 2005 letter to Mr. Fitzgerald. For example, Mr. Libby states in that letter that you affirmatively requested of me, on his behalf, that Ms. Miller testify; no such request was ever made to me. He also repeats your assertion that I "assured" you that that Ms. Miller's stand was "unrelated to" Mr. Libby and that there was "nothing more" you or Mr. Libby could do. That statement is also incorrect. I assured you of no such thing.

I offer a final thought. In both your letter and that of Mr. Libby, statements are made to the effect that Mr. Libby now desires Ms. Miller to testify because he believes her testimony would "benefit" him. I can neither confirm nor deny that. But so that there is no possible misunderstanding, Ms. Miller's decision about whether to testify has been and will be wholly unaffected by whether it assists your client or not and will be based on, among other things, whether she concludes that your client's waiver is truly voluntary. His recent personal call and his personal letter to her are certainly helpful in that regard.

Sincerely,



Floyd Abrams