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August 2, 2013

The Honorable Eric H. Holder Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Re: Leaks and related misconduct; *Kelley et al. v. Federal Bureau of Investigation et al.*

Dear Attorney General Holder:

We represent Mrs. Jill Kelley and her husband, Dr. Scott Kelley. The fact that you instantly know the names and circumstances of these private citizens is the reason we are writing. Because of (incontestable) leaks of confidential investigative information by senior government officials, the Kelley's lives and livelihoods were severely damaged and disrupted. The Kelley's were egregiously maltreated even though they had done nothing wrong, and had merely acted responsibly by bringing evidence of a crime to the attention of the FBI. As a result, we filed privacy litigation on their behalf on June 3, 2013. *Kelley et al. v. Federal Bureau of Investigation et al.* (D.D.C. filed June 3, 2013)(1:13-cv-00825-ABJ). A particularly revealing example of the damaging leak about Mrs. Kelley was reported in The New York Times on November 13, 2012:

Defense Secretary Leon E. Panetta and other officials traveling with him to Australia overnight on Monday disclosed the inquiry into General Allen's e-mails with Jill Kelley, the woman in Tampa, Fla., who was seen by Paula Broadwell, Mr. Petraeus's lover, as a rival for his intentions.¹

We are sending you this letter because I believe that if you look at this case from the standpoint of Justice's over-arching principles, Justice would not want to defend the indefensible conduct of senior government officials at issue here. Leaking criminal investigative information as though there were no privacy and secrecy laws, rules or policies against doing so is surely not tolerable at Justice. Indeed, Justice has aggressively moved to root out and penalize wrongful government leaks.

¹ See, e.g., E. Schmitt and E. Bumiller, "Another General Is Tied to the Petraeus Inquiry," New York Times, Nov. 13, 2012.

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If you apply that same ideal of confidentiality to the leaks about the Kelleys, I am confident you would agree that fairness demands equal respect for Mrs. Kelley and her husband. I would therefore request that you, or your designate, personally review the underlying conduct and the relevant facts, and determine whether you are comfortable with the government defending leaks of the confidential, criminal investigative material in question – or, whether you agree instead that the conduct violated your standards. We believe that you will find: the Kelleys were wronged; Mrs. Kelley was subjected to cavalier, sexist treatment that violates the government's own procedures and regulations regarding the treatment of victims; and, that they both deserve an apology and just compensation. In addition, Justice should reaffirm its confidentiality protocols, including with respect to criminal, investigative material shared with other agencies, and tighten adherence to your guidelines for victim and witness assistance.

We are motivated to write to you, as Attorney General, because the Department's handling of numerous leaks in recent months makes clear that Justice, under your leadership, will not tolerate callous disregard for the duties of confidentiality. Indeed, it has been this Administration's policy, and you have publicly committed, to fully investigate leaks and prosecute the government officials who violate both internal policy and the law. In fact, in a press conference on June 6, 2013, you stated, "The department goal in investigating leak cases is to identify and prosecute government officials who jeopardize government secrets."² As you stated in naming two special investigators to probe government leaks in the last year, "[t]he Justice Department takes seriously cases in which government employees and contractors entrusted with classified information are suspected of willfully disclosing such classified information to those not entitled to it."³ Your foreword to the Attorney General Guidelines for Victim and Witness Assistance⁴ sets a proper, high standard for "How we treat those individuals" who come forward with evidence of a crime:

Our core mission is to pursue justice for criminal acts, and that pursuit includes justice for the victims of and witnesses to crime. Every day, Department personnel encounter individuals harmed by crime or who witnessed others being harmed by crime. How we treat those individuals has a huge impact on their confidence in the criminal justice system and their ability to heal and recover from crime. When the Department is successful in identifying and convicting offenders, our victim assistance efforts help victims navigate an unfamiliar system, foster accountability, and find affirmation for their suffering.

² Elliott C. McLaughlin, *Holder: Leak Probes Target Government Officials, Not Reporters*, CNN, June 6, 2013, available at <http://www.cnn.com/2013/06/06/justice/holder-questioning>.

³ Josh Gerstein, *Eric Holder Names Ronald Machen and Rod Rosenstein to Probe Leaks*, Politico, Jun. 8, 2012, available at <http://www.politico.com/news/stories/0612/77228.html#ixzz2aSPYUrAO>.

⁴ Available at http://www.justice.gov/olp/pdf/ag_guidelines2012.pdf.

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The principles of accountability and justice for victims and witnesses of crimes must also apply to the Kelleys. To treat them otherwise would be unjustified and discriminatory.

As you are well aware, the mission of Justice is not to defend every case brought against it on the assumption the government can do no wrong. Rather, Justice's mission is to "enforce the law and defend the interests of the United States according to the law; ...to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans."⁵ Each component of this mission is jeopardized by the wrongs inflicted on the Kelleys. The Department's management of this litigation will either help rectify a wrong and remediate this harm, or it may wreak further damage on Mrs. Kelley and her husband.

The allegations detailed in the Complaint are well known. Government officials investigating a high level sex scandal engaged in willful and intentional violations of confidentiality and privacy requirements—with the effect (and arguable intention) to divert public focus and diffuse political pressure. In the process, an innocent woman and her husband—a cancer surgeon—were treated grossly, cavalierly, and wrongfully. As our verified complaint states, and facts in the public domain confirm, Mrs. Kelley had no affair with anyone, and did not commit any crime. Yet, she and her husband were humiliatingly defamed and traduced. As a direct result, Mrs. Kelley's own business opportunities, Dr. Kelley's very substantial surgical practice, and their life as they knew it, were severely prejudiced, and Mrs. Kelley's diplomatic position accredited to the U.S. Department of State (Honorary Consul for the Republic of Korea) was terminated. When we look at the case, we see no reasonable argument to deny that Mrs. Kelley and her husband were very substantially damaged by confidentiality and privacy breaches that Justice cannot possibly condone.

To ensure the "fair and impartial administration of justice" and to preserve confidence in the government's ability to enforce its laws in its own house, the public must see your office pursue all improper leaks—whether they involve national security or law enforcement abuses that hurt a victimized woman who came forward to help. As you rightly noted in a statement before the Senate Select Committee on Intelligence in 2009, "[t]he failure to treat and protect sensitive information properly is a grievous breach of the public trust that undermines our nation's security."⁶

⁵ U.S. Department of Justice, Mission Statement, available at <http://www.justice.gov/about/about.html>

⁶ *Statement of Eric H. Holder, Jr., Attorney General, Before the Select Committee on Intelligence United States Senate at a Hearing Concerning Unauthorized Disclosure of Classified Information*, 111th Cong. (Dec. 3, 2009), available at <http://www.justice.gov/ola/testimony/111-1/2009-12-03-ag-holder-disclosure.pdf>.

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We are fully committed to vindicating the Kelley's privacy rights zealously in court. But we also want to provide Justice with an opportunity to make it right by acknowledging what is already evident—that government leaks caused harm to innocent parties whose rights were violated through leaks of protected information to the media. As President Obama has stated:

“Since I’ve been in office, my attitude has been zero tolerance for [security] leaks and speculation...Now we have mechanisms in place where, if we can root out folks who have leaked, they will suffer consequences.”⁷

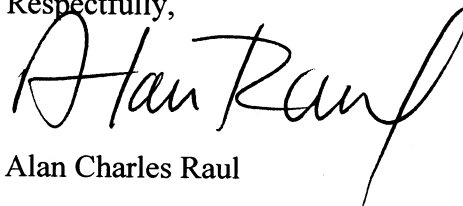
If you and the Department of Justice are genuinely committed to the President's “zero tolerance” policy on harmful leaks and speculation, we respectfully request that you consider the Department of Justice's defense of the Kelley's privacy litigation. To defend, justify and condone the leaks and other egregious misconduct in this case would be incompatible with the commitments and ideals of Justice.

We therefore respectfully request an opportunity to discuss this case with you or a senior representative of your office. (The Civil Division has a copy of the Kelley's verified complaint.)

Please contact me if your office is willing to consider these issues.

Thank you for your kind attention.

Respectfully,



Alan Charles Raul

cc: Hon. Stuart F. Delery
Peter J. Phipps, DOJ Civil Division

⁷ Charlie Savage, *Holder Directs U.S. Attorneys to Track Down Paths of Leaks*, NY Times, Jun. 8, 2012, available at <http://www.nytimes.com/2012/06/09/us/politics/holder-directs-us-attorneys-to-investigate-leaks.html?pagewanted=all>.