105TH CONGRESS
2d Session

SENATE

REPT. 105–167
Vol. 6

INVESTIGATION OF ILLEGAL OR IMPROPER ACTIVITIES IN CONNECTION WITH 1996 FEDERAL ELECTION CAMPAIGNS

FINAL REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TOGETHER WITH

ADDITIONAL AND MINORITY VIEWS

Volume 6 of 6

MARCH 10, 1998.—Ordered to be printed

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CONTENTS

Chapter:	Page
1. Preface	1
2. Procedural Background and Overview	5
3. Summary of Findings	31
4. The Thirst for Money	51
5. The White House Controlled the DNC and Improperly Coordinated the Activities of the DNC and Clinton/Gore '96	105
6. The DNC Dismantled Its System for Vetting Contributions	167
7. DNC Fundraising in the White House: Coffees, Overnights, and Other Events	191
8. Fundraising Calls from the White House	499
9. White House Vetting of Individuals with Access to the President	751
10. Johnny Chung and the White House "Subway"	781
11. The Contribution of Yogesh Gandhi	917
12. Ted Sioeng, His Family, and His Business Interests	961
13. John Huang's Years at Lippo	1117
14. John Huang at Commerce	1153
15. John Huang Moves from Commerce to the DNC	1653
16. John Huang's Illegal Fundraising at the DNC	1689
17. The Hsi Lai Temple Fundraiser and Maria Hsia	1749
18. The China Connection: Summary of Committee's Findings Relating to the Efforts of the People's Republic of China to Influence U.S. Policies and Elections	2499
19. Charlie Trie's and Ng Lap Seng's Laundered Contributions to the DNC	2517
20. Charlie Trie's Contributions to the Presidential Legal Expense Trust	2711
21. The Saga of Roger Tamraz	2905
22. DNC Efforts to Raise Money in the Indian Gaming Community	3071
23. The Hudson, Wisconsin Casino Proposal	3165
24. The Cheyenne and Arapaho Tribes: Their Quest for the Fort Reno Lands	3547
25. The Offer of R. Warren Meddoff	3623
26. White House, DNC and Clinton-Gore Campaign Fundraising Efforts Involving the International Brotherhood of Teamsters	3655
27. Compliance by Nonprofit Groups with Committee Subpoenas	3833
28. Role of Nonprofit Groups in the 1996 Elections	3993
29. Allegations Relating to the National Policy Forum	4195
30. White House Document Production	4277
31. DNC Document Production	4425
32. Campaign Finance Reform Issues Brought to the Forefront by the Special Investigation	4459
33. Recommendations	4503

ADDITIONAL VIEWS

34. Additional Views of Chairman Fred Thompson	4511
35. Additional Views of Senator Susan Collins	4535
36. Additional Views of Senator Arlen Specter	4539
37. Additional Views of Senator Robert Bennett	4545

MINORITY VIEWS

38. Additional Views of Senators Glenn, Levin, Lieberman, Akaka, Durbin, Torricelli and Cleland	4557
39. Additional Views of Senator Glenn	9507

Page
40. Additional Views of Senator Levin 9511
41. Additional Views of Senator Lieberman 9525
42. Additional Views of Senator Akaka 9559
43. Additional Views of Senator Durbin 9565
44. Additional Views of Senator Torricelli 9571

MINORITY VIEWS OF SENATORS GLENN, LEVIN, LIEBERMAN, AKAKA, DURBIN, TORRICELLI AND CLELAND

TABLE OF CONTENTS

	Page
Foreword	4559
Executive Summary	4561
Part 1 Foreign Influence	4577
Chapter 1: Overview and Legal Analysis	4577
Findings	4577
Overview of Following Chapters	4577
Legal Analysis	4579
Chapter 2: The China Plan	4619
Findings	4620
Introduction	4621
The Committee's Investigation	4623
Background	4623
The China Plan	4625
Events Leading up to the China Plan	4625
Information about the China Plan	4626
Implementation of the China Plan	4627
Legal Activities	4627
Illegal Activities	4628
Individuals Under Investigation and the China Plan	4628
Ted Sioeng	4629
John Huang and Maria Hsia	4630
The Riadys	4630
Intermediaries: Relation to the Committee's Public Investigation	4631
Political Contributions to Federal Elections	4632
Political Contributions: Relation to the Committee's Public Investigation	4633
Information not Pursued by the Committee	4633
Conclusion	4634
Chapter 3: The National Policy Forum	4657
Findings	4657
Introduction	4657
Haley Barbour	4659
Ambrous Young	4659
Origin Of the National Policy Forum	4660
The Barbour-Baroody Split	4661
Funding the NPF	4661
Baroody Resigns	4662
The NPF Under John Bolton	4663
Barbour Solicits Ambrous Young	4665
The Loan Transaction	4666
Funding the Contract With America	4668
The Trip to Hong Kong	4669
The Trip to China	4670
The Default	4670
Other Foreign Contributions	4671
Conclusion	4672
Chapter 4: John Huang	4788
Findings	4788
Huang's Early Career	4789
Background on the Lippo Group	4790
Huang's Activities on Behalf of the Lippo Group	4791
Political Contributions	4792
Huang's Tenure at the Department of Commerce	4794

Page

Chapter 4—Continued
Huang's Tenure at the Department of Commerce—Continued
Huang's Appointment 4794
Huang's Role at Commerce 4796
Huang's Security Clearance and Access to Classified Information 4798
Granting of Top Secret Clearance 4799
Huang's Access to Classified Information 4800
Huang's Use of the Stephens Office 4802
Huang's Post-Commerce Clearance 4803
No Evidence of Espionage 4806
Evidence of Solicitations of Contributions 4808
Hiring Huang to Work at the DNC 4811
Huang's Understanding of Applicable Law 4813
Huang's Fundraisers 4814
February 1996 Hay Adams APALC Events, Washington, D.C. 4814
May 13, 1996 Sheraton Carlton Event, Washington, D.C. 4816
July 22, 1996 Century Plaza Hotel Event, Los Angeles 4816
July 30, 1996 Jefferson Hotel Event, Washington, D.C. 4817
Other Huang Activities 4818
Hsi Lai Temple Event 4818
The Vice President and the Temple Event 4819
John Huang and the Temple Event 4831
John H. K. Lee and the Cheong Am America Contribution 4832
June 18, 1996, DNC Coffee at the White House 4836
Rawlein Soberano 4838
The DNC's Supervision of Huang 4839
Conclusion 4840
Chapter 5: Charlie Trie 5270
Findings 5270
Background 5271
Trie's DNC Contributions and Fundraising 5272
Trie's DNC Contributions 5272
Trie's DNC Fundraising 5274
Chu and Wang Contributions 5275
DNC Awareness of Trie's Activities 5276
Trie's Fundraising for the Presidential Legal Expense Trust 5277
Trie's March 21, 1996 Meeting with Cardozo 5278
Investigation into the Contributions 5279
The Trust's Decision to Reject the Contributions 5281
The Trust's Change in Accounting Procedures 5282
Foreign Funds 5283
Analysis 5284
Trie's Access to White House and DNC Events 5285
Trie's Commission Appointment 5287
Trie and Wang Jun at the White House 5289
Wang Jun's Invitation to the White House Coffee 5290
Role of Ernest Green 5291
Analysis 5292
Trie and China 5293
Chapter 6: Michael Kojima 5413
Findings 5413
Contribution History 5415
Kojima's Access to the White House and Other Perks 5415
The Bush White House and Fundraising 5418
GOP Claimed No Duty to Investigate 5423
Foreign Funds 5425
Failure to Conduct a Federal Investigation 5427
Conclusion 5428
Chapter 7: Ted Sioeng 5573
Findings 5573
Ted Sioeng's Background 5573
Sioeng's Connections to China 5574
The "China Plan" and Ted Sioeng 5576
The Sioeng Family's Contributions to Matt Fong in April 1995 5576
The Source of Sioeng's April 1995 Contributions to Fong 5578
Fong Arranges for Sioeng to Meet Speaker Gingrich 5578
The Sioeng Family's Contributions to the National Policy Forum 5579
The Sioeng Family's Contribution to Matt Fong in December 1995 5580

Page

Chapter 7—Continued
Jessica Elnitiarta's Contributions to the DNC 5581
The Hay Adams Fundraiser 5581
Hsi Lai Buddhist Temple Event 5582
Sheraton Carlton Hotel Event 5582
Century City Event and Subsequent $50,000 Contribution 5583
Conclusion 5584
Chapter 8: Jay Kim 5683
Findings 5683
The Korea Traders' Club 5683
Kim's Contribution From His Own Business in 1992 5684
The Kim's Acceptance of Corporate Funds 5684
Acceptance of Funds From Foreign Nationals 5685
Alleged Violations During the Federal Investigation 5686
The Conviction of Kim's Former Campaign Treasurer 5686
Possible Election Law Violations During the 1996 Cycle 5687
Kim's Commitment to Compliance With U.S. Election Laws 5688
The Kims' Book Deal 5689
Conclusion 5690
Part 2 Independent Groups 5926
Chapter 9: Overview and Legal Analysis 5926
Findings 5926
Overview of Following Chapters 5926
1996 Election-Related Activities 5927
Legal Analysis 5928
Categories of Independent Groups 5929
Disclosure 5930
Coordination 5930
Circumvention 5933
Third Party Contributions 5934
Violations of Tax Law 5934
Chapter 10: The Republican Party and Independent Groups 5967
Findings 5967
Introduction 5967
RNC Ties to Independent Groups 5969
Coalition Plans 5969
Coordination during the 1996 Election Cycle 5973
RNC Funding of Independent Groups 5974
RNC Funding Schemes in the 1996 Election Cycle 5975
RNC Contributions and Fundraising Help in 1996 5976
Circumventing Campaign Finance Laws 5978
The RNC's Front Organizations 5979
The National Policy Forum 5980
Coalition for Our Children's Future 5981
Fronts For Conservative Donors 5981
CCF's Attack Ads 5981
Triad's Attack Ads 5982
Triad's Donors 5982
Conclusion 5983
Chapter 11: Americans for Tax Reform 6034
Findings 6034
Background 6034
Grover Norquist 6035
The $4.6 Million October Surprise 6037
ATR Televised Attack Ads 6041
ATR Candidate Advocacy 6043
ATR: Coordinated Efforts in 1996 to Elect Republicans To Office 6048
RNC-Directed Contributions to ATR 6050
ATR and RNC's Refusal to Cooperate 6051
Possible Civil, Criminal, and Tax Law Violations 6052
Circumvention 6052
Coordination 6053
Disclosure 6053
Tax Laws 6054
Conclusion 6055
Chapter 12: Triad and Related Organizations 6289
Findings 6289
Introduction 6290

Page

Chapter 12—Continued
Background ... 6290
The Committee's Investigation of Triad ... 6291
The Political Operation of Triad Management ... 6293
Triad is Not a Business ... 6293
Robert Cone's Financial Support of Triad ... 6293
Corporate Contributions by Triad ... 6294
Triad and Political Action Committees ... 6297
The Advertising Campaign ... 6301
Creation of Citizens for Reform and Citizens for the Republic ... 6301
Improper Coordination of Triad's Advertising with Political Candidates ... 6303
No Comparison Between Triad and the AFL–CIO ... 6306
Financing the Advertising Campaign ... 6307
The Trusts Behind Triad ... 6308
Economic Education Trust ... 6309
Triad's Impact on the 1996 Elections ... 6312
Advertising by Other Triad Contributors ... 6312
Conclusion ... 6313
Chapter 13: Coalition for Our Children's Future ... 6771
Findings ... 6771
Background ... 6771
RNC Ties to CCF ... 6772
CCF's 1995 Advertising Campaign ... 6774
CCF and its Exempt Organization Status ... 6775
CCF 1996 Advertising for Republican Candidates ... 6777
The Secret Trust and CCF's 1996 Election Advertising ... 6780
Did CCF's Secret Contributor Fund Triad Attack Ads? ... 6781
Conclusion ... 6782
Chapter 14: Christian Coalition ... 6934
Finding ... 6934
Background ... 6934
Pat Robertson and Ralph Reed ... 6935
Voter Guides Before the 1996 Election Cycle ... 6937
Distortion of Candidates' Positions on Issues ... 6937
Voter Guides in the 1996 Election Cycle ... 6938
Coalition Officials Endorsed Candidates ... 6941
Coalition Ties to the Republican Party ... 6944
Coalition Activity in State Elections ... 6947
FEC Action ... 6949
Conclusion ... 6951
Chapter 15: Other Independent Groups ... 7051
Seniors Organizations ... 7051
Term Limits Groups as Fronts for GOP Donors ... 7053
Nonprofit Groups Linked to Presidential Candidates ... 7055
Conclusion ... 7055
Chapter 16: The Democratic Party and Independent Groups ... 7062
Findings ... 7062
Chapter 17: Warren Meddoff ... 7064
Findings ... 7064
Warren Meddoff ... 7064
Meddoff and the October 1996 Fundraiser ... 7065
Ickes Conversations With Meddoff ... 7066
No Evidence of Illegal Coordination ... 7067
Ickes's Alleged Direction to Meddoff to Shred the Fax ... 7068
Meddoff's Credibility ... 7068
The DNC'S Refusal of the Contribution Offer ... 7071
Fundraising on Federal Property ... 7072
Conclusion ... 7073
Chapter 18: Teamsters ... 7102
Findings ... 7102
Teamster Contributions ... 7102
Martin Davis's Initial Contacts With DNC Officials ... 7103
Judith Vasquez's Contribution to Vote Now '96 ... 7104
Teamsters' Contributions ... 7105
Sullivan's Role ... 7106
Proposed Contribution to Unity '96 ... 7107
DCCC Executive Director Rejected the Proposal ... 7107

Page

Chapter 18—Continued
Proposed Contribution to Unity '96—Continued
DCCC Chairman Rejected the Proposal 7108
DSCC Deputy Executive Director Rejected the Proposal 7108
DSCC Chairman Rejected the Proposal 7109
The Proposal and Unity '96 7109
Conclusion 7109
Chapter 19: Other Independent Groups 7235
Findings 7235
Overview 7235
The DNC and Independent Groups 7236
Activities of Independent Groups 7237
The AFL–CIO 7237
Vote Now '96 7238
Citizen Action 7239
National Council of Senior Citizens 7239
Conclusion 7239
Part 3 Contribution Laundering/Third Party Transfers 7241
Chapter 20: Overview and Legal Analysis 7241
Finding 7241
Overview of Following Chapters 7241
Legal Analysis 7242
Chapter 21: Contributions to the Democratic Party 7244
Findings 7244
Keshi Zhan, Yue Chu, and Xiping Wang 7246
Pauline Kanchanalak 7248
Yogesh Gandhi 7249
Hsi Lai Temple Monastics 7253
Arief and Soraya Wiaridinata 7256
The Lum Family 7257
Conclusion 7258
Chapter 22: Contributions to the Republican Party 7372
Findings 7372
Michael Kojima 7372
Aqua Leisure Industries, Inc. 7375
Empire Sanitary Landfill, Inc. 7377
Deluca Liquor and Wine, Ltd. 7378
Conclusion 7379
Part 4 Soft Money and Issue Advocacy 7515
Chapter 23: Systemic Problems of the Campaign Finance System 7515
Findings 7515
Introduction 7515
Soft Money 7516
Background on Soft Money 7516
Soft Money Finds a Way into Federal Elections 7517
Soft Money Creates the Appearance of Corruption and Undermines Public Financing 7519
Disclosure of Soft Money 7520
Issue Advocacy 7521
Background on Issue Ads 7522
Proposals for Reform 7524
Kassebaum-Baker/Mondale 7525
League of Women Voters 7525
Common Cause 7526
Campaign Reform Project 7526
Public Campaign 7526
Disclosure Only 7526
Conclusion 7526
Part 5 Fundraising and Political Activities of the National Parties and Administrations 7540
Chapter 24: Overview and Legal Analysis 7540
Finding 7540
Overview of Following Chapters 7540
Legal Analysis 7541
Taking Official Action in Exchange for a Contribution 7541
Use of Federal Property 7542
Use of Federal Employees 7544
Spending Limits, Coordination and Issue Advocacy 7546

Page
Chapter 25: DNC and RNC Fundraising Practices and Problems 7595
Findings 7595
Introduction 7596
Structure of the National Parties 7598
The Democratic National Committee 7598
The Republican National Committee 7599
Fundraising Drives 7600
Soliciting Contributions 7600
Training Fundraisers 7601
The DNC's Training Procedures and Problems 7601
The RNC's Training Procedures and Problems 7602
Contribution Compliance 7602
The DNC's Contribution Compliance and Problems 7602
The RNC's Contribution Compliance and Problems 7603
Telephone Solicitations from Federal Property 7605
Organizing Fundraisers and Other Events 7605
DNC Events and Contributor Services 7605
RNC Events and Contributor Services 7606
Spending Party Funds 7607
DNC'S Splitting Contributions Between Hard and Soft Money Accounts ... 7608
Conclusion 7609
Chapter 26: Telephone Solicitations From Federal Property 7773
Findings 7773
Presidential Telephone Calls 7773
Richard Jenrette 7774
Vice Presidential Telephone Calls 7776
Purpose of the Phone Calls 7777
Raising Soft Money 7780
DNC Splitting Contributions Between Hard and Soft Money Accounts 7781
Applicability of the Pendleton Act 7783
The Contributors 7783
Payment for the Phone Calls 7783
Payment for the Thank-You Notes 7784
No Other Costs to the Government 7784
Republican Phone Calls 7785
Conclusion 7786
Chapter 27: White House Coffees and Overnights 7956
Findings 7956
DNC Coffees at the White House 7956
The Coffees and Fundraising 7957
The Coffees as DNC Events 7959
The Law and Precedent 7960
White House Overnights 7960
Conclusion 7961
Chapter 28: Republican Use of Federal Property and Contributor Access 7968
Findings 7968
Major Contributor Access to Elected Officials 7968
Republican Eagles 7968
Team 100 7970
Other Republican Events and Meetings for Contributions 7972
Use of Federal Property For Fundraising 7975
Political Appointments Awarded to Republican Contributors 7977
Conclusion 7978
Chapter 29: Democratic Contributor Access to the White House 8057
Findings 8057
Introduction 8057
The Secret Service 8058
The White House Office of Political Affairs 8059
The National Security Council 8060
Previous NSC Procedures 8061
Current NSC Procedures 8062
Other Issues 8063
Conclusion 8065
Chapter 30: Roger Tamraz 8095
Findings 8095
Overview 8095
1970–1990: Tamraz's Business Ventures, Dealings With the CIA and Political Contributions 8096

Page

Chapter 30—Continued
1970–1990—Continued
Business Ventures 8096
Reported Contacts with the CIA 8097
RNC's Recommendation for a Reagan Administration Position 8097
Tamraz Leaves Lebanon after Embezzlement Charges 8098
1994–1995: The Commerce Department 8098
1995: The Caspian Sea Pipeline 8099
U.S. Policy on the Caspian Sea Pipeline 8099
May–June 1995: Meetings with Executive Branch Officials 8100
Bob of the CIA 8101
July–October 1995: Contributions to the Democratic Party 8103
Contribution History 8103
The DNC's Acceptance of Tamraz's Contributions 8103
September 1995: Request For an Official Meeting With the Vice President 8104
Tamraz's Attendance at DNC Events 8105
Summary of Events 8105
Fowler's Role 8105
No Effect on Policy 8107
April 1996: Department of Energy Official Talks to Heslin 8107
Tamraz's Attendance at March 27 and April 1, 1996 DNC Events 8107
Follow-Up on the Pipeline Project 8108
The Request within the Department of Energy 8109
Carter's Call to Heslin 8110
Heslin's Testimony 8110
Carter's Testimony 8110
The Department of Energy Responds to the Request for Information Conclusions 8111
Conclusion: Access Still for Sale in 1997 8113
Chapter 31: Other Contributor Access Issues 8250
Findings 8250
Johnny Chung 8250
Political Contributions 8251
Access to Administration Officials 8251
Link Between Contributions and Visits 8252
Williams's Handling of Chung's $50,000 DNC Contribution 8253
The Pendleton Act 8255
The Hatch Act 8256
Other Individuals 8256
Jorge Cabrera 8256
Grigori Loutchansky 8257
Wang Jun 8258
Yung Soo Yoo 8259
Michael Kojima 8260
Conclusion 8260
Chapter 32: Coordination Among the Democratic National Committee and the Clinton/Gore Campaign and the White House 8281
Findings 8282
Introduction and Summary 8282
The Origin of the DNC's Issue Ads Campaign 8282
The DNC and Rules Governing Issue Ads 8283
The DNC Adhered to the Legal Rules Governing Issue Ads 8285
The Clinton Campaign and the DNC Campaign 8286
The Legality of Coordination Among the Clinton Campaign, White House and DNC 8286
The President's Role in the Making of DNC Issue Ads 8286
Ickes's Role in Coordinating with the DNC 8287
Conclusion 8290
Chapter 33: Coordination Between the Republican National Committee and the Dole for President Campaign 8294
Findings 8294
Introduction 8294
The Origin of the Pro-Dole Issue Ads 8295
Dole for President and the Dole/RNC Campaign 8296
The Substance of Dole/RNC Issue Ads 8297
The Dole/RNC "Issue Ads" and Presidential Battleground States 8299
Dole/RNC Issue Ads and Soft Money 8300

Page

Chapter 33—Continued
Coordination of Fundraising and Political Efforts 8301
Dole for President and the RNC Impeded the Committee's Investigation .. 8302
Conclusion 8303
Part 6 Allegations of Quid Pro Quos 8368
Chapter 34: Overview and Legal Analysis 8368
Legal Analysis 8368
Overview of Following Chapters 8369
Chapter 35: Hudson Casino 8371
Findings 8371
Overview 8372
Secretary Babbitt's Remarks to Lobbyist Eckstein 8372
Eckstein's Affidavit 8372
Secretary Babbitt's Letter to Senator McCain 8373
Eckstein's Deposition 8373
Secretary Babbitt's Letter to Chairman Thompson 8374
Secretary Babbitt's Hearing Testimony 8374
Eckstein's Allegations 8376
Eckstein's Interpretation 8378
Secretary Babbitt and Lobbyists for the Opposing Tribes 8378
Role of the White House 8379
Lobbyist Contacts with Harold Ickes 8379
White House Requested Status Report from Interior 8380
White House Requested Second Status Report from Interior 8381
White House and Interior Confer on Response to Congressional Inquiry 8382
Other Interior and White House Contacts 8382
Eckstein's Access to Interior Officials 8383
Eckstein's Telephone Contacts with Secretary Babbitt 8383
The Tribal Applicants' May 1995 Meeting with Interior Officials 8384
Eckstein's July 14 Meeting with Secretary Babbitt 8384
The Merits of Interior's Decision on the Hudson Application 8385
The Hudson Casino and the Surrounding Community 8385
The Surrounding Communities Opposed the Hudson Casino Proposal 8386
Interior Staff Recommended Denial 8387
The Administrative Record 8388
Allegations of Timing and Political Pressure 8389
Interior's Final Decision-Maker Acted on the Merits 8390
Conclusion 8390
Chapter 36: Tobacco and the 1996 Election Cycle 8511
Findings 8511
The Tobacco Industry's Political Contributions During the 1996 Election Cycle 8511
Republican Assistance to Tobacco Companies 8512
Haley Barbour Assisted Tobacco 8513
Tobacco Settlement and the $50 Billion Tobacco Tax Credit 8514
Haley Barbour and Kenneth Kies 8515
Conclusion 8517
Chapter 37: Cheyenne-Arapaho Tribes of Oklahoma 8539
Findings 8539
Overview 8539
The Battle Over the Closure of the Fort Reno ARS 8540
The Tribes Increase Their Political Activities 8543
The Tribes' Contribution to the DNC 8545
The White House Luncheon 8547
The President's Birthday Fundraiser 8552
The Tribes Continue Their Lobbying Efforts 8553
The Tribes' Dealings with Mike Copperthite, Nathan Landow, and Peter Knight 8554
The Tribes' Dealings with Cody Shearer and Terry Lenzner 8560
The Tribes' Contribution is Returned 8561
Conclusion 8562
Part 7 Investigation Process 8680
Chapter 38: Laying the Groundwork 8680
Findings 8680
Introduction 8680
Initial Floor Statements By Chairman Thompson and Senator Glenn 8681
Organizational Meeting 8683

Page

Chapter 38—Continued
Organizational Meeting—Continued
A. Budget ... 8683
B. Scope ... 8685
C. Process ... 8686
D. Termination Date ... 8686
First Public Debate On Issuance of Subpoenas ... 8687
Alternative Resolution, S. Res. 61 ... 8687
Rules Committee Appearances ... 8687
Final Floor Debate ... 8689
The Majority Impeded a Fair Investigation ... 8689
A. Subpoenas ... 8690
B. Consideration of Grants of Immunity ... 8690
C. Interviews ... 8691
D. Hearings ... 8692
Conclusion ... 8693
Chapter 39: Democratic Compliance Issues ... 8710
Finding ... 8711
DNC Cooperation and Compliance ... 8711
Attorney-Client Privilege Issue ... 8712
Late Production of Certain Files ... 8713
Conclusion ... 8713
Chapter 40: Republican Compliance Issues ... 8775
Findings ... 8775
Introduction ... 8775
The First Subpoenas ... 8776
RNC Compliance Issues ... 8777
Triad Compliance Issues ... 8779
The NPF Order ... 8780
NPF Compliance Issues ... 8780
ATR Compliance Issues ... 8782
Conclusion ... 8785
Chapter 41: The Breakdown of Compliance ... 8938
Finding ... 8938
Introduction ... 8938
Organizations Suggested for Subpoena by the Minority ... 8941
Tax-Exempt Groups Linked to Presidential Campaigns ... 8941
Republican Exchange Satellite Network and Lamar Alexander ... 8941
Better America Foundation and Bob Dole ... 8942
The American Cause and Pat Buchanan ... 8943
Other Tax-Exempt Groups ... 8943
Citizens Against Government Waste ... 8943
The Heritage Foundation ... 8944
The Coalition: Americans Working for Real Change ... 8944
American Defense Institute/American Defense Foundation ... 8945
Citizens for a Sound Economy ... 8945
Women for Tax Reform ... 8946
National Right to Life Committee ... 8946
The Christian Coalition ... 8946
Private Corporations Linked to Contribution Laundering ... 8947
DeLuca Liquor & Wine and Empire Landfill, Danella Inc./USA Waste Services of Eastern Pennsylvania ... 8947
Organizations Suggested for Subpoena by the Majority ... 8947
National Council of Senior Citizens ... 8948
Citizen Action ... 8949
National Education Association ... 8949
Vote Now '96 ... 8950
Campaign to Defeat Proposition 209 ... 8950
The Sierra Club ... 8950
Democratic Leadership Council ... 8951
EMILY'S List ... 8951
National Committee for an Effective Congress ... 8951
American Trial Lawyers Association ... 8951
Americans United for Separation of Church and State ... 8951
Conclusion ... 8952
Chapter 42: White House Tapes ... 9331
Findings ... 9331
Overview ... 9331

Page

Chapter 42—Continued
Video and Audio Taping in the White House 9332
The White House Communications Agency 9333
Videotape Procedures for Coffees 9334
The Initial Failure to Identify Responsive Videotapes 9335
White House Definition of Document 9337
White House Search Procedures 9339
White House Responses to Committee Inquiries About Videotapes 9340
Notifying the Department of Justice of the Existence of Responsive Videotapes 9344
Deputy White House Counsel and the Videotapes 9345
Allegations Concerning Alteration of the Videotapes 9345
Other Production Issues 9346
The Presidential "Diary" 9346
WAVE Records Relating to Mr. Wu 9347
Lisa Berg documents 9348
Conclusion 9349
Part 8 Minority Recommendations 9394
Part 9 Response to Majority Report 9399
Senator Glenn's Additional Views 9507
Senator Levin's Additional Views 9511
Senator Lieberman's Additional Views 9525
Senator Akaka's Additional Views 9559
Senator Durbin's Additional Views 9565
Senator Torricelli's Additional Views 9571

PART 5 FUNDRAISING AND POLITICAL ACTIVITIES OF THE NATIONAL PARTIES AND ADMINISTRATIONS

Chapter 29: Democratic Contributor Access to the White House

From 1993 through 1996, the Democratic National Committee organized numerous events to which it invited supporters of the Democratic Party and their guests. Many DNC events were held inside the White House complex and were attended by the President or Vice President. For those events, the DNC generated guest lists and forwarded names of attendees to the White House Office of Political Affairs, which generally did not conduct an independent review of the list. On several occasions, the DNC asked for additional information about persons under consideration for invitations to White House events. In these situations, the White House Office of Political Affairs forwarded the request to the National Security Council ("NSC") or other knowledgeable White House staff for recommendations regarding the individual's attending an event with the President or Vice President.

The Committee investigated the procedures used by the White House to assess and approve individuals invited by the DNC to attend events in the White House.

FINDINGS

(1) From 1993 through 1996, White House procedures for assessing and approving individuals invited by the DNC to attend events in the White House were similar to the procedures used by prior administrations, but such procedures were inadequate. The White House Office of Political Affairs relied on the DNC (and in prior administrations, the RNC) to assess the appropriateness of attendees at DNC (RNC) events at which the President was present. Unfortunately, from 1993 through 1996, the DNC did not adequately perform that function.

(2) When asked to provide information regarding the foreign policy implications arising from DNC-organized events, the National Security Council performed its function. Unfortunately, prior to 1997, the White House did not have a formal structure to adequately assess and approve all attendees at DNC events where the President was present.

INTRODUCTION

For DNC events held in the White House, the Secret Service Agency and the White House Office of Political Affairs are responsible for assessing DNC guests in order to both guard the physical security of the President and to protect the integrity of the Office of the Presidency and the policies of the United States. Before an individual may enter the White House complex, Secret Service officials conduct a background check to determine whether the individ-

ual poses a physical threat to the President or White House staff. To determine whether an individual is otherwise appropriate to attend DNC events at the White House, the White House Office of Political Affairs is responsible for obtaining and approving DNC proposed guest lists. From 1993 through 1996, the White House Office of Political Affairs followed the practice of previous administrations and relied on the judgment of its national party to provide appropriate information about political supporters scheduled to attend White House events. According to the testimony of an 18-year career White House employee, administrations have handled invitations to RNC and DNC events at the White House in the same way as the current Administration handled similar invitations from 1993 through 1996.[1] When questions were raised by the party about possible negative implications of the event or specific attendees, the White House Office of Political Affairs sought relevant information from the NSC and other knowledgeable White House staff in order to make appropriate decisions.

This section discusses the Committee's investigation of the White House procedures used to assess and approve individuals invited by the DNC to attend events inside the White House complex, focusing on the functions of the Secret Service, the White House Office of Political Affairs and the National Security Council.

THE SECRET SERVICE

The Secret Service is responsible for the physical security of the White House complex, which consists of the New Executive Office Building, the Old Executive Office Building, and the White House itself, as well as the physical security of certain White House officials, particularly the President and Vice President.

Visitors to the White House complex, except for individuals on public tours, are screened by the Secret Service through a process known as "WAVEs," which stands for Worker and Visitor Entrance System. In order for an individual to enter the White House complex under the WAVEs system, an employee of the White House must first submit a computer message to the Secret Service requesting that the individual be admitted to the complex on a specified day and time. In response, a Secret Service officer conducts a name check on the individual through the National Crime Information Center ("NCIC"), which contains criminal history and warrant information.[2] If the officer does not discover pertinent criminal information about the individual, the officer clears the individual for entrance through one of the secured gates of the complex.

If the NCIC check does yield pertinent information on a requested individual, the officer conveys that information to a Secret Service supervisor.[3] The supervisor is responsible for reviewing the information to determine whether the individual's entrance into the White House complex may pose a physical threat to the President or Vice President, or to the White House complex generally.[4] In making this determination, the supervisor focuses on whether the information suggests that the individual may be violent, dangerous, or in other ways may present a physical or security threat.[5] If the supervisor determines that the individual should not be ad-

Footnotes at end of Chapter 29.

mitted to the White House for these reasons, the supervisor prohibits clearance for the individual and notifies the White House employee who had requested that the individual be admitted that no clearance would be granted.[6] The Secret Service does not convey the basis of this decision to White House staff.[7] The Secret Service does not assess or make admittance determinations based on issues involving the general appropriateness of an individual entering the White House or meeting with the President or Vice President.[8] These Secret Service procedures have been in effect since 1984.[9]

The responsibility of the Secret Service for screening potential White House visitors, including guests invited by the DNC, is therefore limited to an assessment of whether the individual may pose a physical threat to the White House complex or to the President or Vice President.[10] This narrow review is supplemented by other determinations made independently by the White House Office of Political Affairs and the NSC.

THE WHITE HOUSE OFFICE OF POLITICAL AFFAIRS

DNC officials seeking to organize events on the White House grounds coordinate with the White House Office of Political Affairs. From 1993 to 1997, the DNC organized these events by coordinating schedules and other logistics with the White House Office of Political Affairs, and by forwarding a list of proposed attendees for each event.[11] During this time period, it is not clear what procedures were used inside the DNC for assessing the appropriateness of the list of event attendees before it was forwarded to the White House Office of Political Affairs. DNC Finance Chairman Richard Sullivan testified that it was his understanding that DNC staff within the Finance Division was responsible for compiling the lists and raising any potential problems with the White House at the time it forwarded the attendance list to the Office of Political Affairs.[12] Although the evidence presented to the Committee demonstrates that the DNC staff did, on occasion, raise such questions with the White House, problems arose when the DNC did not raise questions about certain events or individuals with White House officials.[13]

According to Karen Hancox, the Deputy Director of the White House Office of Political Affairs, the DNC normally forwarded the list of proposed attendees for DNC sponsored events via facsimile the night before the event.[14] Hancox testified that the lists did not contain information about past or promised contributions by the invitees,[15] and that her office generally did not conduct an independent assessment of the individuals for general appropriateness unless an issue about a particular individual or event was raised by the DNC staff.[16]

If an issue was raised by the DNC, Hancox testified that her office would seek additional information on the matter from the NSC or other knowledgeable White House staff.[17] Hancox testified that she made approximately 12 such inquiries of the NSC.[18] She also testified that her office strictly adhered to the NSC's response regarding whether there may be any negative implications if a particular person entered the White House or attended a DNC event with the President or Vice President. Hancox testified that, "If [the NSC] said no, it was no."[19] The White House and the NSC made

these determinations on an event by event basis, and did not compile a list of individuals who had previously been denied access to DNC events.

Judith Spangler, a White House career employee testified that during her 18-year tenure, administrations have handled invitations to RNC and DNC events at the White House in the same way that the current Administration handled similar invitations from 1993 to 1997.[20]

Ultimately, from 1993 through 1996, the procedures employed by the White House Office of Political Affairs permitted DNC staff to largely determine on its own who would attend White House events organized and sponsored by the DNC.[21] Unfortunately, the DNC did not have an adequate system of checking the appropriateness of individuals attending events with the President or Vice President and also did not raise questions about certain individuals or events that would have permitted the White House or the NSC to provide input on whether such attendees were advisable. For details regarding the specific incidents that derived from this system, see Chapters 25, 30 and 31 of this Minority Report.

In 1997, both the DNC and the White House implemented policies to formalize their procedures for assessing potential guests at most DNC sponsored events. The DNC now requires that all individuals invited to DNC-sponsored events at the White House, or other DNC events where the President, Vice President or First Lady are in attendance, must be assessed and screened through the DNC's Compliance Division before their names are forwarded to the White House.[22] The DNC also prohibits adding proposed guests to any event less than 24 hours before the event is scheduled to occur, and prohibits attendance if an individual is not legally permitted to make a personal contribution to the DNC, unless he or she is an immediate family member of an individual who is permitted to contribute to the DNC.[23]

The White House also formalized screening procedures in 1997 which require White House staff to assess individuals the DNC proposes to invite to White House events.[24] These new procedures are addressed below.

THE NATIONAL SECURITY COUNCIL

The National Security Council serves as the chief advisory institution to the President on matters relating to foreign policy and national security, coordinating foreign policy activities throughout the Administration.[25] One responsibility of the NSC is to organize official meetings between the President and foreign officials and other individuals in order to advance the foreign policy goals of the Administration it serves.[26] These events are carefully planned and organized by NSC staff.[27]

The NSC's expertise in foreign policy has long been tapped by White House staff when other events are planned that involve the President meeting with outside individuals.[28] Although the NSC does not provide information about the physical risk or general appropriateness of the individuals who come in contact with the President, it does provide, when requested, information about any foreign policy that might be implicated by such contact.[29]

On September 11, 1997, the Committee took public testimony of Samuel R. Berger, National Security Advisor to President Clinton since March of 1997. The Committee explored the NSC's procedures for responding to requests for information from other White House staff regarding DNC-organized events. The evidence presented to the Committee established that from 1993 to 1997, the NSC's procedures in this regard followed those of previous administrations: the NSC appropriately responded to requests when they were made, but no formal structure for assessing DNC attendees was in place. During its investigation, the Committee also learned that in June 1997, the White House established a formal structure to assess individuals the DNC proposes to attend White House events where the President or Vice President will be in attendance.

Previous NSC procedures

The NSC's primary function is to coordinate U.S. foreign policy for the President. As a result, the NSC and its staff is typically not aware of, or responsible for, meetings or events that are organized by the DNC, or any other entity unrelated to foreign policy. From 1993 to 1997, the NSC did, on occasion, assist in providing information about certain individuals who were scheduled to attend DNC events. However, the NSC's participation was sparked only when the White House staff informed the NSC of an event or specified an individual scheduled to attend an event and asked for information about any possible effect on foreign policy.[30]

These contacts between White House staff and the NSC were ad hoc in nature and were largely driven by the White House staff's attempt to obtain information relevant to an upcoming DNC event. Typically, White House staff directly contacted the NSC staff person who was known to have the relevant expertise to provide the information sought. These contacts were facilitated by the fact that the NSC has a relatively small number of employees divided into geographic areas of expertise.[31] Thus, White House staff often called or sent e-mail messages to Robert Suettinger, NSC's Director of Asian Affairs, to seek information about issues relating to events or individuals that may have an impact on U.S. foreign policy toward Asian countries.

Berger explained to the Committee that this unstructured system within the White House and the NSC had been carried over from earlier practices of previous administrations. Berger testified that when he entered the Administration, the NSC procedures for providing information about non-NSC events were not formalized or structured, and that he had understood that these procedures dated back at least to the Nixon Administration.[32] Berger also testified that he has studied a number of historical aspects of the NSC practices,[33] which included speaking to several former National Security Advisors, and confirmed his understanding that this NSC practice had been in place for several administrations.[34]

Berger also explained that this unstructured system is partly a result of the fact that the NSC is not the ultimate decision-maker on questions of access to the White House complex or to the President.[35] Although the NSC performs important foreign policy functions for the President, Berger testified that the NSC's practice in assessing access to the President most often takes the form of pro-

viding information to White House staff, whose responsibility it is to make a final access determination after consideration of that information.[36] On rare occasions, Berger explained that the NSC would actually make a recommendation that an individual not meet with the President. According to Berger, when the NSC issued such recommendations, they were accepted by the White House staff.[37] Ultimately, Berger explained that it is the White House staff that is responsible for determining who sees the President.[38]

Berger also testified that from 1993 to 1997, NSC vetting of non-NSC events was event-driven in that inquiries arose in the context of a specific event.[39] Once the event was over, no ongoing log or record of the NSC's advice or determinations was maintained.[40] These procedures, when combined with the Office of Political Affair's practice of not independently assessing individuals and the DNC's decision to invite a few large contributors to White House events despite recommendations that they not attend, were responsible for such incidents as Roger Tamraz's attendance at DNC events even after NSC staff had recommended against it.[41] See Chapter 30 of the Minority Report.

Current NSC procedures

Based on the unstructured systems of the DNC and the White House Office of Political Affairs, the NSC did not always receive information about DNC events that enabled it to provide information or recommendations about the attendees. As a result, there were questions raised about the NSC's role in vetting non-NSC events and about how certain individuals were permitted to attend small gatherings with the President.[42]

Berger testified that when asked to provide information, the NSC acted appropriately and that the NSC functioned in a nonpartisan manner.[43] He also explained that in March of 1996, in anticipation of the upcoming election activities, the NSC issued a memorandum to all NSC staff that instructed them to treat requests and contacts with individuals from political organizations as they would any other outside individual.[44]

However, Berger testified that there were structural problems with the NSC vetting procedures and that formal procedures were needed.[45] Berger explained that part of the impetus for establishing formal procedures was to protect NSC officials, who had appropriately responded to requests for information from the White House, but did not have a structure in place to explain what had been done.[46] He also stated that although a small number of attendees at DNC events with the President generated controversy in 1996,[47] he had seen no adverse effect on U.S. foreign policy.[48]

On January 21, 1997, Erskine Bowles, Chief of Staff to the President, requested that the NSC formulate and implement guidelines for vetting non-NSC meetings and events.[49] From January to June 1997, Berger consulted with counsel, staff and former National Security Advisors about vetting procedures. He talked to former National Security Advisors Brent Scowcroft, Henry Kissinger and Zbigniew Brzezinski, who confirmed for him that the "ad hoc" structure was the way it had been done during their tenures.[50] On June 13, 1997, Berger issued a memorandum, setting forth a for-

mal structure for NSC vetting.[51] The new procedures require all relevant inquiries to go to one individual at the NSC and that tracking and follow-up procedures be implemented.[52] In support of this memorandum, Bowles has instructed everyone at the White House to forward relevant questions to this particular individual.[53] Finally, all requests for meetings with NSC staff are now forwarded to the Deputy National Security Advisor, who routes them to the NSC staff for their evaluation as to the appropriateness of the meeting.[54] In routing such requests, the Deputy NSA is required to make every effort to remove "any information indicating the individual's partisan political support or opposition to the Administration."[55]

Other issues

During the 1996 presidential race, while Berger was Deputy National Security Advisor, he attended several campaign strategy meetings held in the White House. The Committee explored this issue during Berger's public testimony on September 11, 1997.

The Committee learned that Berger's attendance at campaign strategy meetings was not unprecedented.[56] President Bush's National Security Advisor, Brent Scowcroft, was reported to be a regular attendee at campaign strategy meetings during the 1992 election.[57] In 1992, Scowcroft also traveled to Dallas, Texas as part of a campaign team assigned to convince Ross Perot not to run for President. The New York Times noted that "some historians said that Mr. Scowcroft's journey to Dallas would be little different from appearing on a political talk show or addressing a party convention. Others said his role debased the post of National Security Advisor."[58]

Berger testified that, like Scowcroft, he had attended campaign strategy meetings during his President's election year, but noted that he had not engaged in other political activities in support of the President's re-election campaign.[59] He explained his attendance at the strategy meeting by stating that he ". . . wanted to make sure that in the discussion of a campaign . . . someone was there that was familiar with the President's foreign policy record so that if an ad mentioned a trade position, or a leadership in the world position there was someone there who knew whether it was accurate."[60] Berger also testified that his attendance at the meetings was "partly dissuasive[], to make sure that there wasn't discussion of political issues in any serious way in those meetings, and to make sure there was no distortion of the President's foreign policy record."[61] Berger explained that it was his opinion that ". . . there ought to be somebody from the foreign policy side of the shop that had some general familiarity with the campaign, its basic themes, its basic message, because the President in 1996 was both President and candidate."[62]

Berger also addressed the nature of the campaign strategy meetings. He testified that the weekly gatherings were not "small, close-hold decision making meetings" where "the small inner sanctum ma[de] decisions," but instead were large gatherings attended by "the President and the Vice President, Mr. Panetta, senior domestic policy people, senior people on the White House staff on communications[, and a] good part of the senior White House

staff. . . ."[63] Berger characterized the meetings as "basically a more general briefing on where the campaign was and where it was headed for the next week."[64] There was no evidence presented to the Committee that Berger's attendance at these meetings was anything but appropriate. Berger apparently functioned as an observer at the meetings, seeking to ensure that foreign policy issues were handled in an appropriate and objective manner.

On September 19, 1995, Robert Suettinger, NSC Director of Asian Affairs, met with Hong Kong businessman Eric Hotung to discuss Hotung's opinions on issues relating to Hong Kong, Taiwan, and China.[65] Hotung is a businessman and the head of the Hotung Institute, which has offices in Hong Kong, New York and Washington, D.C. The primary purpose of the Hotung Institute, according to documents presented to the Committee, is to promote a better understanding between the United States and China.[66] Berger testified that meetings between NSA staff and outside individuals with insights on foreign policy issues are common and helpful in assisting the NSC to analyze foreign policy issues.[67]

On September 20, 1995, DNC Chairman Donald Fowler sent a memo to Douglas Sosnik, White House Director of Political Affairs, requesting that a meeting be arranged between National Security Advisor Anthony Lake or Deputy NSA Berger and Mr. and Mrs. Eric Hotung.[68] Berger testified that he requested Stanley Roth, the NSC's Senior Director for Asian Affairs, to review this request and advise him on whether it would be appropriate to meet with Hotung, and was advised that a brief meeting and photograph would be "fine."[69] According to documents presented to the Committee, the meeting lasted five minutes and took place on October 4.[70]

During the public hearings, questions were raised regarding whether the DNC sought to facilitate Hotung's brief meeting with Berger in anticipation of a financial contribution from Mrs. Hotung, an American citizen. The evidence before the Committee, however, does not support the conclusion that Mrs. Hotung made her contributions to the DNC in exchange for a meeting between her husband and the NSC or that Berger agreed to the meeting in exchange for Mrs. Hotung's contribution. First, documents produced to the Committee indicate that Mrs. Hotung had already made a commitment to contribute $100,000 by September 14, and that the DNC expected to receive her check in mid-September, several weeks before the October 4 meeting with Berger took place.[71] Second, Berger testified that at the time of the meeting, he "was not aware that there was a Mrs. Hotung or of her financial relationship to the DNC or of Mr. Hotung's financial relationship to the DNC."[72] Berger also testified that he was "absolutely" certain that no one asked him to meet with Mr. Hotung in order to facilitate a contribution to the Democratic Party.[73]

Berger explained that Hotung "has had a lot of contact with previous Presidents and with a number of prominent Members of the Senate. He's the head of a very well regarded institute on China [and was advised by staff that] he is probably more knowledgeable about China and Hong Kong affairs than almost anybody they've talked to."[74] Berger testified that he had "no reason to believe that he [Hotung] would misuse a photo."[75] Indeed, the Committee

learned that Hotung has never ordered or picked up the photo.[76] Finally, Berger testified that the brief meeting did not have an impact on foreign policy, stating that "in no situation" could he "perceive in any way that any campaign contributor or campaign fundraising consideration had any influence on [foreign] policy. I say that categorically."[77]

CONCLUSION

The appropriate level of scrutiny to be applied to individuals who are invited to attend events with the President is a difficult issue which asks government officials to balance concerns of security and propriety against the desire to have a White House that is accessible to its citizens and open to a diversity of viewpoints. From 1993 to 1997, the combined DNC and White House procedures for assessing DNC events was unstructured and failed to prevent certain individuals from attending events, resulting in controversies publicized in 1996. The inadequacies have been addressed within the DNC and the White House, both of which have implemented guidelines to ensure appropriate review of future DNC events and attendees.

FOOTNOTES

[1] Judith Spangler deposition, 5/9/97, pp. 39–40.

Q: In the Reagan-Bush White House, did the Office of Political Affairs from time to time provide lists of people to be invited?

A: Yes.

Q: Did it do so frequently?

A: May I explain?

Q: Yes.

A: That for almost every event, different offices within the White House submit names to the social secretary; names of people that they would like to have invited to a dinner or a luncheon or some type of reception, or an event.

Q: Has that been so in every White House in which you have worked?

A: Yes.

Q: That for events, receptions, dinners, lunches, events of every kind, the Office of Political Affairs in those White Houses has submitted lists of invitees?

A: Yes.

Q: So that the Clinton-Gore White House is not the first White House which has done that?

A: No.

Q: In earlier administrations did it occasionally occur that the Republican National Committee would supply names of invitees?

A: Yes, they did.

Q: Was that so in the Reagan-Bush White House?

A: Yes.

Q: Was it so in the Bush-Quayle White House?

A: Yes.

Footnotes at end of Chapter 29.

[2] Exhibit 2000M: Affidavit of Colleen B. Callahan, 9/9/97, para. 4(D).

[3] Exhibit 2000M: Affidavit of Colleen B. Callahan, 9/9/97, para. 4(D).

[4] Exhibit 2000M: Affidavit of Colleen B. Callahan, 9/9/97, para. 3.

[5] Exhibit 2000M: Affidavit of Colleen B. Callahan, 9/9/97, para. 4(E).

[6] Exhibit 2000M: Affidavit of Colleen B. Callahan, 9/9/97, para. 4(H).

[7] Exhibit 2000M: Affidavit of Colleen B. Callahan, 9/9/97, para. 4(I).

[8] Exhibit 2000M: Affidavit of Colleen B. Callahan, 9/9/97, para. 3.

[9] Exhibit 2000M: Affidavit of Colleen B. Callahan, 9/9/97, para. 4(B).

[10] Exhibit 2000M: Affidavit of Colleen B. Callahan, 9/9/97, para. 3.

[11] Karen Hancox deposition, 6/10/97, pp. 217–21.

[12] Richard L. Sullivan deposition, 6/4/97, p. 106.

[13] Richard L. Sullivan deposition, 6/4/97, pp. 105–108; Karen Hancox deposition, 6/10/97, pp. 58–59.

[14] Karen Hancox deposition, 6/9/97, pp. 52–53.

[15] Karen Hancox deposition, 6/10/97, pp. 217–21.

[16] Karen Hancox deposition, 6/9/97, pp. 52–53.

[17] Karen Hancox deposition, 6/10/97, p. 51; see also Doug Sosnik deposition, 6/20/97, pp. 167–68, 184; Cheryl Mills deposition, 8/19/97, pp. 147–49.

[18] Karen Hancox deposition, 6/9/97, p. 78.

[19] Karen Hancox deposition, 6/9/97, p. 80.

[20] Judith Spangler deposition, 5/9/97, pp. 39–40.
[21] Karen Hancox deposition, 6/10/97, pp. 9–10.
[22] Exhibit 1073: New DNC Compliance Procedures and Fundraising Manual.
[23] Exhibit 1073: New DNC Compliance Procedures and Fundraising Manual.
[24] Exhibit 1072: Memorandum from Erskine Bowles to All Executive Office of the President Staff, 1/21/97.
[25] Samuel Berger, 9/11/97 Hrg. P. 4
[26] Staff interview with Samuel Berger, 8/28/97.
[27] Staff interview with Samuel Berger, 8/28/97.
[28] Staff interview with Samuel Berger, 8/28/97.
[29] Staff interview with Samuel Berger, 8/28/97.
[30] Staff interview with Samuel Berger, 8/28/97.
[31] Samuel Berger, 9/11/97 Hrg. P. 33; Staff interview with Samuel Berger, 8/28/97.
[32] Samuel Berger, 9/11/97 Hrg. P. 6; Staff interview with Samuel Berger, 8/28/97.
[33] Samuel Berger, 9/11/97 Hrg. P. 5; Staff interview with Samuel Berger, 8/28/97.
[34] Samuel Berger, 9/11/97 Hrg. Pp. 8; Staff interview with Samuel Berger, 8/28/97.
[35] Staff interview with Samuel Berger, 8/28/97.
[36] Samuel Berger, 9/11/97 Hrg. P. 6; Staff interview with Samuel Berger, 8/28/97.
[37] Staff interview with Samuel Berger, 8/28/97.
[38] Staff interview with Samuel Berger, 8/28/97.
[39] Samuel Berger, 9/11/97 Hrg. P. 63; Staff interview with Samuel Berger, 8/28/97.
[40] Samuel Berger, 9/11/97 Hrg. P. 63; Staff interview with Samuel Berger, 8/28/97.
[41] Samuel Berger, 9/11/97 Hrg. Pp. 63–64.
[42] *Washington Post*, 4/2/97.
[43] Staff interview with Samuel Berger, 8/28/97.
[44] Samuel Berger, 9/11/97 Hrg. Pp. 33–35; Exhibit 1074: Memorandum from National Security Advisor Anthony Lake to all NSC staff, 3/96, p. 4, para. 4(d).
[45] Staff interview with Samuel Berger, 8/28/97.
[46] Samuel Berger, 9/11/97 Hrg. P. 9.
[47] Samuel Berger, 9/11/97 Hrg. P. 71.
[48] Samuel Berger, 9/11/97 Hrg. Pp. 8, 43, 70.
[49] Exhibit 1072: Memorandum from Erskine Bowles to all Executive Office of the President Staff, 1/21/97.
[50] Staff interview with Samuel Berger, 8/28/97.
[51] Exhibit 1071: Memorandum from Samuel Berger to all NSC Staff, 6/13/97.
[52] Exhibit 1071: Memorandum from Samuel Berger all NSC Staff, 6/13/97; Samuel Berger, 9/11/97 Hrg. P. 29.
[53] Staff interview with Samuel Berger, 8/28/97.
[54] Exhibit 1071: Memorandum from Samuel Berger to all NSC Staff, p. 4, 6/13/97.
[55] Exhibit 1071: Memorandum from Samuel Berger to all NSC Staff, p. 4, 6/13/97.
[56] Senator Glenn, 9/11/97 Hrg. Pp. 30–32.
[57] Exhibit 2002M: News reports discussed during Committee Hearing, 9/11/97 (reporting that former National Security Advisor Brent Scowcroft attended campaign strategy meetings and engaged in other political activities during the 1992 presidential race).
[58] *New York Times*, 9/28/92.
[59] Samuel Berger, 9/11/97, Hrg. P. 32.
[60] Samuel Berger, 9/11/97, Hrg. P. 18.
[61] Samuel Berger, 9/11/97 Hrg. P. 18.
[62] Samuel Berger, 9/11/97 Hrg. P. 18.
[63] Samuel Berger, 9/11/97 Hrg. P. 19.
[64] Samuel Berger, 9/11/97 Hrg. P. 19.
[65] Exhibit 1077: Memorandum from James W. Symington to Appointment Scheduler, 9/13/95.
[66] Exhibit 1081: Memorandum from Don Fowler to Doug Sosnik via Karen Hancox, 9/20/95, DNC 3140633.
[67] Samuel Berger, 9/11/97 Hrg. Pp. 36–37, 42–43.
[68] Exhibit 1081: Memorandum from Don Fowler to Doug Sosnik via Karen Hancox, 9/20/95, DNC 3140633.
[69] Exhibit 1082: E-mail from Stanley O. Roth to Sandy Berger, 10/3/95.
[70] Exhibit 1083: Appointment Schedule for Samuel Berger, 10/04/95, SUP 003038.
[71] Exhibit 2001M: Memorandum from DNC Chairman Fowler to David Mercer, 9/14/95; Minority Counsel, 9/11/97 Hrg. Pp. 41–42; Samuel Berger, 9/11/97 Hrg. Pp. 41–42.
[72] Samuel Berger, 9/11/97 Hrg. Pp. 39–40.
[73] Samuel Berger, 9/11/97 Hrg. P. 40.
[74] Samuel Berger, 9/11/97 Hrg. Pp. 23–24.
[75] Samuel Berger, 9/11/97 Hrg. P. 24.
[76] Sen. Lieberman, 9/11/97 Hrg. P. 66.
[77] Samuel Berger, 9/11/97 Hrg. P. 43.

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PART 5 FUNDRAISING AND POLITICAL ACTIVITIES OF THE NATIONAL PARTIES AND ADMINISTRATIONS

Chapter 30: Roger Tamraz

Roger E. Tamraz is an American businessman involved in investment banking and international energy projects. In the mid-1990s, he sought to become a "dealmaker" in an oil pipeline project that would cross the Caspian Sea region of Central Asia. In the hope of obtaining U.S. Government support for his project, Tamraz used his past relationship with the Central Intelligence Agency, met with mid-level U.S. Government officials, and made political contributions to the Democratic Party.

The Committee's investigation focused on whether officials of the Central Intelligence Agency, the National Security Council, the Democratic National Committee, the White House, or the Department of Energy improperly promoted Tamraz's pipeline proposal or gave him access to high-level government officials; why Tamraz was permitted to attend DNC events in the White House when staff had recommended that he not have any contact with high-level officials; and whether U.S. policy on the Caspian Sea pipeline changed as a result of Tamraz's political contributions or access to government officials.

FINDINGS

(1) Roger Tamraz openly bought access from both political parties.

(2) Tamraz's attendance at DNC events was based on his political contributions and was unwise given the warnings that he might misuse such attendance. DNC Chairman Donald Fowler endorsed Tamraz's attendance at these events, despite early warnings from DNC staff and opposition from NSC officials and Vice President Gore's staff.

(3) A Central Intelligence Agency official promoted Tamraz's pipeline proposal in 1995, despite knowing that the NSC opposed it.

(4) An Energy Department official promoted additional political access for Tamraz in 1996, despite knowing that the NSC and other officials opposed it.

(5) U.S. policy in the Caspian Sea was not affected by Tamraz's lobbying, political contributions, or presence at DNC-related events. This policy was solidified in early October 1995 and did not incorporate any aspect of Tamraz's proposal.

OVERVIEW

Tamraz was born in 1940 in Cairo, Egypt. He attended the American University of Cairo, Cambridge University, and Harvard Business School. In 1967, Tamraz went to work for the investment firm of Kidder, Peabody & Co., first in New York City, then in Beirut. He left in 1973 to establish his own Beirut-based investment-banking firm, the First Arabian Corporation. In the mid-1980s, Tamraz was chairman of Bank Al-Mashrek, Lebanon's second largest bank, as well as the head of Jet Holdings, which owned TransMediterranean Airway and Middle East Airlines. In 1989, Tamraz left Lebanon after being charged by the Lebanese govern-

ment with embezzlement and negligence in connection with the failure of his Bank Al-Mashrek. He moved to the United States, became an American citizen, and founded TAMOIL, an oil company. Tamraz is currently President of Oil Capitol Limited.

Beginning as early as 1973, Tamraz's business ventures have received significant media coverage. In the 1980s, Tamraz learned the value of making political contributions when, as a legal permanent U.S. resident living in Beirut, he became a contributor to the Republican Party. As a result, he was recommended by the chairman of the Republican National Committee for a position with the Reagan Administration. Since that time, Tamraz was also reported to have had significant contact with the Central Intelligence Agency ("CIA"), which apparently continued until shortly before this Committee's proceedings began in 1997.

In the 1990s, Tamraz, who was then living in New York City and Paris, was promoting a pipeline venture in the Caspian Sea region. In May and June of 1995, Tamraz met with many foreign officials and mid-level U.S. government officials, generally attempting to use every possible avenue to gain support for his pipeline proposal. In June 1995, the U.S. officials informed Tamraz that his proposal would not gain Administration support. Beginning that same month, a mid-level CIA official began to advocate Tamraz's pipeline proposal to the NSC, despite knowing that the NSC opposed it.

In July 1995, Tamraz began to contribute to the Democratic Party and concurrently to request official meetings with higher-level government officials. Tamraz never obtained an official meeting with the President or Vice President. Tamraz did, however, attend several DNC events where the President, Vice President or other Administration officials were present, despite opposition within the National Security Council and the Vice President office's to Tamraz's contact with high-level officials. DNC Chairman Donald Fowler supported Tamraz's attendance at DNC events, despite being aware of the objections to his attendance within the NSC and the Vice President's office.

In April 1996, a mid-level Department of Energy official also promoted Tamraz's efforts to gain access to President Clinton during a telephone conversation with an NSC official.

Despite all of these efforts, Tamraz was not successful in obtaining U.S. Government support for his Caspian Sea pipeline proposal. In fact, the proposal supported by the U.S.—a contract among several foreign governments and oil companies—was signed on October 7, 1995, and did not involve Tamraz or his proposal.

The Committee investigated these issues by conducting numerous depositions and interviews, reviewing documents, and hearing two days of public testimony.[1]

1970–1990: TAMRAZ'S BUSINESS VENTURES, DEALINGS WITH THE CIA AND POLITICAL CONTRIBUTIONS

Business ventures

In 1973, Fortune magazine reported that the Egyptian government had finally decided to build a pipeline from the Gulf of Suez to the Mediterranean Sea.[2] According to Fortune, "What was most

Footnote at end of Chapter 30.

startling about the announcement was that the Sadat government gave the job, not to the eleven-nation consortium with which it had been negotiating for three years, but to the Wall Street firm of Kidder, Peabody & Co."[3] The magazine highlighted the role of Tamraz, then 34 and Kidder's vice president in Beirut, as the individual responsible for negotiating the deal.[4] The deal was reportedly worth $345 million and Tamraz received a five percent share—worth $15 million at the time.[5]

In 1974, Tamraz established the First Arabian Corporation, which was a syndicate made up of wealthy Kuwaiti and Saudi Arabian investors.[6] In 1978, Newsweek reported that Tamraz "has been involved in some of the most widely publicized international business transactions of recent years."[7] Tamraz himself summarized his approach: "I'm interested in things they say can't be done."[8] Even then, Tamraz had detractors who saw him "as a promoter who hasn't delivered the goods."[9]

Reported contacts with the CIA

According to Tamraz, it was during the early to mid-1970s that the CIA first turned to him for advice regarding the oil crisis.[10] Thereafter, Tamraz apparently became a regular unofficial contact of the CIA—"the kind of guy who knew everybody and you had lunch with him every couple of months," according to one former U.S. intelligence official.[11] Tamraz testified that since 1973, he has been in constant contact with CIA officials on a voluntary basis, estimating that in the past 25 years, he has probably had contact with roughly 20 to 25 different CIA employees.[12]

Tamraz testified that in the 1980s, his contacts with the CIA continued.[13] According to Tamraz and press reports, then-CIA Director William J. Casey called on Tamraz after the Israeli invasion of Lebanon in 1982.[14] Casey reportedly asked Tamraz to intercede with Prime Minister Menachem Begin because Casey was frustrated with the slow pace of U.S.-led negotiations and hoped that Tamraz could use his high-level contacts to accelerate an Israeli withdrawal from Lebanon.[15] Throughout these years, Tamraz testified that he has also hired former CIA employees, enhancing his connections with the agency.[16]

RNC's recommendation for a Reagan administration position

Tamraz began to make political contributions to the Republican Party in the 1980s. He testified that he contributed enough money to the RNC to qualify as a Republican Eagle.[17] Federal Election Commission records show that Tamraz gave $32,000 to the Republican Party between 1981 and 1992, but Tamraz told *Congressional Quarterly* that he thought he gave more than that, possibly in "soft money" donations, which were not recorded at the FEC until 1991.[18] Tamraz testified that he received a personal thank-you letter from President Ronald Reagan"[19] and an NSC official told the Committee that Tamraz had met twice with President Reagan.[20]

In addition, then-RNC Chairman Frank Fahrenkopf, Jr., sent a letter on behalf of Tamraz to Robert Tuttle, Reagan White House Director of Presidential Personnel. Fahrenkopf recommended Tamraz for a position in the Reagan Administration, "on a committee or board connected with banking or petroleum, specifically re-

lating to Arab countries."[21] In support of this recommendation, Fahrenkopf not only pointed out that Tamraz was from Beirut, he also stated that "Mr. Tamraz is an Eagle, and a strong supporter of the Administration." Fahrenkopf then stated generally that Tamraz has expertise in banking and the petroleum industry.[22] Tuttle replied to Fahrenkopf thanking him for his "letter in [sic] behalf of Roger Tamraz" and requesting that he forward Tamraz's resume for consideration.[23]

Tamraz was never appointed to a position in the Reagan Administration, but the 1985 Fahrenkopf letter demonstrates that the recommendation was based on his political contributions. Upon learning that Tamraz had produced a copy of the letter to the Committee, Fahrenkopf stated in a letter to the Committee that during his tenure at the RNC he made many recommendations for similar appointments, although he does not believe he actually signed the Tamraz letter.[24]

Tamraz leaves Lebanon after embezzlement charges

Tamraz testified that in late 1988, forces hostile to Tamraz came to dominate the Lebanese political scene.[25] At that time, a run on Tamraz's Al-Mashrek Bank forced its collapse. Tamraz fled the country after claiming to have been kidnapped and later released in return for a multimillion-dollar ransom.[26] Subsequently, Lebanese officials brought charges against him for embezzlement and mismanagement.[27] Tamraz testified that these charges were politically motivated and were largely a result of his contacts with Israel.[28] Tamraz also testified that he was found innocent of any crime.[29] Lebanese authorities have sought his extradition through Interpol, but, according to Tamraz, "a Lebanese court-appointed authority determined in 1990 that there was not criminal activity" relating to his bank.[30] In 1992, however, the Lebanese authorities convicted him in absentia and there is an outstanding Interpol warrant for his arrest.[31]

1994—1995: THE COMMERCE DEPARTMENT

During the Committee's investigation, allegations surfaced that the Clinton Administration's Commerce Department had selected individuals for Department trade missions based on their support of the Democratic Party. Although these allegations were not supported by the evidence presented to the Committee, see Chapter 26, the Committee obtained documents regarding the Department's contacts with Tamraz and his company, Oil Capital Limited. Documents and deposition testimony reveal that Tamraz was twice rebuffed by the Department of Commerce.

Prior to any political contributions to the Democratic Party, which were first made in July of 1995, Tamraz submitted an application to attend a 1994 trade mission with Secretary Ronald Brown.[32] Tamraz's name was initially placed on a list of potential participants, but was later removed by the Office of the General Counsel after its vetting process discovered information on Lexis-Nexis that disqualified Tamraz.[33] Tamraz testified that he was told that he would not be invited to the trade mission because the department considered him unacceptable. Tamraz assumed that he

was rejected because of the publicized embezzlement charges against him.[34]

In October of 1995, Oil Capital Limited submitted a request to the Department seeking support for its attempt to purchase an energy concern in Hungary. The Commerce Department rejected this request as well. The Department's rejection was based again on Tamraz's questionable background and on uncertainties regarding Oil Capital's status as an American company.[35]

1995: THE CASPIAN SEA PIPELINE

U.S. policy on the Caspian Sea pipeline

The United States has pursued a consistent pipeline policy throughout most of the world: the support of multiple pipelines for the transit of energy resources in order to diversify political and economic risks and enhance energy security.[36] U.S. policy in the Caspian Sea region of Central Asia was established in early 1995 and has two primary objectives: (1) support for multiple pipeline routes and (2) insistence that pipeline contracts be established and operated pursuant to commercially accepted principles.[37] Sheila Heslin, the NSC official in charge of implementing the U.S. Caspian Sea pipeline policy from April 1995 to November 1996, testified that in June 1995 the U.S. policy in the Caspian Sea region was "the development of multiple pipelines on commercially viable international terms."[38]

The crucial period for the implementation of U.S. policy was from the spring of 1995 to October 7, 1995.[39] During this time, U.S. and foreign officials, an international consortium of foreign governments and private oil companies, as well private businessmen like Tamraz were in a contest to determine early pipeline routes and the financial terms for constructing and operating those routes.[40] Also during this time, Heslin chaired an interagency group on Caspian Sea pipeline policy, which according to Heslin, "coordinated policy very carefully . . . . We were very concerned to make sure U.S. policy was tightly coordinated because we feared that different agencies could easily be played off against each other."[41] Tamraz's pipeline proposal and his activities in the Caspian Sea region was a subject of discussion within the interagency group.

In the spring of 1995, the interagency group was concerned because Tamraz apparently was traveling in the Caspian Sea region attempting to become a dealmaker between governments and oil companies who hoped to be involved in the construction of an oil pipeline in the region.[42] The group had also heard that Tamraz was calling his pipeline proposal a "peace pipeline" because he believed that his proposed route would foster peace in the region. The group understood, however, that the real incentive behind Tamraz's pipeline proposal was the fact that he planned to retain five percent of the revenues in exchange for forging a deal. According to Heslin, Tamraz's proposal to become a dealmaker, if successful, would have resulted in personal profit to Tamraz of approximately $125 million.[43]

The interagency group determined that Tamraz's proposal to become a "dealmaker" in the Caspian Sea pipeline project was contrary to U.S. policy, which sought commercially viable contracts

without the intervention of dealmakers.[44] According to Heslin, the group nonetheless decided "that as an American, Roger Tamraz deserved a hearing in front of his Government, but that we should do so at a mid-level initially and then assess."[45] Agencies officials thereafter met with Tamraz to discuss his proposal and the CIA also became involved in the process.

Ultimately, on October 7, 1995, a contract was signed that provided for multiple early pipeline routes pursuant to commercially viable terms, thereby implementing U.S. policy.[46] Heslin testified that the success of U.S. policy was due in large part to the coordination within the executive branch of the Government, the importance placed on the policy by National Security Advisors Anthony Lake and Samuel R. Berger, and by President Clinton himself, who called President Heidar Aliyev of Azerbaiijan "at the key moment" in the negotiations.[47]

The project announced on October 7, 1995 did not incorporate any aspect of Tamraz's proposal despite Tamraz's efforts to become part of the project.[48] The Committee investigated some events surrounding the Caspian Sea pipeline issue, focusing on Tamraz's attempts to become part of the project.

May–June 1995: Meetings with executive branch officials

In May and June of 1995, several mid-level executive branch officials met with Tamraz to discuss his proposal. During these meetings, Tamraz sought to persuade the officials to support or, at least, not object to, his "peace pipeline" proposal.[49] This series of meetings was routine and proper, and occurred prior to any political contribution by Tamraz to the Democratic Party.[50] Testimony establishes that the officials met to listen to Tamraz's proposal as they did with many private individuals and businesses. No evidence was presented to the Committee that the agencies offered support for Tamraz's commercial interests.[51]

One of the meetings between Tamraz and executive branch meetings was with Sheila Heslin. According to Heslin, the meeting was scheduled after Ed Pechous, a former CIA official employed by Tamraz, called Heslin "repeatedly" requesting that she meet with Tamraz.[52] Heslin agreed to meet with Tamraz and scheduled the meeting for June 2, 1995. Heslin testified that before the meeting, she "tasked the interagency [group] to basically check out the representations he had made at the various departments with regard to support from various entities and governments."[53] After receiving information from a variety of sources, Heslin discovered that Tamraz's representations "did not check out."[54]

Heslin had a 20-minute meeting with Tamraz and Pechous on June 2, 1995. According to Heslin, she explained U.S. policy and "asked [Tamraz] a bunch of tough questions," including why he had misrepresented his support and whether he was seeking exclusive rights.[55] Heslin testified that she did not get very satisfactory answers and that Tamraz told her that he was seeking to charge five percent of the overall costs of the deal. Heslin explained that that "was the clincher" against his deal, because such deals were against U.S. policy and were not "economically viable."[56]

Tamraz testified that during this meeting, Heslin was in "listening mode" only, and that she was skeptical of his proposal, as were

the other mid-level officials with whom he met in May and June.[57] According to Tamraz, the mid-level officials during these meetings in the spring of 1995 gave him "the same song."[58] Tamraz had no other contact with Heslin or the other agency officials after June 1995.[59]

Bob of the CIA

In preparation for her June 2 meeting with Tamraz, Heslin requested information from the CIA's Directorate of Intelligence ("DI"), the CIA division that analyzes information.[60] Heslin testified that just prior to her meeting, both a colleague at the CIA's DI and an official of the CIA's Directorate of Operations ("DO")—the CIA division that gathers information, often undercover—told her that they would be sending her a report.[61] The official from the DO was referred to during Committee proceedings as "Bob of the CIA" in order to protect his undercover identity. Heslin "was very surprised" that the DO would "decide[] on its own" to send a report on Tamraz, when she had not requested one.[62]

Heslin did receive two separate CIA reports in May 1995, prior to her June 2, 1995 meeting with Tamraz—one report was from the DI and the other was from the DO. Heslin testified that "there was a very big difference between the reports."[63] According to Heslin, the DI report contained negative information about Tamraz, whereas the DO report, signed by Bob's supervisor William Lofgrin, "was almost wholly positive."[64] Heslin testified that she did not understand this discrepancy.[65] This CIA pattern of the DO providing positive information about Tamraz to the NSC continued in early June 1995, when Bob began to contact Heslin and promote Tamraz and his pipeline proposal.

Heslin testified that shortly after her June 2 meeting with Tamraz, she received a call from Bob of the CIA. During that call, Bob apologized for the contents of the DO's report, telling Heslin that his boss Lofgrin (who later went to work for Tamraz) had "asked him personally to call [Heslin] and review his history."[66]

According to Heslin, Bob knew details about her June 2 meeting with Tamraz, and began to "rebut every tough question" she had posed to Tamraz in that meeting.[67] Heslin testified that Bob "was attempting to essentially provide [her] information to ease [her] concerns on the questions that [she] had raised with Tamraz."[68] Heslin found this "strange."[69] Heslin also testified that when talking about Tamraz, Bob had a real reverence in his voice about some of Tamraz's past involvement with the CIA.[70]

Heslin testified that between early June and late October 1995, Bob called her anywhere from three to five times in what she testified could "only be characterized as lobbying in favor of Roger Tamraz."[71] Heslin testified that she was "astonished" when Bob told her specific details about Tamraz's pipeline deal, once even assuring her that the Turkish government was almost "on board."[72] According to Heslin, Bob never mentioned Tamraz's political contributions, and the evidence establishes that Bob's calls began before Tamraz had begun to contribute to the Democratic Party in July of 1995.[73]

Sometime in late August or early September 1995, evidence presented to the Committee indicates that Bob also contacted the Vice

President's staff to discuss Tamraz.[74] At this time, Tamraz had requested an official meeting with Vice President Gore and was waiting for a response.[75]

The last telephone call Heslin received from Bob was in mid-October, after the Caspian Sea pipeline project had been signed and U.S. policy had been implemented. During this call, Heslin recalled that once again Bob urged her to support Tamraz's deal, stating that it was important that they "get Tamraz back on board" in the region.[76]

It was also in mid-October 1995 that Bob initiated a telephone call to Donald Fowler, chairman of the DNC. Bob wrote in an October 20, 1995 memorandum provided to the Committee that "[o]n October 19 Don Fowler called me at the behest of . . . Roger Tamraz."[77] However, during his deposition, portions of which have been declassified, Bob testified that in fact he had called Fowler first. Bob testified that he placed the first call to Fowler on October 18, before Fowler ever contacted him.[78] Fowler was not in, so Bob left his full name with a young man who answered the phone.[79]

According to Bob, Fowler returned the call the next day.[80] Fowler testified that he does not have any memory of this phone call, but according to Bob, Fowler told him that he understood that Bob was in contact with the Vice President's office.[81] In response, Bob testified that he informed Fowler that he could not help with a meeting with the Vice President, referring Fowler to an individual inside the Vice President's office.[82] Bob also testified that the conversation with Fowler was brief, that he was working undercover and that he never mentioned his CIA affiliation.[83] Bob also testified that during the call he was "not sure that Fowler [knew] who he [was] talking to."[84] (Bob and Fowler spoke one more time, in mid-December 1995. These calls are both reviewed fully below.)

Bob's last contact with Heslin was at a dinner for federal and foreign officials in late October 1995. According to Heslin, after this dinner, Bob "insisted" that he drive Heslin home.[85] During the ride, Bob again stated that he had more important information about Tamraz he wished to share with her. According to Heslin, it was her view by this point was that Bob was nothing more than a lobbyist for Tamraz, and that she did not want any additional information.[86]

Although the majority of Bob's deposition testimony remains classified, it can be generally stated that Bob agreed with Heslin that he was the one who initiated all contacts with Heslin. Bob also testified, however, that contrary to Heslin's testimony, he only provided Heslin with *negative* information about Tamraz during those calls. Bob's testimony is contrary to Heslin's public testimony before the Committee. Based on Bob's deposition transcript as a whole, the testimony of Heslin, Lofgrin's positive position and the positive DO reports, Bob's assertion that he provided only negative information about Tamraz to Heslin is not credible. Instead, the opposite conclusion is warranted—that Bob of the CIA lobbied Heslin on behalf of Tamraz and his pipeline project.

In sum, from June 1995 through October 1995, the evidence establishes that Bob, then an employee of the CIA's Directorate of Operations, lobbied the NSC on behalf of Tamraz and his pipeline proposal. The lobbying began in May of 1995, when Bob and his

boss Lofgrin decided "on their own" to send a positive report about Tamraz to Heslin. Heslin had not requested this report and found it ultimately to be inaccurate. Bob's lobbying began before Tamraz had made any political contributions to the Democratic Party and there is no evidence that he ever mentioned political contributions to Heslin. Bob's lobbying seemed driven by a desire to promote the idea that the U.S. Government should support Tamraz's pipeline deal. Of significance is the fact that Bob's lobbying ended shortly after Tamraz had been excluded from the pipeline deal in October of 1995.

Although the reasons behind Bob's lobbying are unclear, it is clear that Bob's lobbying was not tied to Tamraz's involvement with either Fowler or the Democratic Party. The Committee did not completely resolve these issues and further investigation of CIA involvement with Tamraz is warranted.

JULY–OCTOBER 1995: CONTRIBUTIONS TO THE DEMOCRATIC PARTY

Contribution history

Tamraz testified quite bluntly about his persistence in pursuing his business ventures with top officials in the U.S. government: "[I]f they kicked me from the door, I will come through the window."[87]

Tamraz began to contribute to the Democratic Party in July 1995, after the interagency group had given Tamraz the signal that his pipeline proposal would not gain Administration support. Tamraz's first substantial contribution to the Democratic Party was July 19, 1995 and his last was October 19, 1995.[88] Committee documents and FEC records show the following contributions by Tamraz:

July 19, 1995:	
to the DNC Federal Account	$20,000
to Virginia Democratic Party	25,000
to Louisiana Democratic Party	25,000
to Richard Molpus for Governor of Mississippi	20,000
August 29, 1995: to Richard Molpus for Governor of Mississippi	5,000
September 10, 1995: to the DNC (for Tamoil Inc.)	50,000
October 19, 1995: to Virginia Democratic Party	75,000
Total: from July to October 1995	220,000

Interestingly, Tamraz made no substantial contributions to the Democratic Party after October 1995, which was the month the contract for the Caspian Sea pipeline was signed. Apparently, the mid-level U.S. officials had stopped Tamraz at the front door in June of 1995, Bob of the CIA was not able to help him, and thereafter Tamraz attempted to "come through the window"[89] by way of political contributions. Indeed, Tamraz testified that he had made political contributions in order to gain access to the White House and that one reason for seeking access was to promote his pipeline project.[90] As discussed below, Tamraz's efforts to gain access to higher-level officials and promote his pipeline by way of political contributions met with limited success.

The DNC's acceptance of Tamraz's contributions

According to Tamraz, sometime before July 1995, he received a DNC solicitation letter incorrectly addressed to "Robert Tamraz."[91]

In response, Tamraz stated that he contacted the DNC to discuss contributions. Documents produced to the Committee show that the DNC prepared a memorandum to Chairman Fowler in anticipation of Fowler meeting with Tamraz to discuss possible contributions.[92] The memorandum, dated July 12, 1995, was prepared by Alejandra Y. Castillo, a DNC Finance Division employee. The memorandum explained that Tamraz had indicated he would like to give $300,000, but warned that accepting the contribution may "generate considerable problems for the DNC."[93] The memorandum set forth in detail the controversies in Tamraz's past, including the Lebanese embezzlement charges and the Commerce Department's decision to bar Tamraz from participating in certain trade activities. The memorandum even warned Fowler about Tamraz's motivation, stating that "Mr. Tamraz seeks political leverage to secure his oil ventures in the Russian Republics (Caspian Oil Project)."[94]

The memorandum, which concluded with "Pay attention to these warning signals!", informed Fowler that the "DNC Finance Department is pending [sic] your guidance on whether to continue our conversation with Mr. Tamraz and/or extend an invitation to participate in DNC events."[95] Fowler thereafter accepted contributions from Tamraz and supported his attendance at a variety of DNC events. While these activities were legal, Fowler's decision to support Tamraz's attendance at DNC events was unwise given the warnings that Tamraz might misuse his attendance at such events.

SEPTEMBER 1995: REQUEST FOR AN OFFICIAL MEETING WITH THE VICE PRESIDENT

In August 1995, Haroun Sassounian, a wealthy business associate of Tamraz, requested that the Vice President have an official meeting with him and Tamraz to discuss a Caspian Sea pipeline venture.[96] Tamraz testified that he never requested this meeting and that Sassounian may have wanted to push his pipeline proposal because it benefitted Armenia.[97] Nonetheless, the Vice President's staff sought information in order to make a recommendation on whether the Vice President should meet with Tamraz.

Heslin, who worked closely with the Vice President's National Security staff on energy issues, was contacted by Richard Grimes of the Vice President's National Security staff about Sassounian's request.[98] Heslin provided Grimes with information about Tamraz and recommended against the meeting.[99] After Grimes consulted with Heslin and other Vice Presidential staff members, Leon Fuerth, the Vice President's national security advisor, sent a memorandum on September 13, 1995 to the Vice President recommending that he not meet with Tamraz.[100] On October 2 and 3, the Vice President's staff notified Sassounian and Tamraz that no official meeting would be scheduled.[101]

Although Tamraz never had an official meeting with the Vice President, he did attend several DNC-related events where the President or Vice President were in attendance.

TAMRAZ'S ATTENDANCE AT DNC EVENTS

Summary of events

As discussed above, from 1994 to April 1996, a variety of federal officials opposed Tamraz's efforts to have access to high-level U.S. Government officials. In 1994 and 1995, the Commerce Department twice decided not to support the business ventures of Tamraz or his company. In June 1995, the Caspian Sea pipeline interagency group decided that they would recommend to their superiors that Tamraz not receive access to higher-level federal officials. In September 1995, Fuerth recommended against a Tamraz meeting with the Vice President.[102]

In September and October 1995, Tamraz nonetheless attended three DNC events. On September 11, he attended a Business Council Reception at the White House where 320 people were in attendance; on September 15, he attended a DNC Trustee Dinner at the White House, where 80 people were in attendance; and on October 2, he attended a fundraiser held at a private residence and sat at the head table with Vice President Gore.[103]

After the October fundraiser, the Vice President's staff forwarded Fuerth's memo to the DNC, apparently in an attempt to prevent future contact between Tamraz and the Vice President.[104] Thereafter, Tamraz was disinvited from an October 5, 1995, DNC coffee at the White House.[105]

As noted previously, on October 7, 1995, the Caspian Sea pipeline contract was signed, and Tamraz was excluded from the project. Thereafter, according to Heslin's testimony, she was less concerned with Tamraz and his access to the federal government because he was less able to misuse his access to push for his Caspian pipeline deal.[106]

After Tamraz was excluded from the project, his contributions to the Democratic Party dwindled. Perhaps in hopes of encouraging more contributions, the DNC invited Tamraz to a series of DNC events beginning on December 13, 1995. He attended a 300-person holiday reception at the White House on December 13, 1995; a 120-person DNC Trustee Dinner on March 27, 1996; a DNC coffee on April 1, 1996 where approximately 15 people were in attendance; and, finally, a showing of a movie at the White House on June 22, 1996 organized by the DNC, where approximately 50 people were in attendance.[107]

Tamraz testified that he did not have any substantive conversations with the President or Vice President at these events.[108] Nonetheless, Tamraz's attendance at these DNC events was contrary to the recommendations of federal officials and was of concern to those involved in the Caspian Sea pipeline project.

Fowler's role

In early October 1995, after Tamraz was notified that the Vice President had declined to schedule a meeting with him and after he had been disinvited from an October 5, 1995 DNC coffee, Tamraz testified that he had a conversation with Fowler and suggested that Fowler "pick up" information about him, including information from the CIA, in order to clear his name with the White House.[109] Tamraz stated that he gave to Fowler Bob of the CIA's

name, most likely both his first and last name, as well as his telephone number.[110] Tamraz testified that he also spoke with Bob at this same time, as he often did during his trips to Washington.[111] In his deposition, Bob confirmed that he spoke to Tamraz in October and testified that Tamraz informed him that Tamraz had given his name and phone numbers to Fowler.[112]

On October 18, 1995, Bob of the CIA called Fowler and left a message that he had called.[113] On October 19, 1995, according to Bob of the CIA, Fowler returned his call and the two discussed the issue of Tamraz meeting with the Vice President.[114] Bob testified that he told Fowler that he could not assist with setting up any meetings, despite evidence that Bob had already contacted the Vice President's office on Tamraz's behalf.[115]

Two months later, on December 13, 1995, Fowler called Bob again. According to Bob, Fowler repeated Tamraz's assertions that the NSC was a captive of the oil companies and was unfairly preventing Tamraz from attending DNC events.[116] Bob testified that he declined to provide any information to Fowler.[117] Bob also testified that during this phone call, like his first phone conversation with Fowler in October, he couldn't "say for certain how [Fowler] knew who he was talking to because CIA was never mentioned."[118]

According to documents presented to the Committee, Fowler also telephoned Heslin in mid December 1995.[119] Heslin testified that this was her first and only phone conversation with Fowler.[120] During that call, Heslin testified that Fowler told her that she would be receiving information about Tamraz from Bob of the CIA.[121] Heslin complained about the call to her superior, Nancy Soderberg, Deputy Assistant to the President for National Security Affairs.[122] Soderberg told the Committee during a staff interview that after talking to Heslin, she spoke to Fowler and told him not to call NSC staff.[123]

After talking to Fowler, Soderberg told the Committee that she decided to check up on Tamraz herself. Soderberg and Heslin stated that, as Heslin sat in Soderberg's office, Soderberg called Randy Beers, senior director of intelligence at the NSC, and asked him to find out about Tamraz and his relationship with the CIA.[124] Beers told the Committee that he subsequently requested information from the CIA regarding Tamraz.[125] On December 29, 1995, the CIA faxed to Beer's assistant a report containing information about Tamraz.[126]

The December 1995 report was the third report that the CIA had sent to the NSC regarding Tamraz. The first two reports were sent to Heslin in May 1995 to prepare her for her June 2 meeting with Tamraz (one from the CIA's DI and the other from the CIA's DO). The third report, although using the same format as the reports in May, was faxed by the CIA directly to Beers's office in late December 1995.

The Committee investigated whether it was Fowler who had influenced the CIA's decision to send a third report to the NSC and whether Fowler had any influence on the contents of that report. These issues arose because Fowler had contacted Bob in mid December before the report was sent, and because the report contained only positive information about Tamraz. It does not appear, however, that the CIA sent its third report in December in re-

sponse to Fowler's call to Bob. Because the report was sent to Beers's office directly, following Beer's request to the CIA for information on Tamraz, it is more likely that the CIA sent the report in response to a request from Beers, not Fowler. It also does not appear that Fowler had any influence on the contents of the report. The third CIA report was drafted by Bob of the CIA, who had already sent a report to Heslin in May 1995 that, according to Heslin, had "wholly positive" information regarding Tamraz. Thus, it is no surprise, based on Bob's first report, as well as on Bob's promotion of Tamraz during calls to Heslin, that Bob's report in December contained only positive information about Tamraz. The Committee was also informed that the third report may have contained only positive information due to appropriate internal legal restrictions within the CIA itself. Fowler's contact with Bob was unwise although he testified that he could not remember telephone calls with anyone at the CIA.[127]

No effect on policy

Although Tamraz's political contributions to the Democratic Party afforded him limited access to the President and Vice President, U.S. policy toward the Caspian Sea pipeline project was not affected by either Tamraz's contributions or his access. Indeed, when Tamraz was asked whether he regretted making his contributions to the Democratic Party, which totalled less than $300,000, Tamraz responded that "I think next time, I'll give 600,000."[128]

APRIL 1996: DEPARTMENT OF ENERGY OFFICIAL TALKS TO HESLIN

Tamraz's attendance at March 27 and April 1, 1996 DNC events

On March 27, 1996, Tamraz attended a DNC Trustee Dinner at the White House along with 120 other guests.[129] Tamraz testified that during a brief "introduction to the President," he mentioned his pipeline project, but according to Tamraz, the President's reaction was to respond that he would "like to see jobs coming to America."[130] Tamraz also testified that he told the President that "if somebody wants to hear me out, I'm available."[131] At that same event, Tamraz testified that he also spoke to Thomas F. McLarty, Counselor to the President and Special Envoy for the Americas, in a reception line and, in very brief exchange, the two discussed the oil industry in general.[132] According to McLarty, Tamraz talked about his pipeline project and then the two discussed more generally "the importance of lessening the U.S. dependence on the Middle East for energy supplies, something that [McLarty] felt very strongly about for a number of years and conveyed on a number of occasions to the President and others."[133]

During this dinner, Ann Stock, a social secretary at the White House, made notes about some of the President's conversations that evening. In a memorandum to the President the next day, March 28, Stock mentioned the President's brief conversation with Tamraz, writing that Tamraz "wanted to discuss the pipeline that will go from the Caspian Sea to Turkey. You told him that someone would follow-up with him. He will be at the 4/1 breakfast."[134] The President wrote on the memo: "Does Azer. Gov't want *this*" and "cc

M McLarty."[135] Based on the President's notations, McLarty understood that he was being asked to obtain information about the pipeline proposal.[136]

On April 1, McLarty and Tamraz attended a breakfast/coffee at the White House, along with approximately 13 other guests.[137] Tamraz testified that he spoke to McLarty "for about 30 seconds before we sat down"[138] and gave him a brochure from his company and business card.[139] Tamraz said he did not expect to hear back from McLarty, but again told McLarty that "[i]f anybody is interested to talk to me about it, I'm available."[140] McLarty testified that he recalled attending the coffee and seeing Tamraz, but did not recall this brief exchange.[141]

Follow-up on the pipeline project

Between March 27 and April 1, records indicated that McLarty sent a fax to Kyle Simpson, a senior advisor at the Energy Department.[142] McLarty and Simpson both told the Committee that McLarty often contacted Simpson when he needed information about energy issues, and that the two had frequent contact with each other.[143] The Committee does not have a copy of this fax, but McLarty testified that it "probably was just a brief note [on the pipeline project] asking for information or telling Kyle [Simpson] I would call him."[144]

Pursuant to Stock's March 28 memorandum, McLarty also sent brief notes to both the President and Simpson on April 2, 1996. To the President, he noted that he had seen Tamraz at the April 1 coffee and would follow up with him "in a supportive but prudent and appropriate way."[145] To Simpson, he faxed Tamraz's brochure and business card and wrote "Please review and let's discuss the attached. (Relates to the fax I sent you last week.)"[146]

Shortly thereafter, McLarty and Simpson talked on the telephone. Both testified that McLarty requested information about Tamraz's pipeline proposal. Specifically, McLarty testified that he called Simpson "to inquire about the pipeline project. That was the assignment I had been given."[147] Simpson also testified that McLarty wanted information about the "pipeline project."[148] Thus, after the President and McLarty had brief exchanges with Tamraz at DNC events, McLarty was asked by the President to find out whether there was any merit to the pipeline proposal that Tamraz claimed would bring peace to the region and jobs to Americans. Simpson explained generally that the U.S. Government often seeks this type of information because the Government sees value in U.S. companies building and owning projects outside the U.S., although the Government is "not terribly particular" about which U.S. company it is if more than one is vying for a project.[149]

McLarty and Simpson both testified that when McLarty requested information about the Caspian Sea pipeline proposal, McLarty did not mention the issue of whether Tamraz should have a meeting with the President.[150] In fact, Simpson's testimony reveals that he thought that Tamraz had already met with the President. He stated in his deposition that McLarty called and "said the President had met with Mr. Tamraz and Mr. Tamraz had talked about his pipeline proposal and he . . . asked Mr. McLarty to find out" if the pipeline was important.[151]

It is also significant that the testimony establishes that McLarty's conversation with Simpson did not involve a discussion of political contributions. McLarty and Simpson testified in their depositions that not only did they not discuss political contributions, but that neither of them knew anything about Tamraz's contributions at that time.[152] Tamraz himself testified that he never discussed political contributions with McLarty or Simpson and, in fact, noted that "nobody at the White House has ever talked to me about contributions, ever."[153]

The request within the Department of Energy

Shortly after he received the call from McLarty, Simpson was approached after an Energy Department staff meeting sometime in early April 1996 by John "Jack" Carter, also a senior policy advisor at the Energy Department.[154] Carter had been a Department of Energy representative on the interagency group chaired by Heslin and was one of the mid-level officials who met with Tamraz in the spring of 1995. Simpson testified that during this brief exchange, the issue of Tamraz arose. Simpson testified that he explained to Carter that he was seeking information on Tamraz's pipeline project and asked Carter to tell him "what's going on with this pipeline."[155] He also testified that he most likely conveyed to Carter that the request had come from McLarty.[156] Simpson testified that he did not mention anything about political contributions,[157] nor did he ask Carter to contact anyone in particular about this request.[158]

This exchange between Simpson and Carter was, by both of their accounts, brief and informal. In fact, Carter testified that his only knowledge "about Mr. McLarty's inquiry was from [this] brief conversation with Kyle Simpson on April 3rd, 1996."[159] Based on this "brief conversation," however, Carter testified that he thought that Simpson asked about a Presidential meeting.[160] Carter also said that he "thought" that he saw "handwritten notes" with numbers on them, stating that "there was a pad with some notes on it. . . . I can't remember distinctly. It might have had some numbers on it. I am just not sure."[161] Finally, Carter testified that Simpson, "either on the pad or mentioned that the fellow had made a contribution, was going to make more contributions apparently to somebody, political contributions."[162] Simpson, however, testified that he was not aware of Tamraz's political contributions and did not mention anything about political contributions during this conversation.[163]

Carter also testified, however, that although he thought contributions were mentioned during this conversation, Simpson did not suggest to him that anyone thought that Tamraz should meet with the President because of Tamraz's political contributions.[164] In fact, Carter testified that, during this brief exchange, he immediately told Simpson that he was aware of Tamraz's efforts in the Caspian Sea region, and that the President should have nothing to do with him.[165] However, Carter testified that he offered to call Heslin and determine if there was an update regarding Tamraz's pipeline proposal.[166] Carter agreed that it was his suggestion to call Heslin and that no one had suggested that he do so.[167]

Based on this brief conversation, Carter called Heslin the next day.[168] Carter testified that his only purpose in calling Heslin was to see whether the policy about the Tamraz project had changed.[169]

Carter's call to Heslin

Heslin's testimony

Carter called Heslin on April 4, 1996. At that time, according to Heslin, Carter was a colleague with whom she had worked for a year and who she knew was looking for a job in the White House.[170] She also testified that by April of 1996, she was not actively working on the Caspian Sea pipeline policy, but was instead "simply monitoring and supporting the technical implementation of the deal that had been agreed [to] in October."[171]

Heslin testified that Carter began the phone conversation in early April by saying that he was calling "at the behest of Mack McLarty who had recently met with Roger Tamraz and really liked his pipeline proposal."[172] Heslin then stated that Carter asserted that McLarty wanted Tamraz to have a meeting with the President and that it "would mean a lot of money for the DNC."[173] According to Heslin, Carter also told her that Tamraz had already given $200,000 and if he got a meeting with the President, he would give another $400,000. Heslin stated that Carter then asserted that both McLarty and the President wanted this.[174] Heslin testified that she doubted some of Carter's statements, and told him "this is just unbelievable. . . . I can't believe that, Jack."[175] When Heslin resisted the idea of a meeting, Heslin said that Carter "was pretty aggressive" and warned her that she shouldn't be "such a Girl Scout." Heslin also testified that Carter warned her that McLarty might become Secretary of the Energy Department, implying that if she resisted this request, her long-term career in the energy field might suffer.[176] Heslin testified that the phone call lasted about 25 minutes.[177]

Carter's testimony

Carter's recollection of the phone call was different than Heslin's. Carter testified that he called Heslin to see "[i]f there had been any change in our policy, or view towards Tamraz, and whether there was any reason the President should meet with Tamraz."[178] He said that he remembered the call lasting only three to five minutes, and that during that time, he did not state that the President or McLarty wanted a meeting, nor that McLarty might become Secretary of Energy.[179] Carter also testified in his deposition that he did not call Heslin a Girl Scout, although at the public hearing, he testified that he may have.[180] Although Carter remembered mentioning political contributions to Heslin, he testified that he did *not* tie the contributions to a meeting with the President.[181] In sum, Carter testified that "I would not try to bring any pressure on Sheila Heslin having to do with political matters. Moreover, I wouldn't do it with something that I opposed, which was a meeting with Tamraz and the President."[182]

Carter recognized, however, based on Heslin's public testimony the day before, that she had felt pressure during the call. He stated that at the time of the call, it hadn't "register[ed]" with him that

he was pressuring her.[183] Carter's explanation for their different recollections was that Heslin "read more into it certainly than I ever intended because there was no intention of mine to pressure her in any way."[184]

Carter's testimony also reveals that he was in no position to speak on behalf of McLarty, let alone the President. Carter testified that he had never spoken to McLarty about this particular request and, in fact, never worked closely with McLarty on anything. For example, in his two years at the Energy Department, Carter only talked to McLarty four or five times on the telephone about energy issues and never met with him in his office.[185] Carter also testified that he had a total of two personal conversations with McLarty, during which he inquired about jobs at the White House, in an attempt "to get a little more visibility in the administration."[186] In early 1996, Carter testified that McLarty informed him that he would not be hired.[187]

Carter was, however, familiar with Heslin and Tamraz. He had been a member of the interagency group on Caspian Sea policy and had traveled with Heslin and other officials to the region in 1995. In May of that year, Carter was one of the mid-level officials who met with Tamraz about his pipeline proposal, and was opposed to it. However, unlike Heslin, Carter thought that in the scheme of things, Tamraz "was not an important factor" in the region.[188] After October 1995, when the pipeline agreement was signed, Carter had little contact with Heslin.

The Department of Energy responds to the request for information

After his call to Heslin, Carter testified that he reported back to Simpson that the Tamraz's pipeline proposal did not have merit and that the NSC had further information if McLarty wanted to pursue the matter.[189] Simpson testified that he recalled conveying this information to McLarty, and an April 8, 1996, telephone message from him to McLarty contains the information.[190] McLarty remembered Simpson conveying that the pipeline proposal did not have "any uniqueness about it; there was nothing else that needed to be done that was not already being done, and he did raise, as I remember, . . . some caution flag about Mr. Tamraz."[191] McLarty testified that, after receiving this information from Simpson, he believes he orally conveyed it to the President.[192] The officials had no further contact with Tamraz after April 1996.[193]

Conclusions

The evidence presented to the Committee establishes that in late March 1996, Tamraz caught the President's ear at a DNC function and told him that he was working on a supposedly important peace pipeline proposal in the Caspian Sea region that would bring jobs to Americans. The next day, the President wrote "cc'd McLarty" and "does the Azerb. Gov't want *this*" on a memorandum from his social secretary. McLarty understood this notation as a request to inquire about the merits of Tamraz's pipeline proposal. On April 1, McLarty met Tamraz briefly at a coffee, where he obtained Tamraz's business brochure.

McLarty faxed the brochure to Simpson, his usual contact at the Energy Department, and asked for information about Tamraz's

pipeline project. After an April 3 staff meeting within the Energy Department, Carter and Simpson spoke briefly and the issue of Tamraz and his pipeline arose. Simpson told Carter during this exchange that McLarty had asked for information about Tamraz's pipeline project. Carter offered to call Heslin to respond to McLarty's request. The Minority believes, however, that Carter did not accurately understand—or did not accurately testify to—his brief exchange with Simpson. Carter's testimony about the exchange, which he described as Simpson posing a question whether Tamraz should meet with the President, and some mention of political contributions, is full of "maybe's" and "I don't remember distinctly's" and "I thought's." In contrast, Simpson and McLarty's testimony about the request, which was for information about Tamraz's pipeline proposal, is straightforward and follows logically from the President's notation on the March 28 memorandum asking about the pipeline. In his eagerness to respond to McLarty, Carter likely assumed that the request was for a meeting between Tamraz and the President, which would have been a logical assumption based on Carter's experience with the interagency group, where the subject of Tamraz and his attempts to meet with government officials had often been discussed.

There is evidence that Carter also likely wanted to respond to this request from McLarty in order to gain higher visibility in the Administration, something he testified he was seeking at that time. Additionally, Carter probably did not obtain the contribution figures he conveyed to Heslin from Simpson. The figure of $200,000 of past contributions by Tamraz was generally correct, but had been reported in the energy community and discussed in the interagency task force meetings.[194] In addition, press reports on Tamraz's political contributions were found in files of both Department of Energy and NSC officials, including Heslin. The second figure Carter purportedly conveyed to Heslin was that Tamraz was prepared to contribute an additional $400,000 to the DNC. That figure is not correct, nor had Tamraz promised to contribute more money at that time.[195] Tamraz's last substantial contribution had been many months before, in October of 1995. Furthermore, Simpson and McLarty both testified unequivocally that political contributions and a potential meeting with the President were never discussed in relation to their request for information about Tamraz's pipeline proposal. In sum, Carter's testimony that Simpson mentioned political contributions or a meeting with the President is subject to question. Rather, it is likely that Carter assumed that a meeting was requested and determined on his own to aggressively respond to a request he had misunderstood.[196]

Carter's testimony in that regard is also subject to additional scrutiny because of contradictions between his testimony and that of Heslin's regarding their phone conversation. Carter stated that he called Heslin only to ask her whether there had been a change in policy that would permit a meeting between the President and Tamraz. Carter testified that he never spoke to McLarty about the request, never intended to pressure Heslin to agree to a meeting based on political contributions, and never chastised her with names or warnings about her future career in the energy field. Heslin, however, testified that Carter invoked the names of

McLarty and the President, did pressure her based on political contributions, and called her a Girl Scout and warned about McLarty becoming Secretary of Energy.[197]

In the Minority's view, the evidence strongly supports a conclusion that Carter acted on his own in making certain statements to Heslin during their phone call, and that he did so inappropriately. In fact, Heslin's supervisor Nancy Soderberg came to this very conclusion when Heslin informed her about the telephone call.[198] Carter likely thought he could win visibility in the Administration by putting some pressure on a friend, and, when she resisted, he dropped the matter. Heslin also probably reacted particularly strongly because she had already been contacted about Tamraz by Bob of the CIA several times, and Fowler once.

CONCLUSION: ACCESS STILL FOR SALE IN 1997

In February 1997, Tamraz received letters from Republican Senators Trent Lott and Mitch McConnell inviting him to become a member of the Senatorial Inner Circle.[199] Senator Lott encouraged Tamraz to join the Inner Circle, stating, "I know you will enjoy meeting my Senate colleagues. . . . at the meetings we have scheduled this year." Senator McConnell was more specific. His letter stated that for a contribution to the Republican Party, Tamraz could discuss high-level policy issues at exclusive dinners with the Senate leadership.

Tamraz attempted to take up this offer of access, but his contribution was returned. When asked why he had contributed this time, Tamraz responded, "you set the rules, and we are following the rules. . . . [T]his is politics as usual. What is new?"[200] In reply, Senator Carl Levin summarized the story of Tamraz:

> I think that is exactly the point. . . . I just hope our colleagues will closely follow these hearings, enough so that we can vote to change politics as usual because that is exactly what the problem is. It is politics as usual.[201]

FOOTNOTES

[1] Depositions were taken of Roger Tamaraz, John "Jack" Carter, Kyle Simpson, Thomas McLarty, Donald Fowler, Bob of the CIA, and several Department of Commerce officials. Interviews were conducted of a variety of NSC employees, including Samuel "Sandy" Berger, Sheila Heslin, Nancy Soderberg, Robert Suettinger, Randy Beers, Jamona Broadway, and Melanie Darby. Documents were produced by Tamraz, the Department of Commerce, the White House, the NSC, the CIA, the State Department, and the DNC. Pub.ic testimony was taken of Heslin, Tamraz, Carter and Simpson during Committee's hearings held on September 17 and 18, 1997.

[2] *Fortune* magazine, 11/73.

[3] *Fortune* magazine, 11/73.

[4] See also Roger Tamraz deposition, 5/13/97, pp. 135–36 (discussion of *Fortune* magazine article and Tamraz's role in the 1973 pipeline deal).

[5] *Washington Post,* 9/9/97.

[6] *New York Times,* 5/4/78; Newsweek, 2/10/75.

[7] *Newsweek,* 2/10/75.

[8] *Newsweek,* 2/10/75.

[9] *Newsweek,* 2/10/75.

[10] Roger Tamraz deposition, 5/13/97, pp. 11–13; *Washington Post,* 9/9/97.

[11] *Washington Post,* 9/9/97.

[12] Roger Tamraz deposition, 5/13/97, pp. 11–14.

[13] Roger Tamraz deposition, 5/13/97, pp. 3 & 12.

[14] Roger Tamraz, 9/18/97 Hrg., p. 4; Roger Tamraz deposition, 5/13/97, pp. 123–24 ; *Washington Post,* 9/9/97.

[15] Roger Tamraz, 9/18/97 Hrg., pp. 3–4; *Washington Post,* 9/9/97. According to Tamraz, the U.S. also asked him to arrange for the safe passage into Lebanon of William Buckley, who was sent in to negotiate the release of American hostages. Roger Tamraz, 9/18/97 Hrg., p. 4. For

additional information, see *New York Times,* 12/12/86, 12/11/86, 9/7/80; *Washington Post,* 12/11/86; *Los Angeles Times,* 12/12/86; *Chemical Week,* 4/11/79.

[16] Tamraz testified that he had a pattern of hiring former CIA agents. Roger Tamraz, 9/18/97 Hrg., p. 42.

[17] Roger Tamraz deposition, 5/13/97, p. 36. Tamraz asserts that he was a permanent resident in the United States since 1967 and became a U.S. citizen in 1989, Statement of Roger Tamraz, 5/13/97, thus making him eligible to contribute to the RNC in 1985.

[18] *Congressional Quarterly,* 8/20/97; see also public FEC records.

[19] *Congressional Quarterly,* 8/20/97; Roger Tamraz, 9/18/97 Hrg., p. 65.

[20] Staff Interview with Sheila Heslin, 5/28/97.

[21] Exhibit 1064M: p. 1, Letter from Frank J. Fahrenkopf, Jr. to Robert Tuttle, Special Assistant to the President for Presidential Personnel, 6/25/85.

[22] Exhibit 1064M: p. 1, Letter from Frank J. Fahrenkopf, Jr. to Robert Tuttle, Special Assistant to the President for Presidential Personnel, 6/25/85.

[23] Exhibit 1064M: p. 2, Letter from Robert H. Tuttle, director of presidential personnel to Frank J. Fahrenkopf, Jr., chairman of the RNC, 7/10/85.

[24] Senator Levin, 9/18/97, Hrg., pp. 64–66 (discussing Frank Fahrenkopf's letter to the Committee regarding Roger Tamraz).

[25] Roger Tamraz, 9/18/97 Hrg., pp. 4–6; Roger Tamraz deposition, 5/13/97, pp. 8–10; *Washington Post,* 9/19/97.

[26] Roger Tamraz, 9/18/97 Hrg., pp. 4–6; Roger Tamraz deposition, 5/13/97, pp. 8–10; *Washington Post,* 9/19/97.

[27] Roger Tamraz, 9/19/97 Hrg., pp. 4–6; DNC 3234854–58 (Three articles describing the events found in DNC files: *Financial Times,* 9/13/89; *AP,* 3/11/89; *Reuters,* 3/10/89).

[28] Roger Tamraz, 9/19/97 Hrg., pp. 5–6. In 1989, Tamraz was portrayed in the Lebanese media as an agent of Israel. *Beirut Newspaper,* 1/1/89; Roger Tamraz, 9/19/97 Hrg., p. 5.

[29] Roger Tamraz, 9/18/97 Hrg., p. 5.

[30] Roger Tamraz, 9/18/97 Hrg., p. 5.

[31] Department of Commerce Memorandum from Interpol, 4/11/97.

[32] Application submitted to Melissa Moss, director of Office of Business Liaison at Commerce, 3/1/94.

[33] Melissa Moss deposition, 6/11/97, pp. 190–93.

[34] Roger Tamraz deposition, 5/13/97, pp. 5–9. Tamraz admitted that if "anyone puts my name in Nexus-Lexus [sic], you get a lot of horror stories. So I think it was justifiable, but they could have given me a chance to explain the circumstances." Roger Tamraz deposition, 5/13/97, p. 6.

[35] A series of memoranda circulated between the Commerce Department in Washington and the Commercial Service office in Hungary reveal that in October 1995, Commerce had once again reviewed Tamraz's questionable background and other issues concerning Oil Capital and determined that the U.S. should not advocate on behalf of Oil Capital. Memorandum from Jonathan Marks to Ann Ngo, 10/25/95; e-mail from Ira Sockowitz to Jonathan Marks, 10/27/95; e-mail from Jonathan Marks to Ira Sockowitz, 11/2/95.

[36] Statement of Lanny J. Davis, 6/3/97; Federal Clearinghouse (FDCH); FDCH Political Transcripts, 11/26/97.

[37] On February 2, 1995, *Platt's Oilgram* quoted an administration official as saying, "we support multiple routes." On February 24, 1995, a senior State Department official said that "in the short-run there should be a variety of viable alternatives, and that in the medium- to long-run the resource based in the region should support pipelines." State Department press guidance on February 3, 1995 noted that "we expect eventual production in the Caspian region to require multiple pipelines." A March 9, 1995 State Department message stated that "the USG still believes multiple routes are necessary and that their development will provide additional security for oil companies as they proceed. To this day, the U.S. has not taken a position on which route the Baku-Ceyhan pipeline should take. The U.S. maintains that the routes chosen is a decision for private companies and should be based on commercial principle, non-discriminatory access, and market-based tariffs. And in May 1995, President Clinton delivered a letter to Azerbaijani President Heydar Aliyev. President Clinton wrote in the letter that "[t]he U.S. will work actively with Azerbaijan, other governments in the region, the international financial institutions, and private companies to support the development and export of the Caspian Sea's vast energy reserves. Over the next several months, it will be important to ensure that early oil can be exported reliably and economically to the West."

[38] Sheila Heslin, 9/17/97 Hrg., pp. 4, 49–50.

[39] Sheila Heslin, 9/17/97 Hrg., pp. 4; 50–51.

[40] Sheila Heslin, 9/17/97 Hrg., p. 51; Staff interview with Sheila Heslin, 5/28/97.

[41] Sheila Heslin, 9/17/97 Hrg., p. 6.

[42] Staff interview with Sheila Heslin, 5/28/97.

[43] Sheila Heslin, 9/17/97 Hrg., p. 10.

[44] Sheila Heslin, 9/17/97 Hrg., p. 8.

[45] Sheila Heslin, 9/17/97 Hrg., p. 7.

[46] Staff interview with Sheila Heslin, 5/28/97.

[47] Sheila Heslin, 9/17/97 Hrg., p. 52; see also pp. 5–6, 19–20, 72.

[48] Sheila Heslin, 9/17/97 Hrg., pp. 5–6, 19–20, 50–51, 72; Senator Lieberman, 9/17/97 Hrg., p. 75.

[49] Roger Tamraz deposition, 5/13/97, pp. 22–28.

[50] Roger Tamraz, 9/18/97 Hrg., pp. 44–47. Tamraz first met with the DNC to discuss donations in July of 1995. Roger Tamraz, 9/18/97 Hrg., p. 15. Tamraz began contributing to the Democratic Party on July 19, 1995. A DNC Memorandum to Tamraz from Richard Sullivan of the DNC, dated March 28, 1996, states that Tamraz's contributions began on July 19, 1995 and ended on September 10, 1995. Exhibit 1168.

[51] See Roger Tamraz deposition, 5/13/97, pp. 25–26; Roger Tamraz, 9/18/97 Hrg., pp. 45–48.

[52] Sheila Heslin, 9/17/97 Hrg., pp. 7; 53.
[53] Sheila Heslin, 9/17/97 Hrg., p. 8.
[54] Sheila Heslin, 9/17/97 Hrg., p. 8, 33.
[55] Sheila Heslin, 9/17/97 Hrg., pp. 9–10.
[56] Sheila Heslin, 9/17/97 Hrg., pp. 10–11.
[57] Roger Tamraz deposition, 5/13/97, pp. 26–28.
[58] Roger Tamraz deposition, 5/13/97, p. 28.
[59] Roger Tamraz deposition, 5/13/97, p. 28; Roger Tamraz, 9/18/98 Hrg., p. 47–48; John Carter, 9/18/97 Hrg., p. 155; Kyle Simpson, 9/18/97 Hrg., pp. 53–54; Staff interview with Sheila Heslin, 5/28/97.
[60] Sheila Heslin, 9/17/97 Hrg., p. 54.
[61] Sheila Heslin, 9/17/97 Hrg., pp. 54; 56.
[62] Sheila Heslin, 9/17/97 Hrg., p. 54
[63] Sheila Heslin, 9/17/97 Hrg., pp. 54–55.
[64] Sheila Heslin, 9/17/97 Hrg., pp. 54–55; Staff interview with Sheila Heslin, 5/28/97.
[65] Sheila Heslin, 9/17/97 Hrg., pp. 55–57; Staff interview with Sheila Heslin, 5/28/97.
[66] Sheila Heslin, 9/17/97 Hrg., p. 12.
[67] Sheila Heslin, 9/17/97 Hrg., p. 12.
[68] Sheila Heslin, 9/17/97 Hrg., p. 57.
[69] Sheila Heslin, 9/17/97 Hrg., p. 12.
[70] Sheila Heslin, 9/17/97 Hrg., pp. 57–58; Staff interview with Sheila Heslin, 5/28/97.
[71] Sheila Heslin, 9/17/97 Hrg., p. 20.
[72] Sheila Heslin, 9/17/97 Hrg., pp. 58–59.
[73] Sheila Heslin, 9/17/97 Hrg., p. 60.
[74] Four pieces of evidence support this conclusion. In a Committee interview, Heslin stated that it was her understanding that Bob had also contacted someone in the Vice President's office to lobby for Tamraz, and that she thought it might have been Dana Marshall. Staff interview with Sheila Heslin, 5/28/97. Supporting Heslin's statement are two e-mails produced to the Committee by the Vice President's office. The first e-mail, dated September 6, 1995, was sent by Richard Grimes of the Vice President's office to Leon Fuerth, the Vice President's National Security Advisor. The e-mail discusses Tamraz's request for a meeting and sets forth negative information about Tamraz. Grimes had obtained this information about Tamraz from Heslin. Dana Marshall was copied on the e-mail. Exhibit 1124, EOP 56535. The second e-mail is the one Marshall sent in response to Grimes's e-mail about Tamraz. Marshall replied, "Let's discuss this, in light of my discussion with the individual I mentioned." 9/6/95 e-mail from Richard Grimes to Leon Fuerth, EOP 56538. Marshall's response e-mail concerning "the individual" he spoke to about Tamraz, worded in such a secretive manner, suggests that Heslin was correct—Bob had called Marshall of the Vice President's office to discuss Tamraz. The fourth piece of information supporting this conclusion is a declassified memorandum dated 10/20/95, written by Bob himself. Bob stated that during a conversation with Donald Fowler, chairman of the DNC, "Fowler said he understood that I was in contact with the Vice President's office concerning Tamraz." Memorandum for the Record, written by Bob of the CIA, dated 10/20/95 and produced in declassified form by the CIA. (The contacts between Bob and Fowler are reviewed more fully below.)

Although the evidence does not definitely establish that Bob lobbied the Vice President's office on behalf of Tamraz, largely because the Committee never interviewed or deposed Grimes or Marshall, it appears that Bob did in fact contact Vice President staff employee Marshall in August or early September 1995 to discuss Tamraz's request to meet with Vice President Gore.
[75] Exhibit 1127: Memorandum to the Vice President from Leon Fuerth, 9/13/95, EOP 45766–67.
[76] Staff interview with Sheila Heslin, 5/28/97.
[77] Memorandum for the Record, written by Bob of the CIA, produced in declassfied form by the CIA, 10/20/95.
[78] Bob of the CIA deposition, 7/11/97, p. 3.
[79] Bob of the CIA deposition, 7/11/97, p. 3.
[80] Bob of the CIA deposition, 7/11/97, pp. 4–5.
[81] Memorandum for the Record, written by Bob of the CIA, produced in declassified form by the CIA, 10/20/95.
[82] Bob of the CIA deposition, 7/11/97, p. 7.
[83] Bob of the CIA deposition, 7/11/97, p. 6.
[84] Bob of the CIA deposition, 7/11/97, p. 6.
[85] Staff interview with Sheila Heslin, 5/28/97.
[86] Staff interview with Sheila Heslin, 5/28/97.
[87] Roger Tamraz, 9/19/97 Hrg., p. 66.
[88] Exhibit 1168; FEC records demonstrate that Tamraz's only other contribution was $2,000 in September of 1996 for tickets to the DNC Presidential Gala held at the Radio City Music Hall in New York City.
[89] Roger Tamraz, 9/18/97 Hrg., p. 66.
[90] Roger Tamraz, 9/18/97 Hrg., pp. 81–83.
[91] Roger Tamraz deposition, 5/13/97, pp. 36–37.
[92] Exhibit 1117: Memorandum to Fowler from Alejandra Y. Castillo, 7/12/95, DNC 3116351–53.
[93] Exhibit 1117: Memorandum to Fowler from Alejandra Y. Castillo, 7/12/95, DNC 3116351–53.
[94] Exhibit 1117: Memorandum to Fowler from Alejandra Y. Castillo, 7/12/95, DNC 3116351–53.
[95] Exhibit 1117: Memorandum to Fowler from Alejandra Y. Castillo, 7/12/95, DNC 3116351–53.
[96] EOP 5635, EOP 56539–40. Sassounian made this request at a DNC breakfast on 8/8/97.

[97] Roger Tamraz deposition, 5/13/97, pp. 53–54.
[98] E-mail from Grimes to Heslin, 8/11/95, EOP 56532.
[99] Staff interview with Sheila Heslin, 5/28/97; Exhibit 1200; Heslin notes from conversations with Grimes, EOP 25068; Grimes e-mail to Fuerth discussing information received from Heslin, 6/6/95, EOP 56535.
[100] Exhibit 1127: Memorandum to the Vice President from Leon Fuerth, 9/13/95, EOP 45766–67.
[101] Handwritten notes from Scott Patrick to Jack Quinn regarding Tamraz saying "hasn't been regretted" and "NSA said no," 10/2/95, EOP 25006–007; Notations on same page say "10/2—left msg" and "10/3—left msg.", EOP 25004; Exhibit 1135: Memorandum to Jack Quinn and Kim Tilley from Richard Grimes, 10/2/95, attaching copy of Fuerth's 9/13/95 Memorandum to the Vice President.
[102] Also in September 1995, Heslin checked the President's schedule for that month and was informed that no meeting with Tamraz was scheduled. Staff interview with Sheila Heslin, 5/28/97.
[103] Exhibit 1136: Schedule for Vice President Al Gore, 10/2/95, EOP 63857–68
[104] Exhibit 1137; EOP 045764–67; Fax to Richard Sullivan of the DNC from the Office of the Vice President dated 10/3/95.
[105] Roger Tamraz deposition, 5/13/97, pp. 34–35.
[106] Sheila Heslin, 9/17/97, Hrg., p. 20, 51–53.
[107] Statement of Lanny J. Davis, 3/3/97; EOP 024911–14 (White House WAVES records for Tamraz).
[108] Roger Tamraz, 9/18/97 Hrg., pp. 22–24. Tamraz also told CBS's Rita Braver that "Maybe once, standing in line I said, "I'm working on a pipeline and that it's going to bring a half million jobs to Americans" and he said "Good for you. Good luck," and that's about it." CBS Television Broadcast, 3/17/97. Tamraz told NBC "There was never any one-on-one, it was with many other donors and you never had more than 30 seconds with the President." NBC television broadcast 3/17/97. Both interviews were reported in *Hotline,* 3/18/97.
[109] Roger Tamraz, 9/18/97, Hrg., pp. 17–18.
[110] Roger Tamraz, 9/18/97 Hrg., pp. 18, 22, 55. Fowler never told Tamraz, however, that he had contacted Bob. Roger Tamraz, 9/18/97 Hrg., p. 21; Roger Tamraz deposition, 5/13/97, p. 65; Tamraz also doesn't recall Bob telling him that Bob had ever spoken to Fowler. Roger Tamraz deposition, 5/13/97, p. 65.
[111] Roger Tamraz deposition, 5/13/97, pp. 59–60, 63–64.
[112] Bob of the CIA deposition, 7/11/97, p. 2.
[113] Bob of the CIA deposition, 7/11/97, pp. 3—4, 16–17.
[114] Bob of the CIA deposition, 7/11/97, pp. 7, 17–19.
[115] See endnote 74
[116] Bob of the CIA deposition, 7/11/97, p. 11.
[117] Bob of the CIA deposition, 7/11/97, p. 10–11.
[118] Bob of the CIA deposition, 7/11/97, p. 11.
[119] Sheila Heslin, 9/17/97 Hrg., p. 23.
[120] Sheila Heslin, 9/17/97 Hrg., pp. 23, 60.
[121] Sheila Heslin, 9/17/97 Hrg., p. 23.
[122] Sheila Heslin, 9/17/97 Hrg., p. 24.
[123] Sheila Heslin, 9/17/97 Hrg., pp. 26–27; Staff interview with Nancy Soderberg, 5/30/97; Donald Fowler deposition, 5/21/97, p. 230.
[124] Sheila Heslin, 9/17/97 Hrg., pp. 63–64; Exhibit 1159; E-mail from Soderberg's assistant, Kenneth Baldwin, to Beers, 12/21/97, EOP 056543; Staff interview with Nancy Soderberg, 5/30/97; Staff interview with Sheila Heslin, 5/28/97; Staff interview with Randy Beers, 5/23/97 and 6/13/97.
[125] Staff interview with Randy Beers, Senior Director for Intelligence, NSC, 5/23/97 and 6/13/97.
[126] The CIA report faxed to Randy Beers, NSC's Senior Director of Intelligence, on December 29, 1995 is lodged in the Office of Senate Security.
[127] Don Fowler deposition, 5/21/87, p. 229.
[128] Roger Tamraz, 9/18/97, Hrg. p. 86. Senator Lieberman asked Tamraz whether he felt "badly about having given the 300,000." FEC records indicate that Tamraz gave $220,000 to the Democratic Party from July to October, 1995.
[129] Exhibit 1164: 3/27/96 DNC Trustee Dinner invitation acceptance report, 10/20/96, EOP 031249–54.
[130] Roger Tamraz, 9/18/97 Hrg., pp. 22–23.
[131] Roger Tamraz, 9/18/97 Hrg., p. 24.
[132] Roger Tamraz, 9/18/97 Hrg., pp. 24, 28.
[133] Thomas McLarty deposition, 6/30/97, pp. 28–29.
[134] Exhibit 1165: Memorandum from Ann Stock to the President, 3/28/96, EOP 046305.
[135] Exhibit 1166: Memorandum from Ann Stock to the President, 3/28/96, with notations, EOP 046305.
[136] Thomas McLarty deposition, 6/30/97, p. 56.
[137] Exhibit 1170: DNC Memorandum re 4/1/96 coffee, 3/29/96; Exhibit 1171: List of 4/1/96 coffee attendees.
[138] Roger Tamraz, 9/18/97 Hrg., p. 25.
[139] Roger Tamraz, 9/18/97 Hrg., p. 27.
[140] Roger Tamraz, 9/18/97 Hrg., p. 27.
[141] Thomas F. McLarty deposition, 6/30/97, p. 44.
[142] Exhibit 1174: Memorandum from Mack McLarty to Kyle Simpson stating, "Relates to the fax I sent you last week," 4/2/96, EOP 024980–81.
[143] Thomas McLarty deposition, 6/30/97, pp. 42–43; Kyle Simpson deposition, 6/25/97, p. 26.

[144] Thomas McLarty deposition, 6/30/97, p. 39.
[145] Exhibit 1173: Memorandum from Mack McLarty to the President, 4/2/96, EOP 041537; Thomas McLarty deposition, 6/30/97, pp. 50–51.
[146] Exhibit 1174: Memorandum from Mack McLarty to Kyle Simpson, 4/2/96, EOP 024980–81.
[147] Thomas McLarty deposition, 6/30/97, p. 56.
[148] Kyle Simpson deposition, 6/25/97, pp. 43–48; Kyle Simpson, 9/18/97 Hrg., pp. 49–51.
[149] Kyle Simpson deposition, 6/25/97, p. 54.
[150] Kyle Simpson deposition, 6/25/97, pp. 43, 46–48; Kyle Simpson, 9/18/97 Hrg., p. 50; Thomas McLarty deposition, 6/30/97, p. 60.
[151] Kyle Simpson deposition, 6/25/97, p. 43.
[152] Thomas McLarty deposition, 6/30/97, pp. 30, 56–57; Kyle Simpson, 9/18/97 Hrg., pp. 50–51; Kyle Simpson deposition, 6/25/97, pp. 43, 46–48.
[153] Roger Tamraz, 9/18/97 Hrg., p. 73. On March 28, Tamraz received two memoranda from the DNC which he had been requesting for months. Exhibit 1167: Memorandum from Richard Sullivan and Ari Swiller to Roger Tamraz, 3/28/96, DNC 3116355; Exhibit 1168: Memorandum from Richard Sullivan and Ari Swiller to Roger Tamraz, 3/28/96, DNC 3116354. The memoranda list Tamraz's political contributions to date, one adding up to $300,000, the other adding up to $205,000. Tamraz testified that he had requested these memoranda for his records and never showed them to anyone. Roger Tamraz, 9/18/97 Hrg., p. 73. Simpson and another Energy Department official, John Carter, all testified that they had not seen the document until preparing for depositions in 1997. Kyle Simpson, 9/18/97, Hrg., p. 50; John Carter, 9/18/97, Hrg., p. 32. McLarty testified that he had no knowledge of Tamraz's political contributions at the time. Thomas McLarty deposition, 6/30/97, p. 30.
[154] Jack Carter, 9/18/97 Hrg., pp. 29–30; Jack Carter deposition, 6/23/97, p. 44.
[155] Kyle Simpson deposition, 6/25/97, p. 57.
[156] Kyle Simpson deposition, 6/25/97, p. 55; Kyle Simpson, 9/18/97, Hrg., p. 52.
[157] Kyle Simpson, Hrg., pp. 74–75, 91; Kyle Simpson deposition, 6/25/97, pp. 55–57; See also endnote 149.
[158] Kyle Simpson deposition, 6/25/97, p. 55–57.
[159] Jack Carter, 9/18/97 Hrg., pp. 60, 48.
[160] Jack Carter, 9/18/97 Hrg., pp. 30; 35; Jack Carter deposition, 6/23/97, pp. 44–45.
[161] Jack Carter deposition, 6/23/97, pp. 44–45.
[162] Jack Carter deposition, 6/23/97, p. 45.
[163] Kyle Simpson, Hrg., pp. 74–75, 91; Kyle Simpson deposition, 6/25/97, pp. 55–57.
[164] Jack Carter, 9/18/97 Hrg., pp. 31–32, 36–37; John Carter deposition, 6/23/97, p. 79.
[165] Jack Carter, 9/18/97 Hrg., p. 30.
[166] Jack Carter, 9/18/97 Hrg., p. 30.
[167] Jack Carter, 9/18/97 Hrg., pp. 130–31.
[168] Jack Carter, 9/18/97 Hrg., pp. 28–29.
[169] Jack Carter, 9/18/97 Hrg., pp. 30, 33, 37.
[170] Sheila Heslin, 9/18/97 Hrg., pp. 28, 44.
[171] Sheila Heslin, 9/17/97 Hrg., p. 28.
[172] Sheila Heslin, 9/17/97 Hrg., p. 29.
[173] Sheila Heslin, 9/17/97 Hrg., p. 29.
[174] Sheila Heslin, 9/17/97 Hrg., pp. 29–30.
[175] Sheila Heslin, 9/17/97 Hrg., p. 46.
[176] Sheila Heslin, 9/17/97 Hrg., pp. 30, 47; Staff interview with Sheila Heslin, 5/28/97.
[177] Sheila Heslin, 9/17/97 Hrg., pp. 31, 42.
[178] Jack Carter deposition, 6/23/97, p. 45.
[179] Jack Carter deposition, 6/23/97, p. 60–63; Jack Carter, 9/18/97 Hrg., pp. 126–27.
[180] Jack Carter deposition, 6/23/97, p. 64; Jack Carter, 9/18/97 Hrg., pp. 125–26.
[181] Jack Carter deposition, 6/23/97, p. 79.
[182] Jack Carter, 9/18/97 Hrg., p. 92.
[183] Jack Carter, 9/18/97 Hrg., p. 37.
[184] Jack Carter, 9/18/97 Hrg., p. 93.
[185] Jack Carter deposition, 6/23/97, pp. 19–20.
[186] Jack Carter deposition, 6/23/97, pp. 20–21.
[187] Jack Carter deposition, 6/23/97, p. 21.
[188] Jack Carter deposition, 6/23/97, p. 42.
[189] Kyle Simpson deposition, 6/25/97, pp. 59–60.
[190] Kyle Simpson deposition, 6/25/97, pp. 62–63; Exhibit 1182: Phone message slip, EOP 024962.
[191] Thomas McLarty deposition, 6/30/97, pp. 62–63.
[192] Thomas McLarty deposition, 6/30/97, pp. 67–69.
[193] Roger Tamraz deposition, 5/13/97, p. 28; Roger Tamraz, 9/18/97 Hrg., pp. 47–48; John Carter, 9/18/97 Hrg., p. 155; Kyle Simpson, 9/18/97 Hrg., pp. 53–54; Staff interview with Sheila Heslin, 5/28/97; Thomas McLarty deposition 6/30/97, p. 72.
[194] Jack Carter, 9/18/97 Hrg., p. 33.
[195] Hearing Exhibit 1158; Roger Tamraz, 9/18/97, Hrg., p. 51.
[196] Senator Domenici concluded after a morning of testimony that he believed that Carter was telling the truth about this exchange with Simpson, and that Simpson was not being truthful. Senator Domenici, 9/18/97 Hrg., pp. 101–02. This conclusion, however, is not supported by the record. It is quite clear that Carter's testimony was faulty on every count—it contradicts the sworn testimony of not only Simpson and McLarty, but also of Heslin. Considering that Heslin apparently was found by the Majority and Minority to be a highly credible witness, it is relevant that it is Carter's testimony that directly and specifically contradicts Heslin's.

If Heslin's testimony was accurate regarding her telephone call with Carter, then it is necessary to conclude that Carter's testimony was not accurate. Thus, if Carter's testimony about his phone call with Heslin is not accurate, it is difficult to argue that Carter's version of his brief conversation with Simpson is accurate, particularly when it is also contradicted by two individuals.

[197] During her public testimony, Heslin speculated that Carter acted in the manner because he was acting on the behalf of someone else. However, this speculation is contradicted by the evidence before the Committee. For example, Carter himself testified that he was not trying to pressure Heslin based on political contributions and that one had even suggested that he do so. In addition, although Heslin thoughts that Carter was close to McLarty, and therefore might do something on his behalf, this was not the fact. In his two years at the Energy Department, Carter had spoken to McLarty on the phone a few times, but had never met with him personally. Furthermore, no one but Carter contacted Heslin in the spring of 1996 with any type of request that Tamraz have a meeting with the President. Finally, Heslin's speculaiton is contradicted by testimony establishing that Tamraz had not in fact requested a meeting with the President and that no one in the While House even contacted Tamraz after April of 1996. See full text of chapter for a full discussion of these issues as well as supporting citations.

[198] Staff interview with Nancy Soderberg, 5/30/97; Minority counsel, 9/17/97 Hrg., pp. 40–41.

[199] Roger Tamraz, 9/18/97 Hrg., pp. 67, 169; Exhibits 1065 & 1066.

[200] Roger Tamraz, 9/18/97 Hrg., p. 170;

[201] Senator Levin, 9/18/97 Hrg., p. 170.

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PART 5 FUNDRAISING AND POLITICAL ACTIVITIES OF THE NATIONAL PARTIES AND ADMINISTRATIONS

Chapter 31: Other Contributor Access Issues

Johnny Chung, a Taiwan-born American businessman, was a large contributor to the Democratic National Committee ("DNC") during the 1996 election cycle and a frequent visitor to the White House. During some of these visits, he was accompanied by Asian business associates, for whom he arranged "photo opportunities." Many of his visits were to the office of Margaret Williams, then Chief of Staff for First Lady Hillary Clinton. During a March 1995 visit to Williams's office, Chung gave her a $50,000 check payable to the DNC, which she immediately forwarded to the DNC. The Committee investigated whether Chung's access to the White House was inappropriate and whether Williams acted appropriately in connection with a $50,000 donation by Chung.

Chung did not cooperate with the Committee's investigation, citing his Fifth Amendment protection against self-incrimination. Although he offered to testify in exchange for immunity, this offer was not accepted by the Committee. The Committee did not hold hearings on Chung, but it did take deposition testimony from Margaret Williams and her assistant Evan Ryan.

This chapter of the Report also discusses other controversial individuals who were provided access to President Clinton and to former President Bush.

FINDINGS

(1) The evidence before the Committee shows that even though Chief of Staff to the First Lady, Margaret Williams, immediately placed the contribution from Johnny Chung to the DNC in the mailbox, it would have been more prudent for her to have refused to accept the check from Chung and told him to give it directly to the DNC.

(2) Chung's access to the White House, which was based in part on his contributions to the Democratic Party, was excessive and inappropriate. On one occasion Chung was permitted to bring foreign business associates to view the President's delivery of a radio address without appropriate vetting by the DNC or the White House.

JOHNNY CHUNG

Chien Chuen ("Johnny") Chung[1] is a California businessman who emigrated from Taiwan[2] and became a United States citizen. Chung, who is an engineer, established Automated Intelligent Systems Inc.[3] ("AISI"), a company in the Los Angeles area. AISI sells a computer system that enables customers to broadcast thousands of copies of a fax simultaneously.[4] In the mid-1990s, Chung became active internationally, doing business in China and other parts of Asia. For example, he sold part of his fax business to Asian investors and acted as a consultant to Asian businessmen.

Footnotes at end of chapter 31.

Political contributions

Chung has told reporters that he began courting politicians because he felt this would help him market AISI's fax service to government offices.[5] He began making political contributions in August 1994.[6] During the 1994 and 1996 election cycles, according to Federal Election Commission records, Chung or his fax business contributed more than $360,000 to the DNC and to congressional campaigns.[7] Chung also raised money for the Democrats.

Access to administration officials

From 1994 to 1996, Chung attended several fundraising and other events also attended by top U.S. officials. For example, the August 1994 contribution was connected with a birthday party for the President.[8] In December of that year, Chung donated $40,000 in order to attend, with several guests, a fundraising luncheon attended by the First Lady.[9] During the 1996 cycle, according to a press report, Chung purchased several tickets to a "$25,000-a-plate dinner at the California home of the film maker Steven Spielberg and a birthday bash for Mr. Clinton at Radio City Music Hall and brought several guests."[10] During the same period that Chung emerged as an important Democratic donor, he became a frequent visitor to the White House Complex, a term that refers to the White House itself and to a few nearby buildings, including the Old Executive Office Building ("OEOB"). Contrary to several press reports, most of these visits were not to the White House itself, but to the OEOB, where he visited the offices of Margaret Williams, then Chief of Staff to the First Lady.[11] The First Lady does not maintain an office in the suite where these offices are located.[12]

Some of Chung's White House visits were apparently aimed at impressing Asian business associates,[13] who sometimes accompanied him. In December 1994, for example, Chung brought a group of mainland Chinese executives to the White House, including Chen Shizeng, chairman of Haomen, a beer and soft drink company.[14] Chung and his guests posed for pictures with President and Mrs. Clinton.[15] Without the White House's knowledge, and apparently without consulting Chung, the Haomen company later used the photos in China to promote its beer.[16]

On March 11, 1995, Chung and five businessmen from China watched President Clinton deliver his weekly radio address in the Oval Office.[17] Chung had arranged the visit with assistance from the DNC.[18]

At these visits, Chung did not meet privately with the President or have an opportunity to engage in any lengthy conversations with him.

National Security Council staff members were wary of Chung. On April 7, 1995, NSC staff member Melanie Darby sent an e-mail message to colleagues regarding the March 11 presidential radio address. She asked whether they felt the visitors should be given copies of the photographs taken that day. She wrote that President Clinton "wasn't sure we'd want photos of him with these people circulating around" and that the DNC had arranged for the six businessmen to visit without "knowing anything about them except that they were D.N.C. contributors." But she added that "these people are major D.N.C. contributors and if we can give them the

photos, the President's office would like to do so."[19] (Contrary to that statement, no evidence has emerged that Chung's guests donated to the DNC.)

Later that day, Robert L. Suettinger, Director of Asian Affairs in the NSC, replied with a e-mail in which he advised "caution" concerning Chung.

> My impression is that he's a hustler, and appears to be involved in setting up some kind of consulting operation that will thrive by bringing Chinese entrepreneurs into town for exposure to high-level US officials. My concern is that he will continue to make efforts to bring his "friends" into contact with the POTUS [the President] and FLOTUS [the First Lady]—to show one and all he is a big shot, thereby enhancing his business. I'd venture a guess that not all his business ventures—or those of his clients—would be ones the President would support. I also predict that he will become a royal pain, because he will expect to get similar treatment for future visits. He will be persistent.[20]

In the summer of 1995, Chung attempted to involve himself in assisting Harry Wu, an American labor activist who had been jailed in China.[21] Chung sought a letter from President Clinton supporting his efforts to help release Wu but was rebuffed.[22] DNC Chairman Donald Fowler did, however, sign a letter describing Chung as "a friend and a great supporter of the DNC."[23] Chung's efforts to involve himself in this delicate matter provoked concern on the part of the NSC's Suettinger. In a note to then-National Security Adviser Anthony Lake, he described Chung's mission as "very troubling" and said he feared that Chung could do "damage." He advised that "we be very careful about the kinds of favors he is granted."[24] Ultimately, Chung's attempt to involve himself in this issue had no effect on the administration's handling of the Wu case. (Wu was later released.)

Despite concerns about Chung, he was allowed to continue visiting the White House Complex. For example, Secret Service records show that he made 30 visits to the White House Complex in 1995, most of them to Margaret Williams's office in the Old Executive Office Building.

Link between contributions and visits

Although Chung did not provide evidence to the Committee, he has told journalists (in unsworn statements) that his White House access was a direct quid pro quo for political contributions. "I see the White House is like a subway," he said. "You have to put in coins to open the gates."[25] Chung has also stated that he and his associates attended the March 11, 1995, presidential radio address as a quid pro quo for a $50,000 donation he made to the DNC around that time—in the form of a check he handed to Margaret Williams.[26]

The Committee found no evidence that access to the White House was sold in the crude manner described by Chung. Regarding the $50,000 contribution, the DNC's Fowler denied under oath that the invitation was provided in exchange for a specific donation.[27] He

also testified that he was not involved in getting Chung an invitation to the radio address,[28] and that he was unaware that Chung had given a check to Williams for the DNC until the incident was reported in the media.[29] Williams testified that she played no role in arranging the invitation to the radio address.[30] She also testified that such invitations are not difficult to obtain.[31]

Although Chung's "subway" analogy appears to be an exaggeration, his status as a contributor was probably the main reason he was allowed to visit so frequently. Testimony established that White House officials viewed Chung's visits as "irritating," but Williams permitted him to visit in her outer office, despite the fact that he had no obvious reason to be there.[32] Williams stated that she expected every visitor, including Chung, to be welcomed by the staff. She tolerated him because she believed that he had been mistreated and ridiculed.[33] She also stated, "[T]here were many difficult days for Mrs. Clinton over this time period, and the idea that somebody adored her and wanted to be there was fine."[34] But Williams also acknowledged that she knew Chung was a large donor to the DNC,[35] and that this was a factor in her decision to let him spend time in her office.[36]

Williams's handling of Chung's $50,000 DNC donation

Chung's most controversial donation was a check for $50,000 to the DNC, which he gave to Margaret Williams in March 1995. As noted above, Chung claimed that Williams solicited this check as as quid pro quo for attendance at a presidential radio broadcast.

On March 8, Chung arrived at Williams's office at the OEOB without an appointment and spoke to Evan Ryan, Williams's assistant.[37] Chung's lawyer has told *Time* magazine that Chung wanted to arrange lunch in the White House mess and a meeting with the First Lady for the five visiting Chinese executives. According to *Time,* "[T]he subject turned to Democratic Party needs. Ryan remarked that the President's party had to cover the costs of political events held by the First Lady at the White House."[38] In interviews with the press, Chung has alleged that he wanted to "help the First Lady" defray some of the costs associated with Christmas parties the DNC held at the White House, and this was why he later made a $50,000 contribution.[39]

The sworn testimony of both Ryan and Williams contradicts Chung's unsworn assertions to journalists. During the March 8 conversation, according to Ryan, Chung mentioned a contribution he was planning to make.[40] According to Ryan, Chung frequently talked about his contributions, and in this case she thought that he was boasting as he often did.[41] Ryan testified that Chung also mentioned that he wanted to bring some visitors to the White House, and Ryan asked Williams what to do about the requests.[42] Williams suggested that Ryan make some calls about setting up a White House tour and lunch in the White House mess.[43] This was the extent of Williams's instructions to Ryan regarding Chung's requests, according to Ryan.[44]

Ryan testified that she knows of no solicitation of money that ever occurred in the White House.[45] Regarding the specific allegation that either she or Williams solicited the $50,000 contribution from Chung to help pay off debts, Ryan testified that she never had

any discussion with Chung during which she suggested that he could help defray costs of events at the White House.[46]

During testimony before the House Committee on Government Reform and Oversight, Williams confirmed Ryan's version, testifying that she had no knowledge of Ryan ever mentioning to Chung that he could make a $50,000 contribution to cover some of the DNC debt. She also testifed that she had never solicited $50,000 from Chung to help pay some of the money the DNC owed the White House to cover the costs of holiday parties the DNC threw at the White House.[47] Williams also testified to the House Committee that she never told Ryan that if Chung were to ask how he could help the First Lady, Ryan should suggest to him that he help pay off the DNC's debt to the White House.[48] Williams has stated, however, that Chung had asked in the past if he could give something to help Mrs. Clinton.[49] On those occasions, Williams had suggested that he make a contribution to the DNC, or the Presidential Legal Expense Trust, but told him that he could not give money to Mrs. Clinton.[50]

According to Ryan's testimony, there were no discussions between Ryan and Williams regarding Chung's contributions or regarding any connection between his contributions and actually fulfilling his requests for a lunch in the White House mess and a White House tour.[51] Neither Williams nor Ryan suggested to Chung that his requests would be expedited if he contributed to the DNC.

On March 9, according to several press reports, Chung visited the DNC to ask if he could bring a delegation of five executives from China to the White House to have a photo taken with the President. Although, as noted above, he has claimed that he offered to make a $50,000 contribution in exchange for such a visit, the Committee found no evidence to support this allegation.

That same day, Chung appeared at the Old Executive Office Building, and Ryan gave permission for him to enter[52] and visit Williams's office. Williams had not known that Chung was coming to her office that day.[53] Ryan testified that Williams seemed perplexed, but dismissed this as "well, whatever, . . . that's Johnny."[54]

Chung handed Williams a check, despite her protestations.[55] Williams testified that she initially rejected the check, thinking that it was made out to Mrs. Clinton.[56] When Chung stated that it was for the DNC, she decided that she "just wanted to get out of [there]" so she agreed to forward the check to the DNC.[57] She then dropped the check into her outbox with no note to the DNC, and without telling anyone at the DNC that they should be expecting it.[58] She estimated that the entire encounter lasted perhaps 60 to 90 seconds.[59] She said she did not even know the amount of the check.[60]

Williams had never been handed a political contribution in the White House before,[61] and there were no standard procedures about what to do in such a case.[62] On several occasions, checks intended for the DNC had been mailed by mistake to the First Lady's office, and Williams simply forwarded them to the DNC.[63] She decided to handle Chung's check in the same manner. She put it in

her out box,[64] did not tell anyone she had received it, and did not record her receipt of it anywhere.[65] She testified:

> A: Just like any other check I might get, I'd put it in the mail box, in my out box, and when the rest of the things from my out box were collected or, you know, whatever volunteer, would sort through it and send the check where it needed to go.
>
> Q: Did you put a note on it, sent to DNC?
>
> A: No. I—I mean, I figure what I had always done is just put the check in. I never take the time to write a note.[66]

Chung, in an unsworn statement to the Los Angeles Times, said that Ryan told him that Mrs. Clinton was aware of his contribution.[67] This statement is directly contradicted by the sworn testimony of both Ryan and Williams. Ryan testified that she had no knowledge of whether the First Lady was aware of the contribution.[68] She also testified that Chung never asked her if the First Lady knew that he had made a contribution to the DNC.[69] Williams also testified that she never told anyone about the contribution.[70]

The Pendleton Act

Under the Pendleton Act, 18 U.S.C. § 607, it is unlawful "for any person to solicit or receive any contribution" on federal property. Although Chung, as discussed above, asserted to reporters that the check was solicited, the Committee found no evidence to corroborate that assertion. Morever, Williams and Ryan both testified that they did not solicit the contribution.

Williams also does not appear to have violated § 607 by "receiving" Chung's contribution in her office at the OEOB. Under federal regulations, in order to violate § 607 by "receiving" a contribution, one must "come into possession of something from a person *officially on behalf of* a candidate, a campaign, a political party, or a partisan political group" [emphasis added].[71] Regulations also provide that "ministerial acts" are not covered by the statute.[72] A 1995 Justice Department opinion concluded that the mere taking of custody of a contribution by someone who has no "right of disposal" cannot be considered "receipt" of the contribution and is, therefore, not governed by the statute.[73]

Under these circumstances, Williams was a mere custodian of the check Chung gave her. She handled the check for mere seconds, accepting it from him and then immediately putting it in her outbox. She did not even notice how much it was made out for. Williams never had the "right of disposal" discussed in the Justice Department opinion. Instead (using the language of the Justice Department opinion), she "had no more to do with the transaction than a mere messenger would have had to whom the owner had handed it for delivery."[74] Thus, it appears that Williams never actually received the money within the meaning of 18 U.S.C. § 607.

Moreover, Williams's role as chief of staff to the First Lady gave her no authority to act officially on behalf of the DNC. She had only sporadic contact with the DNC.[75] Aside from scheduling the First Lady at events which were fundraisers, or had fundraising components, Williams was not involved with DNC fundraising.[76]

The only time she would intervene on behalf of a donor would be to pass his or her name along to the Office of the Social Secretary for possible inclusion in a White House event.[77] By physically taking a check from Chung she was not then actually receiving it on behalf of the DNC, because she was not an agent of the DNC. She was merely performing a ministerial act.

Finally, § 607 does not apply to soft money contributions.[78] According to Federal Election Commission records, the contribution Chung made went into the DNC's non-federal or "soft" money account.[79] Because it was soft money, soliciting or receiving the contribution even if it had occurred would not have violated § 607.[80]

The Hatch Act

Under the Hatch Act, 5 U.S.C. § 7323, a federal employee may not "knowingly solicit, accept, or receive a political contribution." Unlike the Pendleton Act, which does not apply to contributions not covered by the Federal Election Campaign Act, the Hatch Act does apply to soft money.

As discussed above, however, the Committee received no evidence that Williams solicited the contribution. Moreover, the analysis of whether a contribution has been received or accepted is the same under the Hatch Act as the analysis for whether a contribution has been received under the Pendleton Act: The mere unofficial taking of custody is not covered by the act.[81] As discussed above, Williams did not take the check from Chung on behalf of anyone else, nor did she have the authority to accept checks on behalf of the DNC. She simply performed a ministerial act by putting the check Chung gave her directly into her outbox to be sent to the DNC. Williams therefore did not receive or accept a contribution as defined by the Hatch Act.

OTHER INDIVIDUALS

Jorge Cabrera

Jorge Cabrera, a Florida businessman, contributed $20,000 to the DNC in order to attend a fundraising event in Miami in December 1995, where he met Vice President Gore and the First Lady.[82] A few days later, Cabrera attended a White House Christmas party at which the First Lady was present.[83]

In early 1996, Cabrera was arrested in Florida and charged with attempting to smuggle cocaine into the United States; he was later sentenced to 19 years in prison.[84] After the arrest, there were reports in the press that Cabrera had a previous criminal record at the time he was invited to the White House in late 1995. In 1983, he pleaded guilty to conspiracy to bribe a grand jury witness and served 42 months in prison. In 1988, he was charged with overseeing a narcotics ring, but pleaded guilty to income tax evasion and served a year in prison. On another occasion, he was charged with racketeering and drug distribution, but not convicted.[85] (Cabrera is also suspected of ties to Cuban leader Fidel Castro;[86] those alleged connections are being investigated by the House Government Reform and Oversight Committee.[87])

When Cabrera's criminal record was publicized, Leon Panetta, then Chief of Staff in the White House, asked other White House

staff members to "meet with Secret Service to find out how a decision was made to allow a convicted felon to 'run round' the White House," according to notes taken by an aide.[88]

The Secret Service responded that Cabrera had been allowed to enter the White House because the cases that turned up on a law enforcement database indicated that he did not pose a physical threat to the First Family.[89] Secret Service procedures do not automatically call for the exclusion of visitors because they have criminal records (see Chapter 26).[90] Instead, the Secret Service determines whether criminal records of proposed visitors would suggest that the individual may pose a physical threat to the President or other White House officials. The Secret Service is prohibited by law from telling the White House staff about any proposed visitor's criminal record, and therefore did not inform the White House of the information they obtained regarding Cabrera.[91]

The DNC, however, could have learned about Cabrera's background if it had conducted an on-line search of the press via Lexis-Nexis,[92] but it apparently failed to do so. DNC spokeswoman Amy Weiss Tobe admitted, "We were not doing the proper vetting of guests at our events. We regret that this happened, but we have a process in place now where the mistakes of the past will not be the mistakes of the future."[93]

Grigori Loutchansky

According to press reports, Grigori Loutchansky is the president of Nordex, a trading company in Vienna that specializes in doing business in the former Soviet Union. He was born and raised in the Soviet Union, but currently holds an Israeli passport. In October 1993, Loutchansky attended a Democratic Party dinner as the guest of Sam Domb, a New York real estate developer and DNC donor. The dinner was not held in the White House, but was attended by President Clinton and Vice President Gore. Loutchansky reportedly chatted briefly with the President and had his picture taken. Loutchansky later told reporters that the President asked him to convey a message to the president of Ukraine, asking him to reduce that country's nuclear stockpile.[94] A senior official of the National Security Council, however, told the Committee that Loutchansky's assertions were not accurate.[95]

In 1995, the DNC invited Loutchansky to a fundraising event at the Hay Adams Hotel in Washington, at the suggestion of Sam Domb. DNC Finance Director Richard Sullivan contacted Karen Hancox, Deputy Director of the White House Office of Political Affairs, and expressed concerns about Loutchansky. Hancox contacted the National Security Council, which recommended that Loutchansky not attend the event.[96] Hancox passed this information on to Sullivan[97] and he asked Domb to rescind the invitation to Loutchansky, which he did.[98]

In July 1996, *Time* magazine reported that Loutchansky was under investigation by law enforcement and intelligence agencies in the United States and other countries. He was suspected of involvement in arms-trafficking, money-laundering, and other crimes, but had not been charged.[99] Shortly before the November election, the Republican National Committee issued a press release based mainly on that article, criticizing the President for having met with

Loutchansky three years earlier. The RNC press release failed to mention that the allegations against Nordex had not been reported in the press when Loutchansky was invited to the 1993 dinner, nor did it mention that he had never attended an event in the White House or any DNC event after 1993. The press release also insinuated, without any substantiation, that Loutchansky had contributed money to the DNC.[100]

Wang Jun

Wang Jun is a Chinese citizen and the son of Wang Zhen, a high-ranking Chinese government official.[101] Wang Jun is the chairman of China International Trust and Investment Corporation ("CITIC"), the chief investment arm of the Chinese government. He is also reportedly the chairman of the China Poly Group, an arms-manufacturer.

On February 6, 1996, Wang attended a White House coffee at the invitation of Yah Lin "Charlie" Trie, at which President Clinton was in attendance.[102] Shortly after the coffee, Poly Technologies was implicated in smuggling weapons into the United States and Wang was described in press reports as an "arms dealer."[103]

Although the President and the DNC acknowledged that Wang's attendance at the coffee was "clearly inappropriate," neither the DNC nor the White House notified the NSC about this invitation in order to receive information about Wang before he attended the event.[104] Moreover, Wang's role in China Poly and its Poly Technologies unit is not clear, despite his title as chairman of China Poly, according to Robert Suettinger, Director of Asian Affairs in the National Security Council. Suettinger informed the Committee that Wang is generally associated with CITIC, not with Poly Technologies.[105]

CITIC, a $20 billion conglomerate, serves as the chief investment arm of China's central government with ministry-level status on the Chinese State Council.[106] CITIC is guided by a 13-member CITIC International Advisory Council, whose board members include prominent Americans including former Secretary of State George Shultz and Maurice Greenberg, chairman of a American International Group, a major insurance firm.[107] CITIC companies have received more than $200 million worth of financing from the Export-Import Bank of the United States. CITIC has forged business partnerships with a variety of U.S. firms, including Westinghouse, Bechtel, and Chase Manhattan. Two months after appearing at the White House coffee, Wang hosted a dinner in Beijing attended by former President Bush and Brent Scowcroft, President Bush's former national security advisor.[108] Wang calls Henry Kissinger "a good friend."[109] During the hearing, Senator Glenn observed that Wang was "a key figure for virtually any U.S. company interested in major economic involvement in China."[110] Senator Glenn noted that former Secretary Shultz has been quoted as saying that he attended CITIC's advisory council meeting in 1996 and that he planned to attend the 1997 meeting as well. Senator Glenn described Secretary Shultz as "one of the finest people to serve in Government . . ."[111]

After the arms-dealing allegations were publicized, the White House determined that Wang Jun had not been vetted by the NSC

(there had been only a "summary background check" by the DNC). The NSC was then asked what it would have recommended if it had performed a background check. Suettinger of the NSC stated in his interview that he believes that if he had been consulted he would have recommended against Wang attending a DNC event because of Wang's "business connections, not his ties to the Communist government" of China.[112]

Yung Soo Yoo

Yung Soo Yoo is a Korean-born American citizen.[113] He is a resident of New Jersey and owns Vitac Optical Inc., a company which imports optical lenses.[114] In 1991, he attended a state dinner in the Bush White House. Throughout the 1990s, he contributed to a wide range of Republican committees and candidates.

In 1977, Yoo testified before a House of Representatives subcommittee that he had worked with the Korean Central Intelligence Agency in an unsuccessful attempt to prevent Korean witnesses from cooperating with a congressional investigation into "Koreagate."[115] This was a scandal involving attempts by the South Korean government to acquire influence in Washington by, for example, bribing members of Congress.

In 1984, Yoo was found guilty under 18 U.S.C. § 1014 of committing bank fraud.[116] The scheme involved his sale of substandard coal to the South Korean government in 1982, and making false statements to a U.S. bank to obtain $4 million from an international letter of credit. Yoo's appeal of the conviction was rejected.[117] He subsequently paid a $10,000 fine.[118]

Yoo has been active in Republican circles for several years. In 1988, he contributed $1,000 to the Bush presidential campaign and $6,000 to the Republican National Committee.[119] He gave $4,500 to the President's Dinner in 1990.[120] He attended a 1991 State Dinner at the White House hosted by President Bush for South Korean President Roh Tae Woo, and was actively engaged in Republican fundraising during the 1992, 1994, and 1996 election cycles.[121]

In 1992, Yoo raised campaign funds in the Korean-American community for President Bush and Senator Alfonse D'Amato of New York and held a fundraiser for Senator D'Amato which was attended by President Bush.[122] He also raised money for Representative Jay Kim of California and, according to federal prosecutors, was the middleman in a scheme to funnel illegal corporate contributions to the Congressman (see Chapter 8).[123] In 1994, Yoo served on the transition team for George Pataki, the Governor-elect of New York, and as the chairman of the International Trade Subcommittee of New Jersey Governor Christine Todd Whitman's economic task force.[124]

In 1994, Yoo donated $2,000 to Senator D'Amato.[125] Two years later, at Yoo's suggestion, Chong Hwang, then the president of the Korean Apparel Manufacturers Association ("KAMA") donated $5,000 in KAMA funds to Senator D'Amato and persuaded 23 KAMA members to purchase $11,500 worth of tickets to a fundraiser headed by D'Amato. As a result, Korean-American factory owners were able to meet with a Pataki aide and as well as Edward McElroy, a director of the Immigration and Naturalization

Service.[126] Hwang was later removed as president of KAMA because of the unauthorized contributions to Senator D'Amato.[127]

Yoo and Senator D'Amato were scheduled to co-chair a fundraiser for Senator Jesse Helms of North Carolina on October 11, 1996, but the event was abruptly canceled the morning it was to take place.[128] Yoo and his wife did, however, donate $2,000 to Helms and $1,000 to the North Carolina Victory Committee in 1996.[129]

Michael Kojima

Michael Kojima, a Japanese-born U.S. citizen, contributed $500,000 to the Republican Party in 1992—the largest contribution to that event—and was rewarded with a seat at the head table, next to President Bush, as discussed in Chapter 6 of the Minority Report.

After the 1992 dinner, news organizations published reports strongly suggesting that Kojima did not make the $500,000 contribution from his own funds. His business was small and apparently struggling. He owed large sums of money to creditors, and he had failed to pay child support to two ex-wives. The Republican Party eventually was forced to share some of the $500,000 with Kojima's creditors, but it insisted on keeping the rest, brushing aside evidence that Kojima was probably a conduit for other donors, most likely businessmen in Japan.

The Republican Party not only provided Kojima with access to President Bush, but a party official wrote several letters on Kojima's behalf, helping him secure meetings with U.S. embassy and consular officials. The RNC even tried to help him get appointments with foreign heads of government.

CONCLUSION

Johnny Chung has asserted in unsworn statements to journalists that he was provided with access to the White House as an explicit quid pro quo for political contributions. He specifically linked a $50,000 contribution to his attendance, with some foreign visitors, at a presidential radio address. Although the evidence presented to this Committee does not support those assertions, Chung's access was to the White House was inappropriate and was probably influenced by his status as a major DNC donor.

The Committee found no evidence that Margaret Williams traded access for contributions or that her activities violated federal laws prohibiting the solicitation of contributors on federal property.

Several individuals involved in controversial activities have been afforded access to senior administration figures in both the Clinton and Bush Administrations. This was largely the fault of inadequate vetting procedures used by the White House and the national political parties. This problem should diminish, since, as noted elsewhere in this Minority Report, the White House and DNC have now tightened their vetting procedures.

FOOTNOTES

[1] *Los Angeles Times,* 3/1/97; *New York Times,* 2/22/97.
[2] *New York Times,* 2/22/97.
[3] *New York Times,* 2/22/97.
[4] *New York Times,* 2/22/97.

[5] *New York Times,* 2/22/97, citing interviews Chung had given to Los Angeles business publications.
[6] *New York Times,* 2/22/97, citing FEC records.
[7] *New York Times,* 2/22/97, citing FEC records.
[8] *New York Times,* 2/22/97.
[9] *New York Times,* 2/22/97.
[10] *New York Times,* 2/22/97.
[11] Margaret Williams and Evan Ryan's offices were located in Room 100 of the Old Executive Office Building.
[12] Evan Ryan deposition, 8/7/97, pp. 11–12.
[13] *New York Times,* 2/22/97: "Associates [of Chung] say he has used his impressive political access to cement business deals with investors from China, Taiwan and Hong Kong . . . ."
[14] *New York Times,* 2/22/97.
[15] *New York Times,* 2/22/97.
[16] *New York Times,* 2/22/97.
[17] *Time,* 3/3/97.
[18] Donald Fowler deposition, 5/21/97, pp. 154–55; see discussion infra.
[19] E-mail from Melanie B. Darby of the NSC, 4/7/97, EOP 5438–40.
[20] E-mail from Robert L. Suettinger of the NSC, 4/7/97, EOP 05438–40.
[21] *New York Times,* 2/22/97.
[22] *New York Times,* 2/22/97.
[23] *New York Times,* 2/22/97.
[24] *Time,* 2/24/97.
[25] *Los Angeles Times,* 7/27/97.
[26] *Time,* 3/3/97.
[27] *New York Times,* 3/3/97.
[28] Donald Fowler deposition, 5/21/97, pp. 154–55.
[29] Donald Fowler deposition, 5/21/97, p. 323.
[30] Margaret Williams deposition, 5/29/97, p. 198. She reiterated this under oath to the Government Reform and Oversight Committee of the House of Representatives, testifying that she did not tell anyone at the DNC or in the President's office about Chung's contribution, and that she did nothing, "no matter how insignificant," to help him secure an invitation to the presidential radio address. House Government Reform and Oversight Committee Hearing Transcript 11/13/97.
[31] Margaret Williams deposition, 5/29/97, p. 198.
[32] Margaret Williams deposition, 5/29/97, pp. 159–60.
[33] Margaret Williams deposition, 5/29/97, p. 167.
[34] Margaret Williams deposition, 5/29/97, p. 160.
[35] Margaret Williams deposition, 5/29/97, p. 163.
[36] Margaret Williams deposition, 5/29/97, p. 212.
[37] Evan Ryan deposition, 8/7/97, pp. 74–75.
[38] *Time,* 3/17/97, p. 20.
[39] *Los Angeles Times*, 7/27/97.
[40] Evan Ryan deposition, 8/7/97, pp. 74–75.
[41] Evan Ryan deposition, 8/7/97, pp. 76–77.
[42] Evan Ryan deposition, 8/7/97, p. 77.
[43] Evan Ryan deposition, 8/7/97, pp. 84–85.
[44] Evan Ryan deposition, 8/7/97, p. 150.
[45] Evan Ryan deposition, 8/7/97, p. 163.
[46] Evan Ryan deposition, 8/7/97, pp. 143–45.
[47] 11/13/97 House Government Reform and Oversight Committee Hearing transcript.
[48] 11/13/97 House Government Reform and Oversight Committee Hearing transcript.
[49] Margaret Williams deposition, 5/29/97, pp. 181–82.
[50] Margaret Williams deposition, 5/29/97, p. 182.
[51] Evan Ryan deposition, 8/7/97, p. 145.
[52] Summary of Secret Service WAVEs records relating to Chung, EOP 004560–63.
[53] Margaret Williams deposition, 5/29/97, p. 230.
[54] Evan Ryan deposition, 8/7/97, p. 116.
[55] Margaret Williams deposition, 5/29/97 pp. 173–74; pp. 183–84.
[56] Margaret Williams deposition, 5/29/97, p. 184.
[57] Margaret Williams deposition, 5/29/97, p. 184. Ryan also testified that Chung was very persistent and that Williams, by taking the check from him, was saving herself from being stuck in a lengthy conversation with Chung. Evan Ryan deposition, 8/7/97, pp. 153–54.
[58] Margaret Williams deposition, 5/29/97, pp. 186, 233.
[59] Margaret Williams deposition, 5/29/97, p. 232; Evan Ryan deposition, 8/7/97, p. 155.
[60] Margaret Williams deposition, 5/29/97, p. 174.
[61] Margaret Williams deposition, 5/29/97, p. 184. During hearings held by the House Government Reform and Oversight Committee Williams reiterated that this was the first time anyone had ever come to the office and handed her a political contribution. House Government Reform and Oversight Committee hearing transcript, 11/13/97. No one has come to the office to deliver her a contribution since this incident. House Government Reform and Oversight Committee hearing transcript, 11/13/97.
[62] Margaret Williams deposition, 5/29/97, p. 185.
[63] Margaret Williams deposition, 5/29/97, pp. 185–86.
[64] Margaret Williams deposition, 5/29/97, p. 186.
[65] Margaret Williams deposition, 5/29/97, p. 232–33.
[66] Margaret Williams deposition, 5/29/97, p. 186.
[67] *Los Angeles Times* , 7/27/97.

[68] Evan Ryan deposition, 8/7/97, p. 110.
[69] Evan Ryan deposition, 8/7/97, p. 110.
[70] Margaret Williams deposition, 5/29/97, p. 232.
[71] 5 C.F.R. 734.101.
[72] 5 C.F.R. 734.101.
[73] Memorandum for James B. King, director, Office of Personnel Management, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, p. 14 (1995) (hereinafter "1995 DOJ Memorandum'). This opinion deals with personnel who administer the Federal Payroll Allocation System, which permits federal employees to make voluntary salary allotments to political action committees. According to the opinion, those Office of Personnel Management staffers who administer the salary-allotment procedure for PAC contributions do not violate 18 U.S.C. § 607 because they are not actually receiving the money that employees allocate to PACs.
[74] 1995 DOJ Memorandum, p. 14 (quoting Contributions for Political Purposes, 21 Op. Att'y Gen., 298, 300–01 (1896)).
[75] Margaret Williams deposition, 5/29/97, p. 244.
[76] Margaret Williams deposition, 5/29/97, pp. 244–45.
[77] Margaret Williams deposition, 5/29/97, pp. 245–46.
[78] Soft money contributions are not covered by the Federal Election Campaign Act, and section 607 applies only to those contributions that are so covered. See Chapter 24.
[79] FEC Records.
[80] See Letter from Attorney General Reno to Senator Orrin Hatch, 4/14/97 (regarding phone calls).
[81] 5 C.F.R. 734.101; 1995 DOJ Memorandum.
[82] *Los Angeles Times*, 12/10/96.
[83] *Los Angeles Times*, 12/10/96.
[84] *New York Times*, 3/22/97.
[85] *Chicago Tribune*, 10/28/96.
[86] *Legal Times,* 4/14/97.
[87] *Legal Times*, 4/1/97.
[88] *USA Today*, 12/10/96, citing notes taken by Janis Kearney.
[89] *Washington Post*, 10/26/96.
[90] *Chicago Tribune*, 10/28/96.
[91] *USA Today*, 10/28/96; *Washington Post,* 10/26/96: In a letter to Representatives Bob Livingston and Frank Wolf, Secret Service Director Eljay Brown wrote, "No member of the White House staff was informed of Mr. Cabrera's criminal history as these records are for law enforcement use only. There are no letters, memoranda, transcripts, electronic mail, phone records, or other records detailing any communications from the Secret Service to the White House."
[92] A Lexis-Nexis search would have turned up, among other things, a UPI report dated 12/15/83 which notes that "Jorge Luis Cabrera . . . is charged with bribing a grand jury witness, smuggling marijuana and engaging in racketeering."
[93] *New York Times*, 3/22/97.
[94] *Washington Post*, 4/8/97.
[95] Staff Interview with Nancy Soderberg, Advisor to the President for National Security Affairs, National Security Council, 5/30/97.
[96] Karen Hancox deposition, 6/9/97, p. 93.
[97] Karen Hancox deposition, 6/9/97, pp. 55–58; see also Doug Sosnik deposition, 6/20/97, p. 175.
[98] *Washington Post*, 4/8/97.
[99] *Time*, 7/8/96.
[100] Press statement issued by RNC Chairman Haley Barbour, 11/3/96.
[101] *Richmond Times Dispatch*, 7/13/97.
[102] *AP Online*, 7/30/97; *New York Times,* 2/3/97.
[103] *AP Online*, 7/30/97.
[104] *Tampa Tribune*, 2/3/97; New York Times, 2/3/97.
[105] Staff Interview with Robert Suettinger, Director, Asian Affairs, National Security Council, 6/3/97.
[106] *Austin-American Statesman*, 3/30/97.
[107] *Austin-American Statesman*, 3/30/97.
[108] *Austin-American Statesman*, 3/30/97.
[109] *Washington Post*, 3/16/97.
[110] Senator Glenn, 7/9/97 Hrg., p. 154.
[111] Senator Glenn, 7/9/97 Hrg., p. 155.
[112] Staff Interview with Robert Suettinger, Director, Asian Affairs, National Security Council, 6/3/97.
[113] *New York Daily News*, 12/5/96.
[114] *Los Angeles Times*, 8/19/97.
[115] *Los Angeles Times*, 8/19/97; *Washington Post,* 12/1/97.
[116] *Los Angeles Times*, 8/19/97.
[117] *United States v. Yung Soo Yoo*, 833 F.2d 488 (3d Cir. 1987).
[118] *Los Angeles Times*, 8/19/97.
[119] FEC records.
[120] FEC records.
[121] *Washington Post*, 7/3/91; *The Hill,* 6/4/97; *Star-Ledger,* 4/15/97.
[122] *New York Daily News*, 11/21/96; *New York Daily News,* 4/11/97; *The Hill,* 6/4/97.
[123] *Los Angeles Times*, 8/19/97.
[124] *Albany (N.Y.) Times Union*, 12/24/94; *Bergen Record* (Bergen County, N.J.), 9/15/94.
[125] FEC records.
[126] *New York Daily News*, 11/21/96.

[127] *New York Daily News*, 11/21/96.
[128] *New York Daily News*, 11/21/96.
[129] FEC records.

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PART 5 FUNDRAISING AND POLITICAL ACTIVITIES OF THE NATIONAL PARTIES AND ADMINISTRATIONS

Chapter 32: Coordination Among the White House, the Democratic National Committee and the Clinton Campaign; Issue Ads

Since 1976, presidential campaigns have been eligible to receive federal funds. Public financing was designed to free presidential candidates from the need to raise money and to assure voters that these candidates would not become beholden to contributors. In exchange for federal funds, presidential campaigns must agree to limit the amount of money they spend. One purpose in enacting our campaign finance law was to put in place expenditure limitations that would level the playing field on which presidential candidates compete.

However, due to a series of court rulings, as explained in Chapter 24, an enormous loophole has been created that enables national party committees and presidential campaigns to circumvent this spending limit. In addition to the funds that presidential candidates may spend on their own campaigns, national party committees are permitted to spend unlimited amounts of money on "issue ads."[1] An advertisement sponsored by a party qualifies as an issue ad as long as it does not contain an electioneering message advocating the election or defeat of a specific candidate. A cleverly worded ad can meet this standard even though it portrays a candidate in a positive (or negative) light. The law also permits a presidential candidate to help his party raise money for issue ads and to control the content and production of these advertisements.

By running issue ads, political parties and presidential campaigns are legally able to circumvent the federal law mandating that a presidential candidate can raise and spend only hard money (contributions in small dollar amounts raised from individuals and political action committees) prior to the party's convention without violating the law.[2] In contrast, during the 1996 election cycle, the political parties were free to pay for issue ads with a combination of hard and soft money.[3] In the upcoming election cycle, it may be possible for parties to pay for issue advertisements with only soft money.[4]

In 1996, both the Clinton campaign and the Dole campaign made use of the loophole allowing a national party committee to spend unlimited soft dollars on issue advertising. Both presidential candidates helped their parties to raise hard and soft money, which was used to pay for issue ads, and both presidential campaigns assisted the party committees in creating ads that were designed to bolster support for the party's presidential candidates. Although a number of RNC ads came close to not meeting the legal standard for issue advocacy, neither party's ads appeared to carry an electioneering message advocating the election or defeat of its presidential nominee and, thus, were not subject to the federal spending limits that apply to presidential campaigns. The Clinton and Dole for President campaigns were thus able to legally circumvent federal spending limits.

Footnotes appear at end of chapter 32.

FINDINGS

(1) Both the Clinton campaign and the Dole for President campaign benefited from spending by their respective parties in excess of the spending limits applicable to presidential candidates who accept public financing.

(2) Coordination of issue advocacy between the Clinton campaign and the DNC and between the Dole for President campaign and the RNC was legal under current campaign finance laws.

(3) Both presidential campaigns coordinated fundraising to pay for the issue advocacy of their respective parties.

INTRODUCTION AND SUMMARY

During the 1996 election cycle, the DNC paid for a multimillion-dollar issue advocacy effort that was designed to build support for the Democratic Party's position on major legislative issues and to bolster support for President Clinton. The Clinton campaign organization and its consultants actively participated in all stages of this media effort. White House Deputy Chief of Staff Harold Ickes played a major role in the reelection effort, of which the ads were a key part.

The activities of the DNC and the Clinton campaign were permissible. Federal law explicitly sanctions coordination between political parties and their presidential candidates.[5] The law also permits parties to pay for and air issue ads that are intended to aid their presidential candidate as long as the ads do not carry an electioneering message advocating the election or defeat of a specific candidate. The DNC's ads, which all related to pending legislative issues, satisfied this issue-advocacy standard.

THE ORIGIN OF THE DNC'S ISSUE AD CAMPAIGN

The Clinton campaign and the DNC first considered the possibility of using issue ads to communicate the President's message in the first half of 1995.[6] Democratic strategists felt that one of the reasons the party lost Congress in 1994 was that it had not been successful in communicating its message. After discussions involving the President and his advisers, a decision was made to conduct a major radio and television advertising effort in 1995 and 1996. Richard ("Dick") Morris, the Clinton campaign's media consultant, suggested that the campaign not accept federal matching funds so that it would not be limited by the federal cap on campaign expenditures.[7] In early 1995, the Clinton campaign organization rejected Morris's suggestion and agreed to accept federal funds. It is unclear whether, at the time this decision was made, the DNC and the Clinton campaign had planned to spend money on issue ads not subject to the expenditure cap.

The first-1996 cycle televised ads ran in July 1995 when the Clinton campaign paid for a series of advertisements that addressed the crime issue.[8] Dick Morris explained the original conception of the advertising campaign:

> [I] found out that you could run advertising that was related to issues that did not explicitly urge the election of a candidate, I realized that was precisely what I had in mind anyway. . . . So it was not a question of finding a

> loophole in which we could restructure the advertising to achieve a different goal in a different way in order to get under the DNC label. . . . Specifically, I was not very concerned in the early part of '95 or throughout most of "95 with the president's re-election per se, because I felt that for the president to have a hope of being reelected, he first had to win the fight over the budget. He first had to defeat the agenda of the Gingrich-Dole Congress and win the battle associated with the budget and tax issues. . . . So that when I found out that there was a kind of advertising . . . that could be done that was congruent with my political purposes at that point, which was to win an issue before the Congress, I was thrilled.[9]

In a September 1995 meeting, the President, the Vice President, the First Lady, Harold Ickes, Senator Christopher Dodd, DNC Chairman Donald Fowler, and White House aide George Stephanopoulos decided that the DNC should undertake an extensive media effort to communicate the message of the President and the party.[10]

The televised ads, which aired steadily throughout the fall of 1995 and early 1996, focused on the President's refusal to support Republican budget proposals and the President's determination to protect Medicare.[11] These issues were among the most important pending before the United States Congress at the time. Although Haley Barbour, then Chairman of the RNC, initially vowed not to spend Republican hard dollars on a similar advertising effort, in November 1995, the RNC began airing advertising attacking President Clinton and his position on the balanced budget.[12] In addition, in mid-1995, the RNC helped create a tax- exempt organization, Coalition for Our Children's Future, to air balanced budget and Medicare advertising with entirely undisclosed and unregulated soft money, in contrast to the publicly disclosed combination of hard and soft money being used by the DNC (see Chapter 13).

THE DNC AND RULES GOVERNING ISSUE ADS

Before the DNC began its million-dollar issue advertising effort, counsel for the DNC and the Clinton campaign advised their clients that the DNC's plan complied with existing law. Ickes explained, when he was questioned by Senator Akaka during a Committee hearing:

> Q: In response to questions earlier today, you testified that you consulted counsel on the ability to use soft money for issue ads during 1995, did you not?
>
> A: Certainly did.
>
> Q: What were you told were the parameters of the advertising that could be done with soft money?
>
> A: I was concerned, Senator, because I wanted to make sure that whatever advertising was done by the DNC using both hard and soft money, because a mix is required, would not be attributed to the spending limits of the Clinton campaign. That is why I did consult counsel, and I was told by counsel that under the Federal Election Campaign Act, as amended by the Congress in '78 or '79 and as inter-

> preted by the FEC, that these kinds of ads, the so-called issue ads, could be run by the DNC and would not be attributed to the campaign, that they were perfectly legal. . . . And, in addition, we had lawyers looking at each script and each ad as it was cut before it went on the air, with the exception of one which we had to pull.
>
> Q: So soft money, which under current federal election laws can be raised in unlimited amounts from any type of contributor, including corporate contributors, may lawfully be used to advertise the president's message without much limitation. Is that right?
>
> A: That's right, and it depends upon the content of the ad. And, again, Senator Lieberman and I have had a colloquy about this. I think this is something that has to have a very sharp look-at.[13]

As Chapter 24 details, counsel, along with Ickes were correct regarding the legal requirements for party issue ads. These ads are permissible and do not count against a presidential campaign's spending cap as long as they do not cross the line into advocating the election or defeat of a specific candidate. Courts disagree about where to draw the line between issue ads and candidate ads. Courts have held that an ad does not advocate the election or defeat of a candidate unless it uses words such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," or "reject." One circuit has held that an ad that does not use these so-called magic words can nevertheless cross the line between an issue ad and candidate ad if it unmistakably urges voters to elect or defeat a specific candidate.

Counsel placed limits on the types of ads that the DNC could run that were stricter than either of these legal standards. Counsel also attempted to ensure that the ads did not contain an "electioneering message," a currently undefined standard, by ensuring that the advertsiments mentioned no campaign or election and were not run within six weeks of a state primary. No DNC advertsing was aired during the general election period. Dick Morris described these limits:

> Sandler and Utrecht . . . said that issue advocacy advertising had to relate to an important . . . legislative issue that was pending before the Congress, that was actively in play and discussion before the Congress. It had to express the view on that issue which was held by the President, the administration in general . . . and the leadership of the Democratic Party; that it had to be an issue position in which the Republican Party leadership took a generally different point of view. . . . I further learned from Sandler and Utrecht that the advertisements . . . could not overtly urge the re-election of the President or the defeat of any particular Republican candidate. I further learned that there were constraints on the extent to which the President's picture could be used in the advertisements or the picture of possible Republican opponents could be used in the advertisements. I further came to learn that there were restrictions on the proximity to the

> primary dates that such advertisement could be run in different states.[14]

The rules established by counsel for the DNC and the Clinton campaign were stricter than the FEC opinions and court rulings distinguishing issue and candidate ads.

THE DNC ADHERED TO THE LEGAL RULES GOVERNING ISSUE ADS

The ideas for specific DNC issue ads originated in regular Wednesday evening strategy meetings at which the President, top White House staff, and the media consultants planned campaign activities, including the use of advertising.[15] At the Wednesday meetings, President Clinton approved the concepts for DNC ads. "Creative meetings" attended by, among others, Dick Morris and DNC Counsel Joseph Sandler, took place the day after these strategy meetings. Participants at the "creative meetings" developed ad themes and scripted ads. On occasion, they changed ad themes that the President had approved in a strategy meeting, and final ads were often cut and aired without receiving the President's approval. DNC counsel, and on occasion, Clinton campaign counsel attended these creative meetings in order to ensure that every DNC ad adhered to the limits they had imposed and therefore fell within the legal definition of issue advocacy and did not contain an electioneering message.[16]

Dick Morris testified that the DNC followed the guidelines established by counsel "to the letter—to the comma."[17] He complained that the lawyers were "obsessively" concerned with following the law:

> [T]hey would bend over backward in ways that I considered ridiculous to comply with what would have been [an] overly conservative interpretation of the law. As I mentioned, there was a time in which the Republicans were running ads bashing Clinton, and Utrecht and Sandler told us that we couldn't run ads bashing Dole because he had retired from the Senate. And I said you are disarming us unilaterally; this guy is on the air, spending 3 million bucks a week savaging Clinton, and you won't let us go on the air with our measly million defending him, or attacking Dole, because you're telling me that it's illegal. Well, if it's illegal for us, why isn't it illegal for them? . . . And constantly during this process, I felt that Sandler and Utrecht were overly conservative in their interpretation.[18]

Morris was particularly angry that the Dole campaign and the RNC were not operating under the restrictions that counsel had imposed on the DNC:

> [T]he Republicans had a 60-second commercial which was entirely positive about Bob Dole. It talked about how he was born on a farm, and he grew up in Kansas, and everybody in this town knew him and loved him, and he was a war hero, and he'd been wounded; and it did not in the course of the entire ad mention a single public policy issue, whether or not the issue was before Congress or not, to my

> recollection. And that was paid for as an issue advocacy RNC ad.
>
> And when I asked Sandler and Utrecht permission to run a positive Clinton commercial that related to Clinton's personal life and background and all that, they said we're going to have to do that with Clinton money if we do it; and they were constantly editing out of my manuscripts and my texts any references to Clinton that were not within the direct four walls of legislative advocacy.
>
> And when the Dole ad came on, I screamed bloody murder, because I said they are violating every rule you've made me follow. That was the most blatant example. There was no issue content in the ad.[19]

Because the DNC's ads complied with counsel's guidelines, which were stricter than the legal requirement that issue ads refrain from advocating the election or defeat of a specific candidate, they were permissible under current law. As the next chapter discusses in greater detail, although the RNC's issue ads were also permissible, the ads came much closer to crossing the line between issue advocacy and candidate advocacy.

THE CLINTON CAMPAIGN AND THE DNC CAMPAIGN

Even though the DNC's ads were permissible, they were clearly designed to aid the Clinton campaign. As Harold Ickes testified at this Committee's hearings:

> Q: Would you say that people looking at the ads—and I am sure you looked at the Dole spots as well—would take the message, the average person, that this is very good person who we should vote for next year?
>
> A: I would certainly hope so. If not, we ought to fire the ad agencies.[20]

Because the cost of DNC issue ads did not count as expenditures by the Clinton campaign, the DNC's media effort allowed the Clinton campaign to benefit from favorable advertising without depleting its scarce, federally-capped campaign coffers. The DNC's advertisements were shown in states considered key to the President's reelection, and funds were transferred from the DNC to the state parties in order to take advantage of the state parties' ability to spend a larger percentage of soft money on the advertisements. While the transfers were made to take advantage of the state parties' greater ability to spend soft money, there are no restrictions on this type of transfer.[21] As Chapter 33 explains, the RNC and Dole for President campaign engaged in similar activities. Although the practices engaged in by both parties are permissible, they violate the spirit of the campaign finance laws, which are designed to limit the spending of presidential campaigns.

THE LEGALITY OF COORDINATION AMONG THE CLINTON CAMPAIGN, WHITE HOUSE, AND DNC

The President's role in the making of DNC issue ads

President Clinton played a significant role in the DNC's issue-advocacy effort. He attended weekly strategy sessions with Senator

Dodd and DNC Chairman Donald Fowler and he approved the concepts for a number of DNC issue ads. President Clinton and Vice President Gore also devoted a significant amount of time to raising money for the DNC's media effort. Some Committee Members have raised concerns that the President's involvement in the making of issue ads may have been illegal.[22] They point in particular to a video tape in which, in discussing the DNC's issue-advocacy campaign, the President says: "And then we realized we can run these ads through the Democratic Party."

However, the President is permitted to be involved in strategic decision making, and fundraising on behalf of the party. As discussed in Chapter 24, federal law not only permits, but explicitly sanctions this cooperation between candidates, including Presidential candidates, and their political parties. The Federal Election Campaign Act and its regulations recognize the unique role of President with regard to the party and allow a presidential candidate to go so far as to "designate the national committee of [his or her] political party as his or her principal campaign committee."[23] If President Clinton had exercised his right to choose the DNC as his campaign committee, then he would have been able not only to coordinate with the DNC or to control some of its activities, but the party and the President would have become one entity. The President is legally entitled to have a say in the activities and operation of the national party.

Attorney General Reno correctly stated the current law in her April 1997 testimony before the Senate Judiciary Committee. She stated, "one of the things I want to make clear—coordination is never prohibited. And, in fact, issue advertising may be paid for in part by soft money with coordination, even with coordination."[24]

Republican election-law experts agree that President Clinton's involvement in the making of the DNC issue ads was permissible. Republican election law expert Jan Baran, stated that the courts have interpreted the law to allow political parties to coordinate with candidates and pay for issue ads with soft money. He dismissed the significance of the videotape in which the President admitted to running "ads through the Democratic Party," stating that "He [Clinton] is confirming the legally obvious. To me it has no legal significance." When asked about the possibility that the President could be accused of committing a crime for being involved in the issue ads placed by the DNC, Baran said, "Are you going to throw somebody in jail for violating a law no three people can agree on?" The answer is "of course not."[25]

Senator Dole himself has stated clearly that parties and presidential candidates can coordinate their activities. Asked about the RNC's issue ads, he took the same position that President Clinton took with respect to DNC issue ads, and used almost identical language: "[W]e can, through the Republican National Committee, through what we call the Victory '96 program, run television ads and other advertising."[26]

Ickes's role in coordinating with the DNC

Harold Ickes was heavily involved in the activities of the DNC while he was White House Deputy Chief of Staff. Ickes's actions

were legal, as were similar activities by White House officials in Republican administrations.

Ickes's involvement with the DNC traces back to the September 1995 meeting at which the DNC and Clinton campaign officials decided that the DNC would undertake an issue-advocacy effort. At this meeting, the President and Vice President committed to devoting time to raise money for the DNC's media effort.[27] Thereafter, the President and the Vice President spent more time on fundraising activities to assist the DNC's efforts to raise the soft money needed to pay for the issue advertisements. The President and the Vice President attended many fundraising events for the DNC and the Vice President made phone calls to help raise soft money for the media fund.

Involving the President in fundraising for the DNC required the White House to maintain frequent contact with the party. Ickes was the primary White House-DNC liaison. Although he became involved in many DNC activities, his involvement was generally related to "big picture" issues, such as scheduling the President and monitoring the DNC's finances.[28] Ickes also took part in DNC personnel decisions, including those related to the transfer of staff between the DNC and the Clinton campaign. Donald Fowler, national chairman of the DNC, testified that he viewed the President as the leader of the party and Ickes as the person who communicated the President's views to DNC personnel.[29] Accordingly, Ickes was expected to and did have involvement in campaign activities, including the coordination of the issue advocacy efforts of the DNC and the raising of soft money to pay for such ads.

Beginning in the fall of 1995, Ickes attended weekly meetings with political and scheduling staff from the White House (including Doug Sosnik and Karen Hancox) and senior DNC staff (including Donald Fowler, B.J. Thornberry, Marvin Rosen, Brad Marshall, Scott Patrick, and Richard Sullivan). Attendees discussed the DNC budget and the scheduling of the President's and Vice President's participation in fundraisers.

The participation of a deputy chief of staff in such gatherings is hardly unprecedented. During the 1984 campaign, President Reagan's chief of staff, James Baker, III, participated in similar meetings. As Harold Ickes noted:

> In 1983, White House chief of staff, James Baker, began holding weekly political meetings in his White House offices, again, including White House staff, the staff of the RNC, the re-election campaign, and campaign consultants. Known as the Campaign Strategy Group, its reported purpose was to guide President Reagan's re-election campaign and to coordinate the activities of the RNC and other Republican Party resources.[30]

Indeed, Ickes modeled his involvement with the DNC on the activities of Republican administrations. Ickes testified:

> [M]ost of the White House staff may participate in a broad range of political activities in their offices.
>
> In this regard, much has been made of my role with respect to the elections while I served as deputy chief of staff of the White House. Among my numerous duties, I served

as the president's point man on both the DNC and the re-election campaign, and I met regularly with campaign and DNC officials. And the Office of Public—the Office of Political Affairs reported to me.

This was the model established by my Republican predecessors. Indeed, it was President Reagan and his then Chief of Staff James Baker who officially established the Office of Political Affairs in the White House. Its functions were continued under President Bush and were inherited by the Clinton White House.

According to the *National Journal,* the Reagan White House political office was, and I quote, "structured along the lines of a miniature campaign organization."

Under its first director, Lyn Nofziger, the Office of Political Affairs had, and I quote, "specific links to the Republican National Committee and the House and Senate GOP campaign units . . . [so] that all elements of the party apparatus [would] have a designated contact in the White House . . ."

In late 1981, Mr. Nofziger announced he was leaving the White House, but not before the general election strategy had been planned for the 1982 elections.

As Mr. Nofziger explained: "The idea [was] to make sure that the White House bestowed its favors—campaign appearances, endorsements, coordination of grant announcements—in the most effective way possible."

And according to Mr. Nofziger, "We had a full time team of political operatives working for us—essentially our consulting firm—the White House could respond quickly and decisively to problems as they cropped up.". . .

President Reagan's next director of the Office of Political Affairs, Ed Rollins, held regular weekly meetings in the Old Executive Office Building next to the White House, which included White House staff and top staff from the Republican National Committee, the National Republican Senate Committee, and the National Republican Congressional Committee. Their purpose was to obtain Republican victories in the 1982 congressional elections.

To this end, the *National Journal* reported, "Rollins' office has been established as a place where Republicans in Congress can come to request Presidential favors. In the past 16 months," according to Mr. Rollins, "we worked very hard to produce the perks that members want. This has been the shop that has fought to get their appointments and their advisory commission people, the things that we feel are important to them for getting re-elected."

* * * * *

During 1984, Mr. Baker established a second campaign group known as the Implementation Group, which he also chaired and which also met in his White House offices.

It was reported, and I quote, "Overall authority for directing the 1984 re-election campaign was clearly vested in White House chief of staff, James A. Baker, III, eliminating coordinating problems between the White House and

> campaign staffs, that plagues campaigns of prior, previous incumbents."
>
> At that same time, Lee Atwater was the deputy director of the Reagan-Bush re-election campaign, but as he stated, Mr. Baker controlled the campaign. I quote Mr. Atwater, "Having Jim Baker as the key domo in this whole operation is a big plus. Rollins and I do not question his supremacy. We are very loyal to him, and we all work very well together."
>
> Mr. Baker went on to play this role as well in the 1992 Bush re-election campaign. President Bush persuaded Mr. Baker to resign as Secretary of State and to assume the role of chief of staff to the President operating out of the White House. He was put in charge of both the White House staff and President Bush's re-election campaign, and Mr. Baker eventually chaired twice daily campaign meetings in his White House offices.
>
> According to reliable reports, President Bush's national security advisor, General Scowcroft, attended those meetings. Thus, in having the White House actively involved in campaign matters, the Clinton White House merely followed well-established Republican precedent. . . .[31]

Ickes's involvement with the DNC not only follows the precedent set by Republican administrations, but, more importantly, complies with federal law. Coordination between the party and the campaign is expected, and federal election law presumes that coordination occurs. Also, as Chapter 24 explains, the Hatch Act's prohibition on federal employees' engaging in political activity does not apply to White House personnel, such as Harold Ickes, who are paid from appropriations for the Executive Office of the President. The law permitted Ickes to engage in political activity during working hours, in a federal building, and using federal property as long as the activity did not involve soliciting or accepting contributions and incurred no cost to the government. Ickes complied with these restrictions.[32]

CONCLUSION

The fact that coordination of soft money spending and fundraising has become commonplace and expected should be examined by Congress. By permitting such coordinated efforts to raise soft money and spend it on political activities that advance the interests of presidential campaigns, the federal election laws create a tremendous loophole to both contribution limits and spending limits. As the Chairman has acknowledged:

> Acceptance of this activity would allow any candidate and his campaign to direct and control the activities of a straw man through which the campaign could draft, revise, and place advertisements meant to benefit the particular Federal campaign. For such activity, these straw men could use funds subject to no limit and derived from any source. . . . If the interpretation is that this is legal and this is proper, then we have no campaign finance system in this country anymore.[33]

The fact that the national parties and presidential campaigns can legally coordinate issue ads paid for, in part, by unlimited soft money undermines the system of regulating the financing of presidential elections. The spending limits applicable to presidential campaigns that accept matching funds are meaningless when unlimited party soft money can be spent on the campaign. During the 1996 election cycle, the irrelevance of the spending limits was demonstrated by the fact that hundreds of millions of dollars over and above the limits was spent on issue advocacy efforts that were designed to advance the presidential tickets. By reducing or, preferably, banning soft money, Congress could close this loophole and give meaning to the spending limits imposed on presidential campaigns.

FOOTNOTES

[1] FEC Advisory Opinion 1995–25.

[2] Under the federal election laws, an individual is allowed to give a maximum of $2,000 to a candidate ($1,000 each for the primary and general election) during any one cycle. A political action committee ("PAC") can give $5,000. Contributions from corporations and labor unions are forbidden. 2 U.S.C. sections 441a and 441b.

[3] FEC Advisory Opinion 1995–25.

[4] See Federal Election Commission Matter Under Review 4246, released 1997. But see Statement of Reasons issued by Commissioners McGarry and Thomas in MUR 4246.

[5] See Chapter 24.

[6] Richard Morris deposition, 8/20/97, p. 78.

[7] Richard Morris deposition, 8/20/97, pp. 98–100.

[8] Richard Morris deposition, 8/20/97, p. 131.

[9] Richard Morris deposition, 8/20/97, pp. 135–36.

[10] Donald Fowler deposition, 5/21/97, p. 292–95.

[11] See Annenberg Public Policy Center, "Issue Advocacy Advertising During the 1996 Campaign: A Catalog," 9/16/97, p. 32.

[12] *The Hotline*, 11/17/95; *The Hotline*, 1/6/95.

[13] Harold Ickes, 10/8/97 Hrg., pp. 164–65.

[14] Richard Morris deposition, 8/20/97, pp. 143–44.

[15] Participants at these meetings included the president, the vice president, Leon Panetta, Harold Ickes, Evelyn Lieberman, George Stephanopoulos, Don Baer, Doug Sosnik, Ron Klain, Sandy Berger, Senator Chris Dodd, John Hilley, Maggie Williams, Mike McCurry, Henry Cisneros, Mickey Kantor, Mack McLarty, Peter Knight, Anne Lewis, Ron Brown, Erskine Bowles, Jack Quinn, Dick Morris, Doug Schoen, Mark Penn, Bob Squier, and Bill Knapp. Richard Morris deposition, 8/20/97, p. 76.

[16] Joseph Sandler deposition, 8/22/97, pp. 67–69; Richard Morris deposition, 8/20/97, pp. 76, 140–44.

[17] Richard Morris deposition, 8/20/97, p. 409.

[18] Richard Morris deposition, 8/20/97, p. 410.

[19] Richard Morris deposition, 8/20/97, pp. 411–12.

[20] Harold Ickes, 10/8/97 Hrg., p. 79.

[21] 2 U.S.C. section 441a(a)(4). The allocation regulations adopted in 1990, which determine how much hard and soft money national and state parties may use, place no restrictions on transfers between parties for any purpose.

[22] At this Committee's 10/22/97 hearing Chairman Thompson said: "The President acknowledges that spending on campaign advertising is limited by law, but he and his advisors, so he tells the assembled contributors who are being asked to pay for these ads, say that they have found a way that they could raise and spend money through the Democratic National Committee; that they could run these ads through the DNC. Indeed, the President credits his DNC advertising, which they and the White House directed and controlled, with having improved his performance by 10 to 15 points in key States where the President is hopeful of garnering additional Electoral College votes. We now know about how the President saw the DNC ads functioning as an integral part of his re-election strategy. . . . To allow the type of activity undertaken by the Clinton '96 campaign in conjunction with the DNC undermines the entire Federal election campaign regulatory system. Acceptance of this activity would allow any candidate and his campaign to direct and control the activities of a straw man through which the campaign could draft, revise, and place advertisements meant to benefit the particular Federal campaign. For such activity, these straw men could use funds subject to no limit and derived from any source. Furthermore, these straw men would not be subject to any overall expenditure limit. To tolerate such blatant manipulation of the system would perpetuate a ruse on the American taxpayer. Those taxpayers are being told that in return for over $233 million in their money, they got an open, above-board system of campaign finance prohibitions, limitations, and regulation. That simply was not the case in 1996." 10/22/97 Hrg., pp. 9–11.

[23] 11 C.F.R. 102.12(c)(1).

[24] Senate Judiciary Committee hearing, 4/30/97, p. 106.

[25] *Wall Street Journal* , 10/17/97.

[26] Exhibit 2336M: Transcript of ABC News Interview of Bob Dole, 6/6/96.

[27] Donald Fowler deposition, 5/21/97, pp. 294–95. As described in Chapter 26, this commitment led to the Vice President's making fundraising calls to raise some of the soft money needed to fund the media efforts.

[28] Harold Ickes testified: "Again, the discussions I had with respect to my role in the White House as it related to both the DNC and the Clinton campaign, was basically to use—sort of an overused cliche—bottom line. I was looking at aggregates. And it was the DNC and Clinton-Gore campaign that were dealing with the particular specifics." Harold Ickes, 10/8/97 Hrg., p. 35.

[29] Donald Fowler, 9/9/97 Hrg., pp. 76–77.

[30] Harold Ickes, 10/7/97 Hrg., pp. 88–89.

[31] Harold Ickes, 10/7/97 Hrg., pp. 86–90. See also Samuel Berger, 9/11/97 Hrg.

[32] See Chapter 24. The testimony and documents submitted to this Committee indicate that both the DNC and the White House took numerous steps to ensure that government resources were not used for political purposes. For example, there were separate fax machines, computers and other office equipment that were used for political purposes. See Jennifer O'Connor deposition, 10/6/97, pp. 149–50.

[33] 10/22/97 Hrg., p. 10.

8293

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PART 5 FUNDRAISING AND POLITICAL ACTIVITIES OF THE NATIONAL PARTIES AND ADMINISTRATIONS

Chapter 33: Coordination Between the Republican National Committee and the Dole for President Campaign During the 1996 Cycle; Issue Ads

Presidential campaigns that accept federal matching funds must limit their spending to $37 million in hard money during the primaries and $74 million in the general-election campaign. As explained in the previous chapter, the Clinton campaign legally coordinated with its political parties to spend unlimited sums of money on issue ads designed to aid their presidential candidates. These ads are legal as long as they do not carry an electioneering message advocating the election or defeat of a specific candidate. The law also permits political parties and presidential campaigns to work together in producing these issue ads.

The Dole for President campaign and the Republican National Committee ("RNC") also skirted the federal spending caps by launching a multimillion-dollar issue-advocacy campaign that was designed to support the Dole candidacy. Dole for President controlled the RNC's media budget as well as the content and production of the RNC's issue ads. Unlike the DNC's issue ads, which all related to pending legislative issues, a number of RNC ads did not discuss any substantive issues. Although these Dole/RNC issue ads complied with the letter of the law, they certainly violated the spirit of the law by permitting the Dole campaign to benefit from RNC ads that are virtually indistinguishable from the types of advertisements that a presidential campaign would run. Dole for President also circumvented federal spending limits by transferring to the RNC payroll key Dole staffers who continued to work directly to advance the Dole candidacy.

FINDINGS

(1) Both the Clinton campaign and the Dole for President campaign benefited from spending by their respective parties in excess of the spending limits applicable to presidential candidates who accept public financing.

(2) Coordination of issue advocacy between the Clinton campaign and the DNC and between the Dole for President campaign and the RNC was legal under current campaign finance laws.

(3) Both presidential campaigns coordinated fundraising to pay for the issue advocacy of their respective parties.

INTRODUCTION

The RNC spent approximately $24 million over and above the hard-money spending limit applicable to the Dole campaign.[1] This massive expenditure was for an issue-advocacy campaign designed to inform voters about the Republican view on issues. The evidence clearly shows that this advertising effort was coordinated with the Dole campaign and was designed to promote Dole's candidacy.

According to documents produced to the Committee, Scott Reed, Dole's campaign manager, controlled the budget for this ad cam-

Footnotes at end of Chapter 33.

paign. Moreover, the RNC ads were produced by Don Sipple and Tony Fabrizio, media consultants who were vendors to both the Dole campaign and the RNC. Therefore, the content of these ads, as well as the circumstances surrounding their creation, production, and distribution show that the RNC designed its issue- ad campaign for one purpose: to support the candidacy of Senator Dole.

The DNC sponsored a similar effort during the 1996 election cycle—the White House, the Clinton campaign, and the DNC coordinated an extensive issue-advocacy effort that was designed to support the re-election of the current administration. (See Chapter 32.) There is nothing inherently illegal about such efforts. However, the RNC advertisements came closer to violating the legal test for issue advocacy than did the DNC's ads. For example, a number of RNC issue ads did not include any substantive discussion of legislative issues, but simply discussed Senator Dole's biography or leveled personal attacks against President Clinton. The DNC did not run ads of that sort and has brought a lawsuit against the RNC and the Dole campaign challenging several of the RNC issue ads.

The Dole campaign was able to make use of loopholes in the campaign-finance law that essentially nullify the law's limits on presidential campaign spending.

THE ORIGIN OF THE PRO-DOLE ISSUE-AD CAMPAIGN

In April 1995, Dole for President applied for federal funding and pledged to spend no more than $37 million, limited to hard money, before the August 1996 Republican Convention. By March 1996, however, the Dole campaign had, by its own estimate, only $2 million left to spend.[2] In April, Senator Dole conceded that his campaign was "broke."[3] In May—three months before the Republican National Convention—the Dole campaign had only $177,000 left to spend.[4] As the *New York Times* explained, "[n]o presidential campaign [had] reported coming this close to the spending limit this long before its convention."[5]

As early as January 1996, the RNC had foreseen that its nominee would emerge from the Republican primaries having exhausted his financial resources, and it planned to support the nominee's candidacy by running issue ads that would be paid for with a hard-soft money mix that was not subject to the $37 million spending limit. The minutes of a January 17 RNC Executive Council and Budget Committee meeting show that party officials "issued a request for [a] proposal to Republican consultants to solicit ideas for how we can insulate our nominee-to-be during the April-August interregnum."[6] The party officials anticipated that "[p]aid advertising [would] be the necessary component of [the party's] message management during this period, supplementing [its] bracketing and press efforts."[7] On March 5, RNC Chairman Haley Barbour wrote to Republican leaders:

> Our nominee is likely (but not certain) to be known by the end of March. Because of provisions of the federal election law, our nominee is likely to be broke and to have reached the spending limit allowed by law (unless it is Steve Forbes who hasn't accepted federal funds and, there-

> fore, is under no limit). Assuming our nominee has reached the limit, he will not be able to air radio and TV spots or conduct much in the way of campaign activity until the convention in August.[8]

Barbour went on to explain how the Republican Party planned to aid its cash-strapped nominee: "[T]he party (the RNC and our state party organizations) are allowed to run issue and generic party advertising, and we have a sizable (though it needs to be bigger) budget for that. We are scheduled to begin in April."[9] The chairman also made it clear that "the party [could] coordinate [its] generic advertising with anybody. . . ."[10]

On May 16, Barbour announced that the RNC would launch a $20 million advertising campaign. In the announcement, Barbour boasted that the RNC's ads were designed to aid the Dole campaign:

> Yesterday, with Senator Dole's announcement that he will resign from the Senate to be a full-time candidate for president, the 1996 presidential campaign began in earnest. Consistent with that, the Republican National Committee is announcing today that we will launch a $20 million issue-advocacy advertising campaign between now and our convention in August to get the issues of this campaign before the American people and to get the truth out about these issues.
>
> * * * * *
>
> Yesterday, Bob Dole picked up the flag of our Party to carry it to victory in the November elections against Bill Clinton. Now the Republican National Committee will rally behind his leadership and use this issue-advocacy campaign to show the differences between Dole and Clinton and between Republicans and Democrats on the issues facing our country, so we can engage full-time in one of the most consequential elections in our history.[11]

DOLE FOR PRESIDENT AND THE DOLE/RNC CAMPAIGN

The Dole for President committee exercised full control over the budget for the RNC's issue-advocacy campaign as well as the production and content of the RNC's ads, as a June 5 memo from Barbour to RNC Director of Campaign Operations Curt Anderson and Anderson's assistant, Ruth Kistler, demonstrates. Anderson and Kistler had suggested that the RNC spend $800,000 on "Unity Events," which were RNC-sponsored campaign events in which Senator Dole would appear. Barbour responded:

> I will reach out to [Dole campaign manager] Scott Reed to ask him to consider whether the Dole campaign would want us to 1) reduce other spending, such as issue advocacy television advertising, by $800,000; 2) significantly increase the number and lead time for Victory '96 events in order to offset these costs (although I am not convinced at this time that the Victory '96 events will produce the revenue currently anticipated and budgeted for expenditure);

> 3) not spend the sum requested for Unity Events; or 4) consider some other alternative.[12]

This memorandum indicates that Dole's campaign manager exercised control over not only the overall budget of the RNC's issue-advocacy campaign, but also oversaw the RNC's Victory '96 project, a program run by long-time Dole aide Jo-Anne Coe and used to fund the media campaign.

Dole for President also controlled the content of the RNC's issue ads. The ads were created, written, and produced by Don Sipple, Dole for President's media consultant, and Tony Fabrizio, Dole's pollster. While Sipple produced these RNC ads, he continued as Dole for President's media consultant. To plan the issue-ad campaign, Sipple and Fabrizio met frequently—usually on Wednesday evenings—with Haley Barbour, House Speaker Newt Gingrich, Dole pollster Fred Steeper, RNC Communications Director Ed Gillespie, and Dole Campaign Manager Scott Reed.[13] Although neither the RNC nor Dole for President produced to the Committee any notes or agendas from these meetings, the Committee does have an undated memo from Sipple asking for Barbour *and* Reed to approve an issue ad Sipple had proposed.[14] The fact that Reed had the power to sign off on ads and that the ads were created, written, and produced by Dole operatives shows that Dole for President ran the RNC's issue-advocacy campaign.

In a written submission to the Committee, Senator Dole points out that he personally "did not direct and control the ads produced by the Republican National Committee. . . ."[15] Because the Committee did not depose a single witness about the activities of Dole for President, the Minority is unable to characterize Senator Dole's personal involvement in the RNC's media campaign. Whatever Senator Dole's personal role was, it is clear that his campaign manager, chief fundraiser, media consultant, and pollster controlled the RNC's media campaign.

THE SUBSTANCE OF DOLE/RNC ISSUE ADS

In order to ensure that the Democratic National Committee's advertisements were, in fact, issue ads, counsel for the DNC and the Clinton campaign insisted that DNC ads "had to relate to a legislative issue that was pending before Congress, that was actively in play and in discussion before Congress."[16] The RNC and the Dole campaign did not have a similar policy, and ran ads with no apparent link to legislative issues. These ads praised Senator Dole and attacked President Clinton and included virtually no discussion of public-policy issues.

The most notorious such Dole/RNC ad was entitled "The Story." This ad, which was produced by Don Sipple, used video footage that had previously been used in ads made by Sipple for the Dole campaign.[17] It was run after Senator Dole had resigned from the Senate. "The Story" merely recounted the story of Bob Dole's life with no substantive discussion of public-policy issues:

> Senator DOLE. We have a moral obligation to give our children an America with the opportunity and values of the nation we grew up in.

VOICE OVER. Bob Dole grew up in Russell, Kansas. From his parents he learned the value of hard work, honesty and responsibility. So when his country called . . . he answered. He was seriously wounded in combat. Paralyzed, he underwent nine operations.

Senator DOLE. I went around looking for a miracle that would make me whole again.

VOICE OVER. The doctors said he'd never walk again. But after 39 months, he proved them wrong.

Mrs. DOLE. He persevered, he never gave up. He fought his way back from total paralysis.

VOICE OVER. Like many Americans, his life experience and values serve as a strong moral compass. The principle of work to replace welfare. The principle of accountability to strengthen our criminal justice system. The principle of discipline to end wasteful Washington spending.

Senator DOLE. It all comes down to values. What you believe in. What you sacrifice for. And what you stand for.[18]

Even RNC employees questioned whether "The Story" qualified as an issue ad. In a May 22, 1996, memo to Haley Barbour, RNC Campaign Operations Director Curt Anderson admitted, "We could run into a real snag with the Dole Story spot. Certainly, all the quantitative and qualitative research strongly suggests that this spot needs to be run. Making this spot pass the issue advocacy test may take some doing."[19]

Senator Dole himself admitted to ABC News that the RNC "The Story" ad was intended to boost his presidential campaign and that viewers would regard "The Story" as a Dole campaign ad:

Senator DOLE. [W]e can, through the Republican National Committee, through what we call the Victory '96 program, run television ads and other advertising. It's called generic. It's not Bob Dole for president. In fact, there's an ad running now, hopefully in Orlando, a 60-second spot about the Bob Dole story: Who is Bob Dole? What's he all about? Pretty much the same question that Ted Koppel asked me. So we'll do that. . . . It never mentions the word that I'm—it never says that I'm running for president, though I hope that it's fairly obvious, since I'm the only one in the picture! (Laughter).[20]

"The Story" was not the only Dole/RNC issue ad that did not include any substantive discussion of public-policy issues. Don Sipple proposed to Haley Barbour and Scott Reed that "we do a spot on the constellation of *ethics* problems facing Clinton and his administration. . . The purpose of doing this ad would be to connect the dots for the American people—to demonstrate a pattern of behavior."[21] This ad does not meet the requirement followed by the DNC that issue ads must relate to a "legislative issue that was pending before Congress, that was actively in play and in discussion before Congress."[22] Indeed, Sipple himself explained that "this is a spot that [Dole for President] shouldn't get to until late (if at all, in advertising),"[23] indicating that this supposed RNC issue ad was suitable for use by the Dole campaign.

The Dole/RNC issue ads were carefully worded to comply with the letter of the law. As explained in Chapter 24, issue ads are legal and do not count against a presidential campaign's spending cap as long as they do not carry an electioneering message advocating the election or defeat of a specific candidate. Because the Dole/RNC ads did not tell viewers to vote for Senator Dole, they did not violate any campaign-finance laws. They were, however, indistinguishable from ads that are typically run by a presidential campaign and were a clear attempt to circumvent federal spending limits.

THE DOLE/RNC "ISSUE ADS" AND PRESIDENTIAL BATTLEGROUND STATES

One of the strongest indicators that the purpose of the Dole/RNC issue ads was to support Senator Dole's candidacy is that Dole for President and the RNC ran the ads only in states where Clinton and Dole were close in the polls. In states where either candidate had an insurmountable lead, the Dole campaign and the RNC did not run issue ads. See Appendix.

Documentary evidence also supports the conclusion that the criterion used by the RNC and the Dole campaign for deciding where to run issue ads was whether the ads would help Senator Dole win electoral votes. For example, Dave Hansen, an RNC aide, argued that issue ads should be run in Washington state because "Washington is a very winnable state for Dole. Present polls show him down to Clinton by 16 points which is about where he is nationally. . . . For [Washington] to be left out of the first major media program would be devastating to the party and party faithful and, I believe would eliminate any chance for Senator Dole to come back and win the state."[24] Curt Anderson agreed with Hansen, arguing that the omission of Seattle would "cause us serious political heartburn in the state of Washington, which is a state that we could win Presidentially."[25] Anderson then described the purpose of the RNC's media campaign:

> The point that needs to be reiterated is that this plan is based on the premise that right now we should be targeting those markets that can not [sic] be considered core partisan for either party. This assumes that if, over the course of the summer, we raise the water level of Dole support in the must win marginal markets, the historically core Republican markets will swing our way. Secondly, the targeted swing markets represented are the most difficult must win voters. This being the case, it makes sense to vie for these votes now, in the hope that [Dole for President] can close the deal in the fall. More to the point, playing for the swing markets should keep them from moving to core Clinton-Gore.[26]

The Dole/RNC issue ads were run to support the cash-strapped Dole for President campaign. The ads were designed and planned in content, timing, and location to assist the Dole candidacy. Even Senator Dole admitted that the ads were intended to aid his presidential bid. Because the law allows such ads to be run by national parties with a mix of hard and soft money that is not subject to

federal spending limits, by running these ads in coordination with the RNC, the Dole campaign was able to bypass federal spending limits, while remaining within the letter, if not the spirit, of the campaign finance laws.

DOLE/RNC ISSUE ADS AND SOFT MONEY

Federal law requires that no more than 35 percent of the money used to pay for party-building activities, such as running issue ads, be soft money.[27] Thus, while a presidential campaign must raise and spend exclusively hard money, a national party can support the campaign with expenditures that are paid for in part with soft-money contributions. Moreover, because the law in many states permits parties to fund issue ads with more than 35 percent soft money, by transferring money to the state parties, more soft money can be used to pay for advertising. The RNC took advantage of this loophole to run Dole/RNC issue ads that were funded primarily with soft money.

The RNC started planning to transfer money for issue advertising to state parties as early as March 18, 1996. On that date, Curt Anderson wrote a memo to Haley Barbour entitled "Ballot Allocation of Target States," which states that "any media we place in the target presidential states should be placed through state parties. The average ballot allocation in the top 17 target states is 37% federal—63% non-federal, this obviously contrasts very well with our 65% federal—35% non-federal allocation."[28] The memo also establishes that state parties acted as mere conduits, exercising no independent judgment over the ads:

> Some have voiced concern that buying through the state parties could result in a loss of control on our part. There is absolutely no reason to be concerned about this. As was demonstrated in our efforts recently in the CA and OR special elections, our field staff is fully able to insure that state parties make good on any arrangement we make with them. This is simply a book keeping hassle, but not in anyway [sic] a reason not to proceed.[29]

On May 24, a week after the media campaign began, RNC Finance Director Albert Mitchler wrote a memorandum stating that the RNC needed "to raise $2 million, minimum, in soft money that has to be transferred to the CA State Party."[30] Mitchler then stressed "how critical it is that this money be raised and assigned as quickly as possible so that *we can get on the air and stay on the air* for the next three months."[31]

Unsigned RNC notes entitled "Proposed media markets" list 18 states in which Dole/RNC issue ads were to be run, and then says:

> —cash flow chart needed from Sipple
> —can't buy week at a time
> —thru state parties—as much as possible transfers[32]

The author of this memo is not known to this Committee because RNC employees refused to be deposed. However, the memo makes clear that there was a coordinated plan to run ads that would be paid for with as much soft money as possible. These ads would be paid for with corporate contributions and other contributions that

exceeded the limits applicable to presidential campaigns. By making use of this practice, a presidential campaign, which is not permitted to accept soft money in any amounts, may coordinate advertising efforts to communicate its message and arrange to have the ads paid for with up to 65 percent in soft-money contributions.

COORDINATION OF FUNDRAISING AND POLITICAL EFFORTS

The Dole campaign actively assisted the RNC in the party's efforts to raise soft money to pay for the Dole/RNC issue-advocacy campaign. Dole was personally involved in these fundraising efforts. From May 28, 1996 through August 6, 1996 alone, at least 25 RNC soft-money fundraisers were held at which Dole made an appearance.[33] The coordination of fundraising efforts is legally permissible—a candidate is permitted to raise money for his or her party that will be spent to aid the candidate's campaign. See Chapter 24.

Scott Reed, the campaign manager for Dole for President, acknowledged that part of the Republican strategy in 1996 included fundraising to help defray the cost of issue ads that would help Bob Dole. Reed said, "We went out in April and May and raised $25 million for the party, of which about $17, $18, or $19 million was put into party building ads, which were Bob Dole in nature."[34] Tony Fabrizio, a Dole pollster, echoed Reed's statement: "We were coming off a primary where we were flat broke . . . We had a candidate who was very sensitive to not having all of the money potentially available to him post-convention. So to say that [fundraising] wasn't a driving factor, especially since we put him out on the road to raise $25 or $30 million for the party, would be unfair."[35]

Another way in which the Dole campaign and the RNC were intermeshed involved staffing. In March and April 1996, the Dole campaign reduced its staff from 230 to 67.[36] Many of those who left the Dole payroll, including long-time chief fundraiser Jo-Anne Coe, were hired by the RNC. Although these individuals technically reported to the RNC, their job duties continued to be to assist Senator Dole's campaign.

In a March 29, 1996, memo, Haley Barbour explained the details of the shift of personnel from the Dole campaign to the RNC payroll. He stated that the RNC had asked "a number of former DFP [Dole for President] employees and consultants" to work for the RNC's Surrogate Division and Campaign Operations Division.[37] The Surrogate Division, a part of Victory '96, organized the travel of Dole and his wife to RNC-sponsored campaign events, and Barbour designated Jo-Anne Coe as the "trigger person on travel requests" for the Doles.[38] Nine other former Dole staffers were placed in the RNC Surrogate Division to coordinate the Doles' travel.[39]

As Senator Dole explained, the aim of Victory '96 was "to keep running honest, hard-hitting issue advertising," that is, the Dole/RNC media campaign.[40] In an April 18, 1996, conference call with major Republican donors, Nancy Brinker, an RNC fundraiser, admitted that the "purpose of Victory '96 is to elect Bob Dole as the next president of the United States."[41] Barbour stated that the RNC assigned these former Dole staffers to run all aspects of the Victory '96 program:

> Update Victory '96 plans in light of our having a presidential nominee; in states with GOP governors, solicit and include the ideas and plans of the governor and his political operation in the state plan; solicit and include the ideas and plans of Republican senators and governors in the state plan; hammer out the updated Victory '96 plan by May 15; assist in raising the revenue necessary and recruiting the leadership and manpower necessary to implement the plan in the state. . . .[42]

Thus, while on the RNC payroll, Dole staffers arranged Senator Dole's travel and ran the program used to fund the Dole/RNC media campaign. In his March 29, 1996, memo, Barbour tried to camouflage the integration of the Dole and RNC staffs by insisting that "all former DFP staff who come to the RNC must report in fact as well as on paper to the RNC. . . ."[43] The facts, however, are to the contrary.

Jo-Anne Coe, who had worked for Senator Dole for many years, supervised the Dole staffers who joined the RNC payroll. As Barbour indicated, former Dole staffers aided Coe in arranging Dole's travel schedule—while the staffers and Coe were supposedly working for the RNC. Coe also ran the Victory '96 program. In fact, in an April 11, 1996, memo, Coe outlined "a very aggressive plan to raise $14 million" for Victory '96.[44] The plan called for fundraising appeals "over the Bob Dole signature which worked so well for us in the campaign."[45] It also relied on donations from long-time Dole contributors, such as Phil Anschutz.[46]

In the April 18, 1996, conference call with major Republican donors mentioned above, the RNC's Brinker succinctly characterized the relationship between the Dole campaign and the RNC: "The Dole for President campaign and the RNC have been integrating our efforts for the past two weeks. All facets of the transition have been smooth from fundraising and political operations to communications."[47] Under Coe's direction, former Dole staffers who were on the RNC payroll ran every aspect of the bankrupt Dole for President campaign, from planning campaign events for Dole to raising money for a multimillion-dollar ad campaign designed to boost the senator's candidacy.

Senator Dole and his longtime staffers were intimately involved in planning and coordinating the RNC's efforts to assist the Dole campaign and to raise the money for the RNC to pay for the extra expenses. From the beginning, it was understood that the RNC could, with Dole's assistance, raise millions of dollars in soft money and spend it on political activities, including advertising, that would advance the Dole candidacy with money that was not subject to the hard-money spending limits on the Dole campaign.

DOLE FOR PRESIDENT AND THE RNC IMPEDED THE COMMITTEE'S INVESTIGATION

There is strong documentary evidence that Dole for President and the RNC worked together to find ways around the federal spending limits for presidential candidates and the hard-money requirements for parties. The Minority sought to depose a number of

individuals who had first-hand knowledge of these activities, including:

- Scott Reed, who managed the Dole campaign, controlled the budget of the Dole/RNC issue-ad campaign, and oversaw Victory '96;[48]
- Albert Mitchler, RNC finance director, who was deeply involved in Victory '96 and the transferring money from the RNC to state parties;[49]
- Curt Anderson, RNC director of campaign operations, who helped plan the Dole/RNC media campaign[50] and who said that making "The Story" television ad "pass the issue advocacy test may take some doing;"[51]
- Jo-Anne Coe, Dole's longtime chief fundraiser and later the RNC deputy finance chairman, who ran Victory '96 and supervised the Dole staffers who joined the RNC payroll;[52]
- Don Sipple, media adviser to both the RNC and Dole for President, who produced many of the Dole/RNC issue ads; and
- Tony Fabrizio, a Dole pollster who helped create and produce the Dole/RNC issue ads.[53]

In August, the Minority asked Martin Weinstein, legal counsel to the RNC, to schedule depositions for Reed, Mitchler, Anderson and Coe. Weinstein assured the Committee that there was no need to issue subpoenas because all of his clients would appear for depositions voluntarily, as DNC witnesses had done.[54] In September, however, Weinstein told the Committee that his clients would not agree to be deposed without subpoenas. The Minority immediately requested the issuance of subpoenas for Reed, Mitchler, Anderson, and Coe. The Chairman refused to subpoena Mitchler and Anderson[55] but did agree to issue deposition subpoenas for Reed and Coe. Reed and Coe chose to defy the Committee's subpoenas. They asserted no legal justification for refusing to comply with the Committee's lawful subpoenas; they simply refused to be deposed.[56]

The Committee also issued a deposition subpoena to Tony Fabrizio, who had helped prepare the Dole/RNC issue ads. Fabrizio did appear for a deposition, but he refused to answer *any* questions, including:

> Did the RNC engage in any illegal or improper activities during the 1996 federal election campaign?
>
> Did the Dole campaign engage in any illegal or improper activities during the 1996 federal election campaign?
>
> Were the polls you conducted for the RNC in 1996 designed to test the strength of Bob Dole's candidacy?
>
> Did the Dole campaign design the polls you conducted for the RNC in 1996?
>
> In June and July of 1996, did the RNC run any ads that were designed to boost the presidential candidacy of Bob Dole?[57]

Like Coe and Reed, Fabrizio offered no legal justification for defying the Committee's deposition subpoena. Apparently, the RNC had much to hide on these issues.

CONCLUSION

Dole for President and the RNC worked together closely, coordinated their efforts, and implemented creative plans to get around

federal spending limits on presidential candidates who accept public funds and federal hard-money requirements for parties engaged in issue advocacy. The centerpiece of this plan was a multimillion-dollar media campaign that was run by the Dole for President committee, which wrote and produced the ads, and which worked with the RNC to raise the necessary funds. The media effort was funded primarily with RNC soft money transferred to state parties. The campaign's purpose was to promote the candidacy of Senator Dole. The Majority's refusal to investigate these activities and the failure of Republican witnesses to comply with deposition subpoenas are two more examples of the failure of the Committee to conduct a bipartisan investigation. The Republican Party was unwilling to cooperate with the Committee's investigation and kept the public from learning the truth about the activities of the Dole for President campaign and the RNC.

FOOTNOTES

[1] The DNC spent about $44 million on issue ads, while the RNC spent about $24 million on issue ads. See FEC filings; see also, for example, Annenberg Public Policy Center, "Issue Advocacy Advertising During the 1996 Campaign: A Catalog," Report Series No. 16, 9/16/97, pp. 32, 53.
[2] Exhibit 2323M: *Washington Post*, 5/4/96.
[3] *New York Times*, 4/19/96.
[4] *New York Times*, 5/18/96.
[5] *New York Times*, 5/18/96.
[6] RNC Executive Council and Budget Committee Meeting minutes, 1/17/96.
[7] RNC Executive Council and Budget Committee Meeting minutes, 1/17/96.
[8] Exhibit 2324M: Memorandum from Haley Barbour to Republican Leaders, 3/5/96.
[9] Exhibit 2324M: Memorandum from Haley Barbour to Republican Leaders, 3/5/96.
[10] Exhibit 2324M: Memorandum from Haley Barbour to Republican Leaders, 3/5/96.
[11] RNC News Release, R 044102, 5/16/96.
[12] Memorandum from Haley Barbour to Curt Anderson and Ruthie Kistler, R 001687, 6/5/96.
[13] *Washington Post*, 5/26/96.
[14] Memorandum from Don Sipple to Haley Barbour and Scott Reed, R 000445. The ad was "a spot on the constellation of ethics problems facing Clinton and his administration."
[15] Statement submitted for the record by Senator Bob Dole, 1/12/98, p. 3.
[16] Richard Morris deposition, 8/20/97, p. 142.
[17] CNN Broadcast, 7/8/96 (text reprinted at http://www.allpolitics.com /1996/news/9607/08/complaints.jackson/).
[18] Transcript of "The Story.'
[19] Exhibit 2329M: Memorandum from Curt Anderson and Wes Anderson to Haley Barbour, 5/22/96, R 044639–41.
[20] Exhibit 2336M: Transcript ABC News Interview of Bob Dole, 6/6/96.
[21] Memorandum from Don Sipple to Haley Barbour and Scott Reed, R 000445 (emphasis added).
[22] Richard Morris deposition, 8/20/97, p. 142.
[23] Memorandum from Don Sipple to Haley Barbour and Scott Reed, R 000445.
[24] Memorandum from Dave Hansen to Haley Barbour, 5/22/96, R 044642–43.
[25] Exhibit 2329M: Memorandum from Curt Anderson and Wes Anderson to Haley Barbour, 5/22/96, R 44639–41.
[26] Exhibit 2329M: Memorandum from Curt Anderson and Wes Anderson to Haley Barbour, 5/22/96, R 44639–41.
[27] FEC Adv. Op. 1995–25.
[28] Memorandum from Curt Anderson to Haley Barbour, 3/18/96, R 055196–97.
[29] Memorandum from Curt Anderson to Haley Barbour, 3/18/96, R 055196–97.
[30] Exhibit 2372M: Memorandum from Al Mitchler to Howard Leach et al., 5/24/96, R 057192.
[31] Exhibit 2372M: Memorandum from Al Mitchler to Howard Leach et al., 5/24/96, R 057192 (emphasis in original).
[32] Notes, R 044659.
[33] Victory '96 Schedule of Events, R 1533–36, 1747–50, 2129–32.
[34] *Campaign for President* '96, p. 117.
[35] *Campaign for President* '96, p. 117.
[36] Exhibit 2323M: *Washington Post*, 5/4/96.
[37] Memorandum from Haley Barbour to Scott Reed, 5/29/96, R 17118–21.
[38] Memorandum from Haley Barbour to Scott Reed, 5/29/96, R 17118–21.
[39] Memorandum from Haley Barbour to Scott Reed, 5/29/96, R 17118–21.
[40] Memorandum from Senator Dole to Haley Barbour, 6/3/96, R 1135.
[41] Notes of Team 100 Conference Call, Thursday, 4/18/96, R 49284–87.
[42] Memorandum from Haley Barbour to Scott Reed, 5/29/96, R 17118–21.
[43] Memorandum from Haley Barbour to Scott Reed, 5/29/96, R 17118–21.

[44] Memorandum from Jo-Anne Coe to Haley Barbour, 4/11/96, R 3828.

[45] Memorandum from Jo-Anne Coe to Haley Barbour, 4/11/96, R 3828.

[46] On April 18, 1996, one week after Ms. Coe drafted her Victory '96 proposal, the Anschutz Corporation donated $250,000 to the Republican National Committee. FEC Records.

[47] Notes of Team 100 Conference Call, Thursday, 4/18/96, R 49284–87.

[48] Memorandum from Haley Barbour to Curt Anderson and Ruthie Kistler, 6/5/96, R 001687.

[49] Exhibit 2372M: Memorandum from Al Mitchler to Howard Leach et al., 5/24/96, R 057192.

[50] Exhibit 2329M: Memorandum from Curt Anderson and Wes Anderson to Haley Barbour, 5/22/96, R 044639–41.

[51] Exhibit 2329M: Memorandum from Curt Anderson and Wes Anderson to Haley Barbour, 5/22/96, R 044639–41.

[52] Memorandum from Jo-Anne Coe to Haley Barbour, 4/11/96, R 3828; Memorandum from Haley Barbour to Scott Reed, 3/29/96, R 17118–21.

[53] Memorandum from Don Sipple to Haley Barbour and Scott Reed, cc: Tony Fabrizio, R 000445.

[54] Letter from Martin Weinstein to Majority and Minority Chief Counsels, 8/14/97.

[55] Chairman Thompson purported to issue a subpoena for Curt Anderson on September 19. The subpoena, however, asked Mr. Anderson to appear for a deposition on September 17—two days before the subpoena was served. The Minority asked for this error to be corrected, but it was not.

[56] Letter from Martin Weinstein to Majority Chief Counsel, 10/22/97.

[57] Tony Fabrizio deposition, 9/22/97, p. 10; Tony Fabrizio deposition, 9/22/97, Exhibit 1: Questions Fabrizio refused to answer.

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PART 6 ALLEGATIONS OF QUID PRO QUOS

Chapter 34: Overview and Legal Analysis

Allegations concerning "quid pro quos," or favors received from government officials in return for financial contributions, go to the heart of public concern over campaign finance. One of the most discouraging aspects of the present campaign finance system is that even public policy decisions undertaken in the utmost good-faith can take on an appearance of impropriety in the context of a system where so many of the individuals or entities likely to be affected by government actions are able to make the kind of large campaign contributions presently permitted by our system.

It is instructive to note at the outset what some federal courts have stated as the underlying purpose of the bribery and illegal gratuities law, that is, to prevent the sale of better government services to those who can afford to pay for it:

> All sections of the bribery statute are aimed at preventing the evil of allowing citizens with money to buy better public service than those without money . . . "[e]ven if corruption is not intended by either the donor or the donee, there is still a tendency in such a situation to provide conscious or unconscious preferential treatment of the donor by the donee, or the inefficient management of public affairs." *United States* v. *Biaggi,* 853 F.2d 89, 101 (2d Cir. 1988), *cert. denied,* 109 S.Ct. 1312 (1989).

LEGAL ANALYSIS

The primary consideration under federal criminal law would be the federal bribery statute. That statute provides criminal penalties for anyone who, directly or indirectly, corruptly offers to a public official something of value, or promises to give something of value to "any other person or entity," with the intent to "influence any official act." 18 U.S.C. § 201(b)(1)(A). The statute also reaches the public official who corruptly seeks or agrees to receive something of value for himself or "for any other person or entity" in return for being influenced in any official act. 18 U.S.C. § 201(b)(2)(A).

The bribery statute requires that the thing of value being sought by the public official be "in return for being influenced" in the performance of any official act. This is part of the corrupt intent which is characteristic of a bribe. This element of the offense, that the thing of value sought or received is "in return for being influenced" in an official act, requires that there be some express or implied quid pro quo involved in the transaction. *United States* v. *Arthur,* 544 F.2d 730, 734–735 (4th Cir. 1976); *United States* v. *Brewster,* 506 F.2d 62, 72 (D.C. Cir. 1974). That is, the bribe must be shown to be the "prime mover or producer of the official act" performed or promised to be performed. *Brewster,* 506 F.2d at 72, 82. So-called "goodwill" payments or general contributions, which are given to create a favorable atmosphere or feeling of gratitude in the recipient, or with the hope or expectation of some possible future, undefined benefit, but which are neither given nor received in the context of any express or implied agreement to perform some identi-

fied official act, that is, without a specific quid pro quo, are not considered "bribes" under the statute. *Arthur,* 544 F.2d at 734, 735.

OVERVIEW OF FOLLOWING CHAPTERS

As the preceding legal discussion demonstrates, a finding of an illegal quid pro quo requires much more than simply pointing out that an individual or entity made a campaign contribution some time before or after a government action was taken which benefitted that individual or entity. Instead, the Committee looked to the nature of the contacts between the contributors and the decision makers, whether the contributions were unique or singular in the history of the contributor at issue, and whether the decision or action at issue seemed unsupported by the facts. Unfortunately, many of the allegations of illegal quid pro quos leveled against Democratic contributors and fundraisers ignored these evidentiary issues in favor of simplistic and cynical interpretations of government decision making.

On the final day of the Committee's hearings, Interior Secretary Babbitt, along with a former colleague who had unsuccessfully lobbied Secretary Babbitt to approve an Indian trust application for the purpose of building a casino near Hudson, Wisconsin, were called to testify about allegations that Interior's denial of the Hudson casino proposal was undertaken in response to political pressure brought to bear by opposing tribes who were also Democratic Party supporters. Significantly, the original allegations of improper political influence in this case were generated in the context of a still-unresolved lawsuit brought by the gaming interests who seek to run the casino in partnership with the Indians. Although much of the hearing was devoted to the particulars of a comment made to Eckstein at one point by Secretary Babbitt which referenced Harold Ickes, the Committee largely ignored the extensive evidentiary record it had created which found no evidence that Babbitt had played any role in the decision or that the Interior officials who did make the decision had any knowledge of either campaign contributions by the opposing tribes or alleged "pressure" from the White House or the DNC to deny the casino proposal. These simple points, along with the ample factual record that supported the merits of Interior's decision, did not receive sufficient attention.

These same defenses were not available to Haley Barbour with respect to his vigorous advocacy of tobacco interests which donated millions of dollars to the Republicans during the 1996 election cycle. The Committee's investigation uncovered detailed evidence of overtures Barbour made personally to Republican elected officials on behalf of tobacco interests. It is difficult to argue the merits of some of the pro-tobacco positions urged by Barbour and apparently impossible to do so with respect to the $50 billion tax credit granted to the tobacco interests as part of the 1997 budget bill due, in part, to Barbour's efforts. Barbour declined the Committee's invitation to explain these actions and, perhaps as a result, the Committee never found evidence that the contributions were made with the intent of effecting such a huge giveaway. Although the Committee's investigation did not uncover illegality on Barbour's part, the relationship between the Republican Party and monied tobacco in-

terests is a prime example of the kind of story that feeds public disillusionment about our political system.

Allegations of a quid pro quo arrangement were also levelled with respect to a $100,000 contribution made by the Cheyenne-Arapaho Tribes (the "Tribes") to the DNC in 1996. At the time the Tribes made their donation they were involved in a lobbying campaign to reacquire certain tribal lands in Oklahoma that had been taken by the Federal government. There was no evidence presented to the Committee, however, that anyone within the DNC or the Administration made any promises to the Tribes concerning the return of their lands in exchange for their contribution. Indeed, the President had supported legislation which would have assisted the Tribes in asserting their claim to the lands almost two years prior to the Tribes' contribution. The Tribes had also succeeded in obtaining access to officials in the appropriate federal agencies well before their contribution. There has been no evidence presented to the Committee that any official in a decision-making capacity with respect to these lands was even aware of the Tribes' contribution.

PART 6 ALLEGATIONS OF QUID PRO QUOS

Chapter 35: Secretary Babbitt and the Hudson Casino

On October 30, 1997, the Committee took testimony from Secretary of the Interior Bruce Babbitt and Paul Eckstein, an attorney-lobbyist from Phoenix, Arizona. Eckstein is a former law school classmate and law partner of Secretary Babbitt's. At issue was the July 14, 1995, decision by the Department of the Interior ("Interior") denying the request of three northern Wisconsin Indian tribes that the United States take land in the western Wisconsin city of Hudson "into trust." The tribes made this request to enable them and their partner, Galaxy Gaming, Inc., to open a casino at a failing greyhound track owned by Galaxy Gaming that was located on the proposed trust site. Eckstein, hired as a lobbyist for the applicants, spoke with Secretary Babbitt concerning the trust application on several occasions between April and July 1995, including a conversation with Babbitt on July 14, 1995—the day Interior issued the decision denying the application. During that conversation, according to Eckstein, Secretary Babbitt declined to delay the issuance of the decision because Deputy White House Chief of Staff Harold Ickes had instructed him to issue the decision that day. During his testimony before the Committee, Secretary Babbitt sought to explain apparent contradictions between accounts he had given of this conversation in two separate letters to Sen. McCain and Chairman Thompson. On February 11, 1998, Attorney General Reno petitioned for the appointment of an independent counsel to investigate whether Secretary Babbitt "committed a violation of federal criminal law in connection with his sworn testimony" before this Committee.[1]

FINDINGS

(1) The evidence before the Committee supports the conclusion that Secretary Babbitt did not act improperly with respect to the Department of Interior's decision to deny the Hudson trust application. The evidence shows that Secretary Babbitt played no role in the Hudson trust decision, that he did not hear from, or talk to, Harold Ickes about the decision, and that the Interior officials who recommended denying the trust application had no knowledge of either campaign contributions by the opposing tribes or the alleged "pressure" from the White House or the DNC to deny the trust application.

(2) However, Secretary Babbitt's actions with respect to Eckstein, his letters to Senators McCain and Thompson, and his testimony to this Committee regarding his conversations with Eckstein were confusing. Secretary Babbitt's letter to Senator McCain omitted the fact that Secretary Babbitt had invoked Ickes' name to Eckstein even though that allegation was at the center of Senator McCain's earlier letter to Secretary Babbitt. The Secretary's subsequent letter to Senator Thompson acknowledged that he did invoke Ickes' name with Eckstein, but said that he did so only as a means to terminate his conversation with Eckstein. Secretary Babbitt then testified to this Committee that, even though he had not spoken to

Footnotes at end of Chapter 35.

Ickes about the trust application, he did not technically mislead Eckstein when invoking Ickes' name because the White House naturally wanted him to issue decisions in a timely way. These statements, when taken together, are confusing, but they are not directly inconsistent with the facts.

OVERVIEW

The St. Croix Meadows Greyhound Racing Track ("the dog track") is located in Hudson, Wisconsin, a small city near the border of Wisconsin and Minnesota, approximately 25 miles east of Minneapolis. Three northern Wisconsin Indian tribes, the Lac Courte Oreilles Chippewa, the Red Cliffe Chippewa, and the Sokaogon Chippewa, and their partner, Galaxy Casinos, Inc., formed the Four Feathers Casino Joint Venture ("Four Feathers") in early 1993 in order to open a gaming facility at the dog track. The Lac Courte Oreilles Chippewa reservation, located 85 miles from the greyhound racetrack, is the closest of the three tribes' reservations to Hudson.

In November 1994, the partnership gained the recommendation of the Minneapolis regional office of the Bureau of Indian Affairs ("BIA") that the Interior Department take the dog track into trust on behalf of the three tribes and approve the opening of a casino at the dog track. However, the Washington headquarters of BIA, after performing further evaluation of the proposal, recommended that this request be denied. Pursuant to the recommendation of BIA's gaming staff, Deputy Assistant Secretary for Indian Affairs Michael Anderson denied the request in a letter dated July 14, 1995.

Four Feathers subsequently filed suit in U.S. District Court in the Western District of Wisconsin, claiming that the request that the dog track be taken into trust was denied by Interior because of "improper political pressure" placed on the department by White House Deputy Chief of Staff Harold Ickes, DNC Chairman Donald Fowler, and others closely connected to the national Democratic Party.

SECRETARY BABBITT'S REMARKS TO LOBBYIST ECKSTEIN

The primary evidence of supposed political "interference" in Interior's decision to deny the Hudson casino proposal are remarks attributed to Secretary Babbitt by Eckstein during the course of a last-ditch, unsuccessful appeal by Eckstein for Interior to delay the issuance of its denial letter. Given the issues that have been raised concerning the timing of some of Eckstein's revelations and the consistency of Secretary Babbitt's statements, the history of how these allegations came to light merits close scrutiny.

Eckstein's affidavit

During the course of the litigation, the tribes filed a motion to expand discovery beyond the administrative record compiled by Interior, arguing that the evidence of improper political pressure justified plaintiffs' request for discovery into the reasons for Interior's decision. In support of that motion, the tribes filed the affidavit of Paul Eckstein, a lawyer-lobbyist hired by the tribes who recounted his involvement in the Hudson casino matter in extensive detail.

Included in this affidavit was the allegation that Secretary Babbitt told him on the day the application was rejected "that the decision could not be delayed because Presidential Deputy Chief of Staff Harold Ickes had called the Secretary and told him that the decision had to be issued that day."[2]

Secretary Babbitt's letter to Senator McCain

Notwithstanding these allegations, the U.S. District Court denied the applicants' request to take discovery outside the administrative record. The *Wall Street Journal* published an article on July 12, 1996, reporting on the contents of Eckstein's affidavit concerning the Ickes comment and the plaintiffs' allegations that the Interior Department denied the Hudson casino application because of White House pressure. After reading the *Wall Street Journal* article, Senator John McCain, Chairman of the Indian Affairs Committee, wrote to Secretary Babbitt to ask him about the veracity of the allegations contained in the article.[3] Specifically, Senator McCain asked Secretary Babbitt whether it was true "that you told Eckstein that Ickes had called you and told you the decision in favor of Mr. O'Connor's client tribes had to be issued that day without delay."[4] Secretary Babbitt, in a letter dated August 30, 1996, responded to that specific inquiry as follows:

> I must regretfully dispute Mr. Eckstein's assertion that I told him that Mr. Ickes instructed me to issue a decision on this matter without delay. I never discussed the matter with Mr. Ickes; he never gave me any instructions as to what this Department's decision should be, nor when it should be made.[5]

Eckstein's deposition

In his deposition to this Committee on September 30, 1997, Eckstein significantly expanded on his affidavit testimony concerning his July 14 conversation with Secretary Babbitt. Specifically, Eckstein alleged that at the end of their July 14, 1995, conversation, he objected to a letter that he had seen from Patrick O'Connor, a lobbyist representing neighboring tribes opposed to the Hudson casino, to Harold Ickes. This letter requested assistance in receiving an unredacted copy of an Arthur Andersen report commissioned by the tribal applicants which found that the proposed casino would have no adverse financial impact on the neighboring tribes with existing casinos. In addition, the letter alleged, incorrectly, that the greyhound race track on the proposed trust site was owned by a Buffalo, NY company called Delaware North, which supposedly enjoyed the support of Senator Alfonse D'Amato (R–N.Y.).[6] The letter also mentioned that the leader of one of the applicant tribes was active in Republican party politics and that the opposing tribes had been financial supporters of the DNC and the 1992 Clinton-Gore campaign.[7] Eckstein recalled that he objected to the contents of the letter, specifically the allegations concerning Delaware North and the party affiliation of the chairman of the lead applicant tribe.[8] Although Secretary Babbitt did not indicate to Eckstein that he had seen the O'Connor letter, Eckstein claimed that at some point after he raised the issue of the O'Connor letter, Secretary Babbitt asked him rhetorically, "Do you know how much

. . . 'these tribes' . . . had contributed to either the Democratic party or Democratic candidates or the DNC." Eckstein alleges that Secretary Babbitt then answered his own rhetorical question by remarking, "Well, it's on the order of half a million dollars, something like that."[9]

Secretary Babbitt's Letter to Chairman Thompson

On October 8, approximately one week after Eckstein's deposition, Eckstein's confidential deposition testimony concerning the remarks attributed to Secretary Babbitt were the subject of news reports by the *Minneapolis Star Tribune,* the *Wisconsin State Journal* and the NBC Nightly News.

In response to the request of the Committee that he submit to a deposition, Secretary Babbitt wrote to Chairman Thompson and explained that he would not appear for a deposition due to press leaks of the Eckstein deposition but that he was willing to testify voluntarily before the Committee. Secretary Babbitt reiterated in this letter that Ickes never instructed him in any way on the Hudson matter and offered the following elaboration on his earlier statement to Senator McCain concerning his conversation with Eckstein:

> I do believe that Mr. Eckstein's recollection that I said something to the effect that Mr. Ickes wanted a decision is correct. Mr. Eckstein was extremely persistent in our meeting, and I used this phrase simply as a means of terminating the discussion and getting him out the door. It was not the first time that I have dealt with lobbyists by stating that the Administration expects me to use my good judgment to resolve controversial matters in a timely fashion, nor do I expect it to be the last.[10]

Secretary Babbitt's Hearing Testimony

During his hearing testimony, Secretary Babbitt consistently disputed two key elements of the "Ickes comment" attributed to him by Eckstein. First, Secretary Babbitt denied ever making a reference to Ickes "instructing" or "ordering" him to do anything with respect to the Hudson casino proposal. More substantively, Secretary Babbitt denied ever speaking with "Harold Ickes or anyone else at the White House" or with "Donald Fowler or anyone else at the Democratic National Committee" concerning the Hudson casino proposal.[11] Instead, Secretary Babbitt allowed that he may have made a reference to Ickes, who was the Department's point of contact with the White House on many matters, as "wanting" or "expecting" prompt action on the Hudson casino proposal. Secretary Babbitt explained that his general references to Ickes' expectations was meant to convey to Eckstein that "this decision has got to be made. It is overdue, and now is the time to make it."[12] Secretary Babbitt testified that he hoped the reference to Ickes would allow him to end the discussion and "express in a way some sympathy toward his point of view."[13] Although Secretary Babbitt testified that he had had no contacts with Ickes concerning the Hudson casino matter, he disagreed with the suggestion that his general reference to Ickes misled Eckstein, arguing that "I think it's fair to say that my superiors expect me to make decisions."[14]

Second, Secretary Babbitt denied that he ever characterized Ickes' generic expectations of Interior to include issuance of a denial of the Hudson casino proposal on the day of his conversation with Eckstein. The following colloquy between Chairman Thompson and Secretary Babbitt captures the two essential points of Secretary Babbitt's differences with Eckstein:

> Secretary BABBITT. [I]t is my recollection that I may well have said to him, Mr. Ickes expects me to make a decision or Mr. Ickes wants me to make a decision.
>
> * * * * *
>
> Chairman THOMPSON. Could you have said that Mr. Ickes wanted you to make the decision that very day?
>
> Secretary BABBITT. No, sir.
>
> Chairman THOMPSON. You definitely remember you did not say that?
>
> Secretary BABBITT. I do, and I represented that much in my letter to Senator McCain.[15]

Secretary Babbitt was definite in his recollection that, although he might have generally suggested that Ickes "wanted" or "expected" a decision to be issued "promptly" or "without delay," he would not have told Eckstein that Ickes wanted a decision on that particular day. This is unsurprising in light of Secretary Babbitt's testimony that he never discussed the matter with Ickes, therefore making it impossible for Ickes to suggest a particular date for the decision. When Senator Collins reformulated Thompson's inquiry to ask whether Secretary Babbitt's general reference to Ickes might have been to the effect that Ickes had "instructed" Secretary Babbitt to promptly deny the trust application, Secretary Babbitt again denied that he could have made any reference to an "instruction" from Ickes.

> Secretary BABBITT. I think my response to Senator McCain to this question, were there—did you have communications with the White House or Harold Ickes, and the response is I dispute any assertion that there were such contacts or instructions because there were not.
>
> Senator COLLINS. I agree that your letter clearly says that there was not contact for Mr. Ickes, but it also clearly says, "I must regretfully dispute Mr. Eckstein's assertion that I told him that Mr. Ickes instructed me to issue a decision in this matter without delay."
>
> Secretary BABBITT. . . . I didn't tell Mr. Eckstein that.
>
> Senator COLLINS. . . . What part isn't true? The "without delay" part? Secretary Babbitt: I did not tell Mr. Eckstein that Mr. Ickes had instructed me to make a decision.[16]

Secretary Babbitt defended the accuracy of his response to Senator McCain's inquiry about his conversation with Eckstein, pointing out that Senator McCain's main concern was whether Harold Ickes had given him instructions concerning the Hudson casino matter. Secretary Babbitt responded to Senator McCain's specific inquiry by stating that he had never told Eckstein that Ickes had instructed him to issue a decision that day. Secretary Babbitt's let-

ter immediately goes on, however, to specifically address the underlying issue of improper political pressure from the White House on a pending policy matter. "I never discussed the matter with Mr. Ickes; he never gave me any instructions as to what this Department's decision should be, nor when it should be made."[17] Secretary Babbitt's testimony confirms that his focus in responding to Senator McCain's inquiry was the contention that the White House had directed Interior to deny the Hudson casino proposal.

Part of the confusion surrounding Secretary Babbitt's statements arises from the fact that, in his letter to Thompson, he stated that he believed Eckstein's recollection to be "correct," whereas he had "regretfully dispute[d]" Eckstein's statements in his letter to Senator McCain. Secretary Babbitt's letter to Thompson characterizes Eckstein's recollection very broadly, however, as "something to the effect that Mr. Ickes wanted a decision."[18] The substance of the statements contained in the two letters are consistent. In the first letter to McCain, Secretary Babbitt denied a specific allegation that he told Eckstein that Ickes had instructed him to issue a decision that day. In the second letter to Thompson, Secretary Babbitt confirms that Ickes did not direct him to issue a decision but offers his recollection of what was actually said by him with reference to Ickes. As Secretary Babbitt testified, "I believe those statements are consistent. They both reflect my best recollection of what I said and what I didn't say."[19] Nevertheless, Secretary Babbitt might have avoided creating the initial confusion if the more expansive account of his reference to Ickes had been offered in response to Senator McCain's original inquiry.

ECKSTEIN'S ALLEGATIONS

Secretary Babbitt testified that he had no recollection of any discussions with Eckstein concerning the O'Connor letter or campaign contributions by the Indian tribes as alleged by Eckstein.[20] The first time Eckstein alleged on the record that Secretary Babbitt had commented during their July 14, 1995, meeting about campaign contributions was in his deposition before the Committee on September 20, 1997. This was more than two years after Interior's denial of the Hudson application. During that two-year period, Eckstein's client had filed suit in federal court claiming that the denial decision was politically influenced. To prove political influence, Eckstein's client filed a motion for discovery, which motion was supported in large part by an affidavit from Eckstein describing his conversation in July 1995 with Secretary Babbitt.[21] Nowhere in that affidavit does Eckstein mention the alleged comment by Secretary Babbitt about campaign contributions.[22] Nor did Eckstein seek to amend his affidavit to include such allegations even when U.S. District Judge Barbara Crabb denied the initial motion.

Senator Richard Durbin questioned Eckstein on this failure to include the contributions statement in his affidavit and underlined the difficulty faced by the Committee in reconciling Eckstein's allegations with his affidavit.[23]

> Here you are, the attorney for the losing Indian tribes in this case. They are now going to court to try to reverse

> the Department's decision. You have joined in an effort to help them by signing a sworn affidavit, and you leave out one of the most critical questions and pieces of evidence that's being considered by this Committee."[24]

Eckstein testified in his deposition that he did not include any reference to Secretary Babbitt's alleged comment about campaign contributions by the tribes in his affidavit to the court because "I didn't want to put it in."[25]

The Minority could find no credible evidence that Eckstein ever told anyone off the record about Secretary Babbitt's alleged campaign contributions comment prior to his deposition before the Committee. Eckstein claimed that he told casino publicist Mark Goff about the alleged comment immediately after Eckstein's July 14 meeting with the Secretary.[26] And Eckstein claims he also may have told former Congressman Jim Moody, another lobbyist for the tribes, as well as Fred Havenick, the head of Galaxy Gaming.[27] But despite two years of comments by both sides about the case to the press, the Minority could find no public comment by anyone, including Goff, Moody and Havenick that ever mentioned the alleged contributions comment by Secretary Babbitt.[28] In fact, when Eckstein's deposition was leaked to the news media in October 1997, Goff was quoted as stating, "We consider this report to be the biggest piece of news in two years."[29] During their investigation, the Majority did not take the sworn testimony of Goff, Moody or Havenick. And in an interview with Committee staff, George Newago, the former chairman of one of the applicant tribes, stated that he had never heard about Secretary Babbitt's alleged comments concerning contributions prior to October 1997.[30] These facts call into question Eckstein's credibility on the other matters to which he testified. As Senator Torricelli pointed out, these circumstances engender considerable skepticism about the veracity of this part of Eckstein's testimony:

> [T]his Committee really is left with nothing other than . . . Babbitt's failure to recollect it and a recollection which seems to have come to you without any contemporaneous affirmation for a considerable period of time. . . . I think you'd have to concede to me that [given the evidence] . . . you would at least be very unclear about the state of the circumstances . . .[31]

The Justice Department's preliminary investigation into these allegations confirmed that "Eckstein's allegations that Secretary Babbitt commented about Indian contributions was first made public in October, 1997, more than two years after the conversation occurred."[32] Although Attorney General Reno eventually petitioned for the appointment of an independent counsel to investigate Secretary's Babbitt's account of his reference to Harold Ickes, the Justice Department's investigation "developed no evidence that Secretary Babbitt testified falsely when he stated that he does not recall whether he commented that Indian tribes had contributed approximately half a million dollars to the Democratic National Committee or other entities."[33] Attorney General also concluded that "no further investigation is warranted with respect to the perjury

in connection with Secretary Babbitt's stated failure to recall his alleged comment about political contributions by Indian tribes."[34]

ECKSTEIN'S INTERPRETATION

Even if Eckstein's allegations are fully credited, Eckstein himself did not understand the comments he ascribed to Secretary Babbitt to signify that the casino proposal had been denied due to political pressure from the White House or the DNC. Specifically, Eckstein testified that he did not understand Secretary Babbitt's reference to Ickes's desire for a prompt decision during their July 14, 1995, meeting to mean that the White House had directed Interior as to the substance of the Hudson decision.[35] Instead, Eckstein testified that his understanding of the comments he ascribed to Secretary Babbitt was that the White House had, at the most, pressured Interior as to the "timing" of the issuance of the decision.[36] Likewise, when pressed for his understanding of the remarks concerning contributions by Indian tribes which Eckstein ascribed to Secretary Babbitt, Eckstein testified that he did not interpret the remark to suggest that contributions by the tribes opposing the application had determined the outcome of the agency's decision.[37]

SECRETARY BABBITT AND LOBBYISTS FOR THE OPPOSING TRIBES

O'Connor, one of the lobbyists for the opposing tribes, has testified that, while he has met Secretary Babbitt on several occasions and has spoken with him concerning other matters during his tenure as secretary, they never spoke about the Hudson casino.[38] Secretary Babbitt corroborated this recollection in his hearing testimony.[39]

Secretary Babbitt also testified that he does not recall ever seeing the May 8, 1995, letter O'Connor sent to Harold Ickes urging support for his clients' position until well after the July 14, 1995, decision was rendered.[40] John Duffy also does not recall seeing the O'Connor letter prior to commencement of the federal court litigation in Wisconsin in the fall of 1995.[41] Documents produced by Interior confirm that they did not receive the letter until November 9, 1995, when an assistant U.S. attorney from the Western District of Wisconsin faxed the letter to the Office of the Secretary, following commencement of the litigation.[42]

O'Connor's sole contact with the Department of the Interior occurred in March 1995, when he met with Secretary Babbitt's chief of staff, Tom Collier, and John Duffy's special assistant, Heather Sibbison. Sibbison, who did not recall O'Connor's name, said she and Collier met with a lobbyist who requested that Interior delay its decision until the opponents of the Four Feathers project could submit an economic impact study demonstrating the detrimental impact the Hudson casino would have on their tribes.[43] Collier recalled that he was asked to attend the meeting at the last minute.[44] He also recalled that O'Connor's major concern was that Interior delay the decision until after his clients could submit their report, which would be by the end of April 1995. Collier testified that—either when O'Connor was still in the room, or directly after he left—Collier called the Indian Gaming Management Staff office to ask about O'Connor's request. A staff member said that the office would not reach its decision until after the end of April, and

thus the office did not object to keeping the record open for additional public comment until that time.[45]

No career or political appointees from Interior recall any further meetings or telephone conversations with O'Connor or any of his lobbying partners concerning the Hudson casino matter after the March 1995 meeting between Collier, Sibbison, and O'Connor. The only request made by the tribes opposing the casino proposal was that they be allowed to submit additional comments concerning the detrimental impact the proposal would have on their on-reservation casinos that employ hundreds of Native Americans. Interior's accommodation of this request was entirely appropriate and consistent with Departmental procedures. In summary, Secretary Babbitt met personally only with the supporters of the Hudson casino proposal and never met once with the lobbyists hired by the casino's opponents.

ROLE OF THE WHITE HOUSE

Much has been made of the allegation that the White House directed Interior to deny the Hudson application at the urging of lobbyists for the tribes and the DNC. However, the Minority found no evidence that White House personnel attempted to influence the timing or substance of Interior's decision in this matter. Instead, the only contacts between the White House and Interior concerning the Hudson casino proposal were status reports relayed from Interior staffers to junior White House staffers.

Lobbyist contacts with Harold Ickes

O'Connor and his lobbying colleagues did make numerous attempts to convince Ickes to get involved in advocating on behalf of the opponents of the Hudson casino. First, Ickes and O'Connor apparently exchanged several telephone messages on April 25 and 26, 1995, but O'Connor testified that they never actually spoke with one another during that period.[46] Ickes testified that, to his recollection, he never met with O'Connor nor any representatives of the tribes.[47] Next, O'Connor, his Native American colleague Larry Kitto, and several tribal leaders met with DNC Chairman Fowler on April 28, 1995, and told him about their concerns about the Hudson proposal.[48] As a result, Fowler said he talked to Ickes on the telephone about the tribes' concerns and wrote Ickes a follow-up memo concerning what these "DNC supporters" had emphasized in their meeting.[49]

Patrick O'Connor followed up Fowler's efforts with his own letter to Ickes, dated May 8, 1995, in which he unjustifiably claimed that the Hudson casino proposal was a partisan wedge issue in which Democrats opposed the proposal, and Republicans favored it.[50] In addition, one of O'Connor's Washington-based law partners, Tom Schneider, mentioned O'Connor's concerns regarding Hudson to Ickes at a DNC fundraiser on May 14, 1995, and Schneider said Ickes told Schneider, "I'll follow through on it."[51]

O'Connor's datebook entries corroborate that he was unsuccessful in scheduling a White House meeting to present his clients' concerns. Entries for May 15, 17, 19, and 24 indicate that O'Connor's clients asked him about setting up a meeting with Ickes on each of those dates.[52] The datebook reflects that, on the evening of May

24, O'Connor attended an event for the Vice President at which he mentioned to Peter Knight, a lobbyist and former campaign manager for then-Senator Al Gore in 1992, and David Strauss, Vice President Gore's deputy chief of staff, his problems with the Hudson casino.[53] On June 6, 1995, the datebook also reflects that he mentioned to Clinton/Gore Finance Chair Terry McAuliffe that he wanted to set up a meeting with Ickes.[54]

The failure of O'Connor to arrange a meeting with Ickes is not surprising, given the memo sent to Ickes by Loretta Avent of the White House Office of Intergovernmental Affairs on April 24, 1995. In this memo, Avent, who handled relations with Indian tribes for the White House, recounted that she had been contacted that day by Bruce Lindsey concerning why she hadn't returned a telephone call from Patrick O'Connor. In her memo to Ickes, Avent emphasized that it was White House policy not to communicate with lawyers or lobbyists for Indian tribes but rather to deal directly with the tribal chairpersons as governmental leaders. She emphasized that, because Indian gaming is an area rife with controversy, it was best for the White House to stay as far as possible from involvement with the issue.[55]

White House requested status report from Interior

Shortly thereafter, Ickes asked Jennifer O'Connor, a staff assistant, to find out the status of the Hudson casino issue.[56] Jennifer O'Connor wrote a memorandum to Ickes on May 18, 1995, in which she reported that Interior was in the process of making a decision and that the application was likely to be denied. Ickes testified that it was his responsibility to become aware of issues in a particular inquiry and then make a decision about whether he should become involved. When Ickes found out that Interior was handling the matter, he testified that "the best of my recollection is I think that was the end of it as far as my office was concerned."[57]

Jennifer O'Connor testified that she contacted the office of John Duffy and spoke with Heather Sibbison, Duffy's special assistant; she has no recollection of speaking with anyone else at Interior concerning the status of the Hudson casino.[58] Ms. O'Connor testified that, whenever she made a status inquiry of an agency about a policy matter, she would start "with a disclaimer that roughly said, you know, I'm looking for a status, I don't want you to tell me anything I'm not supposed to know, I don't want to influence anything, so just tell me what you can about this issue."[59] She recalled Sibbison's comments as follows:

> And she sort of explained the context of it, that a tribe wanted the Department of the Interior to approve their ability to turn a dog track into a casino, and that the community where the dog track was [located] was pretty universally united against it and that they were in the process of making a decision on it and hearing from members of Congress and community leaders and governors, and you name them, everybody seemed to have an opinion on it; and that the department was not yet done with its decision-making process, but she—it was her personal opinion that based on all of the negative information they were getting from communities that they were most likely going

to eventually deny it. And I think she told me that none of this was public. I think that's about the extent of the conversation.[60]

Jennifer O'Connor wrote a May 18, 1995, memo to Ickes that summarized the status of the Hudson casino issue at the Interior Department. She verified in her deposition that the information must have come about as a result of the conversation she remembers having with Sibbison.[61] In the memo, O'Connor states that the Interior staff had met on the issue "last night" and had come up with a preliminary decision to deny the application. According to this memo, Interior's decision was likely to be based upon the following factors:

- the applicant tribes' existing reservations were located far from the proposed casino site;
- the local officials in Hudson and the local (Republican) Congressman Gunderson opposed the project based upon concerns that it would have an adverse impact on the local community;
- the Minnesota congressional delegation opposed it because of the negative impact upon on-reservation gaming facilities of tribes located near Hudson in eastern Minnesota; and
- "It is likely that a decision to approve this proposal would result in a spotlight being shone on the Indian Gaming Regulatory Act, which is under some legislative pressure at the moment. The Department wants to avoid this kind of negative attention to the Act."

The memorandum reflects that Interior staff were aware of the possible influence of the "bigger lobbyists" of the wealthier tribes influencing the process, but thought that such concerns did not negate "the uniform opposition from the local community." The bottom line is a status report: "the Department is reviewing the comments received during the comment period which ended April 30. It has committed to making a final decision within a month."[62]

White House requested second status report from Interior

A fax sent from Patrick O'Connor to Ickes's office on June 1, 1995, attached a newspaper article from a Madison, Wisconsin, newspaper discussing another Wisconsin dog track near Madison that was being purchased for conversion to an off-reservation Indian casino.[63] In his fax cover sheet, O'Connor made the point that allowing the Hudson casino to go forward would be a bad precedent concerning off-reservation casinos, as was indicated by the fact that other tribes were going forward with similar proposals right in Wisconsin.[64] Jennifer O'Connor did not recall reading the article attached to this fax.[65] She did recall John Sutton, a staff person in Ickes's office, passing the fax cover sheet to her and asking if she wanted to meet with Patrick O'Connor.[66] Ms. O'Connor testified that she never met with Patrick O'Connor at any time.[67] Ms. O'Connor subsequently asked an intern in her office, David Meyers, to call Sibbison to find out whether Interior had announced a decision concerning the casino.[68]

Meyers contacted Sibbison and wrote a memo to Jennifer O'Connor on June 6, 1995, recounting the conversation between himself and Sibbison. He confirmed that Interior would make an announce-

ment concerning the Hudson matter in the next two weeks and that the department was 95 percent certain that the application would be turned down.

> She [Sibbison] explained that there is significant local opposition. Much of the opposition, however, is a by-product of wealthier tribes lobbying against the application. Therefore, they still want to receive public comment in making a fair determination regarding the application. . . . [S]he stated that they will probably decline without offering much explanation, because of their "discretion" in this matter. She asked that if you have any feedback please call her with your thoughts.[69]

Ms. O'Connor was confident that she never shared her thoughts on the issue with Sibbison, stating, "I had no need to because they were about to make a decision, they were about to turn it down. I had no reason to think there was anything wrong with that."[70]

White House and Interior confer on response to congressional inquiry

On June 26, 1997, Jennifer O'Connor faxed to Heather Sibbison a copy of a June 12 letter from Minnesota's Democratic congressional delegation to Ickes opposing the trust acquisition, explaining the grounds for their opposition, and asking him to explain their concerns to Secretary Babbitt.[71] The accompanying fax sheet contains, Ms. O'Connor requests that Sibbison "[p]lease have someone draft a response."[72] On June 27, 1995, Sibbison faxed Ms. O'Connor draft responses.[73] The accompanying cover memo from Sibbison to O'Connor explained that, in light of the fact that the Department's decision to deny the trust acquisition proposal might be made later that week, Sibbison drafted two letters.[74] The first draft could be sent immediately acknowledging the concerns expressed by the congressional delegation and advising them that the issue was still under consideration.[75] The other draft contemplated that the decision denying the application had already been released and simply advised the congressional delegation of that fact.[76] O'Connor's recollection of her response, which is supported by a note she wrote on the cover page of Sibbison's return fax, was that she decided to send neither letter and simply asked Interior to respond on behalf of the White House.[77]

In summary, when Jennifer O'Connor first contacted Secretary Babbitt's office on behalf of Ickes, Heather Sibbison told her that Interior was likely to deny the application, and Ms. O'Connor's contemporaneous memo demonstrates that the reasons for denial that Sibbison referred to were similar to those actually used by Michael Anderson in his July 14, 1995 denial letter. Subsequent contacts between the White House and Interior were routine and non-substantive. There is no evidence that the White House influenced the substance of the decision.

Other Interior and White House contacts

Secretary Babbitt testified that he had no contact with any White House staff, elected officials, or DNC personnel concerning the Hudson casino proposal.[78] Although Secretary Babbitt men-

tioned Ickes to Eckstein during their July 14, 1995 meeting, Secretary Babbitt testified that Ickes was the White House official who was the "general point of contact" on Department of Interior matters, and thus Ickes was a shorthand way for him to state that the White House expected the Department to decide sensitive matters promptly.[79] Also, prior to the July 14, 1995, decision in this matter, Secretary Babbitt testified that he had no knowledge of any contact by his staff with White House personnel concerning the Hudson casino.[80] In addition, Secretary Babbitt testified that no one told him about the specific campaign contributions made by Indian tribes to Democratic candidates or party organizations.[81]

John J. Duffy, Counselor to the Secretary, testified that he had no recollection of having contact with Ickes or with anyone in Ickes's office concerning the Hudson matter.[82] Duffy has no recollection of speaking with Fowler or any DNC staff on the Hudson matter, nor did he ever hear about any Interior employees speaking with Fowler or DNC staff concerning this issue.[83] Sibbison, the Special Assistant to Secretary Babbitt, does not recall speaking with Fowler or hearing about anyone speaking with the DNC or the Clinton campaign about the Hudson issue.[84]

George Skibine, the director of the Indian Gaming Management staff, stated that Heather Sibbison never told him about inquiries she received from the White House on the matter. Moreover, when Skibine was shown Ms. O'Connor's memo concerning her conversation with Sibbison, Skibine agreed that the opposition of Wisconsin officials based upon detriment to the Hudson-area community and the opposition of the Minnesota Democratic congressional delegation due to impact on nearby tribes' on-reservation gaming facilities were integral reasons for the denial of the application.[85]

Therefore, aside from the contacts between Sibbison and either Jennifer O'Connor or White House intern David Meyers, there is no evidence that Interior officials had any direct contacts with Ickes or anyone else at the White House concerning the Hudson casino proposal.

ECKSTEIN'S ACCESS TO INTERIOR OFFICIALS

According to the evidence collected by the Committee, Eckstein, unlike Patrick O'Connor and other lobbyists hired by the opposing tribes, was the only lobbyist who spoke extensively to Secretary Babbitt, to John Duffy, the secretary's counselor for Indian affairs, and to career Indian Gaming Management Staff employees concerning the Hudson matter.

Eckstein's telephone contacts with Secretary Babbitt

Eckstein testified that he had one and perhaps two or three telephone conversations with Secretary Babbitt of a substantive nature after he was retained by the casino partnership in April 1995, and that he and Secretary Babbitt discussed the grassroots opposition in the Hudson area, the opposition by elected officials in Wisconsin and Minnesota, and the concerns of nearby Indian tribes in Wisconsin and Minnesota.[86] Eckstein testified that he met with Secretary Babbitt at the Interior Department, either around May 17 or shortly after Memorial Day, 1995. He stated that they met for about a half-hour, after which time Secretary Babbitt gave him a

ride to his office, and they discussed many of the same issues they had gone over in telephone conversations.[87]

The tribal applicants' May 1995 meeting with Interior officials

Eckstein testified that Secretary Babbitt made it clear in their telephone conversations that John Duffy was his counselor in charge of monitoring Indian gaming issues. Eckstein thereafter met on May 17, 1995, with Duffy and George Skibine, the director of the Indian Gaming Management Staff. In addition to Eckstein, Jim Moody, a former U.S. representative from Wisconsin, attended on behalf of the partnership, as did Fred Havenick, the owner of Galaxy Casinos, Inc., and representatives of the three tribes involved in this casino partnership.

According to Eckstein, Secretary Babbitt's office sent a letter to Senator Tom Daschle on June 7, 1995, regarding Moody and Havenick's continuing requests to meet with Secretary Babbitt on this issue. The letter offers a revealing glimpse of Interior's efforts to listen to the concerns of Eckstein's clients and Eckstein's aggressiveness in seeking to lobby Interior officials on behalf of his clients:

> [T]he Department already has afforded Mr. Moody and Mr. Havinick [sic] ample opportunity to express their views. John [Duffy] personally met with Mr. Moody and Mr. Havinick [sic] on this issue, and indeed, went out of his way to accommodate them. On the morning of May 17, 1995, they arrived at the Department with no scheduled meeting. John offered to carve out a fifteen-minute block of time in an already over-booked morning to see them, and arranged to have George Skibine, Director of the Indian Gaming Management Staff, be present. John allowed Mr. Moody and Mr. Havinick [sic] to continue the meeting for a full forty-five minutes, even though allowing this extension forced leaders from another tribe, who had a scheduled appointment, to wait half an hour beyond their meeting time.
>
> After Mr. Moody and Mr. Havinick [sic] left John's office, they continued the unscheduled meeting for nearly two additional hours with George Skibine and his staff. Additionally, as recently as last week, Mr. Moody and Mr. Havinick [sic] met again with George.[88]

Eckstein's July 14 meeting with Secretary Babbitt

Eckstein called Secretary Babbitt on July 11, 1995, to request another opportunity to plead his clients' case since he had heard rumors that the Department was about to make a decision.[89] Secretary Babbitt called Duffy to ask him to meet with Eckstein again. In his deposition, Duffy recalled, "I said we are pretty far along and I think there are very good reasons to get this out. And I think he [Secretary Babbitt] said, "Well, I would like you to make an effort to meet with Paul and explain the decision to him and hear what he has to say." And I think that is consistent with the Secretary's desire to make sure that all sides are heard."[90]

Duffy then called Eckstein and they agreed to meet on the morning of Friday, July 14.[91] The draft decision was finalized during

that week.[92] When Eckstein and Moody presented their arguments to Duffy on the morning of July 14, Duffy said he felt that they simply repeated the arguments that they had raised in the May 17 meeting.[93] He said he told them the decision would be issued denying the application.[94] Duffy explained the key reasons as listed in the decision letter issued by Michael Anderson: (i) the long distance of the applicant tribes from Hudson; (ii) the opposition of the local community, as represented by the statements of opposition of their local, state and federal representatives; (iii) and the opposition of the nearby Indian tribes with on-reservation casinos, specifically the St. Croix Chippewa in Wisconsin.[95]

After Duffy informed Eckstein that the Department was planning to deny the casino request, Eckstein contacted Secretary Babbitt's office and requested an immediate, one-on-one meeting with Secretary Babbitt.[96] Secretary Babbitt agreed to Eckstein's request and met with him later that day for approximately a half-hour.[97] During that meeting, Secretary Babbitt did not grant Eckstein's requests for additional delay in the issuance of the Department's decision.[98]

THE MERITS OF INTERIOR'S DECISION ON THE HUDSON APPLICATION

Secretary Babbitt, John Duffy, Heather Sibbison, and Michael Anderson all testified that the denial of the Hudson application was consistent with a departmental policy that casino projects not be approved if the applicant tribe's current reservation is located far from the proposed site, the host community is not supportive of the project, and the project would have a detrimental impact on tribes whose reservations were near the proposed site.[99] George Skibine, who wrote the draft letter denying the application,[100] testified that, with the exception of Interior's reliance on the applicant tribes' distance from Hudson, he was completely supportive of the reasoning and language of the July 14, 1995, final decision letter.[101] Contrary to assertions in the October 30, 1997, hearing, George Skibine, the career civil servant charged with recommending a decision agreed that the Hudson casino application should be denied.[102] The Minority's formal request to depose Skibine before the Committee's October 30 hearing was declined by the Majority without explanation, but it later took place, at the Minority's request, on November 17, 1997.[103]

The Hudson Casino would have been detrimental to the surrounding community

As Secretary Babbitt emphasized in his testimony before the Committee,[104] the Indian Gaming Regulatory Act[105] requires that, when Indian tribes request that Interior acquire land "in trust" on the Tribes' behalf for gaming purposes, the Secretary must find that the new casino would not be detrimental to the surrounding community, following consultation with state and local officials, including nearby Indian tribes. Even after the secretary makes that determination, the land cannot be taken into trust until "the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination."[106] The legal standard for taking off-reservation land into trust for gaming purposes is

much more rigorous than when the land is within or contiguous to an existing reservation.[107]

At the beginning of his tenure as Secretary of the Interior, Secretary Babbitt made his position absolutely clear.[108] He favored on-reservation Indian casinos without restrictions by host states but would endeavor to keep Indian gaming on existing reservation lands unless an off-reservation casino was clearly supported by the host community.[109] When the Mayor and the City Council of Detroit publicly supported the "Greektown" casino proposed by the Sault Ste. Marie Chippewa Tribe of Michigan, Secretary Babbitt, after a staff determination that the casino would not be detrimental to the Detroit community, sent a letter requesting the concurrence of Michigan Governor John Engler to the proposed land acquisition.[110] Similarly, in 1997, both the Northwest Regional Office of the Bureau of Indian Affairs ("BIA") and the Washington-based Indian Gaming Management Staff performed an extensive canvassing of opinions in nearby towns and tribal governments before Interior determined that an off-reservation casino proposed by the Kalispal Indians near Spokane, Washington, would not be detrimental to the surrounding community, and therefore requested that Governor Gary Locke concur in this determination.[111]

The surrounding communities opposed the Hudson Casino proposal

In stark contrast to the Michigan and Washington state applications, extensive public comment by private citizens, elected officials and leaders of Indian tribes located within a 50-mile radius of Hudson indicated that the proposed casino would have caused social, economic, and environmental harm to the surrounding communities. In early 1995, Interior received complaints from Congressmen in both Wisconsin and Minnesota that the Minneapolis regional office of the Bureau of Indian Affairs had failed to consider adequately the detriment the casino would cause to the surrounding community.[112] Even in the June 8, 1995, memorandum of Tom Hartman,[113] in which the economic analyst on the Indian gaming management staff argued that the Hudson casino proposal would not be detrimental to the surrounding community, the author admitted the following important fact:

> There has been no consultation with the State of Wisconsin. . . . On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner for Indian Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.[114]

This failure to consult with the state was significant, because consultation would have revealed that a large majority of Wisconsin voters, including 65 percent in St. Croix County, had voted "Yes" in a 1993 statewide referendum proposing a state constitutional amendment to restrict the growth of casino gambling in the state. In October 1994, while running for reelection as Wisconsin's governor, Tommy Thompson promised "I'm not in any way going to expand Indian gambling beyond what it is today."[115] An aide to

Thompson confirmed that the governor's position meant that Thompson had "shut the door on" the Hudson casino proposal.[116] Even after the election, when asked whether he supported the expansion of gaming to raise funds for a new stadium for the Milwaukee Brewers baseball team, Thompson stated the following: "There is no expansion of Indian gaming. How many times do I have to announce it?"[117] In addition, the Wisconsin State Senate's Republican Majority Leader, Michael Ellis, had announced his opposition to the Hudson casino in July 1994, as did the State Senate's Minority Democratic Leader, Bob Jauch; Wisconsin's Democratic Attorney General, James Doyle, wrote Secretary Babbitt in opposition in April 1995; and the Republican State Assemblywoman from Hudson, Sheila Harsdorf, led a coalition of 29 Wisconsin Assembly members who wrote to Secretary Babbitt and Thompson in March 1995 to express their joint opposition to the Hudson proposal as detrimental to both the Hudson area and the entire state of Wisconsin.[118]

In addition, the Congressman from the Hudson area, Republican Steve Gunderson, forwarded to Interior evidence that his constituents in the Hudson area widely opposed the casino. For example, he sent a resolution in opposition passed on December 12, 1994 by the Town of Troy which surrounds the St. Croix Meadows Greyhound track on three sides;[119] a resolution in opposition passed by the City of Hudson on February 6, 1995; and a full-page advertisement signed by 25 Hudson-area business leaders opposing the casino because of specific fiscal and social damage to the Hudson-area community.[120] Based upon the detrimental effects to his district, and the dangerous national precedent of approving an off-reservation casino over vigorous opposition of the local community, Gunderson wrote to Secretary Babbitt on April 28, 1995 and urged the Department to deny the Hudson application.[121]

Gunderson, who retired from the House of Representatives at the end of the 104th Congress, expressed his recollection of the Hudson casino issue in a letter to the Committee dated October 19, 1997:

> The Committee should be aware of significant and intense opposition to any extension of gambling in Wisconsin during this time. . . . I know of no legislator in the area who endorsed the potential casino—Republican or Democrat. . . . It is important for the Committee to understand the depth of feeling in opposition to the casino at that time. It is also my impression that the opposition would be greater today. The only merit in expanding the reservation for casino purposes was to try and salvage something for the huge investment in the dog track facility.[122]

Interior staff recommended denial

The Indian Gaming Management Staff ("IGMS") also identified numerous inadequacies in the environmental assessment that had been prepared for the casino, particularly concerning the St. Croix National Scenic Riverway located near the greyhound track, raising another area of concern that the casino would cause specific harm to the Hudson area community. In January 1995, prior to George Skibine's assignment as director of the IGMS, an IGMS staff member created an initial "Findings of Fact" document analyzing the

Hudson casino application. Referring to and attaching that document, IGMS Environmental Protection Specialist Edward S. ("Ned") Slagle, a career civil servant, wrote Skibine a memorandum expressing his views regarding supplementary materials received by IGMS between January and May 1995, including the following:

> The main additional environmental information which was provided in the supplemental documents concerned the St. Croix Scenic Riverway. The fact that the nearby riverway has received a special designation was not revealed in the environmental document which had been submitted in connection with the other documents in support of the proposed casino. The potential impact, if any, of the proposed casino on the riverway was also not adequately addressed. These deficiencies augment the many others which were described earlier in the environmental analysis sections of the *Findings of Fact*.[123]
>
> With regard to the other deficiencies, Slagle had noted in the January 1995 document,
>
> The environmental impacts of this proposed project are analyzed insufficiently, and the plans for the reduction and mitigation of adverse impacts are insufficient. The Environmental Assessment (EA) of this action is largely irrelevant because the existing conditions are inadequately described. The EA is seven years old, for a different proposed project, and for an environment that has changed drastically during the intervening years.[124]

In addition, in a letter to Skibine, four alderman, and the mayor of Hudson, pointed to detrimental impacts to their community's environment that would be caused by the large increase in attendance at St. Croix Meadows accompanying a casino. Among those documented detriments were "harm to the City's waste water treatment" and "problems with solid waste due to the fact that the county's incineration facility is permanently closed."[125] The National Parks and Conservation Association also wrote a letter to Wisconsin Governor Thompson and Secretary Babbitt expressing its concern about the likely detriment to the St. Croix National Scenic Riverway and the watershed surrounding that waterway.[126]

With regard to these comments, Skibine testified, "I certainly agreed that the EA was deficient because the impact on the St. Croix River Waterway was not addressed."[127] Skibine testified that the environmental impact of the project was a factor in his consideration of this application.[128] Thus, based upon Slagle's written comments on the Hudson application, it is inaccurate to state that the Indian Gaming Management Staff supported this application.

The Administrative Record

Skibine testified that in June 1995 he read the entire record on the Hudson casino proposal, including the staff memos written by Hartman and Slagle, and discussed the matter with other staff members such as Paula Hart, Leroy Chase, and Larry Scrivner.[129] Following this review, Skibine drafted a letter denying the application based upon the secretary's discretionary authority under Section 5 of the Indian Reorganization Act of 1934 ("IRA").[130] The let-

ter based this rejection primarily upon the specific opposition of the neighboring communities of Hudson and Troy, Wisconsin, which were based upon (1) increased law enforcement expenses due to potential exponential growth in crime and traffic congestion; (2) testing [sic] waste water treatment facilities up to remaining operational capacity; (3) problems with solid waste; (4) adverse effect on the communities" future residential, industrial and commercial development plans; and (5) difficulties for current Hudson businesses to find and retain employees." Skibine's letter referred to the objections of both Wisconsin's St. Croix Chippewa and Minnesota's Shakopee Mdewakanton Sioux as neighboring Indian tribes with concerns about the "potential harmful effects of this acquisition on their gaming establishments." Skibine also referred to the objections of a number of elected officials, including the state and United States representatives from the Hudson area. Finally, the location of the proposed casino within a half-mile from the St. Croix National Scenic Riverway was noted as a potentially harmful impact in this letter. Skibine testified that this letter was based upon the record compiled in the case, and there were no other matters that he could think of that were important in his decision-making process.[131]

Allegations of Timing and Political Pressure

An e-mail from Skibine to the Indian Gaming Management Staff dated July 8, 1995, reveals that Skibine edited the Hudson letter, "per Duffy and Heather's instructions," and that he wanted it brought up to Heather Sibbison first thing Monday morning (July 10, 1995). According to the e-mail, this was because "[t]he Secretary wants this to go out ASAP because of Ada's impending visit to the Great Lakes Area."[132] Ada Deer, the Assistant Secretary for Indian Affairs, was scheduled to visit Wisconsin later in July. A note in Interior's files from Sibbison to Tona LaRocque of the Indian Gaming Management Staff, dated July 10, 1995, stated, "Please let me know as soon as the letters are signed. They should be faxed out to the Tribes, so that they will have some time to digest the information before Ada arrives later in the week."[133] Skibine verified that he and Deputy Assistant Secretary for Indian Affairs Michael Anderson discussed the revised decision letter together on either July 10 or July 11, while they were out of town on other business, and that Anderson wanted some changes made to the letter.[134]

While Anderson did testify that he was asked by Deer's special assistant, Michael Chapman, to sign the letter by July 14, he stated that this request likely was made because he was going to be out of the office until July 24, and the matter was clearly ripe for decision.[135] As indicated by the internal memoranda of the Department of Interior dated July 8 and July 10, 1995 as well as Eckstein's own testimony that he had heard "rumors that the application was going to be denied," it clearly was in the best interests of the department that the decision be issued prior to a visit to a Wisconsin "pow-wow" by Deer on July 15 and 16, 1995, so that she would not be bombarded with further lobbying efforts and inter-tribal arguments on the matter.

Interior's Final Decision-Maker Acted on the Merits

Anderson, who had the final decision authority, also testified about the absence of political considerations from his decision-making process.[136] Anderson said that he had reviewed the relevant legal standards and the analyses of the staff (which he described as the "driving force" behind the decision), and he felt that he had a "competent understanding of what the facts were."[137] Anderson's decision, however, was not influenced by any conversations with Secretary Babbitt concerning this matter. Anderson testified that, prior to making the decision denying the Hudson casino proposal, he had never discussed the matter with Secretary Babbitt and, indeed, had "never heard the Secretary's position stated at all on this matter."[138] This was confirmed by Secretary Babbitt himself, who testified that he "did not personally make the decision to deny the Hudson application, nor did I participate in Department deliberations relating to that application."[139] Moreover, Anderson testified that he was not aware of the status reports that had been requested from Interior by Ickes's assistant.[140] Likewise, Anderson said that he had no knowledge, direct or indirect, of any contacts between the DNC and Interior.[141]

CONCLUSION

It is clear from the evidence in the record, including the testimony taken by this Committee, that the decision by the Department of the Interior to deny the Hudson casino application was based upon legitimate concerns about detriment to the communities surrounding the Hudson greyhound track and to neighboring Indian communities with pre-existing, on-reservation casinos. The bipartisan opposition from federal, state, and local elected officials demonstrates that approval of the Hudson casino project would have been contrary to the best interests of the surrounding communities. Allegations that the White House and the DNC caused the Interior Department to deny this application are unsupported by the evidence before this Committee.

FOOTNOTES

[1] *Application To The Court Pursuant to 28 U.S.C. § 592(c)(1) For The Appointment Of An Independent Counsel,* (D.C. Cir. Feb. 11, 1998), p. 1.
[2] Exhibit 1588: Affidavit of Paul Eckstein.
[3] Exhibit 1578: Letter from Senator McCain to Secretary Babbitt re: *Wall Street Journal* article, 7/19/96; Exhibit 1582: Letter from Senator McCain to Harold Ickes re: *Wall Street Journal* article, 7/19/96 [EOP 64386]; Exhibit 1584: Letter from Senator McCain to President Clinton re: *Wall Street Journal* article, 7/19/96, [EOP 64390].
[4] Exhibit 1578: Letter from Senator McCain to Secretary Babbitt re: *Wall Street Journal* article, 7/19/96.
[5] Exhibit 1580: Letter from Secretary Babbitt to Senator McCain re: *Wall Street Journal* article, 8/30/96.
[6] Exhibit 1560: Letter from Patrick O'Connor to Harold Ickes re: Hudson casino proposal, 5/8/95. [EOP 64262–3]
[7] Exhibit 1560: Letter from Patrick O'Connor to Harold Ickes re: Hudson casino proposal, 5/8/95. [EOP 64262–3]
[8] Paul Eckstein deposition, 9/30/97, pp. 59–60.
[9] Paul Eckstein deposition, 9/30/97, p. 53.
[10] Exhibit 1587: Letter from Secretary Babbitt to Chairman Thompson, 10/10/97.
[11] Secretary Babbitt, 10/30/97 Hrg., pp. 116–117.
[12] Secretary Babbitt, 10/30/97 Hrg., p. 185.
[13] Secretary Babbitt, 10/30/97 Hrg., p. 137.
[14] Secretary Babbitt, 10/30/97 Hrg., p. 138.
[15] Secretary Babbitt, 10/30/97 Hrg., pp. 126–127.
[16] Secretary Babbitt, 10/30/97 Hrg., pp. 187–188.

[17] Exhibit 1580: Letter from Secretary Babbitt to Senator McCain re: *Wall Street Journal* article, 8/30/96.
[18] Exhibit 1587: Letter from Secretary Babbitt to Chairman Thompson, 10/10/97.
[19] Secretary Babbitt, 10/30/97 Hrg., p. 136.
[20] Secretary Babbitt, 10/30/97 Hrg., p. 130.
[21] Exhibit 1588: Affidavit of Paul F. Eckstein.
[22] Exhibit 1588: Affidavit of Paul F. Eckstein.
[23] Paul Eckstein, 10/30/97 Hrg., pp. 93–96.
[24] Senator Durbin, 10/30/97 Hrg., pp. 91–92.
[25] Paul Eckstein deposition, 9/30/97, p. 63.
[26] Paul Eckstein deposition, 9/30/97, p. 105; Paul Eckstein, 10/30/97 Hrg., p. 65.
[27] Paul Eckstein deposition, 9/30/97, p. 105; Paul Eckstein, 10/30/97 Hrg., p. 65.
[28] *Wall Street Journal*, 7/12/96; *Wisconsin State Journal*, 7/28/96; *Wisconsin State Journal*, 4/1/97; *Wisconsin State Journal*, 8/16/97.
[29] *Wisconsin State Journal*, 10/8/97.
[30] Staff interview with George Newago, 10/29/97.
[31] Senator Torricelli, 10/30/97 Hrg., pp. 102–103.
[32] *Application To The Court Pursuant to 28 U.S.C. § 592(c)(1) For The Appointment Of An Independent Counsel,* (D.C. Cir. Feb. 11, 1998), p. 7.
[33] *Application To The Court Pursuant to 28 U.S.C. § 592(c)(1) For The Appointment Of An Independent Counsel,* (D.C. Cir. Feb. 11, 1998), p. 7.
[34] *Application To The Court Pursuant to 28 U.S.C. § 592(c)(1) For The Appointment Of An Independent Counsel,* (D.C. Cir. Feb. 11, 1998), pp. 7–8.
[35] Paul Eckstein deposition, 9/30/97, p. 90.
[36] Paul Eckstein deposition, 9/30/97, p. 90.
[37] Paul Eckstein deposition, 9/30/97, p. 115.
[38] Exhibit 2512M: Patrick O'Connor deposition in *Four Feathers Casino Joint Venture Partnership* v. *City of Hudson,* Case No. 95–CV–540, St. Croix County., WI Circuit Court, 4/18/97, pp. 107–108.
[39] Secretary Babbitt, 10/30/97 Hrg., p. 150–151.
[40] Secretary Babbitt, 10/30/97 Hrg., p. 150.
[41] John Duffy deposition, 9/29/97, pp. 79–80.
[42] Exhibit 2515M: Letter from Sue Ellen Sloca, Office of the Secretary of the Interior, FOIA officer, to Glenn R. Simpson and Jill Abramson, Wall Street Journal, 4/25/97.
[43] Heather Sibbison deposition, 9/26/97, pp. 50.
[44] Tom Collier deposition, 9/29/97, pp. 11–12.
[45] Tom Collier deposition, 9/29/97, pp. 11–13.
[46] Exhibit 2512M: Patrick O'Connor deposition in *Four Feathers Casino Joint Venture Partnership* v. *City of Hudson*, Case No. 95–CV–540, St. Croix County., WI Circuit Court, 4/18/97, pp. 107–108.
[47] Harold Ickes deposition, 9/22/97, p. 34.
[48] Exhibit 1559: Memorandum from Don Fowler to Harold Ickes re: Indian Gaming Issue, 5/5/95. [DNC 3245524].
[49] Exhibit 1559: Memorandum from Don Fowler to Harold Ickes re: Indian Gaming Issue, 5/5/95. [DNC 3245524]
[50] Exhibit 1560: Letter from Patrick O'Connor to Harold Ickes re: Hudson casino proposal, 5/8/95. [EOP 64262–3]
[51] Chairman Thompson, 10/30/97 Hrg., p. 7, referencing Exhibit 1592: Tom Schneider deposition, 9/9/97, taken in *Four Feathers Casino Joint Venture Partnership* v. *City of Hudson*, Case No. 95–CV–540, St. Croix County, WI Circuit Court.
[52] Exhibit 1557: Entries from Patrick O'Connor's datebook. [OC 4, 31, 49, 62, 68, 69, 73, 74, 76–81, 83–89 & 93]
[53] Exhibit 1557: Entries from Patrick O'Connor's datebook. [OC 80].
[54] Exhibit 1557: Entries from Patrick O'Connor's datebook. [OC 83].
[55] Exhibit 1597: Memo from Loretta Avent to Harold Ickes re: call from Bruce Lindsey concerning O'Connor, 4/24/95. [EOP 069071]
[56] Jennifer O'Connor deposition, 10/6/97, pp. 37–38.
[57] Harold Ickes deposition, 9/22/97, pp. 35–36, 38–39.
[58] Jennifer O'Connor deposition, 10/6/97, pp. 39–40.
[59] Jennifer O'Connor deposition, 10/6/97, p. 40.
[60] Jennifer O'Connor deposition, 10/6/97, pp. 40–41.
[61] Jennifer O'Connor deposition, 10/6/97, p. 57, referencing Exhibit 1562: Memo from Jennifer O'Connor to Harold Ickes re: "Indian Gaming in Wisconsin," 5/18/95. [EOP 64394]
[62] Exhibit 1562: Memo from Jennifer O'Connor to Harold Ickes re: "Indian Gaming in Wisconsin," 5/18/95. [EOP 64394]
[63] Exhibit 1566: Fax from Patrick O'Connor to Harold Ickes/John Sutton, 6/1/95. [EOP 64251].
[64] Exhibit 1566: Fax from Patrick O'Connor to Harold Ickes/John Sutton, 6/1/95. [EOP 64251].
[65] Jennifer O'Connor deposition, 10/6/97, pp. 66–67.
[66] Jennifer O'Connor deposition, 10/6/97, p. 67.
[67] Jennifer O'Connor deposition, 10/6/97, p. 66.
[68] Jennifer O'Connor deposition, 10/6/97, p. 53.
[69] Exhibit 1599: Memo from David Meyers, White House intern, to Jennifer O'Connor, special assistant to Harold Ickes re: "Wisconsin Dog Track," 6/6/95. [EOP 64250]
[70] Jennifer O'Connor deposition, 10/6/97, p. 56.
[71] Exhibit 1569: Fax from Jennifer O'Connor, aide to Harold Ickes, to Heather Sibbison, special assistant to Interior counselor John Duffy, asking for a draft response to an enclosed 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/26/95. [02893, EOP 064257–8].

[72] Exhibit 1569: Fax from Jennifer O'Connor, aide to Harold Ickes, to Heather Sibbison, special assistant to Interior counselor John Duffy, asking for a draft response to an enclosed 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/26/95. [02893, EOP 064257–8].

[73] Exhibit 1570: Fax from Heather Sibbison, special assistant to Interior counselor John Duffy, to Jennifer O'Connor, aide to Harold Ickes, enclosing draft responses to a 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/27/95. [EOP 64253–6].

[74] Exhibit 1570: Fax from Heather Sibbison, special assistant to Interior counselor John Duffy, to Jennifer O'Connor, aide to Harold Ickes, enclosing draft responses to a 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/27/95. [EOP 64253–6].

[75] Exhibit 1570: Fax from Heather Sibbison, special assistant to Interior counselor John Duffy, to Jennifer O'Connor, aide to Harold Ickes, enclosing draft responses to a 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/27/95. [EOP 64253–6].

[76] Exhibit 1570: Fax from Heather Sibbison, special assistant to Interior counselor John Duffy, to Jennifer O'Connor, aide to Harold Ickes, enclosing draft responses to a 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/27/95. [EOP 64253–6].

[77] Jennifer O'Connor deposition, 10/6/97, pp. 49–51, referencing Exhibit 1570, Fax from Heather Sibbison, special assistant to Interior counselor John Duffy, to Jennifer O'Connor, aide to Harold Ickes, enclosing draft responses to a 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/27/95. [EOP 64253–6]

[78] Secretary Babbitt, 10/30/97 Hrg., p. 147–148.

[79] Secretary Babbitt, 10/30/97 Hrg., p. 121.

[80] Secretary Babbitt, 10/30/97 Hrg., p. 119–120.

[81] Secretary Babbitt, 10/30/97 Hrg., p. 121.

[82] Exhibit 2510M: John Duffy deposition, 9/29/97, p. 57.

[83] John Duffy deposition, 9/29/97, pp. 68–71.

[84] Heather Sibbison deposition, 9/26/97, pp. 42 & 44.

[85] George Skibine deposition, 11/17/97, p. 48–50.

[86] Paul Eckstein deposition, 9/30/97, pp. 22–25.

[87] Paul Eckstein deposition, 9/30/97, p. 26–28.

[88] George Skibine deposition, 11/17/97, pp. 54–55.

[89] Paul Eckstein deposition, 9/30/97, p. 43.

[90] John Duffy deposition, 9/29/97, p. 107.

[91] Paul Eckstein deposition, 9/30/97, p. 44–45.

[92] John Duffy deposition, 9/29/97, pp. 107.

[93] John Duffy deposition, 9/29/97, p. 107.

[94] John Duffy deposition, 9/29/97, p. 105–107.

[95] John Duffy deposition, 9/29/95, p. 104–105.

[96] Paul Eckstein deposition, 9/30/97, p. 51.

[97] Paul Eckstein deposition, 9/30/97, p. 52.

[98] Paul Eckstein deposition, 9/30/97, p. 53.

[99] Secretary Babbitt, 10/30/97 Hrg., pp. 120–122; John Duffy deposition, 9/29/96, pp. 23–25; Heather Sibbison deposition, 9/26/95, pp. 24–26; Michael Anderson deposition, 9/19/96, pp. 18-20, 43–45.

[100] Exhibit 2508M: Draft letter from Interior Assistant Secretary for Indian Affairs Ada Deer to tribal leaders denying the Hudson casino request, 6/29/95. [3211–14]

[101] George Skibine deposition, 11/17/95, pp. 152–153.

[102] George Skibine deposition, 11/17/95, pp. 152–153.

[103] "Silent Witness: Senate investigators never called the one man who could clear up the Babbitt case,"*Washington Monthly*, December 1997; "The Non-Case Against Bruce Babbitt," *Wall Street Journal*, 12/4/97.

[104] Secretary Babbitt, 10/30/97 Hrg., p. 121.

[105] 25 U.S.C. §2719 (1997).

[106] 25 U.S.C. §2719(b)(1)(A).

[107] 25 U.S.C. §2719(a)(1) (gaming is not to be conducted by tribes on land acquired in trust by the Department of Interior after 1988, unless the land is within or contiguous to the tribes" existing reservation.)

[108] *Indian Country Today*, 2/11/93 (Secretary Babbitt tells group of western governors that Indian tribes should have some degree of latitude from state gaming laws on federally recognized reservation bases); *The Economist*, 5/29/93 (Secretary Babbitt negotiated an agreement in his native Arizona between tribal and state government that the tribes' casino gambling would be restricted to their reservations).

[109] *Indian Country Today, 2/11/93 (Secretary Babbitt tells group of western governors that Indian tribes should have some degree of latitude from state gaming laws on federally recognized reservation bases); The Economist*, 5/29/93 (Secretary Babbitt negotiated an agreement in his native Arizona between tribal and state government that the tribes' casino gambling would be restricted to their reservations).

[110] George Skibine deposition, 11/17/97, p. 72.

[111] George Skibine deposition, 11/17/97, pp. 74–75.

[112] For example, Rep. Steve Gunderson, then-U.S. Representative for the Hudson area of western Wisconsin, sent letters to Secretary Babbitt (Exhibits 2522M, 2523M) asking about the truth of reported allegations that the Interior's Minneapolis area office had recommended approval of the trust application in the face of local opposition. Rep. Gunderson enclosed expressions of op-

position from within his district, of which the following comment from Hudson resident Bob Bastian is representative:

With 3200 signatures against the proposal, the majority of the business community, and all the Indian tribes within a 100 miles of here dead set against [the proposed casino in Hudson], the BIA in Minneapolis in all its bureaucratic wisdom decided that wasn't sufficient opposition and OK'd the proposal.

We've been through this before with overwhelming opposition (2-1 ratio) in 1988–89 we got the dog track shoved down our throats. Now it's happening again. When does the majority's will ever count anymore other than in an election?

[113] Exhibit 1567: Draft memo from Tom Hartmann, Indian gaming management staff, Interior Department, to George Skibine, director, Indian gaming management staff, Interior Department re: Hudson casino trust application, 6/8/95. [3194–3209]

[114] Exhibit 1567: Draft memo from Tom Hartmann, Indian gaming management staff, Interior Department, to George Skibine, director, Indian gaming management staff, Interior Department re: Hudson casino trust application, 6/8/95. [3194–3209]

[115] Exhibit 2519M: *St. Paul Pioneer Press*, 10/4/94.

[116] Exhibit 2519M: *St. Paul Pioneer Press*, 10/4/94.

[117] *Associated Press*, 2/7/95. Beginning in early 1994, Gov. Thompson had clearly and publicly expressed his opposition to any expansion of gaming, including the Hudson proposal. Exhibit 2519M: *St. Paul* (MN) *Pioneer Press,* 10/4/94.

[118] Exhibit 2524M: several letters of opposition from state and federal elected officials in Wisconsin.

[119] Exhibit 2522M: Letter from Rep. Gunderson to Secretary Babbitt re: local opposition to Hudson casino proposal, 1/25/95.

[120] Exhibit 2523M: several letters of opposition from state and federal elected officials in Wisconsin.

[121] Exhibit 2524M: several letters of opposition from state and federal elected officials in Wisconsin.

[122] Exhibit 2521M: Letter from Steve Gunderson, former U.S. Representative from Hudson, Wisconsin, to Ranking Minority Member Glenn re: local opposition to Hudson casino proposal, 10/29/97.

[123] George Skibine deposition, 11/17/97, Exhibit 10.

[124] George Skibine deposition, 11/17/97, Exhibit 10.

[125] George Skibine deposition, 11/17/97, p. 60.

[126] George Skibine deposition, 11/17/97, Exhibit 9.

[127] George Skibine deposition, 11/17/97, p. 43.

[128] George Skibine deposition, 11/17/97, p. 39–40.

[129] George Skibine deposition, 11/17/97, pp. 61–65.

[130] 25 U.S.C. 465; George Skibine deposition, 11/17/97, p. 65.

[131] George Skibine deposition, 11/17/97, pp. 66–67.

[132] E-mail from George Skibine, director of the Indian gaming management staff, to Miltona R. Wilkins, Tom Hartman, Paula Hart, and Tona LaRocque, 7/8/95.

[133] Department of the Interior Central Office Routing Slip, 7/8/95.

[134] George Skibine deposition, 11/17/97, p. 68.

[135] Michael Anderson deposition, 9/19/97, pp. 58–59.

[136] Michael Anderson deposition, 9/19/97, p. 43–46.

[137] Michael Anderson deposition, 9/26/97, p. 67–68.

[138] Michael Anderson deposition, 9/19/97, p. 40–41.

[139] Secretary Babbitt, 10/30/97 Hrg, p. 117.

[140] Michael Anderson deposition, 9/19/97, p. 48.

[141] Michael Anderson deposition, 9/19/97, p. 48–49.

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PART 6 ALLEGATIONS OF QUID PRO QUOS

Chapter 36: Tobacco and the 1996 Election Cycle

On August 5, 1997, President Clinton signed into law a landmark balanced budget agreement passed by the 105th Congress.[1] This agreement actually incorporated two bills, a tax relief bill and the balanced budget bill.[2] Buried in the tax bill's "miscellaneous provisions" section was a little-noticed, one-sentence, 46-word provision that stated that tobacco companies would be entitled to claim a tax credit of $50 billion based on a settlement agreement in a major anti-tobacco civil litigation matter. In that settlement agreement, tobacco campanies have agreed to pay $368.5 billion over the next 25 years to settle anti-tobacco lawsuits, compensate people injured by smoking, and finance health programs. In return, the companies would reduce their exposure in future lawsuits. This settlement has not yet been approved by Congress or the President.[3]

The Minority was interested in investigating how this billion-dollar-a-word provision wound up in the balanced budget agreement, particularly in light of the tobacco industry's substantial political contributions to the Republican Party and the tobacco industry connections to Haley Barbour, former chairman of the Republican National Committee ("RNC"). Tobacco companies gave more than $10 million overall in the 1996 election cycle, about $8.5 million to Republicans. During the period when Barbour was chairman of the RNC, he attempted to block unfavorable tobacco legislation at the federal and state levels and lobbied against anti-tobacco litigation brought by private individuals and state agencies. Just two days after one of Barbour's interventions, one tobacco company donated a half-million dollars to the RNC. After leaving the RNC to return to his lobbying firm in early 1997, Barbour was immediately retained as a lobbyist for the five largest tobacco firms.

The Minority looked at the role tobacco played in the 1996 elections.

FINDING

During the 1996 election cycle, tobacco companies contributed roughly $8.5 million in soft money to the Republicans, much of which was raised by Haley Barbour. There are grounds for suspecting that Barbour assisted the industry in exchange for campaign money, but the Committee did not investigate these troubling allegations.

THE TOBACCO INDUSTRY'S POLITICAL CONTRIBUTIONS DURING THE 1996 ELECTION CYCLE

The tobacco industry gave roughly $10.1 million overall in political contributions in the 1996 election cycle. According to the nonpartisan Center for Responsive Politics, the industry gave a total of $6.8 million in soft money to both parties, most of it to the Republican Party.[4] Tobacco PACs and company employees contributed another $3.3 million to federal candidates in the 1996 cycle, again most of it to Republicans.[5] In fact, Philip Morris Companies, Inc.

Footnotes at end of chapter 36.

("Philip Morris") was the number one overall campaign contributor in the entire 1996 election cycle with $4.2 million in hard and soft money, with nearly 80 percent contributed to Republicans.[6] In addition to these campaign contributions, tobacco firms in 1996 spent nearly $27 million lobbying Congress and federal agencies. Philip Morris led the way again, spending $19.6 million, according to federal lobby disclosure forms.

In previous election cycles, the industry divided its campaign contributions equally between the parties, but in the 1996 election cycle over 80 percent of tobacco's $10.1 million in political donations went to Republicans. The GOP collected $5.8 million in soft money from tobacco interests and tobacco PACs and company executives contributed $2.5 million to Republican candidates at the federal level. The two largest soft-money donors to national Republican party committees were Philip Morris with $2.5 million and RJ Reynolds/RJR Nabisco ("RJR") with $1.2 million.[7]

There are several likely reasons for the industry's dramatic shift of support to the Republican Party. Shortly after President Clinton took office, Administration officials proposed sharp increases in cigarette taxes as a way of financing the expansion of health care. Later, the President proposed that the Food and Drug Administration ("FDA") be given the authority to regulate tobacco as a drug. In Congress, Representative Henry Waxman (D-Calif.) chaired a subcommittee that held hearings on the tobacco industry. Senator Richard Durbin (D-Ill.), a House member from 1983 until winning election to the Senate in 1996, clashed with the industry when he pushed for smoking to be banned on all domestic flights.

On the state level, many Democrats were also supportive of efforts to curb smoking in public places. State government became the arena for one of the biggest threats to the industry: a lawsuit by state attorneys general against tobacco companies to recoup medical costs the states have incurred in treating smokers.

Apparently, as part of an effort to thwart these and other initiatives, the major tobacco companies contributed millions of dollars on the Republican Party. Tobacco companies not only gave directly to the RNC, they contributed to Speaker Newt Gingrich's GOPAC, a political action committee; Senator Bob Dole's Better America Foundation ("BAF"), a nonprofit think tank; and to the Dole Foundation, a charitable entity linked to the Senator. (Philip Morris and RJR each gave $100,000 to BAF.) After Haley Barbour launched the National Policy Forum, a Republican Party think tank, in the spring of 1993, tobacco companies were among the biggest backers, contributing a total of $445,000; the biggest contributions included $200,000 from Philip Morris and $100,000 from RJR.

REPUBLICAN ASSISTANCE TO TOBACCO COMPANIES

According to published reports, the tobacco companies have received valuable benefits in exchange for their political "investments." *Common Cause Magazine,* citing a 1994 study published in the *Journal of the American Medical Association,* noted: "House members receiving the most tobacco money were 14.4 times as likely to vote with the industry as members receiving the least; in the Senate the number was 42.2."[8] Other examples of Republican efforts on the industry's behalf include:

• For nearly three years after the Republicans took control of Congress in 1994, there was not a single congressional hearing on cigarettes and health.[9] It was not until late 1997, after the tobacco settlement was announced, that such hearings were held. Even one long-time industry advocate, Representative Thomas Bliley (R-Virginia), began to criticize the industry, and his committee subpoenaed hundreds of documents from tobacco companies that, according to press reports "apparently contain more evidence that cigarette makers deliberately misled the public about smoking's dangers."[10]

• In the 104th Congress, pro-tobacco lawmakers defeated efforts to strip funding for tobacco farmers from the Agriculture Department's budget in both 1995 and 1996[11] and fought off attempts to raise tobacco taxes and preserved millions of dollars in federal subsidies, including the ability to take tax deductions for advertising costs.[12] In 1994, the tobacco industry spent nearly $5 billion on advertising.[13]

• Other tobacco-related legislation in the 104th Congress never came to a vote. For example, Representative Scotty Baesler (D-Ky.) bill, that would have codified the federal government's authority to regulate tobacco, died in committee.[14]

• During the 1996 presidential campaign, GOP candidate Bob Dole made clear that he also was opposed to giving the FDA increased authority to regulate tobacco. Dole stated that he did not regard smoking as an addiction. In his view, it was merely a habit—like drinking milk.[15] Even after Dole was widely criticized for that statement, he repeated his assertion that smoking was not addictive.[16]

• After Dole's statement, Barbour was asked if he thought smoking was addictive, but he refused to be pinned down. In the words of a press report, the RNC chairman "effectively dodged a reporter's insistent questioning on whether he believes cigarette smoking is addictive."[17] Barbour explained that he couldn't answer the question because he was not a scientist or a chemist.[18]

HALEY BARBOUR ASSISTED TOBACCO

Haley Barbour became RNC chairman in January 1993 and served a four-year term. During his tenure, he was unquestionably the party's top fundraiser. Documents obtained by the Committee indicate that Barbour was heavily involved in raising money from the tobacco industry.

One RNC document the Committee received is a handwritten note from Barbour to Craig Fuller, the Philip Morris official in charge of lobbying. In the note, Barbour thanked Fuller for a $50,000 contribution and mentioned that he was "working on a replacement for John Moran"—the RNC finance chairman—which suggests that he wanted Fuller to propose someone for the job.[19] Barbour and Fuller had worked together in the Reagan Administration: Barbour served in the White House political affairs office while Fuller was Vice President Bush's chief of staff.[20]

At the same time Barbour was collecting millions of dollars from Fuller and other tobacco-industry executives, he was contacting state-level politicians on the industry's behalf, according to press

reports. In the spring of 1995, Mark Killian, a conservative Republican who served as speaker of the Arizona House of Representatives, received a telephone call at his home from Barbour. Killian later said he thought Barbour might be calling "to congratulate us on Arizona's ability to bring forth the revolution on tax cuts and welfare reform and medical savings accounts."[21] However, according to Killian, the real purpose of Barbour's call was to push a piece of legislation that was supported by the tobacco industry.[22] This was a so-called "pre-emption" bill that would have prevented cities from imposing smoking rules more restrictive than those enacted at the state level. Barbour apparently urged Killian to let the bill go to a vote. Barbour later claimed "that he was simply making routine checks on the status of legislation, not attempting to impose pressure," according to a press report.[23]

Killian, a longtime opponent of smoking, said he was angered by Barbour's call. "It made me mad," he said. "And I said no."[24] According to a press report, Killian "said he ended up blocking the bill because he thinks 'cities ought to be able to make their own rules and regulations.' But he said another factor in his decision was his anger that Mr. Barbour got involved in the matter."[25] In March of 1996, Killian "joined with Democrats in urging [Arizona] Attorney General Grant Woods to join the lawsuit initiated by Mississippi against such tobacco giants as Philip Morris and RJR Nabisco."[26] Killian said: "I think it's a great idea. I think the tobacco companies have been ripping off this country for years."[27]

Also in the spring of 1995, Barbour telephoned Republican Governor George W. Bush of Texas "to check on a bill to prevent cities from adopting strict smoking restrictions," according to the *Wall Street Journal*. "He was told the bill would be vetoed, and it was."[28] A story in the *Arizona Republic* on that incident stated that Barbour had called Bush to encourage Texas "to drop legislation opposed by the tobacco industry."[29]

On October 16, 1996, Barbour flew to Arizona to attend a Republican fundraising event and he met with Governor Fife Symington. The next day, Governor Symington ordered Arizona Attorney General Grant Woods, a fellow Republican, to drop his lawsuit against the major tobacco companies.[30] Woods ignored the order and continued pursuing the lawsuit.[31] One day after Governor Symington issued the order, Philip Morris contributed $500,000 in soft money to a Republican party committee, according to FEC records.

Although spokesmen for both Governor Symington and Barbour denied that the tobacco litigation came up during the October 16 meeting,[32] there are grounds for skepticism. Ron Motley, a lawyer involved in the tobacco litigation, told a reporter that Barbour "just runs around the country trying to stop these lawsuits."[33] Symington's credibility was damaged on September 3, 1997 when he was convicted on federal criminal charges.[34]

TOBACCO SETTLEMENT AND THE $50 BILLION TOBACCO TAX CREDIT

The tobacco companies are currently seeking congressional approval of a proposed settlement of the multi-state litigation and have contributed large sums of money to the party most likely to take a pro-industry line. During the month of June 1997—just before the settlement was announced—Philip Morris and RJR each

donated $100,000 in soft money to the RNC. Between January 1 and June 30, the two companies gave a total of $575,000 to the RNC.

The tobacco companies have also mounted a major lobbying campaign to win support for the settlement. One of their lobbyists is Haley Barbour, whose firm was retained in early 1997 "for six figures per month by the nation's five biggest tobacco companies—including Philip Morris" according to a press report.[35] Barbour's firm was hired just weeks after Barbour stepped down from his post as RNC chairman.

On September 29, 1997, *Time* magazine reported that Barbour was behind the $50 billion tobacco tax break. Citing anonymous Republican Party officials as sources, the magazine stated that Barbour persuaded Speaker Newt Gingrich and Senate Majority Leader Trent Lott to put the tax break in the balanced-budget agreement "just minutes before it was inked."[36] When the provision was uncovered by freshmen Senators Richard Durbin (D-Ill.) and Susan Collins (R-Maine), it was defeated by vote in both the Senate and House and stripped from the bill.

USA Today reported on August 29, 1997 that the provision had been written by tobacco industry representatives. Kenneth Kies, staff director of the Joint Committee on Taxation, was quoted as saying: "The industry wrote it and submitted it, and we just used their language."[37] Kies, as discussed below, denies making that statement.

HALEY BARBOUR AND KENNETH KIES

In an effort to learn more about the tax break, Minority Counsel wrote letters to Barbour's attorney and to Kenneth Kies on September 10, 1997.

The letter to Barbour's attorney, Terrence O'Donnell, included ten interrogatories for Barbour that the Minority sought to have answered by September 19. Interrogatories were sent because Barbour would not agree to a continuation of his deposition that had been limited to the issue of foreign contributions to the National Policy Forum. The interrogatories asked Barbour about his fundraising from and lobbying activities for the tobacco industry in general and the companies Philip Morris and RJR in particular. Barbour was also asked about his lobbying of state and local officials regarding legislation or regulation affecting the tobacco industry. Most importantly, Barbour was asked about his alleged role in inserting a provision in the balanced budget agreement of 1997 that would give tobacco companies a $50 billion tax credit in connection with the tobacco settlement.[38]

On September 19, O'Donnell replied with a letter in which he noted that Barbour had already testified. He also questioned the legal authority of the Minority's request and how the interrogatories related to the Committee's mandate[39] Minority Counsel responded on September 24 with a letter clarifying the Minority's request and noted that former White House Deputy Chief of Staff Harold Ickes was deposed twice for a total of over two and a half days, thus the request for more information from Barbour was not unusual. The letter also explained that the interrogatories were within the scope and mandate of the Committee because the to-

bacco industry was a major contributor of soft money during the last election, especially to the Republican Party. Finally, the letter suggested that answering these interrogatories would provide Barbour with a forum to rebut the *Time* magazine assertion that he was directly involved in the $50 billion tax credit for the tobacco industry. Without a response, the letter stated that the Minority "will assume the article to have been correct." [40]

The Minority received no response.

The September 10 letter to Kies asked him to agree to a brief interview with Committee staff to discuss the statement attributed to him by *USA Today* and more importantly "to identify the lobbyist who presented the provision as well as the company he represented." [41]

On September 30, after receiving no response from Kies, Minority Counsel sent a follow-up letter to Kies asking again for a brief interview to discuss the $50 billion tax credit for the tobacco industry and its possible connection to numerous campaign contributions by the industry during the 1996 election cycle.[42] On October 7, Kies responded with a letter to Senator Glenn in which he stated that he had submitted a letter to the editor of *USA Today* that was published on September 19.[43] In the *USA Today* letter, Kies disavowed the quotes attributed to him in the original article: "Contrary to the erroneous quote attributed to me, [the statutory language] was drafted by the legislative drafting staff of the House and Senate." [44] Furthermore, Kies stated in his *USA Today* letter that he "did not meet with any representative of the tobacco industry during any time that the tax bill was under consideration." [45] He suggested that "inquiries concerning the so-called tobacco credit provision" should go to "the conferees on the 1997 tax bill." [46] Kies did not comment on whether a tobacco industry representative could have written the language for the provision and gotten it submitted without meeting with Kies. Moreover, *USA Today* did not publish either a retraction or a correction of its story.

While no one openly acknowledges all of the details surrounding the attempt to secure the $50 billion tobacco tax credit, the evidence clearly suggests that top Republicans were involved. *The Washington Post* reported that "at least two days before most people realized it—the Gingrich-controlled House Republican Conference posted on the Internet a list of congressional 'Republican Wins' in the budget and tax bills. Included among them was the $50 billion credit provision for the tobacco industry." Furthermore, according to the *Post*, not only were the GOP leaders "among Congress's top recipients of tobacco industry funds [over the last ten years]: Lott got $50,250 and Gingrich $72,750," but "some in Congress" suggest "the lobbying firm of former Republican national chairman Haley Barbour and R.J. Reynolds pushed" for the provision.[47] Finally, *Washingtonian* magazine directly linked Barbour and the $50 billion tax break by citing "insiders" who say that Barbour "slipped it into the bill himself while working with awed legislative staffers who were drafting the measure." [48]

As with most other avenues of the Minority's investigation, the tobacco inquiry encountered several obstacles. Barbour, through his attorney, failed to respond to the Minority's interrogatories and refused to continue his deposition or otherwise clarify his role in the

$50 billion tax credit. Committee Chairman Thompson also rejected the Minority's request to issue a second hearing subpoena to Barbour to explain publicly his role in obtaining the $50 billion tobacco tax credit.

CONCLUSION

The tobacco industry is a major funder of the Republican Party through hard and soft money. Former RNC Chairman Haley Barbour, who raised much of this money, has by all accounts used his influence to assist the industry on the state and federal levels. Perhaps the biggest payoff for tobacco's $8.5 million investment in the Republican Party during the 1996 election cycle was the effort to include a $50 billion tax credit for the tobacco industry in the 1997 balanced budget agreement.

FOOTNOTES

[1] This legislation is actually two laws, Public Law 105–33 and Public Law 105–34. Public Law 105–33 is the Balanced Budget Act of 1997. Public Law 105–34 is the Taxpayer Relief Act of 1997. Both were signed into law on August 5, 1997.

[2] The tax relief bill was H.R. 2014, the Revenue Reconciliation Act of 1997. The balanced budget bill was H.R. 2015, the Balanced Budget Act of 1997.

[3] *Washington Post*, 8/17/97.

[4] Keen, Jennifer and John Daly. *Beyond the Limits*. Washington, D.C.: Center for Responsive Politics, 2/97.

[5] Makinson, Larry. *The Big Picture: Money Follows Power Shift on Capitol Hill*. Washington, D.C.: Center for Responsive Politics, 11/97.

[6] Makinson.

[7] Keen and Daly. One of the $100,000 corporate "sponsors" of the Republican presidential nominating convention in San Diego was Philip Morris. Additionallly, the company contributed about $200,000 to help stage the presidential debates. Tobacco firms also sprinkle contributions among Washington think tanks and advocacy organizations that support their views, mostly libertarian or free-market oriented groups that lobby against government interference in the economy. These include Citizens for a Sound Economy, the Competitive Enterprise Institute, the Progress and Freedom Foundation, and the American Civil Liberties Union. Philip Morris made headlines in 1996 when reporters discovered the company was the major funder of Contributions Watch, a non-profit group that conducted state-level research on money and politics. The group released a major study on contributions from trial lawyers. (Watzman, Nancy; James Youngclaus; and Jennifer Shecter. *Cashing In: A Guide to Money, Votes, and Public Policy in the 104th Congress*. Washington, D.C.: Center for Responsive Politics, 1/97, p. 39.)

[8] *Common Cause Magazine*, Winter 1995.

[9] *New York Times*, 6/27/96.

[10] *Wilmington Star-News*, 12/7/97.

[11] Watzman, et al, p. 39.

[12] Watzman, et al, p. 39.

[13] Watzman, et al, p. 39.

[14] Watzman, et al, p. 39.

[15] *Washington Post*, 6/22/96.

[16] *Reuters North American Wire*, 6/28/96.

[17] *Roll Call*, 7/8/96.

[18] *Roll Call*, 7/8/96.

[19] RNC documents R050910–R050911.

[20] *Washington Post*, 8/3/91; National Journal, 6/28/86.

[21] *Wall Street Journal*, 2/20/96.

[22] *Wall Street Journal*, 2/20/96.

[23] *Washington Post*, 7/6/96.

[24] *Arizona Republic*, 2/15/96.

[25] *Wall Street Journal*, 2/20/96.

[26] *Arizona Republic*, 3/23/96.

[27] *Arizona Republic*, 3/23/96.

[28] *Wall Street Journal*, 3/1/96.

[29] *Arizona Republic*, 10/23/96.

[30] *Arizona Republic*, 10/23/96.

[31] *Arizona Republic*, 10/23/96.

[32] *Arizona Republic*, 10/23/96.

[33] *Arizona Republic*, 10/23/96.

[34] *Arizona Republic*, 9/4/97.

[35] *National Journal*, 3/29/97.

[36] *Time*, 9/29/97.

[37] *USA Today*, 8/29/97.

[38] Letter from Minority Counsel to Terrence O'Donnell, 9/10/97.

[39] Letter from Terrence O'Donnell to Minority Counsel, 9/19/97.
[40] Letter from Minority Chief Counsel to Terrence O'Donnell, 9/24/97.
[41] Letter from Minority Counsel to Kenneth Kies, 9/10/97.
[42] Letter from Minority Chief Counsel to Kenneth Kies, 9/30/97.
[43] Letter from Kenneth Kies to Senator Glenn, 10/7/97.
[44] *USA Today,* 9/19/97.
[45] *USA Today,* 9/19/97.
[46] *USA Today,* 9/19/97.
[47] *Washington Post,* 8/17/97.
[48] *Washingtonian*, 1/98.

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PART 6 ALLEGATIONS OF QUID PRO QUOS

Chapter 37: Cheyenne-Arapaho Tribes of Oklahoma

The Committee investigated allegations that the DNC solicited $100,000 from a politically naive and poor Native American tribe; improperly granted tribal members access to the President of the United States; and illegally promised the return of historic tribal lands currently used by the federal government in a quid pro quo exchange for a contribution from the Tribes' "welfare" fund. The evidence discovered in the course of the investigation, however, shows that the DNC did not solicit a contribution from the Tribes; the Tribes were very active in state and federal elections in 1996; they did not have a "welfare" fund; and neither the Administration nor the DNC acted improperly or illegally in response to the Tribes' efforts to regain the Fort Reno, Oklahoma tribal lands.

FINDINGS

(1) No arrangement existed, or was ever contemplated, between the Cheyenne-Arapaho Tribes of Oklahoma and the Democratic National Committee or the Administration to return tribal lands held by the federal government to the Tribes in exchange for a political contribution to the DNC.

(2) The evidence before the Committee supports the conclusion that the DNC and the Administration acted properly and legally throughout the course of their dealings with the Tribes.

OVERVIEW

To fully understand the significance of the events that took place with respect to the Cheyenne-Arapaho Tribes of Oklahoma (the "Tribes") during the 1996 election cycle, and to put each of these events in their proper context, it is important to understand the Tribes' efforts over the past fifteen years to obtain the subsurface mineral rights for the historic tribal lands located in Fort Reno, Oklahoma, that are currently used by the federal government.

In the 1800's, the federal government carved approximately 10,000 acres out of land held by the Cheyenne and Arapaho Tribes and established a military reservation known as Fort Reno. The Fort Reno lands are located in Canadian County, Oklahoma, and there is "ample evidence of oil and gas deposits under much of the area."[1] The Department of Agriculture currently utilizes the bulk of the Fort Reno lands for an agriculture research station ("ARS") and the Department of Justice also operates a prison on a portion of the site.

In 1975, Congress created a legislative mechanism known as the Surplus Property Act[2] that allows Native American tribes to seek recovery of former tribal lands from the federal government.[3] Under the Surplus Property Act, tribes are entitled to the restoration of their lands if those lands are declared excess federal property. For the past fifteen years the Cheyenne-Arapaho Tribes have aggressively lobbied Congress, as well as the Reagan, Bush, and Clinton Administrations, in an effort to obtain the subsurface rights to the Fort Reno lands under the Surplus Property Act.

Footnotes at end of chapter 37.

In 1990, Eddie F. Brown, President Bush's Assistant Secretary for Indian Affairs in the U.S. Department of the Interior, confirmed in a letter to Senator Daniel Inouye that "the Fort Reno property, were it declared excess federal property, would satisfy the requirements of the Oklahoma provision of the Surplus Property Act" and could be transferred to the Department of the Interior to be held in trust for the benefit of the Tribe.[4] In 1993, the Tribes enlisted the services of Patton, Boggs & Blow to make their case that the lands should be declared excess. The firm wrote to the General Counsel of the U.S. Department of Agriculture, "as you know, the Cheyenne and Arapaho Tribes have requested that the [USDA] declare excess to its needs the subsurface rights to an area known as the Fort Reno Lands."[5] The firm explained that the Tribes sought to "develop the subsurface minerals without undue disturbance to the surface" which would allow the USDA to continue operation of its agriculture research station on the surface of the Fort Reno lands.[6]

On November 19, 1993, George B. Farris, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs, United States Department of the Interior, stated in a letter that the Bureau of Indian Affairs supported the return of the Fort Reno lands to the Tribes if the requirements of the Surplus Property Act were satisfied. Mr. Farris wrote:

> As you know, it is the position of the Bureau of Indian Affairs that if the Fort Reno lands are declared excess Federal property by the Department of Agriculture, the property would satisfy the requirements of the Oklahoma provision of the Surplus Property Act [40 U.S.C. Sec. 483(a)(2)(1982)] and the lands should be returned to the tribes. We are certainly in support of the subsurface rights to these lands being returned to the Cheyenne and Arapaho Tribes.[7]

Up to 1993, the Tribes' efforts had focused on obtaining use of the subsurface rights of the Fort Reno lands in a manner which would not disturb the ARS operated by the USDA or the federal prison. By gaining the right to drill oil on the Fort Reno lands, the Tribes would have reaped substantial financial rewards. In 1994, however, the Tribes saw an opportunity to obtain the surface rights to the lands as well.

THE BATTLE OVER THE CLOSURE OF THE FORT RENO ARS

In early 1994, the Clinton Administration released its proposed budget for fiscal year 1995. This budget proposal called for the closure of the USDA's agriculture research station operated on the Fort Reno lands because it was outdated and inefficient compared to other similar research facilities. The Congressional Research Service ("CRS") had reviewed the productivity of the five scientists working at the Fort Reno ARS, and after comparing it to other research facilities, had found that there were similar research facilities located in Miles City, Montana and Clay Center, Nebraska that proved to be more modern and more productive than the Fort Reno facility which it termed "outdated."[8]

Closure of the research station would likely have resulted in the Fort Reno lands being declared excess federal property and consequently returned to the Tribes pursuant to the Surplus Property Act. However, the Oklahoma congressional delegation opposed the Clinton Administration's proposal to close the ARS. On February 7, 1994, Congressman Frank Lucas wrote to the chairman of the subcommittee of the Appropriations Committee responsible for the USDA budget and urged him to preserve funding for the Fort Reno agriculture research station.[9] According to tribal attorney Rick Grellner, during a May 1994 meeting with representatives of the Tribes, a staff member for Lucas argued that Congress had to restore funding for the Fort Reno ARS or the Tribes would get the land.[10]

In the summer of 1994, tribal representatives traveled to Washington, D.C. a dozen times to lobby Members of Congress.[11] They received no support, however, from the Oklahoma delegation. According to Archie Hoffman, a Cheyenne-Arapaho tribal leader, Ryan Leonard, an aide to Senator Don Nickles, told the Tribes at that time that they did not get attention because they were not involved politically.[12] The *New York Times* reported Hoffman's account of one of these 1994 trips:

> Tribal leaders went to Mr. Nickles's office in Washington, but they said a Nickles aide denied them an opportunity to meet with the Senator. Mr. Hoffman said that was when they decided to form a political action committee and register thousands of American Indians to vote.[13]

The Philadelphia Enquirer reported that the Tribes were told that the reason their issues were not addressed was because "Indians don't vote."[14] In response, the Tribes registered 7,000 tribe members to vote and "set out to make Oklahoma's biggest donation to the Democrats."[15]

Although the Tribes did win an initial victory when the Senate voted 76–23 in favor of closure of the Fort Reno ARS, the Oklahoma congressional delegation continued to work to restore $1.7 million in the House-Senate budget conference bill to keep the station open. On July 25, 1994, Congressman Lucas, Senator Nickles and Senator David Boren, co-signed a letter to the Senate-House conferees on the fiscal year 1995 Agriculture and Related Agencies Appropriations bill, urging them to support an effort to restore funding for the Fort Reno facility.[16] These efforts ultimately proved successful, and funding for the Fort Reno ARS was restored in the fiscal year 1995 budget.[17]

In a letter to a constituent, Senator Nickles described the steps taken to save the Fort Reno ARS:

> As you know, the Fort Reno research facility was targeted for termination by President Clinton in his 1995 budget proposal. After the House agreed to the President's proposal, I managed to amend the agriculture funding bill to save the station from closure. Then, regrettably, my amendment to fund Fort Reno failed to survive Senate consideration.
>
> Following Senate action on the agriculture funding bill, I joined with Senator David Boren and Congressman

> Frank Lucas in asking the joint House-Senate conference committee to reinstate funding for this important research facility . . . I then followed this letter up with phone calls to the chief negotiators on the bill.[18]

The Fort Reno ARS supporters won the 1995 budget battle, but the Administration continued its effort to streamline the government by eliminating an inefficient, outdated research facility and the Tribes continued their effort to regain control of the subsurface and surface rights to the Fort Reno land on which the research station idled.

On November 8, 1994, less than two months after the Fort Reno ARS was rescued from President Clinton's budget cuts, a delegation from the Tribes met with officials at the Department of Agriculture to propose a compromise that would enable the Tribes to use the Fort Reno land, yet still keep the research facility open, and allow the Veterans Department to establish a national cemetary on part of the land.[19] Elwood Patawa, Director of Native American Programs for the Department of Agriculture, drafted a memorandum for the Deputy Secretary in which he outlined the compromise proposed by the Tribes. Patawa explained:

> This approach (the Tribes' proposal) satisfies the Tribes, the veterans, the President's directives to reinvent government, the [Agriculture] Department's evaluation of the ARS station, the congressional interest expressed in the FY95 Appropriation Act, the Executive Order regarding arrangements of comity and cooperation with tribal governments, the Surplus Property Act, the Veterans Department process in citing [sic] a cemetery in Oklahoma . . .[20]

At the same time, the Cheyenne-Arapaho obtained the help of other Native American tribes in lobbying for the return of the Fort Reno lands. Members of the Upper Sioux Community in Granite Falls, Minnesota wrote to the Bureau of Indian Affairs in support of the proposed transfer of the Fort Reno lands to the Tribes.

Throughout 1995, the Tribes continued to lobby local and national government agencies and officials. Their efforts, however, met with little success. Despite renewed attempts by the Clinton Administration to delete funding for the Fort Reno ARS in the fiscal year 1996 budget, Congress once again restored the funding. Even the Tribes' effort to have the El Reno, Oklahoma city council pass a resolution of support proved unsuccessful. Although the vote on the resolution was 4–3 in favor, the resolution failed because two council members did not attend the meeting and because the council's operating procedures required a resolution to receive at least 5 votes to be official.

Several council members indicated that Senator Nickles had intervened to ensure that the city council resolution would fail. Council member J.P. Fitzgerald, who voted against the resolution, and another council member who did not attend the meeting, had agreed to support the resolution just a few days earlier, before they were contacted by a member of Senator Nickles' staff.[21] According to press reports, council member Fitzgerald said he voted against the resolution "because U.S. Sen. Don Nickles' staff told him that the Tribes' land claim could not be intertwined with any cemetery

resolution."[22] Another council member, Matt White, who also voted against the resolution, said, "We gave Nickles what he asked for" when the council passed an earlier resolution that merely supported the national cemetery and did not address the Tribes' land claim.[23]

On December 11, 1995, ABC News aired a segment on the Clinton Administration's effort to cut waste from the federal budget, including ending the "charmed life" of the Fort Reno ARS:

> *Peter Jennings:* For our weekly look at how the government spends your money, we look tonight at a particular program that seems to have a charmed life. Despite a decision by agriculture department officials to shut this project down—it just keeps going on. . . .
>
> *Senator Patrick Leahy (D–VT)*: What happens is that they're strapped for money because the money is being spent just propping up aging, decaying, obsolete facilities in other parts of the country. Example: Fort Reno, built in the 1880's, the USDA says it will cost too much to modernize, $8 million.
>
> *John Martin:* Everybody says they want to save money. So why hasn't Congress closed Fort Reno and the others? Well each of the stations has at least one die hard patron who insists his station is too important to close. So they stay open. Fort Reno's patron is Don Nickles.
>
> *Senator Don Nickles (R–OK)*: We haven't put a lot of money into building. What we have done is put research in the ground.[24]

Restoration of funding for the Fort Reno ARS effectively blocked the Tribes' effort to have the land declared "excess" by the departments of Agriculture and Interior. After losing the budget battles in 1994 and 1995, the Tribes took a more aggressive approach, deciding to hold political rallies and run issue ads on the Fort Reno land issue.

THE TRIBES INCREASE THEIR POLITICAL ACTIVITIES

The Tribes, disappointed that funding for the Fort Reno facility was restored by the Republican-controlled Congress, planned a protest rally to be held at the ARS gates. According to news reports, tribal member Archie Hoffman, "said the rally is to protest the proposed budget cuts in the Bureau of Indian Affairs, U.S. Sen. Don Nickles' changing position on the proposed national veterans cemetery, and the government's unwillingness to return the Fort Reno land" to the Tribes.[25] Hoffman, according to the reports, stated that "The state's veterans need and deserve a national cemetery and the tribes deserve their land back."[26] Senator Nickles, through an aide, responded to the proposed rally by saying, "I am disappointed the tribes are not willing to approve clear title to the 130 acres for the national cemetery without a lot of conditions."[27]

In November 1995, the Tribes spent over $100,000 to run two 60-second television advertisments on the Fort Reno issue.[28] The text of the two ads illustrates the harsh tenor of the Fort Reno dispute:

Ad One—Text

They call it a research station but little research is done here and the Agriculture department wants it closed. Most of the buildings sit empty. So does most of the land except the part used by a handful of ranchers allowed to fatten their cattle here. All this costs taxpayers $1.6 million a year. It's a prime example of wasteful federal spending that Frank Lucas and Don Nickles claim they're against. But Lucas and Nickles keep voting for it. Taxpayers keep paying for it. And somebody's cows keep getting fat.[29]

Ad Two—Text

7,000 acres near El Reno sit mostly unused. There's a run down federal government research station that the Agriculture Department would like to close. There's a historic cavalry fort that few people visit. But there's an old Army graveyard that the Veterans' Administration would like to make the center of a new National Cemetery.

The cemetery would serve and honor Oklahoma veterans. The old fort could be turned into a tourist attraction. The land could provide jobs in ranching and energy. But all this progress is being stopped by Senator Don Nickles and Congressman Frank Lucas.

The Cheyenne-Arapaho Tribes claim rightful title to this land but they've offered to give enough up for the cemetery if the rest of it will be returned to the tribes. Veterans support the idea. So does a majority of the El Reno city council. But Nickles and Lucas keep saying no.

Tell Nickles and Lucas to stop playing politics and do what's right for Oklahoma.[30]

In late November or early December 1995, members of the Tribes' leadership met with former Oklahoma Attorney General Mike Turpen to seek his help in lobbying for the return of the Fort Reno lands.[31] Rick Grellner, the Tribes' attorney, suggested that the Tribes hire Turpen to lobby on their behalf in Washington, D.C.[32] Turpen told the Tribes he could not make any guarantees, but he agreed to help set up meetings on their behalf with federal agencies in Washington, D.C.[33] According to Tribal chairman Charles Surveyor, Turpen made "a lot of contacts" for the Tribes in Washington.[34]

In the spring of 1996, tribal representatives met with Agriculture Department officials Larry Ellsworth, Mary McNeel, Floyd Horn, Jim Snow, Michael Darrien and Richard Romniger for one hour to discuss the Tribes' claims.[35] Ironically, Horn was the director of the Fort Reno ARS for the USDA before he was transferred to Washington, D.C.[36] The meeting with Ellsworth and McNeel apparently went well but, according to Turpen, he and Grellner had a confrontation with Horn in the hallway after the meeting was finished. According to Turpen, Horn said, "Nickles will never let you have [the land]."[37]

The tribal representatives also met with Justice Department officials, including Craig Alexander (Tribal Affairs) and Kay Lin Free (Native American Resources) to discuss the Tribes' claims. The

Tribes were advised to draft a letter to Bob Anderson in the Solicitor General's Office at the Department of the Interior laying out their legal claim to the land and the argument that they had not been compensated by the U.S. government.[38]

In late April or early May 1996, Grellner sent a letter and a legal brief on the issues to Anderson.[39] Anderson assigned Brad Grenham to work with Grellner on this matter and they spoke approximately twenty times during the Summer of 1996 about the Tribes' legal claims.[40]

THE TRIBES' CONTRIBUTION TO THE DNC

It appears that in early 1996 the Tribes also began to consider getting involved in the political process by making a contribution to the DNC. According to transcripts of a June 3, 1996 tribal meeting, the Tribes' contribution to the DNC was first considered by tribal leaders in February 1996—three months before they actually contacted the DNC. The transcript quotes Tyler Todd as saying, "back on February 12th [1996] was the first time the Business Committee discussed giving a donation to someone."[41] Hoffman, Todd, Tabor, Surveyor and Grellner discussed the possible contribution many times in February and March 1996 and during one of these meetings, Hoffman said, "why don't we make a $100,000 donation" to the DNC.[42] Although there have been allegations that the Tribes were encouraged or even solicited to make this contribution by Turpen, both Grellner and Todd have stated that Turpen was not part of these discussions and did not participate in the decision-making process.[43] Moreover, Turpen himself stated that the contribution was entirely the Tribes' idea.[44]

On April 30, 1996, the Tribes' Business Committee formalized their decision to contribute $100,000 to the DNC.[45] The Tribes' decision was re-affirmed in a resolution passed by the leadership on July 9, 1996. The resolution read, in part:

> A majority of the Business Committee of the Cheyenne and Arapaho Tribes on the previous occasions as far back as of April 30, 1996, had agreed that the Tribes should be involved in a positive manner in the political process and as a result to contribute $100,000 to the Democratic National Committee for the exclusive purpose of voter outreach and voter education for Native American voters.[46]

The deliberative steps the Tribes took before finalizing their decision to contribute to the DNC indicates that they were not a politically naive group, but rather, a politically savvy organization which intended to bring attention to their cause by making the largest political contribution in Oklahoma. According to news reports, tribal leaders maintained that:

> they knew exactly what they were doing, that they approached the Democrats about giving money, that the funds were in a savings account that hadn't been earmarked for any other purposes, that they weren't under any illusions it would automatically get the land for them and that they were just doing what many other groups do to get people here (Washington, D.C.) to listen. "It costs to

> get involved in the process," said Archie Hoffman, secretary of the tribes' business committee.

Contrary to allegations that the Tribes were pressured into contributing to the DNC by advisors or Democratic operatives, interviews with members of the Tribes revealed that they had very clear reasons of their own for wanting to contribute to the DNC. According to Surveyor, the Tribes contributed to the Democratic party because tribal members believed that Democrats supported issues important to Native Americans, while Republicans opposed them.[47] As an example, Surveyor cited a 1995 effort by the Republican-controlled Congress to cut funding for many Native American programs, an effort which was vetoed by President Clinton.[48]

Todd stated that the Tribes contributed to the DNC, in part, because Republican Members of Congress had opposed their efforts to regain the Fort Reno lands.[49] The Tribes also cited the need to counter the campaign donations that Republican Members of Congress received from individuals and organizations who supported the Fort Reno ARS as another reason that they decided to contribute to the DNC. The *Daily Oklahoman* reported on March 17, 1997:

> Farmers and ranchers—whose political action committees have given generously to Nickles and other Oklahoma lawmakers—successfully lobbied to keep the Agricultural Research Service station at Fort Reno, despite Clinton Administration efforts to close it. . . . Hoffman, the secretary of the Tribes' business committee, said last week supporters of the research station "donate heavily" to the campaigns of some Oklahoma lawmakers. Lucas, who received donations last year from a wide range of agriculture-related political action committees, said he does, "in a sense," get campaign contributions from people who support the research station, "whether they're from El Reno or farmers and ranchers across the district."[50]

Contrary to inaccurate press reports that the Tribes contribution came from a "welfare fund . . . normally used to help tribal members who can't pay such things as heating-oil bills," the evidence establishes that the Tribes do not have a "welfare" fund.[51] The source of the funds used by the Tribes for the DNC contribution was in fact accumulated monthly fees paid to the Tribes for their management of a bingo hall.[52] The Tribes are paid $5,000 per month by the Southwest Casino and Hotel Corporation to manage the bingo games held at the Lucky Star Bingo Hall in Concho, Oklahoma.[53] The first $5,000 payment was paid to the Tribes in July 1994.[54] The Tribes deposited the monthly management fees into certificates of deposit ("CDs"). By February 1997, they had received over $140,000.[55] The contribution to the DNC was the first time this revenue source was used for any purpose by the Tribes.[56]

The Tribes' attorney confirmed in an interview with Majority and Minority counsel that the Tribes did not have a welfare fund and that the bingo management money had not previously been used for anything by the Tribes.[57] Both Surveyor and Todd also confirmed in their interviews that the Tribes did not have a "welfare fund" and that the source of the money contributed to the DNC was bingo management fees that were deposited in CDs.[58]

There is no dispute that per capita income among tribal members is very low and that unemployment is very high. Nor is there any dispute that the money received by the Tribes from the bingo operations could have been used for other purposes. That, however, is a decision that belongs to the Tribes themselves—and a decision apparently made by the Tribes themselves. Moreover, it appears that the decision was made after the Tribes had learned that they would be receiving more than $1 million in early 1996 from the settlement of a lawsuit.[59]

In May 1996, Surveyor, Todd, and Grellner met in Turpen's law office in Oklahoma City where they informed Turpen that the Tribes had decided to contribute $100,000 to the DNC.[60] Turpen then called Jason McIntosh, a friend and staff person who worked at the DNC. Contrary to allegations that the DNC had solicited the Tribes, McIntosh testified that he learned for the first time of the Tribes' decision to contribute money during this conference call.[61] During the course of the conversation, McIntosh asked if the Tribes could afford to make the contribution, and was informed by the Tribes' leadership that they could.[62] He subsequently provided Turpen with instructions on how the Tribes could wire their contribution directly to the DNC.[63] McIntosh testified that "[i]n no way whatsoever did I know anything about the tribe, their income levels or anything of that nature until well into '97" when he read the March 1997 *Washington Post* article that broke the story publicly.[64] McIntosh also testified that he did not recall any discussion about the Fort Reno land during the course of the May 1996 phone conversation with Turpen and the tribal leaders.[65]

THE WHITE HOUSE LUNCHEON

On or about June 10, 1996, Turpen was invited to attend a small luncheon with the President at the White House.[66] According to McIntosh, Turpen was invited because he was an "active supporter."[67] Turpen did not, however, make a political contribution in connection with the White House luncheon.[68] Terry McAuliffe explained in his deposition that "[a]t this time we were trying to do some outreach to people who had been active and wanted to be active."[69] McIntosh testified in his deposition that it was indeed Turpen—not tribal members—who was originally invited to attend the luncheon.[70]

When McIntosh informed Turpen that he was invited to attend the White House luncheon, Turpen asked if two representatives from the Tribes could attend in his place. In his deposition, McIntosh explained:

> Mr. Turpen basically just requested an accommodation for him; that they be allowed to attend; that they were active supporters or whatever and were going to be politically involved and he wanted to make that request [that tribal representatives attend the luncheon instead of him]. . . .[71] He just wanted their name to be suggested instead of his. Instead of him going, they go.[72]

According to McIntosh, when Turpen requested that tribal leaders attend the lunch in his place, Turpen's name was withdrawn from the guest list, and McIntosh then forwarded the names of the

tribal representatives to the White House.[73] McIntosh was not aware that the tribal officials intended to talk to the President about the Fort Reno land issue when he sent their names to the White House in mid-June 1996.[74]

On June 12, 1996, Turpen called Grellner to inform him, for the first time, that two tribal representatives could attend a luncheon with the President at the White House on June 17, 1996.[75] The Tribes accepted the invitation immediately and decided to send Surveyor and Todd as their representatives to the White House luncheon.[76] The tribal leaders had not known that they would be invited to the White House for a luncheon with the President when they decided to contribute $100,000 to the DNC in early 1996. Surveyor,[77] Grellner,[78] and Hoffman[79] all confirmed this in interviews with the Committee staff. Grellner also stated that there had been no discussion of a White House luncheon during the Tribes' conversation with McIntosh.[80]

On the morning of June 17, 1996, Surveyor, Todd and Grellner met with McIntosh before they were escorted by McAuliffe to the White House luncheon.[81] An assertion was made in the course of the Committee's investigation that McIntosh demanded a check from the Tribes during this meeting. Such a demand makes no sense, however, in light of McIntosh's previous arrangements with Turpen to have the money wired to the DNC. This assertion is also contradicted by Surveyor, who said in his interview that McIntosh did not ask for a check.[82] McIntosh himself testified in his deposition that, "I asked them did they have any difficulty wiring it [the contribution], because I knew since given wiring instructions, they were going to transmit it that way."[83] The tribal representatives told McIntosh that they would be sending the contribution to the DNC by wire transfer at a later date.[84]

The tribal representatives met with McIntosh for about five minutes before he introduced them to McAuliffe for the first time.[85] The Tribes' attorney told the Committee staff that McAuliffe did not appear to know anything about the Tribes' contribution or the Fort Reno land issue when they spoke with him.[86] The Tribes gave McAuliffe a large package of documents that included news clips, copies of letters, and other background information regarding the Fort Reno land.

After the brief meeting with McIntosh and McAuliffe, Surveyor and Todd traveled by taxi with McAuliffe and another staff person to the White House for the luncheon.[87] After being admitted to the White House, Todd and Surveyor were taken to the Green Room where they waited with a few other people for the President to arrive.[88] After approximately 30 minutes, the President entered the room with a photographer and chatted briefly with the guests about the history of the Green Room before escorting the group to the Blue Room for the luncheon.[89] There were no assigned seats at the table and Surveyor, who was the last person to sit down, took the last vacant seat next to the President.[90]

The President spoke briefly about world affairs, the weather, and then, according to Surveyor, "sat around and listened to what everybody had to say."[91] Each guest was given an opportunity to speak. When it was Todd's turn, he deferred to the Tribes' chairman and politely declined the President's invitation. Surveyor, who

was the last to speak, focused on Native American issues, health care, and education.[92] He also gave the President a brief history of the Fort Reno land controversy.[93]

After listening to Surveyor, the President asked a staff person present in the room, "do we have anything on Fort Reno?"[94] The staff person pulled out the package of documents the Tribes had given to McAuliffe earlier in the day to show the President that they did have some information on the issue.[95] According to Surveyor, the President said "we'll see what we can do to help you," but made "no promises."[96] Todd did not think that the President would take any action, but hoped that his interest would help open some doors within the Administration.[97] Surveyor said that there was no discussion about contributions with the President or any of the other guests before, during, or after the luncheon.[98]

Surveyor and Todd were escorted out of the White House by McAuliffe. The press has reported misleading characterizations offered by unnamed "Senate aides" of a post-luncheon conversation between McAuliffe, Surveyor and Todd as apparent evidence of a quid pro quo arrangement involving the Tribes' contribution for the return of the Fort Reno land. The *Associated Press* reported on October 13, 1997, that "Senate aides, speaking on condition of anonymity, said tribal representatives told investigators that Terence McAuliffe, Clinton's chief campaign fundraiser, assured Surveyor as they left the luncheon, "When the president makes a promise, he keeps it.'"[99] There is no evidence before the Committee that substantiates this description of the conversation. Tribal attorney Barry Coburn explained that McAuliffe merely told Surveyor and Todd that if the President says he will do something, he will do it.[100] According to Coburn, Surveyor and Todd understood McAuliffe to mean that the Administration would look into the matter, not that their land would be returned.[101]

For his part, McAuliffe did not recall the post-luncheon conversation with Surveyor and Todd, but he did testify that he probably did say something positive.[102] He further stated that he had no further contact with the Tribes after the lunch. "Once we walked out of the White House, I never spoke to these people again," he testified.[103] He also testified that he never spoke to anyone at the DNC, the White House, the Clinton campaign, the Interior Department, the Agriculture Department or anywhere else about the Tribes or the Fort Reno land.[104]

There was no evidence presented to the Committee of any quid pro quo arrangement involving the Tribes' contribution in exchange for the return of the Fort Reno land. Indeed, in a press release issued on June 28, 1996—almost a year before the story first appeared on the front page of the *Washington Post*—the Tribes made it clear that the President had made no promises to the Tribes.

The press release indicated that the tribal representatives had met with the President "to discuss, Native-American issues, the importance of the up-coming election in November [1996] and how we as Native Americans and specifically the Cheyenne and Arapaho Tribes can be pro-actively involved in the process to help re-elect President Clinton and elect Democrats to office." The press release also stated:

> When asked about the content of the meeting Surveyor responded, "We discussed a lot of policy issues such as the recent attack by the Republican Congress on the Indian Child Welfare Act, Welfare Reform, cuts to Native American programs and his positive support for funding for the Indian Health Service.
>
> "We discussed at great length the recent logjam over the National Cemetery that has been created by Senator Nickles and his willingness to pit the interests of Native Americans regarding Fort Reno against the community and voters support for the National Cemetery without seeking common ground."
>
> The question Surveyor fielded was in regards to anything specifically promised by the Administration for the Tribes participation. In response Surveyor snapped, "Absolutely nothing. We simply wish to support the cause and be involved in the process. I am always a little skeptical at the reporter who is so willing to attribute some sort of sinister motive to our legal, ethical and proactive involvement in the political process. Why don't they ask the executives of the local financial institutions what they get for supporting their Republican candidates. This is about leadership, citizenship and our votes that need to be counted. Nothing more, nothing less." [105]

The evidence clearly shows that neither the President nor McAuliffe made an explicit or implied promise that the Tribes would obtain any benefit in exchange for their contribution to the DNC. The Tribes' contribution was not discussed with the President, and Surveyor and Todd confirmed that no promises were made by either the President or McAuliffe during or after the luncheon.

After the luncheon, McIntosh called Grellner approximately three times to follow up on the Tribes' contribution.[106] According to McIntosh, Grellner kept telling him that the money was on its way and he, in turn, "would follow up each time that indication was given." [107] On June 26, 1996, the DNC received a wire transfer from the Tribes in the amount of $87,671.74. Upon wiring the money to the DNC, Grellner told McIntosh, "we'll send more later." [108] McIntosh, however, did not have any further contact with Grellner or the Tribes regarding additional contributions.

> *Minority Counsel:* Now the tribes' donation was approximately $87,000 to the DNC. Did you ever follow up to make sure that they contributed the original $100,000 that they indicated that they would contribute?
>
> *McIntosh:* No, once that was done and once I told Mike [Turpen] that, you know, hey, it's been received, that was it. That was the end of my involvement with Cheyenne-Arapaho Indians.[109]

Allegations have been made that the DNC and the Administration somehow pressured or took advantage of the Tribes. One news report stated that a Senator:

> said in a prepared statement that it was unsettling to learn that prominent figures in the administration's campaign "may have been engaged in what amounts to a shakedown. And secondly, I am concerned that certain tribal leaders may have used $107,000 from a fund intended for needy tribal families as a payoff for political favors. That's unconscionable." [110]

Surveyor and Todd, however, said that they did not believe the Tribes were "shaken down" by the DNC.[111] Todd said, "we made a decision and went after it. We're not going to stop being politically involved." [112] "We didn't ask for anything, and we weren't promised anything," Todd said, adding that he never felt pressured to give money at any time.[113] Todd felt that "the Cheyenne and Arapaho Tribes [had] been more hurt by Senator Nickles' actions than by the DNC." [114]

Minutes from tribal meetings support the tribal representatives' statements that the contribution was not the result of any pressure from the DNC. On June 20, 1996, the Tribes held a business committee meeting to discuss Surveyor and Todd's trip to Washington to meet with the President. During the course of this meeting, the Tribes discussed their past political involvement and their goals for the future. One unidentified speaker discussed the importance of being involved in the political process:

> We live in a world where things beyond our control affect us. Unless we are willing to engage and be involved in the process, however, imperfect as it has been given to us, then we can't expect to be at the table when those issues are determined, and that's how it has been for the last several years, and that is how it continues to be, unless we decide that we are going to be involved.[115]

Another speaker agreed, "we have to get involved in this political process if we want to get anything done." [116]

One member of the Tribes asked Surveyor what kind of commitment he had received from the President. Surveyor responded, "Well, in the first place, you don't go in and make deals with the President. We go in and talk to him." [117]

Members of the Tribes discussed the impact that the contribution would have in the future. One member stated, "I don't think anyone disputes that a contribution this large would help the Tribes politically." [118] Others cited the Cherokees who had been politically active for a long time and were "doing good" as an example.[119] This statement was followed by the observation of one attendee who said, "I don't want to dispute that making a donation has an impact, but I think it is the years of political influence that they've had with Congress that has more to do with what the Cherokees are receiving than any one donation that was made recently." [120]

The June 20, 1996 tribal meeting shows that the Tribes understood the importance of their political activity and were not political neophytes. They had a great deal of experience interacting with the Oklahoma Congressional delegation and federal agencies over the years. The television ads and voter registration drives in 1995 and their political contributions in 1996 illustrate their active political involvement.

The fact that the Tribes understood what they were doing is reinforced by another business committee meeting held on July 9, 1996. During that meeting the members discussed the Tribes' ability to afford the large contribution to the DNC, the similarity between the Tribes and corporate contributors, and another resolution re-affirming their commitment to contribute to the DNC.

One unidentified speaker re-assured the members that they could afford to make a large contribution to the DNC. He reminded them that the Tribes knew in January 1996 that they would receive close to $2 million from the "Woods settlement."[121] Another speaker discussed how the Tribes contribution was similar to those made by corporations and the perceived impact such contributions have on the political process. He said:

> You know, you talk about businesses and corporations. You wonder why these large corporations you see in the papers [inaudible]. I'll tell you what, dinero talks. Any time you make large contributions when the state governor sees that all these small tribes are better off opposing this Bill 2208—because this contribution to the Democratic Party is going to make him sit back and say, "Hey, now these guys are serious. We need to reconsider some of these things." But that is the key. Whenever you want recognition and you want to get into any organization, when you pay your dues, you become part of that. You have a voice.[122]

Hoffman stated during the meeting that the Tribes had committed to making a $100,000 contribution to the DNC previously but that they wanted to re-authorize the commitment with another resolution. Another member of the Tribes expressed a concern that they could not afford to make the contribution, but Hoffman reassured them, again, that the "Woods settlement" enabled the Tribes to make the contribution.[123] The July 1996 resolution passed by the Tribes stated, in part:

> Now, therefore be it resolved that, the Tribes have previously located funds that have been received from Tribal businesses for the accomplishment of this goal and that a majority of the 30th Business Committee hereby re-authorizes such expenditure and hereby formalizes such support for the donation.[124]

THE PRESIDENT'S BIRTHDAY FUNDRAISER

The DNC used President Clinton's birthday as a centerpiece for raising money at satellite events around the country in August 1996. The Oklahoma satellite birthday event was underwritten by the Tribes.

In the last week of July 1996, the Tribes were contacted by Turpen, who asked if they were interested in sponsoring a satellite birthday fundraiser in Oklahoma for the President.[125] Grellner told Turpen that the Tribes would contribute $20,000 to be a sponsor of the birthday event.[126] The business committee voted to use $15,000 more from the bingo management fees and borrow $5,000 from another corporate account.[127]

The invitations to the satellite birthday fundraiser state that the event was "underwritten by the Cheyenne and Arapaho Tribes of Oklahoma."[128] Approximately 600 people attended the satellite fundraiser at an Oklahoma City hotel. As a thank you for their contribution, the Tribes were given floor passes at the Democratic National Convention in Chicago, Surveyor was invited to a reception for Vice President Gore, and Todd attended a dinner with the Vice President.[129]

When the Tribes decided to contribute $20,000 to pay for the satellite fundraiser they did not know that they would be invited to a dinner with the Vice President.[130] That dinner was held in July 1996 in Washington, D.C.[131] Approximately 80 people attended the dinner. Todd represented the Tribes and was seated at the Vice President's table.[132] Todd talked about health care and Indian sovereignty issues during the dinner. During the dinner, the Vice President reminisced about a family vacation he had taken to Oklahoma when he was a small boy.[133] He also introduced Todd to Mitchell Berger, a Democratic activist who was also seated at their table. Todd did not discuss the Fort Reno land issue with either the Vice President or Berger.[134]

In early August 1996, Surveyor attended an outdoor reception with three busloads of people held at the Vice President's residence in Washington.[135] Surveyor shook hands with the Vice President in a receiving line but had no conversation with him about the Fort Reno land issue, or any other matters.[136]

In late August 1996, Surveyor, Todd and Grellner attended the Democratic National Convention held in Chicago.[137] In January 1997, Berger contacted Todd to request a contribution from the Tribes to help pay for the Inauguration ceremonies.[138] Todd informed him that he could not commit to a contribution, but that the Tribes would have more money later.[139] Todd did not feel pressured to contribute to the DNC and told the Committee staff in an interview that, "If someone gave me $100,000, I'd call them again, too."[140]

THE TRIBES CONTINUE THEIR LOBBYING EFFORTS

In addition to political contributions, the Tribes continued to pursue their claim to the Fort Reno lands with the appropriate federal agencies. In September 1996, Grellner met with Anderson and Grenham at the Department of Interior offices in Washington, D.C. to discuss the Tribes' claim that they had not been compensated for the Fort Reno lands taken by the federal government.[141] The Interior Department officials informed Grellner that there was a statute of limitations problem barring any action, but that the Tribes did have a meritorious claim.[142] Anderson and Grenham advised Grellner to address the statute of limitations problem in a legal brief and to present equitable arguments for them to consider also. Grellner stated in his interview that he "never" talked about the Tribes' contribution to the DNC with Anderson and Grenham and that he never felt that he got "special treatment" from them.[143] Surveyor confirmed that the federal agencies he met with did not know about the Tribes' contribution either.[144]

In October 1996, Grellner met with Anderson and Grenham of the Interior Department, McNeel from the Agriculture Department,

and Free of the Justice Department to further discuss the Tribes' legal claim.[145] Anderson reiterated the statute of limitations problem precluding any legal action, but said that the Tribes did have a meritorious equitable claim that they had not been compensated by the U.S. government for the Fort Reno land.[146] Anderson agreed to prepare an Interior Department legal opinion outlining their position for the Agriculture Department's consideration.

In November 1996, Bart Miller replaced Grenham at the Interior Department and Grellner met with Miller to discuss the Tribes' claim.[147] Miller was assigned the task of drafting the legal opinion and he also expressed to Grellner his belief that the Tribes had not been compensated for the Fort Reno land.[148] On February 21, 1997, Surveyor and Grellner met with Ada Deer, the Assistant Secretary for Indian Affairs, and Bart Miller to discuss the Tribes' legal claim that they had not been compensated for the Fort Reno land.[149] Miller informed Grellner and Surveyor that the Interior Department would have the long anticipated legal opinion regarding this matter finished within two weeks.[150] As with all other meetings with Administration officials, the Tribes' did not discuss their contribution to the DNC with Deer.[151]

THE TRIBES' DEALINGS WITH MIKE COPPERTHITE, NATHAN LANDOW, AND PETER KNIGHT

In October 1996, Mike Copperthite, a campaign manager for a congressional candidate in Arkansas, contacted Grellner and solicited a contribution from the Tribes.[152] Grellner conveyed Copperthite's request to Todd, who told him that the Tribes' money was too tight to make a contribution to Copperthite's candidate.[153] Grellner, however, contacted Copperthite and told him that the Tribes could "come up with $5,000 to $10,000."[154] The Tribes did not themselves contribute to Copperthite's candidate, but, according to FEC records, on November 13, 1996, Grellner personally contributed $10,000 to the Arkansas Democratic Party pursuant to Copperthite's request.[155] Apparently in exchange for the contribution, Copperthite told Grellner that he would help the Tribes in their efforts to regain the Fort Reno land after the campaign.[156]

Copperthite developed a close relationship with Grellner, and the Tribes used him to set up meetings with people in Washington after the election. One of the first meetings he arranged was with real estate developer Nathan Landow. Landow testified that he was first contacted by Copperthite in the early part of October 1996.[157] During that conversation, Copperthite told Landow that he was representing the Tribes and that he was interested in Landow's help. Landow testified:

> [Copperthite] told me that he had a client representing the Cheyenne-Arapaho Indian Tribes and that there was an interesting real estate development that he thought I would be interested in. He suggested to them that I was a person that they should talk to and asked me if I would meet with them.[158]

After this initial conversation in October, approximately a month and a half or two months passed before Copperthite called again. After the November elections, Copperthite became "pretty persist-

ent" to set up a meeting between the Tribes and Landow.[159] A phone message from Copperthite to Landow dated November 15, 1996 states, "some people are coming in from out of town next week that he [Copperthite] wants you [Landow] to meet."[160] A meeting eventually was held on November 24, 1996, according to information included on a phone message sheet from Copperthite to Landow.[161]

That meeting was attended by Surveyor, Grellner, Hoffman, Copperthite and Landow.[162] Copperthite testified that he "introduced Nate Landow to the tribe as a very dear friend of the Vice President's."[163] Landow testified that he understood that the Tribe wanted to meet with him to discuss development of the Fort Reno property.[164] Landow learned, however, that the Tribes did not own the land at that time and that they were taking steps to regain it on a "parallel but different track."[165]

During the meeting, the Tribes asked for help and suggestions regarding their effort to regain the Fort Reno land. Landow testified that he "made it very clear that not being a lobbyist, never having been involved with any business or other issue in dealing with the Federal Government, that is something that I certainly wouldn't undertake."[166] He did suggest a few Washington lobbying firms that might help, including "Tommy Boggs's firm, J.D. Williams, Peter Knight's firm as ones that I felt had the experience and the credibility and might be able to help them."[167]

The tribal representatives apparently knew from Copperthite that Landow was close to Peter Knight and they asked Landow to help set up a meeting with Knight's firm, Wunder, Diefenderfer, Cannon & Thelen ("Wunder Diefenderfer").[168] Landow testified:

> they decided amongst themselves that that was one they would like to talk to and asked if I would help set that up, and I did. I made a call, and I agreed to introduce them there. They said that they had other appointments; that they might be talking to other people.[169]

As the press has reported, "everyone agrees that Landow made no guarantees about doing anything to get the Fort Reno land to the tribe. He offered to help develop the land *if* the tribe got it."[170] There was no discussion during the meeting with Landow about the Tribes' contribution to the DNC.[171]

After the meeting, Landow contacted Wunder Diefenderfer to set up a meeting with the Tribes the next day. Landow called Grellner at his hotel that evening and told him that Jody Trapasso at Wunder Diefenderfer was interested in meeting with the Tribes to discuss how his firm could help them regain the Fort Reno land.[172] Landow told him that the firm was very good and that they would not take the case if they could not help the Tribes.[173] Surveyor and Grellner met with Landow and Trapasso at the Wunder Diefenderfer office in Washington, D.C.[174]

The tribal representatives were told at the meeting that Knight was not willing to commit to personally taking their case at that time, but the firm would look into it.[175] Grellner was subsequently told that if Wunder Diefenderfer did take on the case, their fee would include a $100,000 retainer and $10,000 per month.[176] Subsequent events suggest that this fee was too much for the Tribes,

but that Copperthite apparently continued to try to interest the parties in doing business with each other.

From his first meeting with the Tribes in November 1996, through the beginning of February 1997, Landow focused on the need for a written agreement with the Tribes before he would begin to perform work for them. Landow stated:

> At every meeting, what I tried to get across was that there had to come a time when any suggestions that they had or interest that they had concerning getting me involved would have to be reduced to writing, and my track was that I was always moving in that direction, to come to an agreement in writing so that there was clear understanding between both parties as to show their responsibilities would be, and I think that the same thing was happening with Wunder Diefenderfer.[177]

A meeting was scheduled for February 5, 1997, at the Wunder Diefenderfer offices with the principles from the Tribes, Wunder Diefenderfer, and Landow to finalize written agreements with the Tribes.[178] Ken Levine, Jody Trapasso, and Peter Knight attended from Wunder Diefenderfer. The Tribes were represented by Copperthite and Grellner.[179] Landow was upset to learn that Surveyor, the Tribal chairman, would not be at the meeting.[180] Landow testified:

> I said, "I thought I made it extremely clear that at this meeting, it was critical that the chairman [Surveyor] be there to finish the negotiations and discuss the final terms of my agreement?" And as late as the day before, [Copperthite] had suggested to me the chairman would be there.[181]

After learning that Surveyor would not be at the meeting, Landow told Knight, Levine and Trapasso that it made no sense for them to stay.[182] According to Grellner, after he learned that Surveyor was not going to attend the meeting, Trapasso said he thought it was all a "hoax" and that the Tribes were not interested in hiring the firm.[183] Landow apparently had the same reaction.[184]

After Knight, Trapasso and Levine left the room, Grellner, Copperthite, and Landow again discussed the details of a written agreement. One of the details that apparently concerned Grellner was the incorporation of the Bureau of Indian Affairs' requirement that all contracts with tribes be approved by the Bureau. Copperthite testified that Grellner had proposed a way for Landow to circumvent the Bureau of Indian Affairs' requirement.

> *Copperthite:* Rick was trying to explain that because of the Bureau of Indian Affairs' rules and regulations that it would be much easier for Wunder Diefenderfer to be retained under Rick's contract with the Bureau of Indian Affairs than it would be to put together a separate contract, then negotiate it with the tribe and then have the BIA put their rubber stamp on it.
>
> *Counsel:* The Bureau of Indian Affairs has to approve contracts that tribes enter into?

> *Copperthite:* All tribes. So—and I don't know that to be true. I just know based on that conversation in that room that day. It made sense to me. So Rick tried to show him in his contract. Landow looked at Rick's contract and said this is a piece of garbage, we can't do this.[185]

During this meeting, Grellner, Copperthite and Landow also discussed fees.[186] Grellner agreed to draft a contract and incorporate the terms proposed by Landow.[187] Landow confirmed that he discussed the terms of the agreement with Grellner and Copperthite during their meeting and that he spoke to Surveyor later in the day to discuss the proposed agreement with him.[188] Landow testified:

> Up until that time, I had done nothing, not a phone call, not a visit, nothing but stay on the same track, "Let's negotiate. Let me hear where you're coming from. Let me hear the terms that you would find acceptable to have me involved and I will tell you mine and the end result may be you don't want me, you don't need me, not for what I'm asking for, but this is what I think is a reasonable offer."[189]

Landow testified that during this conversation "[Surveyor] said he would prepare an agreement."[190] Landow denied that he negotiated Wunder Diefenderfer's fees, but he said he was aware of the amount they were seeking.[191]

After the February 5, 1997 meeting with Landow, Grellner prepared an agreement that included the terms they discussed, and on February 14, 1997 he faxed it to Landow for his review and consideration. The Tribes, however, apparently never intended the agreement with Landow or Wunder Diefenderfer to be enforceable. Coburn, another attorney for the Tribes, confirmed to the Committee staff that Grellner purposefully drafted the proposed agreement so that it would not be a valid or enforceable contract.[192] Surveyor, according to Coburn, had said he would never sign the agreement even though it was drafted by Grellner and faxed on behalf of the Tribes to Landow.[193] In his interview, Surveyor confirmed that there was "no way we would agree to that contract."[194]

When Landow received the proposed agreement he contacted Surveyor to discuss the problems with the document drafted by Grellner.[195] Landow stated:

> What I told him was the agreement was unacceptable in its form and its terms . . . The main objection as to the form was the fact that he lumped together the consultants, Landow, and the terms of the agreement with Wunder, Diefenderfer, which was totally unacceptable . . .[196]

Landow was also concerned that the Tribes' proposed agreement did not satisfy the Bureau of Indian Affairs requirements. According to Landow:

> There was a major concern, additional major concern in this Consulting Services Agreement that Ken Levine raised and that was pertaining to the fact that it didn't conform, in his opinion, to the requirements of the Bureau of Indian Affairs . . . A consulting agreement or when

> they hire legal counsel, it's got to be approved by the Bureau of Indian Affairs.[197]

Landow met with Dan Press, an attorney familiar with the Bureau of Indian Affairs requirements, to discuss the proposed agreement with the Tribes. He testified that:

> I met with him so that I could outline to him the terms of what I wanted this agreement to say and we could begin to negotiate, and that he was to build in all of the requirements of the Bureau of Indian Affairs so that if they agreed to it, we were pretty well assured that the Bureau of Indian Affairs would agree to it as well. . . .[198]
>
> In order for it ever to become hard and firm, it would have to be approved by them and that was something that we did. The Indians never, as you can see from their agreement, never addressed it, which leads me to believe maybe they never thought it would be placed in a position to be effective."[199]

The documentary evidence, deposition testimony, and witness interviews suggest that tribal representatives, including Grellner and Copperthite, misled Landow and Wunder Diefenderfer throughout the negotiations. The tribal representatives were informed very early in the negotiation process as to the amount of money that Landow and Wunder Diefenderfer would request for their services, and apparently objected to the fees as too high; however, they never made that clear to either Landow or Wunder Diefenderfer.

In a final attempt to obtain a binding agreement with the Tribes, Landow's attorney redrafted a proposed contract, had Landow sign it, and sent it to the Tribes for their consideration on March 4, 1997. Landow explained that the Tribes were persistent in their efforts to get him to act and he was persistent in his efforts to formalize their agreement. Landow testified:

> They were very persistent—when I say they, Copperthite calling—very persistent on proceeding, trying to get me to do something. My persistence was in trying to get them to reduce any understanding to writing.[200]

Landow explained in his March 4, 1997 cover letter to Surveyor that he had to separate Grellner's proposal into two different contracts and include the Bureau of Indian Affairs requirement that they approve the contract. The Tribes did not sign Landow's proposed contract, however, and they never entered into an agreement with him to develop the Fort Reno land.

Copperthite later alleged that Landow had said that the Tribes would never get the Fort Reno land back if they did not finalize the deal with Landow and Wunder Diefenderfer.[201] Landow denied this allegation under oath.

> *Minority Counsel:* Did you indicate to them [Copperthite and Grellner] in any way that if they [the Tribes] didn't do a deal with you, they'd never get their land back?
>
> *Landow:* Absolutely not.[202]

Copperthite's credibility in making such allegations must be evaluated in light of documentary evidence that, without informing the Tribes, Copperthite had proposed a private deal with Landow to share any "commissions, payments, revenue, or compensation from the Tribes."[203]

On February 2, 1997, Copperthite had written a memorandum to Landow in which he stated:

> I would like to split with you equally any commissions, payments, revenue, or compensation from the Tribes, and I could go to work full time representing the Tribes Land development. I would also like to be the person who is the go-between the Tribes and the DNC or any democrat seeking contributions.
>
> I would like our agreement be between you and I for now. I have gained the Tribes trust by not accepting any remuneration (to date) and by being honest and effective.[204]

Copperthite had suggested that Landow have the term of his agreement extend for 25 years and that it be ratified by a tribal resolution "so that this deal is good no [matter] who is the Chairman of the Tribes."[205] Landow testified that he rejected Copperthite's proposal to enter into a private agreement.[206] Landow testified that he already had been concerned with Copperthite's integrity, and that the memorandum had raised even more questions. With regard to Copperthite's memorandum, Landow testified:

> . . . [I]t's pretty obvious that Mr. Copperthite had a pretty deep and distinct self-serving interest in this project, and I think this also backs up my concerns of dealing with people that were of questionable character and integrity and more or less loose cannons. . .[207]

With regard to Knight's role, the evidence indicates that his involvement with the Tribes was very limited. He attended one meeting with tribal representatives on February 5, 1997 in the Wunder Diefenderfer offices. Knight, Levine and Trapasso, of Wunder Diefenderfer, were present at that meeting for only a short period of time. Knight testified that he attended this meeting because Landow asked him if he would stop in and say hello to Surveyor.[208] Knight was at the meeting roughly 4 minutes, when it was learned that Surveyor would not be attending. When Landow said it wasn't worth their time, Knight left.[209]

Knight also testified that he had no other conversations with Grellner[210] and one other conversation with Copperthite on a different subject matter.[211] Knight never spoke to Turpen[212] and he never talked to officials at the DNC about the Tribes.[213]

In December 1996—about two or three weeks after his original conversation with Landow regarding the Tribes—Knight spoke with Trapasso in his firm and came to the conclusion that he was too busy and that he did not have the expertise necessary to work on the issue, but that the Wunder Diefenderfer firm could handle it.[214] Knight stated:

> After I made a decision that I was not going to be involved in the representation of the Indians—of the Tribe—the question at that time was, is there anyone else in my firm that would be interested in pursuing that representation, or is this a matter that I should attempt to refer to someone outside. And as with other clients or prospective clients that have come in and asked for representation, I try to make it a habit to try to put them in hands that I think will be capable.
>
> In this case, Mr. Trapasso and I indicated that perhaps we should ask someone in the firm if they would like to be part of this representation, and in fact we did. We had a short conversation with Mr. Levine. He indicated that he was interested in pursuing that, and from that point forward, I don't believe I had—and I don't believe that Mr. Trapasso had any further dealings with this issue.[215]

Kenneth Levine did in fact prepare and sign a proposed contract describing the terms under which the firm would assist the Tribes in their effort to recover the Fort Reno land.[216] The Tribes did not sign Levine's proposed contract, however, and they never entered into an agreement with Wunder Diefenderfer to assist in their effort to recover the Fort Reno land.

THE TRIBES' DEALINGS WITH CODY SHEARER AND TERRY LENZNER

On March 10, 1997, the *Washington Post* published a lengthy article regarding the Tribes, Fort Reno, the Tribes' DNC contribution and dealings with Wunder Diefenderfer. It alleged that the Tribes were led to believe that, in return for a contribution, the Fort Reno lands would be returned to them. It also alleged that they were being pressured into consulting agreements with Landow and Wunder Diefenderfer. On March 12, 1997, Al Cilella, a Chicago oil man, contacted Tyler Todd of the Cheyenne-Arapaho Tribe (who was an old acquaintance of Cilella), and asked if he could help.[217]

Two months later, in late May or early June 1997, Cilella contacted Cody Shearer[218] and asked if he could introduce the Tribes to Shearer.[219] A week or ten days later, Cilella called back to invite Shearer to a lunch meeting with the Tribes.[220] The evidence is unclear what, if anything, Cilella thought Shearer could do for the tribes.

The luncheon in Washington, D.C. was attended by approximately 14 people[221] including Surveyor, Grellner, Cilella, Hoffman, Copperthite, Bob Musgrove, Shearer, and Susan Arjoe, a lobbyist on Native American issues.[222] Shearer testified that he spent the whole time at the lunch talking with Cilella, not the tribal representatives.[223] The lunch meeting was unfocused and disorganized, so Cilella asked Shearer if he could bring the Tribes' members to Shearer's house the next day. Shearer agreed.[224]

The day after the luncheon meeting, approximately 12 people arrived at Shearer's house for a meeting. During this meeting, the tribal representatives explained the Fort Reno issue. According to Shearer, he was told that Senator Nickles "has supporters that are interested in some mineral rights to our lands" and together, they were blocking the Tribes' efforts to regain the Fort Reno lands.[225]

Shearer did not believe he could be of assistance to the Tribes in this matter; he suggested that the Tribes meet with Terry Lenzner of the Investigative Group International ("IGI").

Shearer contacted Lenzner's office and set up a meeting for the next day.[226] Lenzner confirmed during his appearance in public hearings before the Committee that "I received a call from Mr. Shearer asking if we would be interested in meeting with a group of Indians who had an interesting problem. It was so complex that he could not describe it to me telephonically."[227] Lenzner explained to the Committee that he gets "calls all the time with people, would you meet with this group, they have a problem, they think they need a factual investigation."[228]

Surveyor, Hoffman, Grellner, Shearer, and Arjoe met with Lenzner and his partner Steven Green at IGI.[229] Lenzner told the Committee that the meeting lasted approximately an hour to an hour and a half.[230] The Tribes' representatives explained the history of the Fort Reno land battle.[231] Lenzner stated:

> And then at some point, they raised the focus of the inquiry they wanted me to pursue, and as we do with any client, I said I would think about the problem that they posed, and we would give them, as is standard operating procedure, a memo, what we call in our office a proposed investigative to-do list, which, Senator Specter, is basically a list of investigative issues, a menu of investigative issues that the clients can review and choose to pursue or not to pursue, based on their judgment of how effective they might be in achieving the goal they seek, and we'd give them a guesstimated budget to cover those investigative issues.[232]

The cost of such an investigation was discussed and Surveyor believed it was too much and that it was unlikely that the Tribes would pursue this course of action.[233] However, the Tribes did ask Lenzner to put together a proposal and forward it to Grellner for the Tribes' consideration.[234]

IGI prepared a proposal for the Tribes' consideration and sent a copy to them. When they received Lenzner's investigation proposal, Surveyor, Grellner and Hoffman agreed that it was too broad and that they would not pursue this course of action.[235] Grellner nevertheless forwarded a copy of Lenzner's proposal to Copperthite, who then contacted *Newsweek* magazine, according to Grellner.[236] Lenzner testified that after the proposal was sent to the Tribes, "we never heard another word from this group" or about their story until an article describing Lenzner's proposal to the Tribes appeared in the August 1, 1997 issue of *Newsweek* magazine.[237]

THE TRIBES' CONTRIBUTION IS RETURNED

In March 1997, after publication of the *Washington Post* article, Governor Roy Roemer, Chairman of the DNC, contacted Surveyor to discuss the return of the Tribes' contribution. Surveyor told Roemer that the Tribes did not want the money back.[238] According to Surveyor, they had made the contribution in good faith because they supported the party and the President.[239] One week later, the DNC contacted Surveyor again and told him that they wanted to

return the Tribes' contribution. Surveyor finally agreed that if the DNC returned the money, the Tribes would not refuse it, but he wanted to be clear that he was not asking for it back.[240]

In an interview with Committee staff, Surveyor stated that he did not believe the Tribes were hurt by the DNC, and that the Tribes might contribute to the party in the future.[241] Surveyor explained that the Tribes had received $1.6 million from a lawsuit in 1996 and he showed a copy of a $5 million check the Tribes had received on May 28, 1997 as payment for another legal victory in which the Tribes won the right to tax non-Native American business activity on tribal lands.[242] Todd explained that the Tribes had contributed more money to local, state and congressional candidates than they had to the DNC in 1996. He also said that the Tribes intended to continue to be politically active.

CONCLUSION

There was no evidence presented to the Committee to support the allegation that the DNC or the Administration entered into, or ever contemplated, a quid pro quo arrangement to return the Fort Reno land to the Tribes in exchange for a contribution to the DNC. Surveyor and Todd, who attended the White House luncheon with the President, each stated that the President made no promises whatsoever to return the Fort Reno land to the Tribes. Coburn, the Tribes' attorney, confirmed in his meeting with the Committee staff that there was no promise made by the DNC or the Administration to return the Fort Reno land to the Tribes. The June 1996 press release issued by the Tribes more than a year before the investigation of this matter quoted Surveyor as denying that any promises were made by the President. Newspaper reports consistently quoted tribal representatives who stated unequivocally that there was no quid pro quo arrangment or a Presidential promise.

There was similarly no evidence presented to the Committee to support the allegation that the Tribes were pressured into contributing to the DNC. The Tribes made the decision to contribute on their own without being solicited by the DNC. That decision was motivated by a desire to become involved in the political process. The Tribes' subsequent reluctance to accept the DNC's return of their contribution only serves to underscore the Tribe's own belief that they had been neither pressured nor taken advantage of by the DNC or the Administration.

The money used for the contribution was not taken from a tribal welfare fund, and the amount contributed was carefully considered and decided upon in light of expected legal settlements that ultimately provided the Tribes with more than $6 million.

While some tribal representatives may not have been satisfied with their dealings with Copperthite, Landow, Knight, Shearer, or Lenzner, there was no evidence presented to the Committee that any of those individuals in any way were acting on behalf of, at the behest of, or even with the knowledge of the DNC or the Administration.

FOOTNOTES

[1] *Daily Oklahoman*, 10/30/83.
[2] 40 U.S.C. Sec. 483(a)(2)(1982).

[3] Public Law No. 93–599, amending the Federal Property and Administrative Services Act, January 21, 1975.

[4] Letter from Assistant Secretary for Indian Affairs, Eddie F. Brown to U.S. Senator, Daniel K. Inouye, 9/7/90.

[5] Jason McIntosh deposition, 10/29/97, Exhibit 7: Letter from Katharine R. Boyce to Jeffrey T. Vail, United States Department of Agriculture, Office of the General Counsel, 10/15/93.

[6] Jason McIntosh deposition, 10/29/97, Exhibit 7: Letter from Katharine R. Boyce to Jeffrey T. Vail, United States Department of Agriculture, Office of the General Counsel, 10/15/93.

[7] Jason McIntosh deposition, 10/29/97, Exhibit 8: Letter from George B. Farris, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs to Katharine R. Boyce, 11/19/93.

[8] Jason McIntosh deposition, 10/29/97, Exhibit 11: Jean M. Rawson, Specialist in Agricultural Policy, Environment and Natural Resources Division, Congressional Research Service memorandum, "Grazinglands Research Facility at El Reno, Oklahoma, 7/7/94.

[9] Jason McIntosh deposition, 10/29/97, Exhibit 9: Letter from Congressman Frank Lucas to Congressman Joe Skeen, Chairman, Committee on Appropriations, Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, 2/7/94.

[10] Staff interview with Richard Grellner, 8/21/97.

[11] Staff interview with Richard Grellner, 8/21/97.

[12] Staff interview with Archie Hoffman, 8/21/97.

[13] *New York Times*, 8/12/97.

[14] *Philadelphia Inquirer*, 3/10/97.

[15] *Philadelphia Inquirer*, 3/10/97.

[16] Jason McIntosh deposition, 10/29/97, Exhibit 13: Letter co-signed by U.S. Senator Don Nickles, U.S. Senator David Boren, and U.S. Representative Frank D. Lucas to U.S. Representative Joe Skeen, 7/25/94.

[17] Jason McIntosh deposition, 10/29/97, Exhibit 15: *El Reno Tribune,* 9/21/94.

[18] Jason McIntosh deposition, 10/29/97, Exhibit 16: Letter from U.S. Senator Don Nickles to unidentified person at the Peoples National Bank in El Reno, Oklahoma, 10/11/94.

[19] Jason McIntosh deposition, 10/29/97, Exhibit 17: Elwood Patawa, Director of Native American Programs, U.S. Department of Agriculture, Informational Memorandum for Deputy Secretary regarding 11/8/94 meeting with Cheyenne and Arapaho Tribes of Oklahoma delegation, 11/8/94.

[20] Jason McIntosh deposition, 10/29/97, Exhibit 17: Elwood Patawa, Director of Native American Programs, U.S. Department of Agriculture, Informational Memorandum for Deputy Secretary regarding 11/8/94 meeting with Cheyenne and Arapaho Tribes of Oklahoma delegation, 11/8/94.

[21] Jason McIntosh deposition, 10/29/97, Exhibit 20: *El Reno Tribune,* 9/13/95.

[22] Jason McIntosh deposition, 10/29/97, Exhibit 20: *El Reno Tribune,* 9/13/95

[23] Jason McIntosh deposition, 10/29/97, Exhibit 20: *El Reno Tribune,* 9/13/95

[24] Jason McIntosh deposition, 10/29/97, Exhibit 26: News Release, Cheyenne and Arapaho Tribes of Oklahoma, with attached transcript of ABC NEWS story on the Fort Reno agriculture research station, 12/11/95.

[25] Jason McIntosh deposition, 10/29/97, Exhibit 21: *El Reno Tribune*, 10/1/95. The *El Reno Tribune* described the rally:

Rally coordinator Archie Hoffman told the approximately 150 people who attended the event that the Tribes have tried to work with Nickles, but have received little support in return. "We took a plan to Washington, D.C. and tried to get Nickles to back us up on the plan," Hoffman said. "He said he would. When we got up there, he changed his stance."

[26] Jason McIntosh deposition, 10/29/97, Exhibit 21: *El Reno Tribune*, 10/1/95.

[27] Jason McIntosh deposition, 10/29/97, Exhibit 21: *El Reno Tribune*, 10/1/95.

[28] Hoffman stated that "when Senator Nickles sabotaged the council vote, the Tribes decided to run the t.v. ads." Staff interview with Archie Hoffman, 8/21/97.

[29] Jason McIntosh deposition, 10/29/97, Exhibit 24.

[30] Jason McIntosh deposition, 10/29/97, Exhibit 24.

[31] Staff interview with Barry Coburn, 9/16/97.

[32] Staff interview with Tyler Todd, 8/21/97.

[33] Staff interview with Barry Coburn, 9/16/97.

[34] Staff interview with Charles Surveyor, 8/21/97.

[35] Staff interview with Richard Grellner, 8/21/97.

[36] Staff interview with Barry Coburn, 9/16/97.

[37] Staff interview with Michael Turpen, 8/21/97.

[38] Staff interview with Richard Grellner, 8/21/97.

[39] Staff interview with Richard Grellner, 8/21/97.

[40] Staff interview with Richard Grellner, 8/21/97.

[41] Cheyenne-Arapaho Tribes of Oklahoma, Working Session transcript, 6/30/96, p. 32.

[42] Staff interview with Tyler Todd, 8/21/97.

[43] Staff interview with Richard Grellner, 8/21/97; Staff interview with Tyler Todd, 8/21/97.

[44] Staff interview with Michael Turpen, 8/21/97.

[45] Staff interview with Barry Coburn, 9/19/97.

[46] Jason McIntosh deposition, 10/29/97, Exhibit 29: Cheyenne-Arapaho Tribes of Oklahoma, Resolution No. 07099S167, 7/9/96.

[47] Staff interview with Charles Surveyor, 8/22/97.

[48] Staff interview with Charles Surveyor, 8/22/97.

[49] In a March 11, 1997 article in the *Daily Oklahoman*, Todd was quoted as saying that tribal officials began discussing ways "to get involved in the political process early last year [1996]," and ". . . [Nickles] was a direct cause of it." *Daily Oklahoman*, 3/11/97. Todd also told the *Phila-*

delphia Inquirer that "[the Tribes] probably wouldn't have done this in the first place if it weren't for Sen. Nickles, because he is the one that has thwarted all our attempts to get Fort Reno back." *Philadelphia –Inquirer*, 3/11/97.

[50] *Daily Oklahoman*, 3/17/97.

[51] *Washington Post*, 3/11/97.

[52] Staff interview with Barry Coburn, 9/16/97.

[53] Jason McIntosh deposition, 10/29/97, Exhibit 28: Memorandum from Tyler Todd, Chairman, Business Development Corporation to Charles Surveyor, Chairman, Cheyenne and Arapaho Tribes of Oklahoma Business Committee, 4/23/97.

[54] Jason McIntosh deposition, 10/29/97, Exhibit 28: Memorandum from Tyler Todd, Chairman, Business Development Corporation to Charles Surveyor, Chairman, Cheyenne and Arapaho Tribes of Oklahoma Business Committee, 4/23/97.

[55] Jason McIntosh deposition, 10/29/97, Exhibit 28: Memorandum from Tyler Todd, Chairman, Business Development Corporation to Charles Surveyor, Chairman, Cheyenne and Arapaho Tribes of Oklahoma Business Committee, 4/23/97.

[56] Staff interview with Barry Coburn, 9/16/97.

[57] Staff interview with Barry Coburn, 9/16/97.

[58] Staff interview with Tyler Todd, 8/21/97; Staff interview with Charles Surveyor, 8/22/97.

[59] Staff interview with Charles Surveyor, 8/21/97.

[60] Staff interview with Barry Coburn, 9/16/97.

[61] Staff interview with Barry Coburn, 9/16/97.

[62] Staff interview with Richard Grellner, 8/21/97; Staff interview with Barry Coburn interview, 9/16/97.

[63] Jason McIntosh deposition, 10/29/97, p. 25.

[64] Jason McIntosh deposition, 10/29/97, p. 23.

[65] Jason McIntosh deposition, 10/29/97, p. 25.

[66] Staff interview with Michael Turpen, 8/21/97.

[67] Jason McIntosh deposition, 10/29/97, p. 32.

[68] Jason McIntosh deposition, 10/29/97, p. 33.

[69] Terence McAuliffe deposition, 9/18/97, p. 24.

[70] Jason McIntosh deposition, 10/29/97, p. 28.

[71] Jason McIntosh deposition, 10/29/97, p. 29.

[72] Jason McIntosh deposition, 10/29/97, p. 29.

[73] Jason McIntosh deposition, 10/29/97, p. 138.

[74] Jason McIntosh deposition, 10/29/97, p. 137.

[75] Staff interview with Barry Coburn, 9/19/97.

[76] Staff interview with Barry Coburn, 9/19/97.

[77] Staff interview with Charles Surveyor, 8/21/97.

[78] Staff interview with Richard Grellner, 8/21/97.

[79] Staff interview with Archie Hoffman, 8/21/97.

[80] Staff interview with Richard Grellner, 8/21/97.

[81] Staff interview with Barry Coburn, 9/16/97.

[82] Staff interview with Charles Surveyor, 8/21/97.

[83] Jason McIntosh deposition, 10/29/97, p. 41.

[84] Staff interview with Barry Coburn, 9/16/97.

[85] Staff interview with Barry Coburn, 9/16/97.

[86] Staff interview with Barry Coburn, 9/16/97.

[87] Staff interview with Barry Coburn, 9/16/97.

[88] Staff interview with Barry Coburn, 9/16/97.

[89] Staff interview with Barry Coburn, 9/16/97.

[90] Staff interview with Barry Coburn, 9/16/97.

[91] *Philadelphia Inquirer*, 3/10/97.

[92] Staff interview with Charles Surveyor, 8/21/97.

[93] Staff interview with Charles Surveyor, 8/21/97.

[94] Staff interview with Barry Coburn, 9/16/97.

[95] Staff interview with Barry Coburn, 9/16/97.

[96] *New York Times*, 8/12/97.

[97] Staff interview with Tyler Todd, 8/21/97.

[98] Staff interview with Charles Surveyor, 8/21/97.

[99] *Newsday*, 10/13/97.

[100] Staff interview with Barry Coburn, 9/16/97.

[101] Staff interview with Barry Coburn, 9/16/97.

[102] Terence McAuliffe deposition, 9/18/97, p. 28.

[103] Terence McAuliffe deposition, 9/18/97, p. 29.

[104] Terence McAuliffe deposition, 9/18/97, p. 30.

[105] Jason McIntosh deposition, 10/29/97, Exhibit 32: Cheyenne-Arapaho Tribes of Oklahoma, press release, 6/28/96.

[106] Staff interview with Barry Coburn, 9/16/97.

[107] Jason McIntosh deposition, 10/29/97, p. 45.

[108] Jason McIntosh deposition, 10/29/97, p. 48.

[109] Jason McIntosh deposition, 10/29/97, p. 142.

[110] *Daily Oklahoman*, 3/11/97.

[111] Staff interview with Charles Surveyor, 8/22/97; Staff interview with Tyler Todd, 8/21/97.

[112] Staff interview with Tyler Todd, 8/21/97.

[113] *Daily Oklahoman*, 3/11/97.

[114] *Daily Oklahoman*, 3/11/97.

[115] Cheyenne-Arapaho Tribes of Oklahoma, Working Session transcript, 6/20/96, p. 18.

[116] Cheyenne-Arapaho Tribes of Oklahoma, Working Session transcript, 6/20/96, p. 29.

[117] Cheyenne-Arapaho Tribes of Oklahoma, Working Session transcript, 6/20/96, p. 41.
[118] Cheyenne-Arapaho Tribes of Oklahoma, Working Session transcript, 6/20/96, p. 42.
[119] Cheyenne-Arapaho Tribes of Oklahoma, Working Session transcript, 6/20/96, p. 43.
[120] Cheyenne-Arapaho Tribes of Oklahoma, Working Session transcript, 6/20/96, p. 43–44.
[121] Cheyenne-Arapaho Tribes of Oklahoma, Working Session transcript, 7/3/96, p. 15.
[122] Cheyenne-Arapaho Tribes of Oklahoma, Working Session transcript, 7/3/96, pp. 3–32.
[123] Cheyenne-Arapaho Tribes of Oklahoma, Working Session transcript, 7/3/96, p. 44.
[124] Jason McIntosh deposition, 10/29/97, Exhibit 29: Cheyenne-Arapaho Tribes of Oklahoma, Resolution No. 070996S167, 7/9/96.
[125] Staff interview with Barry Coburn, 9/16/97.
[126] Staff interview with Barry Coburn, 9/16/97.
[127] Staff interview with Barry Coburn, 9/16/97.
[128] Jason McIntosh deposition, 10/29/97, Exhibit 3.
[129] *Philadelphia Inquirer*, 3/10/97.
[130] Staff interview with Tyler Todd, 8/21/97.
[131] Staff interview with Barry Coburn, 9/16/97.
[132] Staff interview with Barry Coburn, 9/16/97.
[133] Staff interview with Tyler Todd, 8/21/97.
[134] Staff interview with Tyler Todd, 8/21/97.
[135] Staff interview with Barry Coburn, 9/16/97.
[136] Staff interview with Barry Coburn, 9/16/97.
[137] Staff interview with Richard Grellner, 8/21/97.
[138] Staff interview with Barry Coburn, 9/16/97.
[139] Staff interview with Barry Coburn, 9/16/97.
[140] Staff interview with Tyler Todd, 8/21/97.
[141] Staff interview with Richard Grellner, 8/21/97.
[142] Staff interview with Richard Grellner, 8/21/97.
[143] Staff interview with Richard Grellner, 8/21/97.
[144] Staff interview with Charles Surveyor, 8/21/97.
[145] Staff interview with Richard Grellner, 8/21/97.
[146] Staff interview with Richard Grellner, 8/21/97.
[147] Staff interview with Richard Grellner, 8/21/97.
[148] Staff interview with Richard Grellner, 8/21/97.
[149] Staff interview with Richard Grellner, 8/21/97.
[150] Staff interview with Richard Grellner, 8/21/97.
[151] Staff interview with Richard Grellner, 8/21/97.
[152] Staff interview with Barry Coburn, 9/16/97; Michael Copperthite deposition, 9/3/97, p. 20.
[153] Staff interview with Barry Coburn, 9/16/97.
[154] Staff interview with Barry Coburn, 9/16/97.
[155] Staff interview with Barry Coburn, 9/16/97; Federal Election Commission records.
[156] Staff interview with Barry Coburn, 9/16/97.
[157] Nathan Landow deposition, 9/17/97, p. 19.
[158] Nathan Landow deposition, 9/17/97, p. 20.
[159] Nathan Landow, deposition, 9/17/97, p. 20.
[160] Nathan Landow deposition, 9/17/97, Exhibit 4: Record of Phone Message from Michael Copperthite to Nathan Landow, 11/15/96, NL 024.
[161] Nathan Landow deposition, 9/17/97, p. 23; Nathan Landow deposition, 9/17/97, Exhibit 4.
[162] Staff interview with Barry Coburn, 9/16/97.
[163] Michael Copperthite deposition, 8/27/97, p. 17.
[164] Nathan Landow deposition, 9/17/97, p. 26.
[165] Nathan Landow deposition, 9/17/97, p. 25.
[166] Nathan Landow deposition, 9/17/97, pp. 25–26.
[167] Nathan Landow deposition, 9/17/97, pp. 25–26.
[168] Nathan Landow deposition, 9/17/97, p. 26.
[169] Nathan Landow deposition, 9/17/97, pp. 38–39.
[170] *Philadelphia Inquirer*, 3/10/97.
[171] Nathan Landow deposition, 9/17/97, pp. 31–32.
[172] Staff interview with Richard Grellner, 8/21/97.
[173] Staff interview with Richard Grellner, 8/21/97.
[174] Staff interview with Barry Coburn, 9/16/97.
[175] Staff interview with Barry Coburn, 9/16/97.
[176] Staff interview with Barry Coburn, 9/16/97.
[177] Nathan Landow deposition, 9/17/97, p. 43.
[178] Staff interview with Barry Coburn, 9/16/97.
[179] Staff interview with Barry Coburn, 9/16/97.
[180] Staff interview with Barry Coburn, 9/16/97.
[181] Nathan Landow deposition, 9/17/97, p. 81.
[182] Nathan Landow deposition, 9/17/97, p. 82.
[183] Staff interview with Richard Grellner, 8/21/97.
[184] Michael Copperthite deposition, 8/27/97, p. 52.
[185] Michael Copperthite deposition, 8/27/97, p. 53.
[186] Staff interview with Barry Coburn, 9/16/97.
[187] Staff interview with Barry Coburn, 9/16/97.
[188] Nathan Landow deposition, 9/17/97, p. 82–83.
[189] Nathan Landow deposition, 9/17/97, p. 85.
[190] Nathan Landow deposition, 9/17/97, p. 83.
[191] Nathan Landow deposition, 9/17/97, p. 51–54.
[192] Staff interview with Barry Coburn, 9/16/97.

[193] Staff interview with Barry Coburn, 9/16/97.
[194] Staff interview with Charles Surveyor, 8/21/97.
[195] Nathan Landow deposition, 9/17/97, Exhibit 6.
[196] Nathan Landow deposition, 9/17/97, p. 104.
[197] Nathan Landow deposition, 9/17/97, p. 107–108.
[198] Nathan Landow deposition, 9/17/97, p. 108.
[199] Nathan Landow deposition, 9/17/97, p. 149–150.
[200] Nathan Landow deposition, 9/17/97, p. 44–45.
[201] Staff interview with Barry Coburn, 9/16/97.
[202] Nathan Landow deposition, 9/17/97, p. 88.
[203] Nathan Landow deposition, 9/17/97, Exhibit 11.
[204] Nathan Landow deposition, 9/17/97, Exhibit 11.
[205] Nathan Landow deposition, 9/17/97, Exhibit 11.
[206] Nathan Landow deposition, 9/17/97, p. 141.
[207] Nathan Landow deposition, 9/17/97, p. 140.
[208] Peter Knight deposition, 9/17/97, p. 172.
[209] Peter Knight deposition, 9/17/97, p. 183.
[210] Peter Knight deposition, 9/17/97, p. 174.
[211] Peter Knight deposition, 9/17/97, p. 176.
[212] Peter Knight deposition, 9/17/97, p. 177.
[213] Peter Knight deposition, 9/17/97, p. 181.
[214] Peter Knight deposition, 9/17/97, p. 181; pp. 171–172.
[215] Peter Knight deposition, 9/17/97, pp. 187–188.
[216] Nathan Landow deposition, 9/17/97, Exhibit 8.
[217] Staff interview with Barry Coburn, 9/16/97.
[218] Cody Shearer deposition, 9/16/97, pp. 13–14.
[219] Cody Shearer deposition, 9/16/97, p. 12.
[220] Cody Shearer deposition, 9/16/97, p. 20–25.
[221] Cody Shearer deposition, 9/16/97, p. 15.
[222] Staff interview with Richard Grellner, 8/21/97.
[223] Cody Shearer deposition, 9/16/97, p. 15.
[224] Cody Shearer deposition, 9/16/97, p. 17.
[225] Cody Shearer deposition, 9/16/97, p. 19.
[226] Cody Shearer deposition, 9/16/97, p. 20.
[227] Terry Lenzner, 7/31/97 Hrg., p. 51.
[228] Terry Lenzner, 7/31/97 Hrg., p. 53.
[229] Staff interview with Richard Grellner, 8/21/97.
[230] Terry Lenzner, 7/31/97 Hrg., p. 55.
[231] Staff interview with Richard Grellner, 8/21/97.
[232] Terry Lenzner, 7/31/97 Hrg., p. 59.
[233] Staff interview with Charles Surveyor, 8/21/97.
[234] Staff interview with Richard Grellner, 8/21/97.
[235] Staff interview with Richard Grellner, 8/21/97.
[236] Staff interview with Richard Grellner, 8/21/97.
[237] Terry Lenzner, 7/31/97 Hrg., p. 59.
[238] Staff interview with Charles Surveyor, 8/21/97.
[239] Staff interview with Charles Surveyor, 8/21/97.
[240] Staff interview with Charles Surveyor, 8/21/97.
[241] Staff interview with Charles Surveyor, 8/22/97.
[242] Staff interview with Charles Surveyor, 8/21/97.

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PART 7 INVESTIGATION PROCESSES

Chapter 38: Laying the Groundwork for the Investigation

FINDINGS

(1) The Committee's investigation was not bipartisan. The Committee's investigation focused predominantly on persons and entities associated with the Democratic Party. The Majority devoted virtually no resources to exploring a variety of serious allegations against those affiliated with the Republican Party. Moreover, it refused to issue or enforce many of the Minority-requested subpoenas related to the Committee's mandate, simply because those subpoenas sought information from Republican-related persons and entities. When the Minority accumulated substantial evidence of Republican wrongdoing despite these significant limitations, the Majority refused to schedule hearings to allow for the public airing of this information. As a result, virtually all of the Majority's investigatory resources and Committee hearings focused upon activities involving the Democratic Party and its associates.

(2) Although the Committee's investigation provided insight on the serious shortcomings in our campaign finance system, the failure to fully and impartially investigate wrongdoing in the 1996 federal elections, regardless of party, kept the Committee from fulfilling its mandate and eliminated the ability to produce a bipartisan report. The Committee's hearings did make a contribution to the public's understanding of the ways in which money influenced the 1996 elections. As a consequence of the investigation's partisanship, the Committee cannot credibly claim that it offered the American people a complete picture of the illegal or improper activity that occurred during the 1996 federal elections. The Committee virtually ignored at least half of the story of those elections, and the partisan framework in which it presented and interpreted the evidence it did uncover diminishes the Committee's ultimate findings and conclusions.

INTRODUCTION

Shortly before the 1996 federal elections, several news organizations reported that the Democratic National Committee may have received illegal contributions of foreign money and engaged in other fundraising improprieties. These reports prompted the Senate early in the 105th Congress to order an investigation into possible illegal and improper campaign finance activities during the 1996 federal election cycle. Responsibility for conducting the investigation was given to the Senate Governmental Affairs Committee, which has the broadest oversight jurisdiction of any Senate committee and a long history of amicable working relationships between the Majority and Minority membership.

The importance of this assignment cannot be overstated. Clean and fair elections lie at the very heart of our democratic system of government, and the American people are entitled to know whether the electoral process was compromised or corrupted during the 1996 election cycle. This was not only an important assignment, it was an extremely delicate one: A committee of the Senate would be investigating the process by which the Senate's own members

and the sitting President and vice President had been elected. In addition, assurances from the Chairman seemed to guarantee that the Committee would be investigating allegations against both national parties and their candidates.

In such circumstances, the temptation to use the Committee for partisan purposes is enormous. There is, for example, the risk that the Majority might use the vast powers of the Committee to inflict damage on political opponents—while shielding the Majority's own political allies. Although the temptations are great, they are not irresistible. For example, when a Senate Committee probed the Watergate affair, Chairman Sam Ervin and the ranking Republican member Howard Baker, worked as partners—preventing the investigation from becoming overly partisan. The same was true of the Iran-Contra investigation, which Senator Glenn, the Governmental Affairs Committee Ranking Minority Member, hoped would be a model for the investigation into campaign finance activities in 1997.

The Committee did not follow these models of bipartisanship. The Majority focused almost exclusively on Democratic-affiliated individuals and organizations, issuing every subpoena that was proposed if it sought information about Democratic activities but declining to approve dozens of subpoenas seeking legitimate information about Republican activities. There was an even greater imbalance in allocation of hearing days: nearly 90 percent of the hearing days addressed allegations of wrongdoing by Democrats. As a result, the investigation soon lost credibility with the public, and the country was denied the opportunity for a fair and balanced look at the conduct of both Democrats and Republicans during the 1996 election cycle.

The story of how the Committee was used for partisan purposes is demonstrated by the Committee's choice of procedures: the issuance and enforcement of subpoenas, the selection and questioning of witnesses, and the allocation of public hearing time. By examining these procedural choices, the public may be able to understand how the Committee's investigation into campaign finance activities failed to fulfill its potential for informing the American people and improving our democratic system.

INITIAL FLOOR STATEMENTS BY CHAIRMAN THOMPSON AND SENATOR GLENN

On January 28, 1997, Senator Fred Thompson, Chairman of the Governmental Affairs Committee, spoke on the Senate floor to outline his Committee's upcoming investigation into campaign abuses and irregularities in the 1996 election cycle.[1] He laid out the parameters and principles by which he envisioned the investigation would be conducted. The Chairman discussed several general themes. First, he anticipated using the forum of the investigation and its hearings to advance the reform of campaign finance laws.[2] He also stated that "those of us with responsibilities in this area, whether it be the President or members of Congress, cannot let the

call for reform serve to gloss over serious violations of existing laws."[3]

Second, Chairman Thompson proposed that the investigation include an examination of improper activities—not just illegal ones. While the Chairman viewed the scope of activities to be investigated as those in the 1996 federal election cycle, he stated that the Committee should also investigate "facts that may have occurred before the 1996 campaign that are relevant to or shed light upon that campaign or the operation of our government . . ."[4] This statement suggested that the Committee would conduct a meaningful investigation of the fundraising activities of the Democratic National Committee and the current President because those activities would be placed in proper perspective by also investigating comparable activities of the Republican National Committee and previous administrations.

Chairman Thompson described the work of the Committee in this way:

> [I]t is an inquiry into illegal or improper campaign finance activities in the 1996 Presidential campaign and related activities. . . . Certainly, our work will include any improper activities by Republicans, Democrats, or other political partisans. It is of extreme importance that our investigation and our hearings be perceived by the American people as being fair and evenhanded. . . . It simply means letting the chips fall where they may. We are investigating activities here, not political parties.[5]

The Chairman also indicated a desire to work with Senator Glenn, the Committee's Ranking Democrat, and to seek consensus on important issues. He stated:

> We hope that in all cases the work of the Committee can be done by the staff in a cooperative fashion. Consensus should emerge on which issues are the most serious and those matters which will receive the greatest consideration. But if legitimate disagreement arises as to priorities, the Majority will in no way limit the Minority's rights to investigate any and all parties within the jurisdiction of the Committee. Moreover, the Minority will be given the opportunity to call witnesses in for public hearings if we cannot agree upon a joint witness list.[6]

Senator Glenn also spoke on the Senate floor on January 28, 1997. In response to Chairman Thompson's comments that the Committee's investigation should be used to promote meaningful campaign finance reform, Senator Glenn agreed that the hearings were imperative for discovering problems and fixing the laws.[7] Recognizing that reform was unlikely until public pressure becomes "overwhelming," Senator Glenn expressed hope that the hearings would provide impetus for such change by stirring the necessary interest in the American people.[8]

Senator Glenn also offered his views on how the Committee's investigation should be conducted. He noted that bipartisanship was crucial to a meaningful investigation and publicly pledged support for Chairman Thompson's efforts to conduct such an investigation.[9]

He also suggested that the Chairman "establish objectives for the investigation without making the inquiry too narrow and thereby risk[ing] at least a perceived partisan approach."[10] Senator Glenn recommended laying out certain binding ground rules pertaining to scope, duration, process, and resource allocation[11] and proposed that "soft money," one of the most pervasive problems in the campaign finance system, be a focus of the investigation.[12]

Addressing the relationship between the Majority and the Minority with respect to the investigation, Senator Glenn said, "[T]o assure that the Committee's investigation is fair, bipartisan, and legislatively productive, I think it is vital [that] the Senate define the scope and procedures and duration of the investigation in the omnibus committee funding resolution."[13] He later described his specific suggestions for ensuring a bipartisan investigation:

> There should . . . be a specification of even-handed procedural ground rules for the investigation. For example, the majority and minority should have contemporaneous access to all documentary evidence received by the Committee. The majority and minority should have the right to be present at and participate equally in all depositions and investigatory interviews. And the majority and minority should have equal opportunity to obtain and present relevant testimonial and documentary evidence on the subjects of the committee's inquiry.
>
> These are just safeguards for a fair and bipartisan inquiry which is in keeping with contemporary Senate practice. This is the way the last several Senate investigations have been done, and Senate practice from investigations of this kind dictate that it should be expressly spelled out before the actual investigating begins so we do not get into an unpleasant disagreement in the middle of the hearings.[14]

These remarks, made by Chairman Thompson and Senator Glenn on January 28, 1997, were in anticipation of the Committee's first public meeting where the issues raised on the Senate floor would be discussed and debated among Committee members.

ORGANIZATIONAL MEETING

On January 29 and 30, 1997, the Governmental Affairs Committee held a two-day meeting to organize its activities for the 105th Congress. The Committee's organizational meeting focused on the Special Investigation and the members discussed four issues relevant to that investigation: budget, scope, procedures, and deadline.

A. Budget

On January 29, 1997, Chairman Thompson announced his proposal to spend $6.5 million "for a one-time non-recurring budget for 1997 . . . for the investigation . . . into foreign campaign contributions and fund-raising activities emanating from the 1996 Presidential campaign and related matters."[15] Because the Majority had not, as required by Committee rules,[16] provided the Minority with

advance notice of this unprecedented budget request, Senator Glenn objected to approving the budget on procedural grounds.[17]

Senator Glenn and the other Minority Members also objected to Chairman Thompson's budget proposal on substantive grounds. The request for $6.5 million to devote to the investigation was $2 million more than the entire Committee's recurrent budget that is provided for the Committee to carry out all of its other functions in 1997.[18] The Minority also noted that the Chairman provided no justification for his sizable request; although the request was far in excess of any other initial request for a major Senate investigation, including the Watergate and Whitewater investigations, even when inflation was taken into account.[19] And finally, the Democrats noted that although the proposed budget was divided into line items for salary, hearings, travel and equipment, no basis for these figures was provided.[20]

During the second day of the organizational meeting, held on January 30, 1997, Senator Glenn offered a substitute amendment to the Committee funding resolution. Senator Glenn proposed that instead of the $6.5 million budget requested by the Chairman, that the Committee instead request $1.8 million for one year.[21] If the $1.8 million proved insufficient, Senator Glenn suggested that the Committee could, at the appropriate time, vote to authorize additional funds. In response to this proposal, Senator Cochran stated that $1.8 million would only allow an investigation of a few months duration.[22] Senator Glenn then clarified his suggestion by stating, "What I am proposing is that we start out with a reasonable amount of money, and I will be the first to join my distinguished colleague from Mississippi in voting for more money if we see that that is what is needed to continue the investigation."[23] Chairman Thompson stated that he believed Senator Glenn's proposal was "inadequate"[24] and that his $6.5 million figure should be forwarded to the Rules Committee for approval. The Chairman suggested that if any of the $6.5 million was not expended during the investigation, those funds would be returned to the United States Treasury. This suggested procedure prompted Senator Glenn to note that the Committee does not traditionally fund any project or federal program, such as child care or the Head Start program, by providing more funds than are justified and assuming that additional funds will be returned. He explained that the Congress does not stipulate that:

> We will give you more money than you want, and if you do not need it, turn it back. . . [I]n this Committee, we have tried to get efficiencies of government, and we do not normally put out more money than we know we need for whatever the purpose is.[25]

Despite the agreement of most Members that each side should produce specific information on their respective requests, Chairman Thompson called for a vote.[26] The Committee defeated Senator Glenn's substitute amendment and passed Chairman Thompson's proposal for $6.5 million to fund the investigation along party lines.[27]

B. Scope

During its organizational meetings, the Committee also discussed the appropriate scope of activities to investigate. Here, the Committee members were able to find some common ground.

All Members of the Committee agreed that the investigation would include exploring any "illegal or improper" activities of Democratic fundraising surrounding the 1996 Presidential election. The Minority also sought to ensure that the Committee had the opportunity to explore similar Republican fundraising activities as well as allegations against Members of Congress—such as improper access for contributors—and against previous administrations in order to put current fundraising practices in perspective.[28] The Minority Members also stated that the Committee should investigate allegations against possible partisan activities of tax-exempt groups during the 1996 federal election cycle.[29] As an example, Senator Levin mentioned investigating a questionable "issue advocacy" campaign conducted on behalf of the Republican Party by Americans for Tax Reform ("ATR") just before the 1996 election. ATR paid for this with a $4.6 million donation from the Republican National Committee.[30] See Chapter 11 of this Minority Report.

Chairman Thompson seemed to accept the Democratic proposal [31] and assured Committee Democrats that these areas would be included, but he questioned how Democrats could on the one hand want to expand the scope, but on the other want to limit the budget.[32] Committee Democrats responded that they only sought to control the initial funding of the investigation because it was dramatically higher than any previous high-profile investigation since Watergate and that if additional funds were needed to conduct a truly bipartisan investigation, they would support such funding.[33]

During the discussion of the scope of the Committee's investigation, Chairman Thompson stated that the scope could be an informal understanding and that he would be willing to broaden the investigation to encompass issues the Democrats thought were important to investigate.[34] Upon Senator Lieberman's suggestion, however, the Committee agreed to memorialize the scope of the investigation within the authorizing resolution.[35] Having agreed to commit the scope of the investigation to writing, the Committee Members met the next day to consider voting on a scope document.

The next day, January 30, 1997, the Committee considered a document establishing the scope of the investigation, drafted jointly by the Majority and Minority staffs. The most significant provisions in the scope document provided that the Committee would investigate (1) all federal elections, including both presidential and congressional races; (2) improper as well as illegal campaign finance activities; and (3) certain specified substantive areas. The Committee also agreed that there would be leeway to look at matters that might have occurred before the 1996 cycle.[36]

The Committee approved this scope proposal unanimously, which called for an investigation of all improper or illegal campaign finance activities, regardless of party affiliation.[37] Some Members cited the passage of the Committee's scope proposal as an indication that the investigation would be a bipartisan one, despite other disagreements.[38] While this was an important first step, matters of procedures, budget, and duration were left unresolved.

C. Process

During the January 29, 1997 organizational meeting, Senator Lieberman raised the issue of procedural safeguards, suggesting that the Committee agree to an internal process agreement that would govern the operations of the Majority and Minority staffs.[39] Such an agreement would ensure that the entire Committee had access to the same documents as well as sufficient notice and opportunity to be present at all witness interviews and depositions.

Chairman Thompson responded that if the Committee followed its standing rules, that would be a starting point for fair treatment. He also stated that the Majority would not take advantage of the Minority and would do its best to ensure bipartisan attendance at depositions as the Committee rules provide.[40] Chairman Thompson did not make the same assurances with respect to Committee interviews except to state that both staff should have "equal access to [interview] results, [and] that these things will be written up and made available immediately to each side."[41] Lastly, the Chairman chose to abide by the regular division of Committee budgets in the Senate, providing two-thirds of any budgeted funds to the Majority and one-third to the Minority.[42]

When the meeting resumed the following day, January 30, 1997, there was some discussion about voting on an agreement regarding investigative procedures, but the Committee decided to allow staff to continue to work out several unresolved matters such as bipartisan attendance at all interviews.[43] On this issue, Chairman Thompson agreed "to make a best-faith effort with regard to significant interviews, and people are just going to have to show a little . . . common sense and good faith as to what is significant."[44] He also offered access to anything committed to writing from an interview which the other side might have missed.[45] Senator Glenn suggested, and Chairman Thompson agreed, to allow more time for consideration of a process agreement. Chairman Thompson said: "I think we are making progress on it, and if there is a chance that we can reach agreement on it, then I want to take that chance. So I will agree to heed your suggestion on that, and let us not take that up."[46] In the meantime Chairman Thompson again offered that the Committee rules would serve as a good basis for procedures to be followed.

D. Termination Date

The final area addressed at the meetings on January 29 and 30 was whether the investigation should have a fixed date upon which it would terminate. Chairman Thompson was opposed to setting a termination date, referring to a book about the Iran-Contra investigation by former Senators George Mitchell and William Cohen in which they recommended against an end date for such a large-scale investigation.[47] Senator Glenn considered this a critical area for the structure of the investigation to ensure against an "open-ended inquiry."[48] The Chairman again suggested that Majority and Minority counsel and their staffs try to resolve some of these procedural issues.[49]

FIRST PUBLIC DEBATE ON ISSUANCE OF SUBPOENAS

On February 7, Majority staff presented 31 document subpoenas to the Minority staff for approval by Senator Glenn. All but four of the subpoenas were for Democratic-related entities or individuals.[50] On February 10, the Majority gave 25 more document subpoenas to the Minority, making the subpoenas forwarded to the Minority within four days total 56.[51]

Under Committee rules, the Ranking Member must be afforded 72 hours to consider the subpoenas and either approve or oppose them.[52] If the Ranking Member opposes them, the Chairman may call a Committee meeting and put the subpoenas to a Committee vote. If a Majority of the Committee members vote for the subpoenas, they are issued. Concurrent with the delivery of the proposed subpoenas, Chairman Thompson announced a business meeting of the Committee to be held on February 13, 1997, at the end of the 72 hour period, anticipating Minority objections to the subpoenas.

At the business meeting on February 13, Senator Glenn noted his objections to the Majority's submission of the 56 subpoenas. First, he noted that all but four of the subpoenas were for individuals and entities connected with Democratic fundraising.[53] Second, he objected to the fact that the Minority was never consulted regarding the subject or the substance of the subpoenas before they were submitted to the Minority.[54] Third, he explained that the sheer number of subpoenas for review by the Minority at one time with no notice was a monumental task. Fourth, Senator Glenn queried why the Majority had provided no substantiation for the subpoenas.[55] And, finally, Senator Glenn stated that these activities had been undertaken despite the fact that the Committee did not yet have an approved budget or mandate. Ultimately, Senator Glenn stated that he would give the subpoenas fair consideration and asked only that the Minority be given an adequate opportunity to review the proposed subpoenas.[56]

Notwithstanding these objections, the Minority voted to approve the issuance of 47 of the 56 subpoenas during the February 13 Committee meeting in order to move the investigation forward. The Committee approved the remaining nine subpoenas over the Minority's objections, but agreed to hold them for further discussion.[57]

ALTERNATIVE RESOLUTION, S. RES. 61

On March 4, Senator Glenn introduced on the Senate floor S. Res. 61, which was an alternative resolution for the Committee's investigation. S. Res. 61 incorporated the scope agreement unanimously voted on the Governmental Affairs Committee, but also set forth procedures to provide equal and contemporaneous access to witnesses as well as documents, a proposed budget of $1.8 million, and provisions for submission of a final report no later than December 31, 1997, and consideration of the McCain-Feingold legislation, S. 25, by May 1, 1997.[58] This alternative resolution was ultimately not adopted by the Senate.

RULES COMMITTEE APPEARANCES

At the beginning of each Congress, all Senate committee chairmen and ranking members routinely appear before the Senate

Rules and Administration Committee ("Rules") to present and support the budget requests for their Committees. The Rules Committee must then vote to authorize each Committee's budget. Chairman Thompson and Senator Glenn appeared before the Rules Committee on February 6 and March 6, 1997 to discuss the Senate Governmental Affairs proposed budget, including its proposed budget of $6.5 million to conduct an investigation into campaign finance activities. Also before the Rules Committee was the Governmental Affair's proposed scope of its investigation, which was voted out unanimously by its Members and which proposed an investigation of all "improper and illegal" campaign activities during the 1996 federal election cycle.[59]

During the February 6 Rules Committee meeting, Senator Glenn stated that he opposed Chairman Thompson's budget of $6.5 million as "excessive and unjustified," especially in light of the many other campaign finance investigations occurring in different parts of government.[60] Additionally, Senator Glenn noted that the Minority Members of the Rules Committee also generally supported an incremental approach to funding of the investigation.[61] Chairman Thompson argued that the Committee required $6.5 million for the investigation, stating that the investigation would cover numerous allegations of fundraising practices, as exposed in the press.[62] The Chairman also remarked that the Committee would be exploring activities of an "unprecedented scope."[63] The Rules Committee adjourned without resolving the issue.

On March 6, 1997, Chairman Thompson and Senator Glenn again appeared before the Rules Committee to discuss the funding resolution for the Governmental Affairs Committee's investigation. During this meeting, Rules Committee Chairman John Warner offered a resolution which proposed to decrease Chairman Thompson's proposed budget of $6.5 million for the investigation to a budget of $4.35 million.[64] Chairman Warner's proposal also included provisions terminating the investigation on December 31, 1997, with a final report due on January 31, 1998, a month later.[65] These provisions represented an important effort at compromise. Chairman Warner's provisions, however, proposed to alter the scope of the investigation by eliminating allegations of "improper activities," and leaving the Committee only able to investigate "illegal activities."[66] Both Senator Glenn and Chairman Thompson opposed this narrow definition of scope and maintained their support for the fuller scope which had been unanimously approved by the Governmental Affairs Committee.[67]

Senator Wendell Ford, Ranking Democrat on the Rules Committee, also proposed a resolution during the Rules Committee meeting. His proposal included the "improper and illegal" scope language agreed to by the Governmental Affairs Committee and was identical to Senator Glenn's resolution introduced on March 4, S. Res. 61, except that it proposed an increase in the investigation budget from $1.8 million to $3 million.[68]

After debate on the proposals, the Rules Committee passed Chairman Warner's amendment and defeated Senator Ford's by a party line vote.[69] In taking this action, the Rules Committee undid the unanimous decision of the Governmental Affairs Committee to define the scope of its investigation to include both improper and

illegal activities. The Senate Rules Committee's reversal of another standing committee's unanimous scope decision was highly unusual.[70]

FINAL FLOOR DEBATE

On March 10 and 11, 1997, the full Senate debated S. Res. 39, the resolution governing the Governmental Affairs Committee investigation, as proposed by Chairman Warner and approved by the Rules Committee.[71] On March 11, after a contentious floor debate in which Democrats argued vociferously against narrowing the original scope of the investigation, the full Senate considered and unanimously approved a compromise, in the form of a substitute resolution offered by Majority Leader Trent Lott.[72] This resolution restored the original scope unanimously approved by the Governmental Affairs Committee to investigate "illegal or improper" activities in connection with 1996 federal elections. It also reduced the budget from Chairman Thompson's $6.5 million to $4.35 million, and stipulated a termination date for the investigation of December 31, 1997, with a reporting date of January 31, 1998.[73]

During the debate on the resolution, Democrats sought specific assurances that Chairman Thompson intended to conduct a bipartisan inquiry. Until the Chairman provided certain assurances, several members were not prepared to agree to S. Res. 39.[74]

Senator Glenn discussed the meaning of "improper" to ensure that certain issues would not be precluded from inquiry. Senator Thompson agreed to a broad interpretation of "improper" and committed to discussing with the Minority whether an issue fell inside or outside the Committee's scope.[75]

Senator Levin also engaged Chairman Thompson in a colloquy on procedures. During this discussion, Chairman Thompson agreed to conduct bipartisan depositions, joint investigative interviews "where feasible, . . . equal and contemporaneous access to all documents . . . and . . . adequate notice of filing these documents."[76] Senator Levin and Chairman Thompson also agreed that an effort should be made to work together on developing proposals for subpoenas instead of presenting the Minority with a predetermined list of subpoenas for issuance. Chairman Thompson acknowledged that the Committee had "got off on a bit of a wrong foot with regard to subpoenas."[77] In addition to making specific assurances about procedure, Chairman Thompson promised that "we will have an opportunity for full discussion on any area the Senator brings up."[78] He also offered to work together with Democrats to set the agenda and priorities for the investigation.

The procedures discussed on the Senate floor were never finalized in writing, nor were many of them followed.

THE MAJORITY IMPEDED A FAIR INVESTIGATION

Despite earlier discussions of an internal process agreement that would govern the procedures of the investigation, as well as repeated requests and drafts forwarded by the Minority, a formal process agreement was never signed. The Minority, therefore, had to rely on informal, unwritten assurances made by the Chairman during the negotiation of the resolution. For the most part, the Majority kept to its oral assurances that the Minority would have con-

temporaneous access to documents, per a signed document protocol,[79] and to witnesses for purposes of deposition.[80]

However, there were serious problems with other Committee procedures. Indicia of the partisan nature of the Committee's investigation can be found in the Committee's treatment of immunity requests, notice to staff of interviews, consideration of subpoenas, and scheduling of public testimony.

A. Subpoenas

The procedures the Committee employed to draft, issue, and enforce its investigation subpoenas was an unfortunate one that may have a lasting and detrimental effort on future Senate investigations.[81] On January 28, 1997, when Chairman Thompson addressed the Senate chambers, he referred to a 70-year-old Supreme Court decision in which the Court held,

> A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it.[82]

By the end of the investigation, the Committee had issued 420 subpoenas for documents and testimony. Of the subpoenas, 328 were issued to obtain information about Democrats and Democratic entities. When the Committee issued these subpoenas, the Minority was often not provided its mandated 72 hour review period.[83] Some were even served on the subpoenaed parties before the Minority was informed that they had been issued. These were unauthorized and invalid. The Committee's procedures often deprived the Minority of the right to publicly discuss subpoenas at a Committee meeting, much less to object to them.

On the other hand, the Committee issued only 89 subpoenas requested by the Minority—and over half of those were to require deposition of individuals who would not cooperate with the Committee. Of these 89 subpoenas, nearly half went ignored by the recipient and unenforced by the Committee.

As detailed in Chapters 40 and 41 of this Minority Report, numerous entities did not meaningfully respond to the Committee's subpoenas. The Committee's failure to enforce its subpoenas, particularly with respect to activities during the 1996 election, has created a precedent that may jeopardize the Senate's future ability to obtain information necessary to carry out its legislative responsibilities. By failing to enforce those subpoenas, we relinquished one of the most important tools available to us to govern: the ability to compel testimony.

B. Consideration of Grants of Immunity

Under 18 U.S.C. § 6005(b)(2), two-thirds of the Committee must vote to immunize a witness against use of his or her Committee testimony in future criminal proceedings. This rule is intended to guard against grants of immunity that the Committee might be tempted to consider in order to receive colorful and sensational testimony, despite any negative impact on important criminal pros-

ecutions. The Committee rules regarding the grant of immunity are intended to ensure that this important power is shared by members of both parties.

On a few occasion, the Minority delayed proposed grants of immunity in order to obtain more information about the relevance of an individual's testimony, clearer proffers from attorneys, and briefings from the Department of Justice as to its view of the impact of granting immunity on its own parallel investigation.[84] Despite resistance from the Majority, these steps seemed only prudent: Congress should carefully consider whether its immunity grant may interfere with or prevent a potentially important prosecution. The case of Oliver North demonstrates that after an immunized witness has testified publicly, it is difficult to uphold a successfully prosecution of that witness for serious crimes.

The Minority also delayed a few proposed grants of immunity for another purpose as well: to ensure the issuance of Minority requested subpoenas. When immunity was requested in June, at least a dozen subpoenas requested by the Minority had yet to be issued or even voted upon by the full Committee—an opportunity afforded all Majority requested subpoenas. In order to focus the attention on these concerns, the Minority conditioned their votes on immunity to satisfactory resolution of the long-standing Minority-requested subpoenas. While the Minority was partially successful—some of the bank subpoenas it had requested were issued—many of its subpoena requests continued to be ignored.

Ultimately, the Minority did join the Committee and vote in favor of the majority of immunity proposals. Where the immunity proposals were not granted, the Majority did not pursue testimony from those witnesses.[85]

C. Interviews

Despite earlier assurances, the Majority staff conducted several interviews without either prior, or subsequent, notice to the Minority. This was particularly disturbing in light of representation on the floor of the Senate and in public session that the Chairman would make every accommodation to give the Minority the opportunity to participate in "significant interviews."[86]

One interview that was conducted without notice to the Minority bears special mention. On September 4, 1997 the Minority heard from outside sources that Michael Mitoma, former mayor of Carson, California, might be a hearing witness the following day. At the time of this discovery, Mitoma—to the Minority's knowledge—had been neither interviewed nor deposed by the Committee. Upon inquiry to Majority staff, Minority staff learned that Mitoma was in Washington, D.C. to appear before the Committee and had recently been interviewed by Majority staff.[87] Only after this discovery did the Minority staff have the opportunity to convince Mitoma that an additional interview with both staffs was necessary.

Listed in an appendix to the Minority Report are other interviews the Minority staff is aware were conducted by the Majority without notice to the Minority.

D. Hearings

A final indicia of the Committee's partisan investigation was the Committee's failure to provide to the Minority reasonable notice of hearing witnesses or to schedule reasonable hearings days for Minority witnesses.

During the March 11 meeting, Senators Glenn and Levin raised the issue of notification of hearing topics and witnesses. Senator Glenn said, "Obviously we would like to know as far in advance as possible what the subject of a hearing is going to be so that we can prepare for it also, right along with the Majority. . . . And . . . who the witnesses are going to be . . ." Chairman Thompson replied, "I think we ought to give you as much as you feel like you need that is reasonable to us. . . I think we could strive toward a Wednesday notice" for the following week.[88]

In practice, the Majority consistently failed to provide even 24 hour advance notice of hearing subjects and witnesses to the Minority. On July 2, 1997, six days before the first hearing day, the Majority did provide a list of potential witnesses.[89] The list, however, contained 30 names of individuals who fell into several different categories, and the Majority gave no indication of when it proposed to call whom. At the time the list was issued, several of the listed individuals had neither been deposed or even interviewed by the Committee. During July, the Majority often provided less than 24 hours notice on who on the list would appear the next day. By the end of July, the Majority had called 11 of the 30 listed witnesses to testify before the Committee.[90]

When the hearings continued in the fall, this pattern continued. The Minority was most often provided the names of witnesses the night before they were to testify, and other times was not provided with names until the morning the testimony was to be taken. This notification was clearly contrary to both Committee rules as well as to fair and reasonable practice of conducting a Senate investigation.

The failure of the Majority to provide notice about its public hearings was coupled with the failure of the Majority to abide by Committee rules ensuring that the Minority be afforded time to present its own witnesses and evidence. The Minority attempted to bring balance to the investigation by calling witnesses to explore Republican fundraising activities. Although Chairman Thompson explicitly stated on numerous occasions—beginning with his first public statement on January 28—that he intended to allow a fair inquiry into Republican campaign activities,[91] only three of the 31 hearing days were devoted to investigating Republicans during the entire course of the hearings. This represented less than 10 percent of the total hearing days.

This gross imbalance in hearing days was a matter of serious contention. Time after time, promises were made that the Minority would have an opportunity to put on evidence about Republican campaign activities during the 1996 cycle. In October 1997, an arrangement was reached to end the investigative hearings and conduct three weeks of public policy hearings on campaign finance reform. Under this arrangement, the Minority agreed to temporarily relinquish its right to call witnesses for three hearing days. However, Chairman Thompson reserved the right to reopen the inves-

tigative hearings if evidence arose to warrant such an action. If that were to occur, the Committee agreed that the Minority's three hearing days would be restored. After two weeks of hearings featuring academics and activists on campaign finance reform, the Majority exercised its option to resume its investigative hearings but did not permit the Minority one, much less three, days of hearings, despite the Committee's previous agreement. No justification was ever provided.

CONCLUSION

Over the years, the Senate has used its authority to conduct many significant investigations, often focusing on the operations of governmental institutions or alleged wrongdoing by specific individuals associated with the government. In 1997, the Senate authorized the Governmental Affairs Committee to conduct such an investigation, investing it with a significant opportunity to conduct a bipartisan inquiry into campaign finance activities surrounding the 1996 federal elections. Despite this opportunity, the Committee conducted a narrow examination of the campaign finance system, focusing primarily on selected activities of the Democratic Party. Nonetheless, the Committee did examine, to varying degrees, the two major political parties, a number of individuals involved in campaign finance activities and the inner workings of our electoral system. Although it was inherently a "political" investigation, it could have been conducted in a much less partisan manner. As detailed above, the Minority lacked the power to ensure that the Committee abided by certain procedural safeguards. In the end, the Committee's choice of procedures severely damaged the effectiveness of the investigation and may have damaged the ability of the Committee to conduct future investigations.

FOOTNOTES

[1] *Congressional Record*, 1/28/97, p. S716–718.
[2] *Congressional Record*, 1/28/97, p. 718 (Thompson).
[3] *Congressional Record*, 1/28/97, p. S718 (Thompson).
[4] *Congressional Record*, 1/28/97, p. S716 (Thompson).
[5] *Congressional Record*, 1/28/97, p. S716 (Thompson).
[6] *Congressional Record*, 1/28/97, p. S717 (Thompson).
[7] *Congressional Record*, 1/28/97, p. S719 (Glenn).
[8] *Congressional Record*, 1/28/97, p. S719 (Glenn).
[9] *Congressional Record*, 1/28/97, pp. S718–719 (Glenn).
[10] *Congressional Record*, 1/28/97, p. S718 (Glenn).
[11] *Congressional Record*, 1/28/97, p. S719 (Glenn).
[12] *Congressional Record*, 1/28/97, p. S718 (Glenn).
[13] *Congressional Record*, 1/28/97, p. S719 (Glenn).
[14] *Congressional Record*, 1/28/97, p. S719 (Glenn).
[15] Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 5:18–22. The exact amount Chairman Thompson requested was $6,517,121.
[16] Rule 5(C), "Full Committee subpoenas." S. Prt. 105–05, Rules of Procedure of the Committee on Governmental Affairs, United States Senate, March 1997.
[17] Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 6:21–22 (Glenn).
[18] Chairman Thompson requested $4,533,660 for the Committee's annual recurring budget. Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 5.
[19] Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 71 (Glenn).
[20] Draft United States Senate Committee on Rules and Administration Senate Committee Budget Forms reported by Governmental Affairs Committee listing requests for 1997 and 1998.
[21] This amount equaled all of the money that the Chairman investigating Whitewater received over a two-year period to conduct the Whitewater investigation. Governmental Affairs Committee, 1/30/97 Org. Mtg., pp. 22–23 (Glenn).
[22] Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 40 (Cochran).
[23] Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 42:19–23 (Glenn).
[24] Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 29 (Thompson).
[25] Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 42:11–18 (Glenn).

[26] Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 35 (Levin, Thompson), 37 (Specter).
[27] Governmental Affairs Committee, 1/30/97 Org. Mtg., pp. 43–47.
[28] Governmental Affairs Committee, 1/29/97 Org. Mtg., pp. 10-11 (Glenn), pp. 27–28 (Levin).
[29] Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 57 (Torricelli).
[30] Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 27 (Levin).
[31] Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 22 (Thompson).
[32] Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 72 (Thompson).
[33] *Whitewater: Comparisons of Cost and Other Selected Data with Previous Investigations*, CRS Report for Congress, 96–209 GOV, January 15, 1996. Governmental Affairs Committee, 1/30/97, Org. Mtg., p. 17 (Glenn).
[34] Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 21.
[35] Governmental Affairs Committee, 1/29/97 Org. Mtg., pp. 34–35 (Lieberman).
[36] Governmental Affairs Committee, 1/30/97 Org. Mtg., pp. 1–12.
These areas included: foreign contributions and their effect on the American political system; conflicts of interest involving Federal officeholders and employees, as well as the misuse of Government offices; failure by Federal Government employees to maintain and observe legal barriers between fund-raising and official business; the independence of the Presidential campaigns from the political activities pursued for their benefit by outside individuals or groups; the misuse of charitable and tax-exempt organizations in connection with political or fund-raising activities; unregulated (soft) money and its effect on the American political system; promises and/or the granting of special access in return for political contributions or favors; the effect of independent expenditures (whether by corporations, labor unions or others) upon our current campaign finance system, and the question as to whether such expenditures are truly independent; contributions to and expenditures by entities for the benefit or in the interest of public officials; and to the extent that they are similar or analogous, practices that occurred in previous Federal campaigns." Governmental Affairs Committee, 1/30/97 Org. Mtg., pp. 5:10–6:5.
[37] Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 12.
[38] Governmental Affairs Committee, 1/30/97 Org. Mtg., pp. 14–15 (Glenn), 32 (Levin), 35 (Nickles), 43 (Lieberman).
[39] Governmental Affairs Committee, 1/29/97 Org. Mtg., pp. 35–36 (Lieberman).
[40] Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 48 (Thompson).
[41] Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 49:7–8 (Thompson).
[42] Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 47 (Thompson).
[43] Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 15 (Glenn).
[44] Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 13:13–17 (Thompson).
[45] Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 14 (Thompson). While the Minority is aware of several instances in which unilateral interviews were conducted, no member of the Minority staff received such a memo from any member of the Majority staff. The only interview memoranda which were exchanged were drafted by FBI investigators detailed to the Committee under a protocol that provided for the sharing of all work product of such detailees.
[46] Governmental Affairs Committee, 1/30/97 Org. Mtg., pp. 15:24–16:2 (Thompson).
[47] Governmental Affairs Committee, 1/29/97 Org. Mtg., p. 77 (Thompson).
[48] Governmental Affairs Committee, 1/30/97 Org. Mtg., p. 18. See also, 1/27/97 letter from Senator Glenn to Chairman Thompson.
[49] Governmental Affairs Committee, 1/29/97 Org. Mtg., pp. 75–78.
[50] Subpoena 000067 (RNC), 000069 (Dole for President). The other two subpoenas went to a former Finance Chairman of the Dole for President campaign, Simon Fireman, Subpoena 000032, and his company, Aqua Leisure, Subpoena 000033. Fireman was convicted of laundering political contributions through his business to the Dole campaign *Washington Post*, 10/9/97.
[51] Two subpoenas were eliminated from consideration which left a total of 52 on the table. There was a duplicate subpoena going to the Hsi Lai Buddhist Temple and the International Buddhist Progress Society, both at the same address, and a subpoena to the Presidential Legal Expense Trust which did not meet the Committee's 72-hour rule. Governmental Affairs Committee, 2/13/97 Mtg., p. 30.
[52] Rule 5(C), "Full Committee subpoenas"; S. Prt. 105–05, Rules of Procedure of the Committee on Governmental Affairs, United States Senate, March 1997.
[53] Governmental Affairs Committee, 2/13/97 Mtg., p. 2. Only subpoenas to the Republican National Committee, Dole for President, Simon Fireman and Aqua Leisure (Fireman's company) were served on Republican entities or individuals.
[54] Governmental Affairs Committee, 2/13/97 Mtg., pp. 1–7 (Glenn). Majority staff did discuss problems with the subpoenas with Minority staff after they were submitted to the Minority and even adopted some of their changes.
[55] In Senator Glenn's experience as a member on the Committee with 22 years in the Senate, such subpoenas, regardless of their numbers or origin, were always accompanied by supporting documentation, whether or not from a public source. Governmental Affairs Committee, 2/13/97 Hrg., p. 2 (Glenn).
[56] Governmental Affairs Committee, 2/13/97 Mtg., p. 1.
[57] Governmental Affairs Committee, 2/13/97 Mtg., pp. 30–39. The first vote was on a group of 43 subpoenas unanimously approved for service as soon as possible. The second group of nine subpoenas were also approved, though only members of the Majority voted for them. It was mutually agreed that the Majority would work with the Minority on this second group to try to resolve any concerns the Minority had with the language of the requests. Whether the concerns were resolved or not, though, the subpoenas would be issued the following week.
[58] *Congressional Record*, 3/4/97, pp. S1927–1928. In his statement upon introduction of the resolution, Senator Glenn stated that its purpose was to let ". . . the public know precisely what Democrats have been proposing for this investigation, and he emphasized the need ". . . for a fair, bipartisan investigation. . . ." Congressional Record, 3/4/97, p. S1928 (Glenn).

[59] On January 30, 1997, Chairman Thompson reported the original resolution authorizing expenditures by the Committee on Governmental Affairs. The resolution was referred to the Senate Committee on Rules and Administration.

[60] Senate Rules Committee, 2/6/97 Hrg., pp. 85–86 (Glenn) .

[61] Senate Rules Committee, 2/6/97 Hrg., pp. 109–11 (Inouye); 118 (Feinstein); 128 (Torricelli); 150–151 (Ford).

[62] Senate Rules Committee, 2/6/97 Hrg., p. 96 (Thompson).

[63] Senate Rules Committee, 2/6/97 Hrg., p. 99 (Thompson).

[64] Chairman Warner explained how he arrived at this figure: (1) The FBI agreed to detail agents to the Committee to assist in the investigation. Chairman Thompson estimated that this accounted for $800,000 and, therefore, lowered his request to $5.7 million. (2) Thompson's request was based on a budget for one year and since over two months of the year had already passed, the budget was reduced on a pro rated basis. Senate Rules Committee, 3/6/97 Hrg., p. 3 (Warner).

[65] Senate Rules Committee, 3/6/97 Hrg., p. 4 (Warner).

[66] Further provisions were made to refer only illegality found on the part of a senator to the Senate Ethics Committee. A final section provided that the Rules Committee would continue to hear matters relating to campaign finance reform. Senate Rules Committee, 3/6/97 Hrg., pp. 4–5 (Warner).

[67] Senate Rules Committee, 3/6/97 Hrg., pp. 25 (Glenn), 61–62 (Thompson).

[68] Senate Rules Committee, 3/6/97 Hrg., p. 78 (Ford).

[69] This included Senators Cochran, Stevens, and Nickles, members of both Governmental Affairs and Rules, who were now casting their vote for a resolution which would override their original vote on the Governmental Affairs resolution. (Senator Stevens, along with Senator Roth, left the Governmental Affairs Committee early in the investigation and were replaced by Senators Bennett and Smith.)

Also, by voting for this resolution, Chairman Thompson finally seemed to have succumbed to the idea of an end date for the investigation once he received assurances that further funds would be authorized if deemed appropriate:

> I have resisted a cut-off date. But it is clear the members of this Committee understand that we need to—I would love to finish by the end of the year. . . . But if we do not, I think the Committee understands and the Congress now understands that we will be right back, and for good cause you will extend our time and our money. Am I not correct? Senate Rules Committee, 3/6/97 Hrg., p. 64:5–13 (Thompson).

Chairman Thompson also confirmed that with the approval of his Ranking Member, Senator Glenn, this investigation could be conducted out of the Committee's recurring budget already approved by the Senate, and the Rules Committee would have no say in the subjects or standards of such investigation. Senate Rules Committee, 3/6/97 Hrg., p. 73 (Thompson).

[70] Senate Rules Committee, 3/6/97 Hrg., pp. 6–7 (Ford).

[71] *Congressional Record*, 3/10/97, pp. 2057–2078. In addition to the debate being managed by Rules Committee Chairman Warner and Governmental Affairs Committee Ranking Member Senator Glenn, Senators Hatch, Wellstone, Cochran, Levin, Nickles and Feingold also made statements on the Senate floor. *Congressional Record*, 3/10/97, pp. 2057–2078.

[72] *Congressional Record* Vote No. 29, pp. S2124–2125. The vote was 99–0; Senator Dodd, as immediate past General Chairman of the Democratic National Committee, voted "present".

[73] See S. Res. 39, 105th Cong., 1st Sess.

[74] *Congressional Record*, 3/11/97, p. S2119 (Levin). Senator Levin was prepared to offer an amendment on procedures but held a colloquy with Chairman Thompson instead. *Congressional Record*, 3/11/97, pp. S2119–2121.

[75] *Congressional Record*, 3/11/97, pp. S2118–2119 (Glenn).

[76] *Congressional Record*, 3/11/97, p. S2119–2121 (Thompson, Levin).

[77] *Congressional Record*, 3/11/97, p. S2118 (Thompson).

[78] *Congressional Record*, 3/11/97, p. S2119 (Thompson).

[79] United States Senate Governmental Affairs Committee Security Procedures and Other Protocols, 4/1/97.

[80] As far as the Minority knows, the Minority was given notice of and participated in all depositions, though not always in a timely manner. Approximately two-thirds of the way through the main investigation, a Majority staff began to electronically mail the next day's schedule to the entire investigation staff, both Majority and Minority. Though this was an enormous help, it was often the first notice the Minority received of a deposition or interview to be held the following day.

[81] These issues are discussed in more detail in Chapter 38, "Republican Compliance Issues".

[82] *Congressional Record*, 1/28/97, S716 (Thompson) (quoting *McGrain* v. *Daugherty*, 273 U.S. 135, 175 (1927)).

[83] See Rule 5(C), "Full Committee Subpoenas."

[84] Governmental Affairs Committee, 6/12/97 Mtg.

[85] For example, on June 12, the Committee rejected grants of immunity for 15 Hsi Lai Temple monastics, all proposed by the Majority. Governmental Affairs Committee, 6/12/97 Mtg. By the time the Committee reconsidered these requests, the Majority unilaterally reduced the list. Governmental Affairs Committee, 6/27/97 Mtg.

[86] *Congressional Record*, 3/11/97, p. S2120 (Thompson).

[87] There was always an understanding that if it was not feasible to advise the other side, the interview would go ahead. After the public hearings had been concluded, Minority Counsel was advised that Steve Young, son of Ambrous Young, was in town and available to meet at Union Station late one evening. Minority Counsel conducted an informal interview.

[88] Governmental Affairs Committee, 6/27/97 Mtg., pp. 43–44. On another occasion, Senator Glenn said, ". . . (W)e would hope that we would be able to be informed of what the subject

of the hearing is and the witness list at the same time that the hearing is called, a week in advance. I think that is only fair, and it puts everybody on the same footing." Chairman Thompson replied, "We will do our best to do that." Governmental Affairs Committee, 6/27/97 Mtg., p. 45:15–20.

[89] 7/2/97 Memo from Majority Counsel to Minority Counsel with attached "Hearing Subpoena List".

[90] Richard Sullivan (July 9, 10); Juliana Utomo, Harold Arthur, James Alexander (July 15); Gary Christopherson, Paul Buskirk, Jeffrey Garten, Robert Gallagher, John Dickerson (July 16); Paula Green, Timothy Hauser, William Ginsberg (July 17). In addition, three witnesses were called who were not on the July 2 list: Thomas Hampson, summary witness on the Lippo Group (July 15); William McNair, Central Intelligence Agency (July 16); John Cobb, Counsel to Special Investigation (July 17). Special Investigation Witness List, http://www.senate.gov/gov__affairs/witness.htm.

[91] *Congressional Record*, 1/28/97, p. S716 (Thompson).

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PART 7 INVESTIGATION PROCESSES

Chapter 39: Democratic Compliance Issues

During its investigation, the Committee issued over 400 document and deposition subpoenas to a variety of organizations and individuals. Of those subpoenas, 320 were issued at the request of the Majority and sought information regarding Democratic fundraising and political activities. Subpoenas were issued to the White House, the Democratic National Committee ("DNC"), the Clinton/Gore Campaign, a wide variety of Executive Branch agencies, banks, private companies and government and private individuals. Beginning in March 1997, the Committee began to receive documents and depose individuals. By the end of the investigation, the Committee had received thousands of boxes of documents, deposed over 200 individuals, and taken 31 days of public testimony.

During the Committee's investigation, media reports highlighted a number of problems the Committee encountered in moving forward with its investigation. Although there were problems with obtaining some information, the number of documents produced to the Committee and the number of individuals who voluntarily cooperated with the Committee demonstrates that most organizations and individuals assisted the Committee in conducting its investigation. As detailed in Chapter 42 of the Minority Report, the White House produced 120,000 pages of documents [1] and provided, on a voluntary basis, 40 former and current White House employees for testimony.[2] As detailed below, other Democratic affiliated organizations, particularly the DNC, by and large, cooperated fully with the Committee investigation. The DNC produced over 450,000 pages of documents to the Committee and provided former and current DNC officials who testified in depositions lasting a total of 38 days.

Similarily, the number of documents produced by, and the number of cooperative witnesses affiliated with, the Republican Party is also testiment to that party's lack of cooperation with the Committee. The numbers are telling. Entities affiliated with the Republican party produced only a small fraction of the documents produced by comparable Democratic entities. For example, in response to similar documents subpoenas, the DNC produced over 450,000 pages of unredacted documents whereas the RNC produced 70,000 pages of documents—20 percent of which were heavily redacted, without explanation. The individuals associated with the two parties also responded differently to requests for testimony. Former and current DNC officials voluntarily agreed to depositions, providing over 38 days of depositions testimony to the Committee. Former and current RNC officials, by contrast, did not agree to depositions, insisting on Committee subpoenas before they would cooperate. Ultimately, even when subpoenas were issued, those RNC officials largely ignored them, ultimately providing only two half days of deposition testimony to the Committee (see Chapter 40).

This chapter discusses the DNC's cooperation and compliance with the Committee's investigation. Chapter 40 discusses the response of the RNC and other pro-Republican organizations to the

Footnotes appear at end of chapter 39.

Committee's investigation. Chapter 41 details the breakdown of compliance with the Committee's requests. Finally, Chapter 42 discusses the White House cooperation and compliance with the Committee's requests.

FINDING

The DNC made a good faith effort to comply with Committee requests. To this end, the Committee conducted 38 days of depositions, 14 interviews, and five days of public hearings of DNC witnesses. The DNC also produced over 450,000 pages of documents and hired over 30 additional staff to review and prepare documents for production to the Committee.

DNC COOPERATION AND COMPLIANCE

On April 9, 1997, the Committee issued a document subpoena to the DNC requiring it to produce documents relevant to the Committee's investigation. The Committee did not issue depositions subpoenas for DNC testimony because all DNC witnesses voluntarily appeared for deposition and public testimony.

In response to the Committee's requests for documents and testimony, the DNC expended significant time and resources, reviewing over 9 million documents and providing 230 boxes of documents—exceeding 450,000 pages—to the Committee.[3] In August 1997, to meet the demands placed upon it by the Committee and other investigations, the DNC doubled the number of employees dedicated to document production and review from 17 to 34.[4]

By the end of the year, the DNC had incurred logistical, technical, and staff costs of $4.75 million responding to various investigations. That figure *does not* include legal fees, which significantly increases the total expenditures made by the DNC in response to Committee and other investigative demands.[5] In a July 17, 1997 letter to Chairman Thompson, DNC Chairman Roy Romer concluded that the scope and attendant cost of document production would rival or exceed the costs associated with the largest civil cases in U.S. history, "cases brought against huge corporations with thousands of employees and resources vastly exceeding the limited funds of the DNC."[6]

Repeated requests to the Committee by the DNC to "narrow" the broad document subpoena, so that the DNC could best use its limited resources to address the needs of the Committee, were ignored.[7] Nevertheless, the DNC appears to have made efforts to adjust to the shifting deposition schedules, document demands, and priorities of the Committee.

The DNC also made efforts to ensure that knowledgeable DNC staff were available to the Committee. During the course of the investigation, Committee staff conducted 38 days of depositions and 14 interviews of current and former DNC staff, all of whom appeared voluntarily, many more than once.[8] Four former/current DNC staff appeared as witnesses before the Committee, testifying in five days of public hearings.[9] Despite the considerable efforts of the DNC to cooperate with the Committee, the Majority continued to complain publicly about DNC document production.[10]

In an August 28, 1997 deposition, Joseph Birkenstock, a DNC attorney involved in the DNC production process, testified about the

DNC's efforts to comply with the Committee's document subpoena.[11] Regarding document production, Birkenstock stated that he was instructed to carry it out as expeditiously as possible, and there was no apparent deviation from those instructions. Specifically, Birkenstock testified that there was no DNC practice or policy to delay production of documents for any reason, nor did the DNC establish different document production priorities from those established by the Committee. In addition, he stated that the political or legal sensitivity of particular documents or categories of documents was not a factor in determining when they would be produced to the Committee.[12]

From March to November 1997, the DNC produced over 450,000 pages of unredacted documents to the Committee. During this time period, issues arose concerning the assertion of the attorney-client privilege in one DNC deposition and the DNC's late production of files from Richard Sullivan's office and those issues are addressed below.

Attorney-client privilege issue

On May 15, 1997, DNC General Counsel Joseph Sandler was deposed by staff of the Committee. Sandler's attorney refused to allow his client to testify about conversations with White House and Democratic party officials, citing attorney-client privilege.[13] After the DNC submitted a written explanation of the privilege,[14] Majority counsel called the White House and was informed that the White House had not, and would not, assert any common interest (or joint defense) privilege, even though such a privilege assertion might be valid.[15] The next day, on May 30, 1997, Sandler appeared for another day of deposition testimony, and the DNC informed the Committee that it would voluntarily be waiving protections it could claim based on attorney-client privilege with respect to communications with the White House.[16] Sandler answered all questions posed by the Committee.

On June 6, a week after the DNC had officially waived the privilege and answered questions in Sandler's second deposition, Chairman Thompson issued an order regarding Sandler's attorney-client privilege assertions. The order essentially memorialized the position that the DNC had already adopted. This order purported to "overrule" the "common-interest" privilege—an assertion which had already been rescinded by the DNC—while upholding other privilege assertions that had been made.[17]

In a June 11 letter to Chairman Thompson, DNC Chairman Romer noted that at the second day of Sandler's deposition on May 30, the attorney-client privilege was not invoked in response to any question. Romer opined that this simple fact made the Order appear to be issued to gain partisan publicity. Romer additionally noted that none of Sandler's notes or other documents relating to discussions with any White House official or employee were withheld on grounds of privilege or for any other reason.[18]

Similarly, after the DNC attempted to establish a framework that would permit future disputed documents to be reviewed *in camera* by Committee counsels, Nonetheless, the Chairman issued an order demanding that the DNC produce all documents for which it was asserting a privilege for *in camera* review by Committee

counsels. In a September 2, 1997 response letter to Chairman Thompson, DNC Chairman Romer explained that the DNC's assertion of the attorney-client privilege as to certain documents remained consistent with the terms of the Chairman's Order of June 6.[19]

Late production of certain files

In August 1997, the Committee received 4,000 pages of documents from the files of former DNC Finance Director Richard Sullivan. This production included 1,500 pages of handwritten notes. Apparently, these and other documents—totaling approximately 12,000 pages—were not reviewed for production until August, even though they apparently were in a file cabinet in the office Sullivan occupied while finance director.[20] According to DNC Chairman Romer, this oversight occurred because the documents were not among those that Sullivan identified to the DNC as being his files, and the files in question were believed to be "generic" Finance Department or staff files. When they were determined to be Sullivan's documents, Romer immediately personally informed Chairman Thompson of their existence. Thereafter, the documents were reviewed over a weekend by DNC staff and produced to the Majority on August 4, in accordance with Romer's commitment to Chairman Thompson.[21]

CONCLUSION

The Democratic National Committee has responded appropriately to subpoenas issued by the Committee and to requests for information and staff interview depositions and public testimony. At great expense, the DNC has produced hundreds of thousands pages of documents and made over 30 witnesses available for depositions and public testimony. These numbers largely speak for themselves regarding the DNC's cooperation with the Commitee's investigation, particularly when compared to the RNC's production of a very small number of unredacted documents and no cooperative witnesses. In sum, there was no evidence presented to the Committee that the DNC improperly withheld documents or witnesses during the course of the Committee's investigation.

FOOTNOTES

[1] Lanny Breuer, 10/29/97 Hrg., p. 108.

[2] Exhibit 2417M.

[3] Letter from Chairman Thompson to DNC General Chairman Roy Romer, 7/23/97; telephone conversation with Paul Palmer of Debevoise & Plimpton, counsel to the DNC, 12/15/97; letter from Chairman Romer and Steve Grossman, DNC National Chairman, to Chairman Thompson, 9/2/97; telephone conversation with Paul Palmer of Debevoise & Plimpton, counsel to the DNC, 1/7/98.

[4] Letter from Roy Romer, DNC General Chairman and Steve Grossman, DNC National Chairman, to Chairman Thompson, 9/2/97. The 34 staff operate out of the Office of General Counsel ("OGC"). Joseph Birkenstock deposition, 8/28/97, pp. 9–10.

[5] *Washington Post*, 1/19/98.

[6] Letter from Roy Romer, DNC General Chairman and Steve Grossman, DNC National Chairman, to Chairman Thompson, 7/17/97.

[7] Letter from Roy Romer to Chairman, 6/11/97; letter from Peter Kadzik of Dickstein, Shapiro, Morin & Oshinsky, to Majority Counsel, 7/29/97; letter from Roy Romer, DNC General Chairman and Steve Grossman, DNC National Chairman, 9/2/97.

[8] Minority document, "Interviews and Depositions By Minority Staff"; only one DNC individual required a subpoena for deposition testimony—and that was only after he had already voluntarily provided two full days of testimony.

[9] *See* http://www.senate.gov/~gov__affairs/witness.htm, listing witnesses who publicly testified before the Committee.

[10] Letter from Peter Kadzik of Dickstein, Shapiro, Morin & Oshinsky, to Majority Cheif Counsel, 5/29/97; letter from Roy Romer, DNC General Chairman and Steve Grossman, DNC National Chairman, 6/26/97; letter from Robert Bauer and Marc Elias of Perkins Coie to Chairman, 10/16/97; letter from Richard Ben-Veniste of Weil, Gotshal & Manges to Chairman, 10/20/97.

[11] Joseph Birkenstock deposition, 8/28/97, pp. 131–133.

[12] Joseph Birkenstock deposition, 8/28/97, pp. 131–133.

[13] Joseph E. Sandler deposition, 5/15/97, p. 174:18–21.

[14] A legal research memorandum provided to the Committee on May 21, 1997, by DNC attorney Judah Best, concluded that disclosing privileged information to a person with a common interest does not waive the attorney-client privilege. Best asserted that "under the law of the District of Columbia, the exchange of privileged information among lawyers representing separate clients and the disclosure of privileged communications by one client to another's attorney does not waive the attorney-client privilege where the clients have a common interest and the communications relate to the matter of common interest." Similarly, Best found that the privilege is not waived by disclosure of confidential information between two clients represented by a single attorney where the clients, at the time the information was shared, had common interests. Judah Best Legal Opinion Memorandum, 5/21/97.

[15] Letter from Majority Counsel to White House Counsel Breuer, 5/29/97; Letter from Breur to Majority Counsel, 6/2/97.

[16] Joseph E. Sandler deposition, 5/30/97, pp. 63–64, 106–110.

[17] The Order permitted, in part, the privilege to be asserted with respect to the substance of certain conversations Sandler had with DNC staff. Under the Order, such conversations would be privileged only to the extent that they were for the specific and sole purpose of Sandler's being able to render legal advice and if Sandler received or provided the information with the clear expectation that the information or advice would remain confidential. Similarily, the assertion of attorney work product privilege with respect to any conversation Sandler had in the period of September through November 1996, in the presence of any third party was overruled. Finally, the DNC was ordered and directed to produce all documents in Sandler's files including all his notes that were responsive to the subpoena and a log of all documents in his files withheld from production on the ground of privilege. Chairman's Order, 6/6/97.

[18] Letter from Roy Romer to Chairman, 6/11/97.

[19] Letter from Roy Romer to Chairman, 9/2/97.

[20] Joseph Birkenstock deposition, 8/28/97, pp. 107–127.

[21] Letter from Paul C. Palmer of Debevoise & Plimpton representing the DNC to Majority Counsel, 8/4/97. This production exemplifies the uneven treatment afforded by the Majority staff to the Minority during this investigation. While the DNC produced these documents to the Majority on August 4, despite repeated requests, the Majority did not give the Minority a copy of the production for over two weeks.

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PART 7 INVESTIGATION PROCESSES

Chapter 40: Republican Compliance Issues

During its investigation, the Committee issued over 400 document and deposition subpoenas to a variety of organizations and individuals. Of those subpoenas, 89 were issued at the request of the Minority and sought documents and testimony regarding Republican fundraising activities. Approximately half of the 89 subpoenas sought documents from pro-Republican organizations or from banks that possessed relevant information. Unfortunately, the other half of the 89 were *deposition* subpoenas issued to officials affiliated with the Republican Party. The Committee was forced to issue these deposition subpoenas because officials affiliated with the Republican Party, unlike most officials affiliated with the Democratic Party, see Chapters 39 and 42, refused to voluntarily cooperate with the Committee's request for deposition testimony. By the end of the investigation, although the Committee had received hundreds of thousands of documents and taken 240 depositions, the Committee received from these Republican affiliated groups combined—including the RNC and all pro-Republican groups subpoenaed by the Committee—less than 100,000 pages of documents and only 36 depositions.

FINDINGS

(5) The RNC impeded the investigation. The RNC unilaterally redacted documents and appears to have intentionally withheld material documents. RNC witnesses failed to cooperate in scheduling depositions, and, in the instances where depositions were scheduled, they were unilaterally canceled.

(6) Entities supportive of the Republican party impeded the investigation. Entities including the National Policy Forum, Americans for Tax Reform, and Triad intentionally impeded the investigation by failing to produce documents and witnesses under subpoena.

INTRODUCTION .

On April 9, 1997, the Committee issued document subpoenas to several organizations associated with the Republican Party, including the Republican National Committee (RNC), the National Policy Forum, Americans for Tax Reform, and Triad Management Services, Inc. (Triad). Beginning late April 1997, the entities made clear to the Committee that they would resist the Committee's subpoenas and other requests for information. For example, although the DNC began its documents production in March 1997, even before it received a Committee subpoena, the RNC did not make a meaningful production to the Committee until late June 1997. In addition, despite the fact that the RNC and DNC received similar subpoenas on April 9, the RNC produced only 70,000 pages of redacted documents, compared to the DNC's production of over 450,000 unredacted documents. The other Republican-affiliated groups subpoenaed in April provided less information to the Committee than the RNC. Some of the groups even claimed that the Committee subpoena was "not applicable" to their organizations.

Beginning in the spring of 1997, the Minority urged Chairman Thompson to enforce the subpoenas against these entities. Although Chairman Thompson ultimately issued an order of compliance in July 1997 to the National Policy Forum, that organization flagrantly ignored the order and refused to comply. This defiance sent an unfortunate message to other Republican affiliated groups, and perhaps even groups that were later subpoenaed by the Committee, that the subpoenas could be ignored with no consequences.

In fact, after the Committee later issued additional subpoenas to 26 organizations, many of those organizations on both sides of the political aisle ultimately banded together and did no respond to the Committee mandate. See Chapter 41. This issue turned the Senate investigative process into a "paper tiger." The enforcement power of the Committee, and of the Senate, could have been preserved had the Majority acted decisively against those organizations—most of them Republican—that first challenged the Committee's authority in the spring of 1997. The groups discussed in this chapter were all subpoenaed in early April, which was near the beginning of the investigation so that "running the clock" on the investigation was not an issue. Moreover, Senator Glenn and other Democrats publicly stressed on numerous occasions their willingness to vote contempt against any entity that refused to comply with a valid Senate subpoena.

THE FIRST SUBPOENAS

On April 9, 1997, the Committee issued subpoenas to the Republican National Committee ("RNC"), Dole for President, Triad and its affiliates, Coalition for Our Children's Future, the National Policy Forum ("NPF") and Americans for Tax Reform ("ATR"). The return date for these subpoenas was April 30. In order to understand the extent to which the investigation deteriorated, it is important to fully review the context of the events as they unfolded. By the middle of June—just three weeks before the hearings were scheduled to begin—the production of documents by most of the Republican-affiliated organizations under subpoena remained woefully incomplete, and in some cases, non-existent:

• By April 30, the Republican National Committee had produced only an internal telephone directory and some organizational charts. By June 10, the RNC had provided only four boxes of heavily redacted documents. The Minority estimates that on this date, it received 15,000 documents, 20 percent of which had been redacted and another 20 percent consisting of publicly available information. This record was in sharp contrast to the DNC, which by this date had produced 61 boxes containing over 150,000 pages of unredacted documents.

• During the course of the investigation, Dole for President provided the Committee with only three boxes of material. In contrast, Clinton/Gore produced five boxes containing 11,930 pages of material.

• Triad and its affiliates provided one box of documents by June 10, the majority of which, it appeared, were provided by Triad's affiliates. It is noteworthy that Carolyn Malenick, Triad's president,

had a company policy that required the "cleaning" of Triad's computer files on a regular basis.[1]

• Americans for Tax Reform adopted the unsupportable position that since it played no role in the 1996 election, the subpoena was not applicable.[2] By June 10, it had produced no documents.

• The National Policy Forum, represented by the same lawyer as ATR, also took the position that since, in its view, it played no role in the 1996 election, the subpoena was not applicable. On June 6, NPF did provide the Committee with some documents, which were simultaneously provided to the news media. NPF expressly stated that this production did not constitute compliance with the Committee's subpoena.[3]

• These organizations together—the RNC and all Republican groups combined—only provided 36 days of deposition testimony, with many individuals refusing to appear or answer questions before and after the Committee had issued deposition subpoenas demanding their appearance. The Committee took a total of 240 depositions during its investigation.

Below is a discussion of the cooperation and compliance of the RNC, Triad, NPF and ATR in response to the Committee's investigation.

RNC COMPLIANCE ISSUES

The RNC's initial response to the Committee's April 9, 1997 subpoena was to produce only an internal telephone book. Finally, on May 23, the RNC began to produce documents. Unfortunately, as Chairman Thompson wrote to RNC Chairman Jim Nicholson on June 11, "the RNC . . . in many cases . . . unnecessarily redacted the documents produced."[4] To date, the RNC has offered no explanation for any of the redactions to several thousand documents.

The RNC also failed to produce a number of inculpatory subpoenaed documents. The Committee's document subpoena asked the RNC to produce, among other things:

> All documents referring or relating to the following, including but not limited to communications between the RNC and officers, agents, or employees of any of the following: . . . (21) American Defense Institute and Foundation, . . . (23) National Right to Life Committee; . . . (26) Americans for Tax Reform; . . . (28) Grover Norquist.[5]

On October 17, the Dole for President committee produced a number of documents that had been stored in the computer hard drive of Jo-Anne Coe, who served as RNC deputy finance director in 1996. One of those documents was an October 17, 1996, memo from Coe to RNC Chairman Haley Barbour, RNC Executive Director Sanford McAllister, and RNC Director of Campaign Operations Curt Anderson. In this document, Coe wrote:

> Today I have also sent $100,000 to National Right to Life and $100,000 to Americans for Tax Reform—both from Carl Lindner. In addition, the following checks for

Footnotes appear at end of chapter 40.

> ADI are en route to me: $100,000 [from] Jack Taylor, $100,000 [from] Max Fisher, $50,000 [from] Don Rumsfeld, $30,000 [from] Pat Rutherford. The $100,000 check from Lincy Foundation (Kirk Kerkorian) for ADI is still MIA. With the $100,000 from Lincy, this will bring the total for ADI to $510,000—plus the $500,000 Haley obtained from Philip Morris.[6]

This document refers to Americans for Tax Reform, the National Right to Life Committee, and the American Defense Institute—three organizations specifically mentioned in the Committee's subpoena. Considering that the document was stored in the hard drive of the RNC's deputy finance director and addressed to three top RNC officials, the failure of the RNC to produce it raises a compelling inference that the RNC willfully withheld material evidence which had been subpoenaed.

Coe's hard drive contained a number of other responsive documents that the RNC failed to produce. One example is the text of an October 21, 1996 letter from Coe to ATR President Grover Norquist. The letter asked Norquist to write a thank-you note to Carl Lindner, who had, at the RNC's request, written a $100,000 check to ATR.[7] Coe also wrote a letter to the executive director of the National Right to Life Committee, asking that he also send a thank-you note to Lindner for a $100,000 contribution that the RNC had engineered.[8] Another responsive document contained in Coe's hard drive listed the amounts of money the RNC directly controlled and contributed to the American Defense Institute, National Right to Life Committee, and Americans for Tax Reform.[9] Every single one of these documents is responsive to the Committee's subpoena. Yet, the RNC failed to produce any of these documents, and has refused to explain its failure to comply with the Committee's document subpoena. Whoever was responsible for this declaration on the part of the RNC should, in the view of the Minority, be investigated for possible obstruction of justice.

The RNC's record of making witnesses available for interview or deposition was another indication of the organization's planned activity to impede the Committee's investigation. On April 28, the Minority provided the RNC with a list of 16 individuals the Minority wished to interview. The RNC stated numerous times to Commitee staff that each of these witnesses would appear voluntarily for interviews.[10] Unfortunately, despite repeated attempts to schedule these 16 interviews, only five ultimately agreed to talk to Committee staff.

Majority and Minority Chief Counsels requested in a joint letter to the RNC that it promptly schedule depositions for 15 witnesses. The letter told the RNC that "[i]f a schedule cannot be worked out between you and counsel for the Committee by August 12, 1997, the Committee will find it necessary to subpoena [these] individuals."[11] The RNC assured the Committee that all of these witnesses would appear voluntarily for depositions by the end of October.[12] Despite these assurances, and again despite repeated attempts to schedule deposition dates, the RNC did not allow the Committee to depose a single one of these witnesses.

The refusal of RNC witnesses to appear voluntarily for depositions prompted the Committee to issue deposition subpoenas for

Dole for President Campaign Manager Scott Reed and RNC Deputy Finance Director Coe, both of whom were represented by RNC counsel Martin Weinstein.[13] The subpoenas were served on September 19, 1997. RNC counsel earnestly assured the Committee that it would comply with the Committee's subpoenas, and then cancelled several deposition dates. Ultimately, in October, the RNC informed the Committee that Coe and Reed would in fact not appear for depositions or otherwise comply with the Committee's subpoena.[14] Coe and Reed asserted no legal basis to explain their refusal, nor did they challenge the validity of the Committee's subpoenas. In stark contrast to the DNC officials who all voluntarily appeared for depositions, these RNC officials simply refused to respond to the Committee's requests for information and, when subpoenas were finally issued to require them to cooperate, they proceeded to ignore the Committee's mandate.

TRIAD COMPLIANCE ISSUES

The subpoenas issued to Triad Management Services, Inc. (Triad), a for-profit company, and its affiliates, Citizens for Reform ("CFR") and Citizens for the Republic Education Fund ("CREF"), called for the production of documents under a total of 56 separate paragraphs.[15] Although the return date for the production of documents was April 30, Triad did not begin to make any significant production until early June. Ultimately, Triad produced no more than a few hundred documents. In fact, Triad's affiliate organizations, discussed below, provided the Committee with more documents than did Triad itself and provided several documents that originated at Triad, but were not produced by Triad. Several of the documents strongly suggest that Triad withheld responsive documents from the Committee. One possible, albeit extremely troubling, explanation may be that Triad destroyed documents in anticipation of the Committee's subpoena. Triad produced a memorandum dated February 20, 1997, in which Triad's president, Carolyn Malenick, informed employees of the company's "cleaning of the computers." [16]

Triad, through its lawyer, Mark Braden, maintained that it provided the Committee with all documents called for under the subpoena. Although the Minority cannot prove that any documents were either intentionally destroyed or withheld, the Minority believes it is likely that additional responsive documents exist which have not been produced. For instance, there was incomplete information about advertising planned, produced, or paid for by Triad, CFR, and CREF. There were no scripts or invoices for ads produced by CREF. There were no internal memoranda from CREF such as communication between vendors and the CREF's chairman, Lyn Nofziger. Curiously, there was no application for tax-exempt status produced by CREF, even though its attorney claimed it was a 501(c)(4).

Another example of a document that may have been withheld was a "fee schedule" which was referred to in the deposition of Meredith O'Rourke, Triad's finance director,[17] and which should have been produced under paragraph 10 of the subpoena.[18] Additionally, it is clear from Triad's marketing video that company officials met with elected officials to plan strategy and fundraising.

Yet, Triad produced no information about any meetings at which elected officials to federal office were present.

The Minority was interested in exploring the issue of document production with several Triad witnesses but, with a few exceptions, the witnesses were extremely uncooperative. For example, Carolyn Malenick, Triad's president, Lyn Nofziger, Citizens for the Republic chairman, and Carlos Rodriquez, Triad's campaign consultant, were all subpoenaed for deposition testimony.[19] Initially, they all ignored their respective dates for deposition and failed to appear. After the Minority requested that the Chairman hold them in contempt, they each appeared, but refused to answer questions.[20] Other witnesses critical to the Triad story, including Mark Braden, David Gilliard, Kathleen McCann, Richard Dresner, and James Farwell were under subpoena, but failed to appear for their depositions.[21] Peter Flaherty, the Chairman of Citizens for Reform, did appear for his deposition, but chose to adopt an openly hostile attitude by frequently answering questions "None of your business."[22]

On July 3, 1997, five days before the hearings began, Chairman Thompson wrote a letter to Jim Nicholson, chairman of the Republican National Committee, in which he warned the RNC against "shielding" witnesses and failing to produce documents.[23] More importantly, on that same day, the Chairman issued an Order to the National Policy Forum to produce documents.[24]

THE NPF ORDER

An order is essentially a command by the Chairman that the individual or entity must comply with the Committee's requests and demands or face the legal consequences—presumably contempt. The Chairman had previously issued an order to the DNC with which the DNC complied. The National Policy Forum, on the other hand, completely ignored the order. In fact, the NPF's lawyer, Thomas Wilson, responded in a letter to the Majority Chief Counsel that "The Committee's subpoena cannot change the limits of the Committee's jurisdiction; neither can a letter purporting to be an order issued by the Committee's Chairman."[25]

Wilson's defiance of the order was a decisive moment in the investigation. A subpoena to the AFL–CIO had only been issued a few weeks before and the scope of that subpoena was still being negotiated. Other organizations, such as the RNC, were clearly in violation of their subpoenas, but only the NPF was under an order.

Regrettably, after Wilson's letter, the Chairman took no action. The Minority was forced to conduct its three days of hearings on NPF without ever having that organization even partially comply with the subpoena. More importantly, the NPF episode likely sent a signal to other organizations that the chairman would not exercise the contempt option and that the Committee's processes, particularly when directed at Republican entities or individuals, could be ignored with impunity. As a result, most of the Republican-affiliated organizations under subpoena abandoned any pretense of cooperation with the Committee's inquiry.

NPF COMPLIANCE ISSUES

The subpoena issued to the National Policy Forum on April 9, 1997 called for the production of documents under 27 separate

paragraphs.[26] After several delays, NPF provided a limited number of documents on June 6, 1997. Many of the materials had already been provided voluntarily to the Committee by the attorney for Young Brothers Development (USA) and most were also provided by the NPF to members of the media at the same time they were delivered to the Committee. The next limited production from NPF came on June 30. Accompanying the documents was a transmittal letter that stated:

> Nevertheless, in the same spirit of cooperation that motivated the Forum to provide voluntarily to the Committee documents regarding the Signet Bank loan transaction on June 6, 1997, the Forum is today voluntarily providing 30 boxes of additional materials. These materials—like the loan materials—are not responsive to the Committee's subpoena. They have nothing to do with the 1996 Federal election campaigns and the Forum has no obligation to produce them. The Forum, however, has decided voluntarily to provide the Committee with materials that will give the Committee a better understanding of the Forum's purposes and activities.[27]

Due to its position that it was not producing documents pursuant to subpoena, NPF failed to categorize or relate the documents it provided to specific paragraphs of the subpoena, or to make any representation as to whether there were certain paragraphs of the subpoena for which it had no responsive documents. As noted in Chapter 3 on NPF, because the Committee received important and responsive documents from other sources and it became clear that NPF was willfully withholding documents. As noted above, Chairman Thompson issued an order on July 3, 1997, that stated, "The National Policy Forum is ORDERED and DIRECTED to produce all documents in its files that are responsive to the NPF subpoena . . . by 9 a.m. on Monday, July 14, to Committee staff. . . ."[28] Not only did NPF's counsel ignore the July 14 deadline, but on July 15, he responded by providing a limited number of additional documents along with a letter stating: "As with the June 30 production, the Forum has not provided these materials in response to the Committee's subpoena or because it is obligated to do so."[29]

NPF also ignored paragraph (2) of the subpoena, which requested "All documents referring or relating to NPF obtaining or maintaining tax-exempt status."[30]

A letter to NPF (and RNC) Chairman Haley Barbour from former NPF President Michael Baroody, in which Baroody expressed concern that NPF could be endangering its tax exempt status was never provided to the Committee by NPF, in direct contravention of paragraph (2) of the subpoena and of the Chairman's order.[31] In addition, NPF further obstructed the Committee's investigation by refusing to turn over other documents responsive to paragraph (2) of the subpoena until its July 15 "voluntary" production, when it finally turned over one Internal Revenue Service ("IRS") document denying NPF's tax-exempt status.[32]

NPF ignored paragraph (20) of the subpoena, which requested:

> All documents referring or relating to, or containing information about, any conferences, receptions, briefings, or

> meetings organized by, or through, NPF at which any official elected to federal office and any donor to NPF were present.[33]

NPF violated paragraph (20) of the subpoena by failing to provide at least two documents that were ultimately provided to the Committee by other sources. One was a memo to Haley Barbour from NPF fundraiser Grace Wiegers regarding "Recruiting Members of Congress to Raise Money for NPF."[34] The second was a memorandum to NPF President John Bolton from Grace Wiegers and Dianne Harrison regarding "Megaconference Sponsorship."[35] Both are fundraising memos which anticipate NPF donors meeting with elected officials. (Appearances by elected officials were a feature of NPF megaconferences.)

NPF ignored paragraph (23) of the subpoena, which requested:

> All documents referring or relating to, or containing information about, communications by any director, officer, employee, or agent of NPF and any director, officer, employee or agent of a registered political committee, including, but not limited to, a national party committee.[36]

NPF violated paragraph (23) by withholding from the Committee a memorandum from RNC official Scott Reed to NPF officials Haley Barbour, Michael Baroody, and Kenneth Hill.[37] The Committee received this document from another source.

In addition to withholding documents in defiance of the Committee's subpoena and Chairman Thompson's order, NPF's attorney, Thomas Wilson, may have obstructed the Committee's investigation by making false statements to the Committee. Wilson repeatedly claimed that NPF was not required to comply with the subpoena because "the Forum had nothing to do with the 1996 Federal election campaigns, or any other election campaigns."[38] In hearings on NPF, the Committee established that NPF was nothing more than a front for the Republican National Committee, that foreign money was funneled from the NPF to the RNC, and that the money was ultimately used in federal and state elections in 1994 and 1996.[39] In addition, the Internal Revenue Service denied tax-exempt status to NPF on the ground that the group engaged in partisan political activity.[40] Wilson knew or should have known of the election activity engaged in by his client, and he willfully misled the Committee.

It is clear that NPF refused to comply with the Committee's subpoena and order, and that its agent misled the Committee by making a false statement of material fact. What is unclear is how many other responsive documents NPF failed to produce that the Committee was unable to acquire through other sources. NPF's actions were taken knowingly and willfully, and as such constitute an obstruction of the Committee's investigation.

ATR COMPLIANCE ISSUES

The subpoena issued to Americans for Tax Reform on April 9 called for the production of documents under 29 separate paragraphs.[41] After several delays, ATR provided certain documents to the Committee on June 11, 1997. The transmittal letter accompanying these documents, however, stated:

> ATR makes the production of the documents which accompany this transmittal letter voluntarily and purely as a matter of grace, not because ATR believes that any of the documents produced are called for by the subpoena, when that subpoena is read in conjunction with the jurisdictional limitations placed upon the Committee's investigation by S. 39 [sic—S. Res. 39].[42]

ATR also stated in its letter that "ATR has virtually no documents that relate to the 1996 Federal election campaign, and, we believe, no documents at all that relate to "illegal or improper activities in connection with 1996 Federal election campaigns'. . ."[43]

Due to its position that it was not producing documents pursuant to a subpoena, ATR—like NPF—failed to categorize or relate the documents it provided to specific paragraphs of the subpoena, or to make any representation as to whether there were certain paragraphs of the subpoena for which it had no responsive documents. As a result, it was difficult at first for the Committee to know in certain instances whether ATR was willfully withholding responsive documents or whether it merely had no such responsive documents. In a letter to ATR dated August 15, 1997, and signed jointly by Majority and Minority Chief Counsels, the Committee identified 12 specific paragraphs for which it determined ATR failed to produce documents and asked ATR to provide the Committee with an affidavit stating whether ATR had withheld any documents responsive to these or any other specifications of the subpoena.[44] ATR's affidavit failed to provide such a statement; rather, it merely reiterated the positions taken by ATR in its original transmittal letter.[45]

Among the subpoena requests identified in the Committee's August 15 letter were paragraphs 9 and 25 which read as follows:

> All documents referring or relating to, or containing information about, any contribution, donation, transfer, loan, or grant, or funds or services, made to ATR from any registered political committee.[46]
>
> * * * * *
>
> All documents referring or relating to, or containing information about, communications by any director, officer, employee, or agent of ATR and any director, officer, employee or agent of a registered political committee, including, but not limited to, a national party committee.[47]

It is an established fact, publicly admitted by ATR President Grover Norquist, that the Republican National Committee "donated" $4.6 million to ATR in October 1996. Any and all documents relating to this donation would certainly be responsive under both paragraphs 9 and 25. Despite this, ATR failed to produce to the Committee any documents relating to this transaction. The Committee now knows, however, that certain documents relating to this transaction do exist because they were subsequently produced to the Committee by the RNC.[48] Among these documents are four separate letters from Haley Barbour to ATR's executive director, each of which notify her of the RNC's donations "through its non-federal component, the Republican National State Elections Committee."[49]

This clearly evidences the RNC's contribution to ATR of soft money for partisan political purposes. ATR withheld these documents from the Committee. The failure to produce these documents by whomever was responsible for ATR's production may well amount to obstruction of justice.

It is also an established fact, publicly admitted by ATR's Norquist, that the money ATR received from the RNC was used to conduct a direct mail and phone bank campaign addressing the Medicare issue.[50] The RNC produced another document, "Memorandum for the Field Dogs," which was created shortly before ATR began its direct mail campaign.[51] The document refers to an attached copy of one of the direct mailings that was to be sent out by ATR. The document also refers to an attached map of the 150 congressional districts to which the mailings were to be directed. It is obvious from this document that there was communication between ATR and the RNC concerning ATR's direct mail campaign—how else does one explain how the RNC had an advance copy of ATR's mailing, as well as a map of the exact districts to which the mailing would be sent? Despite the fact that such communications would fall squarely under subpoena paragraph 25, ATR withheld from the Committee documents pertaining to such communication. The failure to produce this material may also constitute obstruction of justice.

Documents pertaining to this direct mail and phone bank campaign would also fall squarely under subpoena paragraph 17. This paragraph called for the production of:

> All documents referring or relating to, or containing information about, any voter education activity, including telephone banks and direct mail, planned, produced or paid for by ATR. Documents include, but are not limited to, communications with regard to such activity, copies of such mailings or telephone scripts including drafts, billing invoices and other documents relating to the cost of production, and memoranda or other documents containing dates, amounts, and locations of mailings, and the number of calls placed, dates of calling, and area codes to which calls were made.[52]

While ATR did produce some documents pertaining to its direct mail and phone bank campaign, it withheld from the Committee any documents identifying the congressional districts to which the mailings were directed (information it apparently provided to the RNC) or the area codes to which phone bank calls were directed. As a result, the Committee to this day still does not know where ATR directed its direct mail and phone bank efforts.

Finally, we know that ATR also withheld from the Committee documents called for under subpoena paragraph 15. That paragraph read as follows:

> All documents referring or relating to, or containing information about, advertising that was planned, produced or paid for by ATR. Documents include, but are not limited to, communications with any media consultant or buyer, transcripts, drafts, video copies, billing invoices, and

memoranda or other records containing times, dates and locations of broadcast.[53]

It is undisputed that ATR produced and paid for a 30-second television advertisement aimed at New Jersey senatorial candidate Robert Torricelli.[54] Some invoices pertaining to this advertisement were among the documents produced by ATR;[55] however, ATR did not produce to the Committee either a transcript or a video copy of the advertisement. ATR also failed to produce to the Committee complete records of the dates and locations of distribution of the advertisement. The Committee did obtain a video copy of the advertisement from Senator Torricelli's office, the content of which makes it clear that this was no issue ad—the advertisement had nothing to do with tax reform, but rather was a direct attack on Torricelli's voting record as a Congressman. Had ATR provided the Committee with the content of the advertisement and complete records of the dates and locations of the advertisement's airing, it certainly would have contradicted its own statement in its June 11 transmittal letter that ATR "has never run political advertising on any subject."[56] The failure to produce this material may well constitute obstruction of justice.

The examples cited above demonstrate that documents exist which were called for under the Committee's subpoena and which were directly relevant to the core issues under investigation by the Committee. Not only did ATR withhold such documents, but the statements in ATR's transmittal letter of June 11, 1997, calling into question the jurisdiction of the Committee, make it clear that ATR's actions were taken consciously and willfully. As such, these actions constitute willful obstruction of this Committee's investigation.

CONCLUSION

The Senate investigation into the 1996 campaign represented a missed opportunity for a number of reasons as outlined in the Executive Summary to this Minority Report. Of more long-term, institutional concern, however, is the fact that the investigation has potentially jeopardized future congressional investigations. Entities on both sides of the political aisle openly resisted the Committee's investigative powers, but certain GOP-affiliated entities actively engaged in impeding and defying the inquiry. The Republican National Committee, the National Policy Forum, Americans for Tax Reform, and Triad failed to respond to deposition subpoenas, and their employees blithely refused to appear for depositions or, if they did appear, declined to answer questions. The Majority took no meaningful enforcement action against any of these organizations. This may have set a damaging precedent for future Senate probes.

It is also extremely troubling that some of the lawyers who represented these organizations may have used unethical tactics in dealing with the Committee and thereby achieved the result they sought. It appears that certain counsel may have withheld documents that were responsive to Committee subpoena. None of the lawyers mentioned in this chapter were cooperative in providing witnesses for deposition, even when these witnesses were under subpoena. One lawyer may have deliberately misled the Committee

about which witnesses he represented[57] and may have directly approached a witness to sign an affidavit even though he knew that witness to be represented by counsel.[58] Clearly, the stakes were high for many of the entities and individuals involved in this investigation, but nothing can justify the kind of behavior that the Committee experienced with certain counsel. In future congressional investigations, these tactics should not be tolerated.

FOOTNOTES

[1] Memorandum to "TRIAD Employees" from "Carolyn" (Malenick) regarding "Office Computers and Files," 2/21/97, TR 20 000005.

[2] Letter to Michael Madigan from Thomas Wilson regarding Americans for Tax Reform, 6/11/97.

[3] Additional documents were provided on June 30, 1997. In the transmittal letter to Michael Madigan from Thomas Wilson regarding the National Policy Forum, Wilson stated that neither the June 6 nor the June 30 productions were to be construed as compliance with the Committee's subpoena, 6/30/97.

[4] Letter to RNC Chairman Jim Nicholson from Chairman Fred Thompson requesting that Nicholson investigate complaints by the Minority that the RNC was not fully complying with the terms of its subpoena and, with respect to witnesses, urging him to instruct counsel "not to attempt to shield important facts . . .," 6/11/97.

[5] Subpoena to Republican National Committee, # 67, Request # 14 of Schedule A, 4/9/97.

[6] Confidential Memorandum to Haley Barbour, Sanford McCallister, and Curt Anderson from Jo-Anne Coe regarding the American Defense Institute, 10/17/96, DFP–004240.

[7] Letter to Grover Norquist from Jo-Anne Coe including a check in the amount of $100,000 for Americans for Tax Reform from Carl Lindner, 10/21/96, DFP–004241.

[8] Letter to David O'Steen from Jo-Anne Coe including a check in the amount of $100,000 for the National Right to Life Committee, 10/21/96, DFP–004243.

[9] Document listing money distributed to three 501(c)(4) organizations and two 501(c)(3) entities, DFP–004244.

[10] Letter to Minority Counsel from Martin Weinstein demonstrating Weinstein's "effort to efficiently produce all current and former RNC employees with whom the Committee wishes to speak . . .," 5/20/97.

[11] Letter to Martin Weinstein from Majority and Minority Chief Counsels regarding the Committee's intention to depose certain individuals, 8/5/97.

[12] Letter to Majority and Minority Chief Counsels from Martin Weinstein regarding the scheduling of deponents in connection with the RNC, 8/14/97.

[13] Subpoenas to Scott Reed, # 392, and Jo-Anne Coe, # 396, 9/18/97.

[14] Letter to Majority Chief Counsel from Martin Weinstein regarding the Republican National Committee, 10/22/97.

[15] Subpoenas to Triad Management Services, Inc., #72 (22 paragraphs under Schedule A); Citizens for the Republic Education Fund, #74 (25 paragraphs under Schedule A); and Citizens for Reform, #75 (9 paragraphs under Schedule A); 4/9/97.

[16] Memorandum to "TRIAD Employees" from "Carolyn" (Malenick) regarding "Office Computers and Files," 2/21/97, TR 20 000005.

[17] Meredith O'Rourke deposition, 9/3/97, pp.30-31.

[18] Subpoena to Triad Management Services, Inc., # 72, Request # 10 of Schedule A, 4/9/97.

[19] Subpoenas to Carolyn Malenick, # 255; Lyn Nofziger, # 248; and Carlos Rodriguez, # 249; 7/11/97.

[20] Carolyn Malenick deposition, 9/16/97, p. 17; Lyn Nofziger deposition, 9/16/97, pp. 10-11; Carlos Rodriguez deposition, 9/17/97, p. 8.

[21] Subpoenas to Mark Braden, # 256, 7/11/97; David Gilliard, # 250, 7/11/97; Kathleen McCann, # 346, 8/21/97; Richard Dresner, # 375, 9/4/97; and James Farwell, # 377; 9/4/97.

[22] Peter Flaherty deposition, 8/22/97, p.9.

[23] Letter to RNC Chairman Jim Nicholson from Chairman Fred Thompson requesting that Nicholson investigate complaints by the Minority that the RNC was not fully complying with the terms of its subpoena and, with respect to witnesses, urging him to instruct counsel "not to attempt to shield important facts..." 6/11/97.

[24] Order to National Policy Forum from Chairman Fred Thompson to produce all documents responsive to the National Policy Forum subpoena, 7/3/97.

[25] Letter to Majority Chief Counsel from Thomas Wilson regarding "National Policy Forum—Response to July 3 Committee Communication," 7/15/97.

[26] Subpoena to National Policy Forum, # 71, Schedule A, 4/9/97.

[27] Letter to Majority Chief Counsel from Thomas Wilson regarding the National Policy Forum, 6/30/97.

[28] Order to National Policy Forum from Chairman Fred Thompson to produce all documents responsive to the National Policy Forum subpoena, 7/3/97.

[29] Letter to Majority Chief Counsel from Thomas Wilson regarding "National Policy Forum—Response to July 3 Committee Communication," 7/15/97.

[30] Subpoena to National Policy Forum, # 71, Request # 2 of Schedule A, 4/9/97.

[31] Exhibit 273, Memorandum to RNC Chairman Haley Barbour from NPF President Michael Baroody regarding "Some Reasons for Resignation [-] A Confidential Memorandum to Accompany My June 26 Letter of Resignation as President of NPF," 6/28/94.

[32] Exhibit 353, Letter to National Policy Forum from Internal Revenue Service notifying NPF of its disqualification for exemption under Section 501(c)(4) of the Internal Revenue Code, 2/21/97, NPF 003375 through 003387.

[33] Subpoena to National Policy Forum, # 71, Request # 20 of Schedule A, 4/9/97.

[34] Exhibit 305, Memorandum to Haley Barbour from Grace Wiegers regarding "Recruiting Members of Congress to Raise Money for NPF," 2/13/95.

[35] Exhibit 308, Memorandum to John Bolton from Grace Wiegers and Dianne Harrison regarding "Megaconference Sponsorship," 5/23/95.

[36] Subpoena to National Policy Forum, # 71, Request # 23 of Schedule A, 4/9/97.

[37] Exhibit 258, Memorandum to Haley Barbour, Mike Baroody, and Ken Hill from Scott Reed regarding "NPF Action," 6/2/93.

[38] Letter to Majority Counsel from Thomas Wilson regarding the National Policy Forum, 6/30/97. See also, Wilson's letter to Majority Chief Counsel dated 7/15/97, in which he repeated the claim that "[t]he Forum had *nothing* to do with the 1996 Federal election campaigns...."

[39] See Chapter 3

[40] Exhibit 353, Letter to National Policy Forum from Internal Revenue Service notifying NPF of its disqualification for exemption under Section 501(c)(4) of the Internal Revenue Code, 2/21/97, NPF 003375 through 003387.

[41] Subpoena to Americans for Tax Reform, # 70, Schedule A, 4/9/97.

[42] Letter to Majority Chief Counsel from Thomas Wilson regarding Americans for Tax Reform, 6/11/97.

[43] Letter to Majority Chief Counsel from Thomas Wilson regarding Americans for Tax Reform, 6/11/97.

[44] Letter to Thomas Wilson from Majority and Minority Chief Counsels "Committee Subpoena 000070," 8/15/97.

[45] Letter to Majority Chief Counsel from Thomas Wilson containing affidavit of Peter Ferrara, Document Custodian for Americans for Tax Reform, 9/3/97.

[46] Subpoena to Americans for Tax Reform, # 70, Request # 9 of Schedule A, 4/9/97.

[47] Subpoena to Americans for Tax Reform, # 70, Request # 25 of Schedule A, 4/9/97.

[48] See, e.g., R 014844, R 046264, R 046260, R 046261, R 046265, R 046252, R 046248, R 046249, R 046253, R 046270, R 046266, R 046267, R 046271, R 046258, R 046254, R 046255, R 046259.

[49] Letters from Haley Barbour to the Executive Director of ATR—R046265, R046253, R046271, and R046259.

[50] See Chapter 11.

[51] ATR "Memorandum for the Field Dogs" regarding "Outside Mail and Phone Effort," R014844

[52] Subpoena to Americans for Tax Reform, # 70, Request # 17 of Schedule A, 4/9/97.

[53] Subpoena to Americans for Tax Reform, # 70, Request # 15 of Schedule A, 4/9/97.

[54] See Chapter 11. A videotaped copy of the advertisement is maintained in the Committee's files.

[55] ATR invoices for "Torricelli/Missing," ATR 000101, 000102, 000106, 000107, 000108.

[56] Letter to Majority Chief Counsel from Thomas Wilson regarding Americans for Tax Reform, 6/11/97.

[57] Letter to Martin Weinstein from Alan Baron regarding RNC depositions, 9/30/97.

[58] Letter to Alan Baron from Benton L. Becker regarding affidavit of Richard Richards, 12/16/97.

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PART 7 INVESTIGATION PROCESSES

Chapter 41: The Breakdown of Compliance

As explained in Chapter 40, the Committee encountered significant problems in enforcing outstanding subpoenas to certain Republican groups beginning in April 1997. Nevertheless, in May and late July the Democratic members of the Committee requested that several other subpoenas be issued to tax-exempt entities. On May 23, the Committee issued a subpoena to the AFL–CIO and on July 30, the Committee issued 26 subpoenas to other independent organizations. Many of these organizations did not comply with the Committee's subpoenas, primarily objecting to their broad scope.

FINDING

The Committee's failure to pursue enforcement actions against those who failed to comply with the Committee's subpoenas threatens to have lasting impact on the success and credibility of future Senate investigations. The Committee's acceptance of the refusal of groups and individuals to comply with the Committee's subpoenas will make objective investigations in the future much more difficult by emboldening persons and entities to ignore future Senate subpoenas.

INTRODUCTION

As the investigation progressed during the summer of 1997, the Republican National Committee, Triad and its affiliates, Americans for Tax Reform, and the National Policy Forum all of which received subpoenas in April 1997 continued to seriously impede the Committee's requests for information. Despite the problems the Minority encountered in enforcing existing subpoenas to these groups, the Democratic members of the Committee requested that several other subpoenas be issued to tax-exempt entities. Some of the requests for subpoenas had originally been made in April, when for example, the Minority first proposed issuing a subpoena to the Christian Coalition. On May 23, the Committee issued a subpoena to the AFL–CIO and on July 30, the Minority was able to secure subpoenas long-sought for 13 entities. These were issued in conjunction with 12 proposed by the Majority, bringing to 26 the total of new subpoenas issued primarily to tax-exempt entities.[1]

Each subpoena required the organization to produce a significant amount of information to the Committee, including organizational, financial, and political records created during the 1996 election cycle. The subpoenas also demanded sensitive information such as membership lists, contributions, and lists of political donations. Even where the demands fell within the scope of the Committee's mandate, the organizations complained that complying with the subpoenas would have been very time-consuming and exorbitantly expensive.

The Majority and the Minority had agreed earlier in the investigation to provide supporting information for each of the subpoenas they requested. As was the case with the subpoenas issued in April, the Minority was primarily interested in investigating

Footnotes appear at end of chapter 41.

whether any of the entities in question misused their tax-exempt status, illegally coordinated issue advertising with the GOP, or improperly used voter guides. The Majority's rationale for many of its subpoenas was less obvious, but the main goal was clearly to isolate information relating to any participation in a coordinated campaign strategy to advocate a Democratic victory in the elections.

Subpoena compliance became a contentious issue during the hearings. Many of the organizations lodged a number of objections relating to the scope of the Committee's subpoenas and the type of information demanded. As earlier undertaken by the National Policy Forum and other Republican entities, several entities subpoenaed later joined together in refusing to provide documents to the Committee without a narrowing of the subpoenas' scope.[2] Eventually the entire subpoena process broke down, and virtually none of these entities fully complied with a subpoena. Some, like the Christian Coalition, showed nothing less than contempt for the Committee when they refused to provide copies of voter guides even though millions of copies had been distributed to the public.[3]

This chapter provides background information on the subpoenaed groups, the allegations against them, and the degree to which they complied with the Committee's document, deposition, and hearing subpoenas. Since circumstances surrounding the AFL–CIO subpoena distinguish it from the rest of the entities, it is addressed first.

Allegations against the AFL–CIO are discussed in Chapter 19 of this Minority Report. The fundamental allegations against the AFL–CIO were (1) that by spending a substantial amount of money on issue ads and other advocacy activities in 1996, the organization had an impermissible effect on the 1996 federal elections and (2) that the organization improperly coordinated its issue ads with the White House and the DNC.

On May 30, the Committee served a 17-page subpoena to the AFL–CIO with a June 15 return date for all materials described in the subpoena. The subpoena requested an inordinate amount of information from the organization. The Committee requested all information from 46 different categories, including:

- all documentation regarding the operating structure of the AFL–CIO;
- all documents filed by the AFL–CIO with the U.S. Department of Labor;
- all financial records of the organization, including audits performed by outside groups;
- all employee information relating to political activities;
- membership lists of the organization;
- all telephone records for which AFL–CIO paid the bills;
- all information regarding any contribution of funds or services received or made by the AFL–CIO with respect to federal political activity; and
- all documents responsive to political activity between the AFL–CIO and several specific political entities, including the DNC, Clinton/Gore, the National Education Association and EMILY's List.[4]

After voicing objections about the breadth and consitutional implications of the subpoena, the AFL–CIO met with both Majority

and Minority counsels in June to discuss the matter. Although the Majority agreed to allow for a rolling production of documents, it would not agree to address the constitutional issues raised by the AFL–CIO attorneys, nor would it agree to issue a new subpoena narrowing the breadth of the May 30 subpoena. In early August, the Majority submitted to the Minority a list of individuals the Majority intended to depose, including AFL–CIO President John Sweeney. The Committee, however, never contacted those individuals or scheduled the depositions.

On August 20, the AFL–CIO made a document production to the Committee, but informed Committee staff that problems with its subpoena would have to be resolved before it would produce additional documents. The AFL–CIO also submitted to the Committee a 75-page memorandum explaining the legal bases for its objection. The AFL–CIO thus became the third organization, after the National Policy Forum and Americans for Tax Reform, to challenge the Committee's subpoenas.[5]

In its memorandum, the AFL–CIO claimed that the document subpoena exceeded the scope of the Committee's mandate and, more importantly, infringed upon the organization's First Amendment rights. It also stated objections based on attorney-client privilege; individual privacy rights of employees, members, and others; and proprietary interests, such as the production of computer programs. The appendix to the AFL–CIO's "Memorandum of Points and Authorities in Support of AFL–CIO's Objections to Document Subpoena" contained a line-item list of objections to producing documents under each of the 46 categories of requested information. Fundamental to the objections was the assertion that the document subpoena was "overly broad, burdensome and oppressive" on several fronts, given the volume of the documents that the AFL–CIO would have had to produce in each area, sometimes hundreds of thousands of documents for a single category alone.[6]

The Chairman accused the AFL–CIO of obstructing the Committee's process by failing to provide all information requested by the subpoena. He also accused the organization of failing to provide witnesses to the Committee.[7] In fact, the Majority staff failed to schedule these depositions. Although the AFL–CIO attorneys had been told by Majority staff that no employees or officers of the federation would be deposed, late on the night of September 19—a Friday—the Majority faxed to counsel for the AFL–CIO three deposition subpoenas for individuals associated with the AFL–CIO compelling them to testify the following week. The Majority did not provide notice to the Minority.[8] The AFL–CIO attorneys informed the Majority that the witnesses were attending the AFL–CIO annual convention in Pittsburg and would not be available on such short notice. Over the next four months of the investigation the Majority never contacted AFL–CIO counsel to reschedule the depositions. In September, the Majority did propose to the Minority to call AFL–CIO Secretary-Treasurer Richard Trumka as a hearing witness, but never did.

Even before the AFL–CIO filed its August 20 objection, several other groups that had been subpoenaed by the Committee on July 30 announced they would object to the Committee's subpoenas. On September 3, five organizations notified the Committee that they

had adopted the position of the AFL–IO and joined the Christian Coalition in signing a letter to the Committee objecting to the scope of their subpoenas. The letter asserted that the subpoenas exceeded the investigative authority of the Committee, demanded the production of sensitive documents protected under federal law due to their confidentiality, were "overly broad, unduly burdensome, and oppressive," and "violate[d] the First Amendment rights of the subject organizations and their members."[9] The Chairman did not enforce the subpoenas.

ORGANIZATIONS SUGGESTED FOR SUBPOENA BY THE MINORITY

In the Minority's view, several organizations should have been the subjects of intensive investigation by the Committee, based on indications that these groups may have violated federal laws during the 1996 election cycle. A few of these organizations were subpoenaed, but the Committee did not further investigate the allegations against them.

These organizations, all subpoenaed on July 30, fell into three broad categories: (1) tax-exempt organizations associated with Republican Presidential candidates, (2) other tax-exempt groups and (3) private corporations linked to contribution laundering.

TAX-EXEMPT GROUPS LINKED TO PRESIDENTIAL CAMPAIGNS

- Republican Exchange Satellite Network, a group associated with Lamar Alexander;
- The Better America Foundation, which was connected to former Senator Bob Dole; and
- The American Cause, which was linked to commentator Pat Buchanan.

These nonprofit organizations allegedly served as shadow campaign vehicles by providing crucial support to presidential campaigns. The organizations reportedly provided travel expenses, polling research, speech-writing, and paid staff salaries for persons affiliated with, but not directly employed by, presidential campaigns. It is alleged, therefore, that these groups were almost entirely political in nature and yet failed to register with the FEC as political organizations.

Based on press accounts and other publicly available material, the Minority believes these entities may have engaged in some or all of the following prohibited partisan activities: participated in prohibited political campaign activities; failed to register as political committees; improperly coordinated expenditures; violated express advocacy requirements; improperly advocated for political candidates using independent expenditures; and circumvented federal limits on spending.

Republican Exchange Satellite Network and Lamar Alexander

The Republican Exchange Satellite Network ("RESN") was a nonprofit organization established by Lamar Alexander, former Governor of Tennessee who served as President George Bush's Secretary of Education. Alexander was a candidate for the Republican presidential nomination in 1996.

Alexander established RESN within days of leaving President Bush's cabinet in January 1993. At least one press report contained

allegations that RESN was used to pay for travel and other campaign-related activities on behalf of Alexander.[10] RESN even employed a full-time organizer in Iowa and most of its employees were later listed as employed by the Alexander presidential campaign.[11] RESN was disbanded on March 9, 1995, a few weeks after Alexander launched his presidential campaign, and its assets were transferred to the National Policy Forum, an organization chaired by Haley Barbour, who was also chairman of the Republican National Committee.[12]

RESN ultimately raised over $5.5 million during its short life, largely from major Alexander contributors.[13] RESN's activities and its funding sources prompted allegations that it was a campaign committee promoting Lamar Alexander's presidential campaign.[14] Alexander admitted he used this nonprofit organization "to develop a political and financial base . . . and develop my message for where we're going to take the country."[15]

RESN made only a token production of documents by the return date which was supplemented by productions on November 4 and 6—11 weeks beyond the required return date and after Chairman Thompson announced that the investigative phase of the Committee hearings had concluded.

The documents contained little information that was not publicly available. Included in the production were news articles, RESN publications, and corporate by-laws.

Better America Foundation and Bob Dole

The Better American Foundation ("BAF") was established in 1993 by Senator Bob Dole, who won the Republican Party's presidential nomination three years later. He disbanded BAF in June 1995, just as he was launching his official campaign organization. According to numerous published reports, BAF was actually a Dole campaign organization created and used to aid his 1996 presidential efforts. If true, this would constitute violations of federal campaign law.[16] The allegations arose because:

- (1) BAF's founding president, Jo-Anne Coe, had worked for Dole since 1967, served as executive director of his leadership PAC from 1988 to 1995, and was the national finance director for his 1996 presidential campaign;[17]
- (2) BAF was initially run by Coe out of the offices of Dole's leadership PAC, Campaign America;[18]
- (3) BAF commissioned several polls;[19]
- (4) BAF paid for TV ads featuring Dole;[20] and
- (5) BAF had regular contact with Dole campaign staff.[21]

These activities strongly suggest coordination of activities and funding between a nonprofit organization and a political candidate, which is prohibited by federal election law.[22]

From 1993 to the end of 1994, the foundation raised over $4.9 million from anonymous donors.[23] One of its brochures noted that, "there are no limits on the amounts an individual or corporation may contribute" and that "there is no requirement for public disclosure of contributors . . . and names of the donors will not be disclosed."[24] Later, after much press criticism, the foundation released a list of its donors.[25] It has also been alleged in the press that the foundation "provided a legal way for corporations to win favor with

the Republican Party's leading presidential candidate without any limits on their contributions or detailed reporting requirements."[26]

Dole closed the foundation only after it was revealed that the foundation spent more than $1.5 million of its total $4.9 million budget on expenditures which benefitted Dole's presidential effort, including an opinion poll, a TV commercial featuring Dole, and a fundraising brochure.[27]

The Better America Foundation provided a small, incomplete production of documents on November 14, 12 weeks after the required due date and after Chairman Thompson announced that the investigative phase of the Committee's hearings had concluded.

The American Cause and Pat Buchanan

The American Cause was established by Pat Buchanan in 1993 and closed down in March 1995. It raised more than $2 million, most of which was allegedly used to support Buchanan's presidential bid, which would violate federal campaign law. For example, American Cause compiled a donor list which it rented to the Buchanan campaign, it rented office space from the campaign, and it provided "volunteers" to the campaign who were actually American Cause employees.[28] Further, numerous press reports contain allegations that Buchanan ran afoul of federal election funds by using $8,000 of Federal matching money to pay for computers and other equipment for American Cause.[29]

The American Cause provided a small, incomplete production on September 16, more than three weeks beyond the due date.

OTHER TAX-EXEMPT GROUPS

Other tax-exempt organizations that may have engaged in improper and/or illegal campaign activities:

- Citizens Against Government Waste;
- The Heritage Foundation;
- The Coalition: Americans Working for Real Change;
- American Defense Institute/American Defense Foundation;
- Citizens for a Sound Economy;
- Women for Tax Reform;
- The National Right to Life Committee;
- The Christian Coalition.

Citizens Against Government Waste

Citizens Against Government Waste ("CAGW") is a 501(c)(3) organization.[30] It has been reported to be under investigation by the IRS for allegedly engaging in improper political activities.[31] The Minority believes CAGW may have engaged in partisan activity, exceeded limits on nonpartisan campaign activity, misled the IRS in its application for tax- exempt status, failed to register as a political committee, improperly coordinated expenditures, and circumvented federal campaign spending limits.

CAGW, like a number of other not-for-profit organizations, apparently paid for mailings and provided the Dole campaign with donor lists after Dole signed a fundraising letter for the group.[32] In addition to the potential violation of the tax laws, such activities might also constitute an illegal in-kind contribution to the Dole campaign. An estimated ten million letters were mailed by Herit-

age, CAGW, and a small number of other groups at a reported postage cost of $80,000 per million letters.[33] Additionally, the donor lists may have been worth $40,000 or more to the Dole campaign.[34]

Citizens Against Government Waste made two small, incomplete productions on September 8 and 9—three weeks beyond the due date.

The Heritage Foundation

The Heritage Foundation is registered with the IRS as a 501(c)(3) charitable organization, meaning that contributions to it are tax-deductible and that the organization is strictly forbidden to engage in partisan campaign activity. Heritage is being investigated by the IRS for allegedly engaging in improper political activities.[35] The Minority believes that Heritage may have exceeded limits on political activity, misrepresented facts to obtain tax exempt status, failed to register as political committee, improperly coordinating expenditures, and circumvented federal campaign spending limits.

As noted above, Heritage, like a number of other not-for-profit organizations, apparently paid for mailings and provided the Dole campaign with donor lists after Dole signed a fundraising letter. The letter was mailed in 1995 on Dole's letterhead at Heritage's expense. In it, Dole said, "I want to get Washington off your back and out of your pocket."[36] In addition to the potential violation of the tax laws, such activities might also constitute an illegal in-kind contribution to the Dole campaign. As noted earlier, an estimated ten million letters were mailed by Heritage, CAGW, and several other groups at a reported postage cost of $80,000 per million letters.[37] Additionally, the donor lists may have been worth $40,000 or more to the Dole campaign.[38]

On August 15, one week early, the Heritage Foundation produced two volumes of documents consisting primarily of publicly available material. Heritage supplemented this production on August 25.

The Coalition: Americans Working for Real Change

The Coalition: Americans Working for Real Change ("Coalition") is composed of approximately 30 business organizations, including the U.S. Chamber of Commerce and the National Association of Manufacturers.[39] The Minority believes the Coalition may have engaged in partisan activity, failed to register as a political committee, improperly coordinated expenditures, improperly engaged in issue advocacy, and circumvented federal campaign spending limits.

According to its spokesman, the Coalition was formed to counterbalance issue ads run by the AFL–CIO.[40] To do so, it reportedly spent at least $4.5 million, supported 23 Republican incumbents, and criticized the voting records of four Democrats in tight races.[41] The Coalition's ads also contained nearly identical language to that used in ads broadcast by the National Republican Congressional Coalition ("NRCC"), a division of the RNC. In addition, the Coalition's ads were run at the same time as the NRCC's ads and in districts where the Republican incumbent's seat was vulnerable.[42] Although the Coalition's ads avoided the so-called "magic words" of

express advocacy, the ads are a prime example of partisan activities by a nonprofit organization.[43] In addition, there are indications that the Coalition was primarily engaged in political activities, meaning that it should have complied with the registration and reporting requirements of the Federal Election Campaign Act ("FECA").[44]

The Coalition and the U.S. Chamber of Commerce forwarded written objections to the Committee's subpoena on September 16, three weeks beyond the return date on the subpoena. They never complied with the subpoena.[45]

American Defense Institute/American Defense Foundation

The American Defense Institute ("ADI") and the American Defense Foundation ("ADF") are tax-exempt organizations operated from the same offices under the same management. The difference between the organizations is that ADI is a 501(c)(3) and ADF is a 501 (c)(4).[46] Press reports indicate these organizations have both received large sums of money from the RNC and the National Republican Senatorial Committee ("NRSC"), a division of the RNC, shortly before election cycles, including special elections.[47]

ADI and ADF conduct get-out-the vote drives aimed at military personnel through mailings and "public service announcements." ADI received $600,000 from the RNC in the last election cycle.[48] ADI had received similar contributions in 1992 and been criticized for its assistance to Republican candidates, leading it to return the money, but not until just after it had received $530,000 from six individual donors funneled through the RNC.[49] In short, the allegation is that the ADI/ADF were used by the RNC during the 1996 election cycle to conduct election-related activities after the RNC has "maxed out" in a particular state.

ADI/ADF requested clarification instructions on September 5, two weeks beyond the required due date, but never produced any documents.[50]

Citizens for a Sound Economy

Citizens for a Sound Economy ("CSE") is a 501(c)(4) chaired by C. Boyden Gray, former White House Counsel in the Bush Administration. CSE was founded in 1984 as a think tank and grass-roots organization, and while the group has a number of members, most of its funding comes from a few major corporations, including foundations associated with the Koch family of Kansas. Koch interests gave more than $8 million to CSE and contribute on average $750,000 annually.[51] The Minority also believes that the Kochs have been important supporters of Triad, which is discussed in Chapter 12 in this Minority Report.

CSE also reportedly cultivated close ties with the Republican leadership. According to press reports, former Majority Leader Bob Dole's Better America Foundation gave CSE $50,000 in 1995. Dole also signed a fundraising letter for the group. In return, CSE provided Dole with its contributors" names.[52] CSE also joined forces with House Majority Leader Richard K. Armey on the flat-tax bill in 1995 who "estimated CSE would spend about $2 million on the campaign."[53]

Citizens for a Sound Economy made two small, incomplete productions on September 12 and 15—three weeks beyond the due date.

Women for Tax Reform

Women for Tax Reform ("WTR") was formed in August 1996 as an affiliate of Americans for Tax Reform, a nonprofit organization run by Republican activist Grover Norquist (see Chapter 11). The Minority believes that WTR may have engaged in partisan activity, exceeded limits on nonpartisan campaign activity, misrepresented facts to obtain tax-exempt status, failed to register as a political committee, improperly coordinated expenditures, and engaged in express advocacy on behalf of Republican candidates.

The Minority's investigation of ATR produced evidence that WTR worked in concert with ATR to organize its activities to evade election laws in violation of ATR's and WTR's tax-exempt status. WTR has the same office address and some of the same officials as Americans for Tax Reform.[54]

On April 1, the Minority submitted a draft subpoena for WTR documents. A final subpoena was issued on July 30. On October 3, WTR made a limited production of 149 pages of documents along with a letter stating that the documents were produced "voluntarily and purely as a matter of grace, not because WTR believes that any of the documents produced are called for by the subpoena. . . ."[55] The attorney, Thomas Wilson, used similar language when he produced ATR documents. WTR made a small, incomplete production on October 3—six weeks beyond the due date.

National Right to Life Committee

The National Right to Life Committee ("NRLC") is a tax-exempt organization which received $650,000 in 1996 from the Republican National Committee[56] and may have received additional donations in previous cycles that were apparently used for political activity (e.g. voter guides, GOTV). For example, in November, 1994, Senator Phil Gramm authorized a $175,000 donation from the National Republican Senatorial Committee to the NRLC in order to "help activate pro-life voters in some key states where they would be pivotal to the [1994] election."[57] Furthermore, Senator Dole's Better America Foundation donated $125,000 to the NRLC one day before the 1994 elections.[58]

NRLC produced three boxes of documents, but did not fully comply with the subpoena. On September 3, the group joined six others to object to its subpoena.[59]

The Christian Coalition

The Christian Coalition has operated for nearly a decade as a 501(c)(4), although the IRS has not granted final approval for its tax-exempt status. The Christian Coalition is ostensibly operated as a social welfare organization dedicated to informing the public about Christian values. In fact, it actively strongly support the conclusion that it is in fact a partisan political organization that operates on behalf of Republican candidates, as discussed in Chapter 14 of the Minority Report.

The Minority first proposed a subpoena for the Christian Coalition on March 3, but issuance was not approved by the Committee until July 30. The Christian Coalition did not comply with the subpoena and joined several other organizations in September in objecting to Committee subpoenas.[60]

PRIVATE CORPORATIONS LINKED TO CONTRIBUTION-LAUNDERING

Private corporations linked to illegal schemes to launder contribution to Republican candidates:

- DeLuca Wine & Liquors, and
- Empire Landfill.

DeLuca Liquor & Wine and Empire Landfill, Danella Inc./USA Waste Services of Eastern Pennsylvania

Various Republican donors involved in schemes to launder contributions through employees, including DeLuca Liquor and Wine ("DeLuca") and Empire Landfill ("Empire'), which are discussed in Chapter 22, led the Minority to recommend that these entities be further investigated by the Committee.

The Committee issued a subpoena to DeLuca, which produced a single folder containing 27 pages of documents on August 25—three days beyond the due date.[61] The folder contained a corporate organizational chart as well as copies of canceled checks from DeLuca to five employees and canceled checks from those employees and their wives payable to "Dole for President." Although the production was limited, the materials raise numerous questions which are explained in Chapter 22 of the Minority Report.

The Committee subpoenaed Empire Landfill's former president, Renato Mariani. Mariani did not produce documents to the Committee upon asserting his Fifth Amendment right against self incrimination.

ORGANIZATIONS SUGGESTED FOR SUBPOENA BY THE MAJORITY

The groups that the Majority subpoenaed on July 30 comprise three broad categories:

1. Those affiliated in some way with the labor movement or linked in some way to allegations against the labor movement:
   - National Council of Senior Citizens;
   - Citizen Action; and
   - National Education Association.
2. Those named by Harold Ickes in a memo to Warren Meddoff (see Chapter 17):
   - Vote Now "96, and
   - Campaign to Defeat 209.
3. Those traditionally affiliated with Democratic causes or issues:
   - The Sierra Club;
   - Democratic Leadership Council;
   - EMILY's List;
   - The National Committee for an Effective Congress;
   - American Trial Lawyers" Association; and
   - Americans United for the Separation of Church and State.

The subpoenas to groups in the first two categories were justified, but at least some of the groups in the third category were apparently targeted by the Majority simply because they have historically been more philosophically aligned with the Democratic Party. The Minority is aware of no evidence that any of these organizations were involved in illegal or improper activities in the 1996 election.

Among other things, all of the subpoenas demanded organizational and financial information; documentation of the organizations" tax-exempt status; membership lists; telephone numbers; information on get-out-the-vote activities, issue and campaign advertising, and public opinion polls; information on money transfers to and from foreign principals; information on transfers of or solicitations for anything of value to or from federal candidates, campaigns, or political parties; information on how the organizations allocated their funds to candidates; information on any interaction with any combination of other entities subpoenaed by this Committee; and anything relating to communications with the FEC. Some subpoenas also demanded information on certain events held by organizations; refunds of fees or dues for political or voter education activities; and records of election activities.[62]

National Council of Senior Citizens

Federal prosecutors alleged that the National Council of Senior Citizens ("NCSC") was linked to a scheme to launder money to the reelection campaign of Teamsters" President Ron Carey. The prosecutors made this allegation in a criminal information filed in United States District Court for the Southern District of New York in connection with the guilty plea of Martin Davis, a political consultant who provided services to Teamsters For A Corruption Free Union ("TCFU'). Davis, a central figure in the scheme, headed a firm called the November Group.[63] According to prosecutors, Davis and Jere Nash, a political consultant for TCFU who provided direct-mail services, and Michael Ansara, another political consultant for TCFU, all arranged for the Teamsters to contribute $85,000 to the NCSC, which then sent the sum to the November Group, a company responsible for executing the Carey direct mail campaign. Part of the money paid to the November Group by the NCSC was funneled by Davis into the Carey campaign in order to finance the direct mail campaign.

In response to the Committee's subpoena, NCSC produced a small number of documents. However, it joined with other nonprofit organizations on September 3 in filing a formal objection to the Committee subpoena.[64]

NCSC provided a list of the documents that were and were not produced, as well as justifications for its refusal to produce certain documents, including the assertion that the subpoena violated the First and Fourth Amendments and was beyond the mandated scope of the investigation. Information sent to the Committee pursuant to the subpoena included: organizational and financial materials; telephone and communications records and directories; Internal Revenue Service materials pertaining to organization's tax-exempt status; and Federal Election Commission reports.

NCSC did not produce information on communications with the Political Action Transition Work Group of the AFL–CIO, other tax-exempt entities, and the FEC; information relevant to the allocation of funds for political purposes; information related to political advertising and advocacy; and copies of the organization's political mailings and documents related to get-out-the-vote drives.

Citizen Action

Citizen Action is a grassroots consumer advocacy group registered with the IRS as a 501(c)(4). In October 1997, it closed its Washington, D.C. national office, but it continues to operate field offices in several states. The allegations against Citizen Action are summarized in Chapter 19 of this Report. Beyond issuing a document subpoena, the Committee did not investigate Citizen Action. Citizen Action joined with seven other non-profit organizations and filed a formal objection to Committee subpoenas on September 3. The letter listed the following grounds for objection: the subpoenas 1) exceeded the investigative authority of the Committee; 2) demanded the production of sensitive documents that are protected under federal law due to their confidentiality; 3) were "overly broad, unduly burdensome, and oppressive"; and 4) "violate[d] the First Amendment rights of the subject organizations and their members."[65]

After filing this objection, Citizen Action produced approximately 70 to 80 pages of material. The documents included information on the organizational structure of Citizen Action and copies of voter education materials distributed during the 1996 campaign cycle, including voting records of candidates and newspaper articles. No one affiliated with Citizen Action was deposed by the Committee.

National Education Association

The National Education Association ("NEA") is one of the largest labor organizations in the United States and is a member of the AFL–CIO. It has generally backed Democratic candidates, including President Clinton in his bid for re-election in 1996. There were no clear allegations made against the NEA by the Majority.

The NEA sent a letter to the Committee on August 11, stating that it would be unable to meet the August 22 return date in the Committee's subpoena, although the letter noted that the NEA had begun the process of attempting to locate responsive documents. The letter also asserted the NEA's "serious concerns" about the scope of the subpoena, including possible infringement of the organization's First Amendment rights of free speech and free association. The NEA requested a meeting with the Committee to address these issues, but the Majority's lawyers never scheduled one.[66]

On August 20, the general counsel to the NEA sent a letter to the Committee joining the legal objections filed by other groups, stating that the NEA would not comply further with the subpoena until its objections—and the joint objections—were addressed by the Committee.[67] The Majority did not respond to that letter. Pursuant to the position it stated in its August 20 letter, the NEA did not produce any documents to the Committee. The Committee did not seek to schedule the depositions of any witnesses affiliated with the NEA.

Vote Now 96'

Vote Now 96' is a Florida-based project of Citizen Vote, Inc., a 501(c)(3) organization headquartered in New York that spearheads voter registration drives, especially in minority communities.[68] Vote Now 96' raised money and made grants to other 501(c)(3) organizations involved in voter registration drives.[69] In 1996, it raised and distributed $3 million for voter registration.[70] There were a number of allegations concerning Vote Now 96' which are explained in Chapter 19. In general, however, the allegations were that DNC and White House officials improperly directed money to Vote Now 96'.

Vote Now 96' is the only one of the 501(c)(3) and 501(c)(4) entities subpoenaed that appears to have fully complied with the demands of the Committee. It produced 726 pages of documents which were responsive to the subpoena,[71] and two members of the Vote Now 96' board voluntarily appeared for depositions.[72] Vote Now 96', under the name of its parent group Citizens Vote, also produced two small sets of documents to the Committee in compliance with the subpoena.

The documents indicate that Vote Now 96' complied with applicable laws. The activities it undertook were nonpolitical voter registration activities that were appropriate for a 501(c)(3) organization. Review of the documents, corroborated by deposition testimony, indicates that in evaluating grant proposals from 501(c)(3) organizations that conducted voter registration, Vote Now 96' properly denied grants to organizations that acted in a partisan fashion.[73] No evidence of partisan activity appears in any of the awarded grant documents.

Campaign to Defeat Proposition 209

Campaign to Defeat 209 is a nonprofit organization that lobbied to defeat the California Civil Rights Initiative ("CCRI"). It was one of three organizations suggested by Harold Ickes to Warren Meddoff as a possible recipient of contributions from Meddoff's business associate, William Morgan (see section on Vote Now 96', above, and Chapter 17). Campaign to Defeat 209 produced a small, incomplete number of documents to the Committee.

The Sierra Club

The Sierra Club is a well-known nonprofit entity that advocates environmental protection and resource conservation and lobbies for pro-environment legislation. Its causes have been historically supported by Democrats, and it continues to be an active participant in the political process. During the 1996 cycle it spent more than $7.5 million on media and grassroots electoral activity, targeting primarily anti-environmental members of Congress.[74] There were no clear allegations leveled against the Sierra Club by the Majority.

The Sierra Club produced several boxes of material, including video and audio tapes, magazines, personal correspondence and posters, but did not attempt to produce all documentation requested. Little attention was paid to the Sierra Club during the investigation, as it did not appear that it was an especially important entity in the 1996 federal election campaign cycle. No representa-

tives of the Sierra Club were interviewed or deposed by the Committee.

Democratic Leadership Council

The Democratic Leadership Council ("DLC") is a nonprofit organization that is identified with the moderate wing of the Democratic Party. During the course of the investigation, no allegation was made that the DLC has ever been involved in improper or illegal conduct in connection with the federal elections of 1996.

The DLC produced a relatively small number of documents, but did not respond completely to the subpoena, and the Committee did not pursue the issue.

EMILY'S List

EMILY's List is a political action committee ("PAC") that contributes mainly to female Democratic candidates. In response to the subpoena, EMILY's List did not fully respond to the subpoena, but did produce two sets of documents contained in 14 boxes. The Majority never made any clear allegations against EMILY's List.

National Committee for an Effective Congress

The National Committee for an Effective Congress ("NCEC") is a "Democratic political action committee that primarily supplies sophisticated voter targeting information to the party's congressional candidates."[75] In response to the subpoena, the NCEC produced one box of documents, including copies of mailings and other related materials produced during the 1996 election cycle. There were no clear allegations leveled against the NCEC by the Majority.

American Trial Lawyers Association

The American Trial Lawyers Association ("ATLA") is a nonprofit, 501(c)(4) organization that also functions as a political action committee, donating mainly to Democratic candidates. In fact, it serves as one of the largest Democratic political action committees. It received explicit permission in FEC Advisory Opinion 96–02 (1996) to endorse congressional candidates and request that members make campaign contributions to the endorsed candidates while identifying themselves as ATLA members. There were no clear allegations made against ATLA made by the Majority.

ATLA produced documents to the Committee on two occasions. It provided the Committee with contribution lists, telephone records, and other documentation regarding the political activities of the organization with respect to both Democratic and Republican candidates. These documents contain no indications that the organization engaged in illegal or improper activities during the 1996 election cycle. On September 3, ATLA joined the group of entities that had previously objected to the Committee's subpoenas.[76] After this objection was filed, ATLA no longer complied with the Committee's requests for information.

Americans United for Separation of Church and State

Americans United for the Separation of Church and State ("Americans United") is a 501(c)(4) organization which styles itself as a national church-state watchdog group.[77] Americans United

complied with the Committee's subpoena and produced a small set of documents.

There is no indication of any kind of coordination between Americans United and any other organizations to influence the outcome of the elections during the 1996 federal election cycle. It appears that Americans United was targeted by the Majority in order to conduct a fishing expedition into the activities of organizations that support Democratic issues.

CONCLUSION

The Majority's unwillingness to grant Minority subpoenas—and its steadfast refusal to enforce the limited number that were eventually granted—call into question the Majority's pledge to conduct a bipartisan investigation.

Allowing witnesses to continually flout the Committee's process with impunity sets a troubling precedent for future Senate investigations. As Senator Joseph Lieberman noted: "We are the people's representatives. We are the people's opportunity to find the facts to search for the truth, and when parties that we subpoena are asked for information, do not cooperate, it is an insult to the Congress, and it sets a precedent that is not one that we should accept." [78]

Beginning in April 1997, when Republican affiliated groups began to openly defy the Committee's subpoenas, more entities followed suit in August and September. In total, well over 30 organizations refused to comply to subpoenas validly issued by the Committee. The Minority repeatedly appealed to the Majority to enforce the outstanding subpoenas to no avail. For example, when on October 9, Senator Carl Levin asked the Committee to enforce outstanding subpoenas, Chairman Thompson replied: "I am not going to entertain that today." [79] Two days earlier, the Chairman opined:

> It's well known that the Senate imposed a cut-off date on this Committee. It's also been a very badly kept secret that people are now systematically thwarting our subpoenas, not responding to this Committee because they know that by the time we get through the contempt proceedings and into court, our cut-off date will have arrived. That is the sad truth, but it must be acknowledged.[80]

Furthermore, the Chairman said the following day, "We will make an additional effort to [enforce the Minority subpoenas] when you get the AFL–CIO to comply with the subpoenas we issued them." [81]

These rationales do not justify the Majority's consistent failure to enforce the outstanding subpoenas issued by this Committee. First, the entire Senate, not simply the Democratic members, voted 99–0 to impose the December 31 deadline. The mere fact that a deadline exists does not *per se* mean that enforcement is unrealistic. To do nothing assures failure.

Second, the statement about the AFL–CIO's lack of compliance is a red herring. The Minority was willing to order all organizations, including the AFL–CIO, to comply. The AFL–CIO did produce ten boxes of documents. If the Majority was dissatisfied with the quality of this production the remedy was not abdication of the Committee's responsibilities but rather institution of con-

tempt proceedings. The Minority agreed to vote to impose contempt on any group or individual that thwarted the Committee's valid authority process, but the Majority declined to take any action.[82]

FOOTNOTES

[1] Subpoenas requested by the Minority: Republican Exchange Satellite Network, #301; Better America Foundation, #299; American Cause, #300; Citizens Against Government Waste, #307; the Heritage Foundation, #306; U.S. Chamber of Congress (Coalition for Change), #304; American Defense Institute and American Defense Foundation, #'s 294 & 295; Citizens for a Sound Economy, #297; Women for Tax Reform, #305; National Right to Life Committee, #296; Christian Coalition, #298; DeLuca Liquor and Wine, Ltd., #302; Renato Mariani (Empire Sanitary Landfill), #303. Subpoenas requested by the Majority: AFL-CIO, #95; National Council of Senior Citizens, #285; Citizen Action, #286; National Education Association, #283; Vote Now, #282; Campaign to Defeat 209, #288; Sierra Club, #287; Democratic Leadership Council, #289; EMILY's List, #290; National Committee for an Effective Congress, #291; American Trial Lawyers Association, #292; Americans United for the Separation of Church and State, #293.

[2] Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpeonas issued by the Committee, 9/3/97.

[3] Letter to attorneys James Bopp, Jr. and Alan Dye from Minority Counsel, following up on a September 3 meeting with the Christian Coalition attorneys concerning the Christian Coalition's response to the Committee's July 30 subpoena, 9/8/97.

[4] Subpoena to the AFL-CIO, #95.

[5] Simultaneously, the AFL-CIO produced two boxes of documents containing what it said were copies of public records that the organization had filed with the Internal Revenue Service, the Federal Election Commission, and the U.S. Department of Labor, as well as a variety of materials generated by the AFL-CIO for political purposes, including tapes of advertisements sponsored by the organization. Letter to Senators Thompson and Glenn from counsel for AFL-CIO enclosing a "memorandum of legal authorities and principles in support of the AFL-CIO's objections to the document subpoena," 8/20/97.

[6] Appendix to Memorandum of Points and Authorities in Support of AFL-CIO's Objections to Document Subpoena, 8/20/97.

[7] Chairman Thompson, 10/9/97, Hrg. pp. 198-199.

[8] Subpoenas to Gerald Shea, #399; Richard Trumka, #400; and Steve Rosenthal, #401.

[9] Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpoenas issued by the Committee, 9/3/97.

[10] *Washington Post*, 12/30/95.

[11] *Washington Post*, 12/30/95.

[12] *Washington Post*, 12/30/95.

[13] *Chattanooga Free Press*, 6/22/95; *Washington Post*, 12/30/95.

[14] *Chattanooga Times*, 2/28/95.

[15] *Chattanooga Times*, 2/28/95.

[16] *Washington Post*, 6/18/95, 8/20/96; *Kansas City Star*, 6/22/95; 2 U.S.C. 433 & 434 (1997).

[17] *New York Times*, 1/28/96; *USA Today*, 2/28/96.

[18] *Roll Call*, 11/7/94.

[19] Associated Press, 11/2/95.

[20] Associated Press, 11/2/95.

[21] *Chicago Tribune*, 5/26/95; see e.g., letter to Jo-Anne Coe from Yong Kim, Chairman of Y.Y.K. Enterprises, Inc., concerning a refund check Kim received from Better America Foundation, 8/17/95.

[22] 2 U.S.C. 441b (1997).

[23] *Kansas City Star*, 6/22/95.

[24] Brochure for Better America Foundation.

[25] *Washington Post*, 6/21/95.

[26] *Washington Post*, 6/18/95.

[27] *Washington Post*, 6/7/95.

[28] AP Online, 4/19/96.

[29] *New York Times*, 3/4/96.

[30] 501(c)(3) organizations are tax-exempt and are incorporated as charitable entities and barred by law from participating in political campaigns. They may engage in lobbying as defined by statutory limitations and can establish 501(c)(4) organizations to lobby freely. 26 U.S.C. 501(c)(3) & (4) (1997); 2 U.S.C. 441b (1997).

[31] *Chicago Tribune*, 1/12/97.

[32] *Orange County Register*, 5/25/96.

[33] *Orange County Register*, 5/25/96.

[34] *Orange County Register*, 5/25/96.

[35] *Chicago Tribune*, 1/12/97.

[36] *Chicago Tribune*, 1/12/97.

[37] *Orange County Register*, 5/25/96.

[38] *Orange County Register*, 5/25/96.

[39] *Advertising Age*, 10/14/96; *Pittsburgh Post-Gazette*, 11/3/96.

[40] *Washington Post*, 11/23/97.

[41] *Washington Post*, 11/23/97; U.P.I., 10/28/96.
[42] U.P.I., 10/28/96.
[43] Examples of phrases constituting express advocacy were provided by the Supreme Court in footnote 52 of the Court's landmark decision in *Buckley* v. Valeo. The terms are commonly referred to as the "magic words" and include "'vote for,' 'elect,' 'support,' cast your ballot for, 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" 424 U.S. 1, 44 (1976).
[44] 2 U.S.C. 431(4), 433, and 434 (1997).
[45] Letter to Majority and Minority Chief Counsels from Jan Witold Baran, representing the Coalition: Americans Working for Real Change, enclosing a "Memorandum of Points and Authorities in Support of the Coalition's Objections to Document Subpoena," 9/16/97.
[46] 501(c)(4) organizations are incorporated as social welfare organizations. Contributions to these organizations are not tax-deductible, however, the organization's revenues are tax-exempt. These organizations have no limitations on the amount of lobbying in which they can engage, and can participate in politics so long as the organization does not expressly advocate the election or defeat of a candidate. 26 U.S.C. 501(c)(4).
[47] *Atlanta Journal*, 12/21/97; *Hotline*, 10/23/97.
[48] *Washington Post*, 10/23/97.
[49] *Washington Post*, 12/10/96 and 10/23/97.
[50] Letter to Chairman Fred Thompson from Richard Hauser regarding the "American Defense Institute/American Defense Foundation," 9/5/97.
[51] *National Journal*, 7/13/96.
[52] *National Journal*, 7/13/96.
[53] *National Journal*, 7/13/96.
[54] See Chapter 11.
[55] Letter to Majority Chief Counsel, from Thomas Wilson, Council for Women for Tax Reform, regarding WTR's response to the Committee's subpoena, 10/2/97.
[56] *Washington Post*, 12/10/96.
[57] *New York Times*, 3/1/95.
[58] Associated Press, 6/21/95.
[59] Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpoenas issued by the Committee, 9/3/97.
[60] Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpoenas issued by the Committee, 9/3/97.
[61] Letter to Minority Counsel from Kenneth A. Gross of Skadden Arps, attorney for DeLuca Liquor & Wine, Ltd., in response to subpoena, 8/21/97.
[62] Such information is requested in subpoenas to Vote Now (#282), the National Council of Senior Citizens (#285), Sierra Club (#287), Democratic Leadership Council (#289), and National Committee for an Effective Congress (#291).
[63] See *United States* v. *Davis*, U.S.D.C., S.D.N.Y.
[64] Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpoenas issued by the Committee, 9/3/97.
[65] Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpoenas issued by the Committee, 9/3/97.
[66] Letter to James Brown and Pam Marple from Richard Wilkof, Counsel for NEA, regarding National Education Association's response to the subpoena, 8/11/97.
[67] Letter to Senators Thompson and Glenn from Robert Chanin, General Counsel for NEA, regarding National Education Association's response to the subpoena, 8/20/97.
[68] *Washington Post*, 11/22/97.
[69] Hugh Westbrook deposition, 9/29/97, p. 13.
[70] *New York Times*, 9/20/97.
[71] Subpoena for Vote Now, #282.
[72] Former Vote Now 96' Executive Director Gary Barron was deposed by the Committee on September 30. Hugh Westbrook, former chairman of the organization, was deposed by the Committee on September 29. Mention of this organization and its ties to Meddoff, organized labor, and the DNC also appears in sworn deposition testimony of Harold Ickes, Warren Meddoff, Karen Hancox, Richard Sullivan, Marvin Rosen, Mark Thomann, and Donald Fowler. Information linking Vote Now 96' to the Judith Vasquez contribution appears in the deposition testimony of Noah Novorodsky, a summer associate at the law firm at Jackson, Tufts, Cole & Black, the firm that represented Vasquez, and the interview of Twyla Foster, a partner at the same firm that supervised Novorodsky. Both were involved in the transaction.
[73] Gary Barron deposition, 9/30/97, pp. 26–27.
[74] The Annenberg Public Policy Center, "Issue Advocacy During the 1996 Campaign: A Catalogue," 9/16/97.
[75] *National Journal*, 7/1/95.
[76] Letter to Majority and Minority Chief Counsels from the Association of Trial Lawyers of America, Christian Coalition, Citizen Action, Citizens Against Government Waste, International Brotherhood of Teamsters, National Council of Senior Citizens, and National Right to Life Committee declaring their objections to subpoenas issued by the Committee, 9/3/97.
[77] *Richmond Times Dispatch*, 7/3/97.
[78] Senator Lieberman, 10/7/97, Hrg. p. 41.

[79] Senator Thompson, 10/9/97, Hrg., p. 196.
[80] Senator Thompson, 10/7/97, Hrg., p. 4.
[81] Senator Thompson, 10/8/97, Hrg., p. 65.
[82] Senator Glenn, 10/8/97, Hrg., p. 73.

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PART 7 INVESTIGATION PROCESSES

Chapter 42: White House Production Issues

Over the course of the Investigation, the Committee subpoenaed or voluntarily requested documents from over 200 groups and individuals. The greatest number of formal and informal requests for documents were directed to the White House. Over 120,000 documents were produced by the White House, many of which shed important light on the fundraising practices being examined by the Committee. Over the course of the Committee's investigation, however, the White House came under frequent criticism for belatedly responding to requests for documents. In some of these instances, it was suggested that the White House's tardy productions compromised the effectiveness of the Committee's investigation. Some members of the Majority went further and suggested that the White House Counsel's office was deliberately obstructing the work of the Committee. These frustrations reached a head in July 1997 when the White House failed to produce entry records relating to Ng Lap Seng prior to Committee hearings concerning his access to the White House. In response, the Committee issued a subpoena to the White House.

In early October, the White House produced to the Committee and the Department of Justice numerous videotapes and audio recordings of Presidential events, including videotape footage of the opening minutes of 44 White House coffees. Materials relevant to these coffees, including videotapes, had been requested earlier by the Committee in April 1997. The belated production raised concerns about the effectiveness of the White House's document production procedures and prompted allegations by some members of the Majority that the White House had deliberately sought to conceal the existence of these materials. The Committee devoted two days of hearings to these matters in an attempt to resolve the issue of whether the White House counsel's office intentionally delayed the production of responsive videotapes to the Committee.

FINDINGS

(1) The White House Counsel's Office took appropriate and reasonable steps to discover the existence of responsive videotapes in response to the Committee's April 1997 document request. There is no evidence before the Committee to suggest that the White House Counsel's Office intended to obstruct the work of the Committee.

(2) The evidence before the Committee is conclusive, based on exhaustive technical analysis, that none of the videotapes or audiotapes produced by the White House to the Committee have been altered in any way.

OVERVIEW

Staff members of the Committee's Special Investigation first met with staff members of the White House Counsel's Office in February 1997. Most issues of how documents would be produced and stored were quickly resolved, and the White House made it clear from the outset that it would respond to document requests made by the Committee voluntarily, obviating the need for a subpoena. On April 9, 1997, the first formal document request was issued by

the Majority.[1] Although the request was reduced to 28 line-items, it required a search of all White House records for references to over 50 separate individuals and organizations.

On May 21, 1997, the Majority issued a second formal request for documents.[2] This request consisted of 42 line-items, one of which required a search for all documents referring to 61 individuals and entities. Two supplemental requests for additional materials were made on June 9, and June 11, 1997.[3] Over 100,000 pages of materials were delivered to the Committee in response to these requests.[4] In addition to its formal requests, the Committee made at least 200 additional, but informal requests, to the White House, leading Committee and White House staff to be in daily contact. The White House chief counsel, Charles Ruff, offered his personal assurance that the "White House w[ould] continue its efforts to honor the Committee's requests for information," and pledged continued timely production of all information requests as well as prompt responses to the many informal requests which were being made since early April by the Majority almost daily.[5]

On July 31, 1997, prompted by concerns arising out of the belated production of records relating to access to the White House by Charlie Trie's associate, Ng Lap Seng (see below, "Ng Lap Seng's WAVE Records"), the Committee unanimously voted to issue a subpoena repeating previous requests for production and seeking numerous additional documents relating to many specified individuals and entities.[6] Despite the burdensomeness of the search required by the subpoena, the response date was set for August 12. As the White House worked to respond to the subpoena, the Majority sent a "supplementary request" for additional documents on August 18, 1997.[7]

On October 2, the White House Counsel's office advised the Committee that the existence of videotapes containing material responsive to several of the Committee's information requests, including the initial April 28 request, had been discovered. By October 4, the Committee was provided with videotapes of the opening minutes of 44 coffees held at the White House. The Committee subsequently received over 100 additional videotapes of White House events and events outside the White House attended by President Clinton which were responsive to the Committee's prior requests. The circumstances of this belated discovery and production of responsive materials focused intense scrutiny on both the White House Counsel's Office and the organization that created and maintained these videotapes: the White House Communications Agency ("WHCA").

VIDEO AND AUDIO TAPING IN THE WHITE HOUSE

The White House Communications Agency ("WHCA") is funded by the Department of Defense and staffed by career military personnel. Its primary mission is to provide communications support to the president in his official capacity.[8] WHCA performs a number of services in this regard, from ensuring that the President has secure lines of communication while travelling, to supplying Secret Service agents with wireless communications equipment. The WHCA staff, numbering approximately 850 individuals, is pri-

Footnotes appear at end of Chapter 42.

marily located at the Anacostia Naval Air Station in Washington, D.C.

An important, but relatively small, aspect of WHCA's operations is the video and audio recording of the president's constitutional, statutory and ceremonial duties pursuant to the Presidential Records Act, 44 U.S.C. § 2201–07.[9] Photographic support has been provided to the Office of the President since 1949.[10] The exact nature and scope of this support has varied over the years, but since 1960, a military film crew has been responsible for the official film or videotape record of each presidency.[11]

A wide variety of events are videotaped by WHCA, including speeches, public addresses, meetings with Cabinet members, and foreign dignitaries, the president's weekly radio address, official phone calls, media interviews, holiday receptions, receiving lines, bill signings, and as much of the president's personal life as he desires.[12] The range of events at which presidential remarks would be audiotaped by WHCA is somewhat more circumscribed, consisting almost entirely of more formal events where the press is already present and the president requires a microphone for amplification of his remarks (the WHCA tape recording is made through a control box connected to the president's microphone in these situations).[13] Shortly after the audio or video recordings are made, they are catalogued and delivered to the National Archives, which stores them pending the establishment of a presidential library.[14]

WHITE HOUSE COMMUNICATION AGENCY

The Committee sought an understanding of why certain Presidential events are videotaped in their entirety, some for only a few minutes, and some not at all. Specifically, the Majority speculated that the abbreviated nature of the "coffee" videotapes was the result of politically motivated instructions given by members of the president's staff. Based on the uncontradicted testimony of both WHCA career military personnel and White House staff members, the Committee found that the decisions concerning the scope of WHCA's videotaping activities were non-political in nature and consistent with the practices of past administrations.

The Committee deposed White House staff member Steve Goodin, who has worked as a special assistant to the staff secretary since late 1994.[15] His responsibilities include interacting with the WHCA videotape camera crew on a daily basis and instructing them about the extent to which the president's activities will be videotaped each day.[16] In making these decisions, Goodin relies on four criteria: (i) the inherent historical value of the event, e.g. bill-signings; (ii) the potential for future historic value, such as a meeting with youth groups; (iii) the degree to which videotaping would help to present "a historical snapshot of what the president's day is like'; and (iv) the level of intrusiveness involved in having the videotape crew present.[17] Goodin also acknowledged that he probably would have asked WHCA personnel about their past videotaping practices.[18] Over time, as Goodin and WHCA personnel worked together on a daily basis, they acquired a mutual understanding about the desired extent of videotape coverage for particular kinds of events, thereby making it unnecessary for Goodin to explicitly direct them with respect to each event. Instead, WHCA

personnel would make assumptions about the desired extent of videotape coverage based on the nature of the event.[19] As WHCA Director of Operations Steve Smith put it, "they can tell by type of events, like recurring events, routine events."[20] For example, Goodin expected that WHCA personnel would generally tape all events where the press was already present, such as press conferences, but because the WHCA video crew would be situated with numerous other cameramen from the media, he could not state definitively that WHCA was always present at such events.[21] In general, Goodin asked them to tape the President's remarks at all public events, all events open to the press, and larger meetings where the president was scheduled to make remarks.[22]

VIDEOTAPE PROCEDURES FOR COFFEES

For events such as coffees, Goodin would instruct WHCA personnel to "take the top" or "take a spray" of the coffee, meaning that the video crew would follow the president into the room, stay long enough for him to greet everyone in the room and to take his seat at the table and then exit the room so the meeting could begin.[23] Goodin did not make discretionary determinations about the scope of videotape coverage for each individual coffee.[24] With respect to small, closed-press meetings like coffees, Chief McGrath, head of WCHA's Videotaping Unit, explained that "it is not that Steve Goodin necessarily decides top of or not. We all sort of know from past . . . we can read the schedule and have a feel for whether it's the top of or whether it's the whole thing."[25] WHCA videotaped only "the top" of numerous other events at the White House besides coffees, such as Cabinet meetings or bipartisan meetings of members of Congress in the Cabinet Room.[26] The basic considerations underlying the decision not to tape such small, closed-press meetings in their entirety were the physical intrusiveness of having a videotape crew present in such small gatherings and the absence of scheduled, formal remarks.

Goodin testified that space limitations in the Map Room, where most of the coffees were held, were one factor in the decision to only "take the top" of the coffees.[27] McGrath confirmed that the Map Room "doesn't have a whole lot of room . . . we were sort of intrusive."[28]

In addition, it has been WHCA's long-standing practice not to videotape entire closed-press meetings where the president is not scheduled to make formal remarks. Although President Clinton spoke with coffee attendees, Goodin testified that such informal remarks were distinguishable from fundraisers that were videotaped in their entirety since "he's not going to stand up and deliver a speech."[29] McGrath confirmed that "if the President is going to make remarks, we're going to be there for the whole thing, but remarks are different than meetings."[30] WHCA's Steve Smith testified that it has been the consistent practice since at least the Bush Administration to only videotape the beginning of an event that is closed to the press and for which no audio support has been requested (i.e., no lectern, no microphone, no amplification).[31]

More importantly, Goodin was never instructed by the president or by other members of the White House staff concerning the extent to which coffees or other events should be videotaped.[32]

McGrath explained that Goodin's instructions to the videotape crew were limited to the commencement and termination of videotaping[33] and never included specific directions about what should or should not be filmed during a particular event. "[I]t is strictly left up to the videographer to do the best he can to document what the president is saying, and that's it. There's no design. . . . There's no direction along those lines."[34] Smith further explained that, consistent with the archival nature of WHCA's videotaping, any footage taken of attendees at White House events was entirely incidental. "Their focus is the presidency, not . . . who he was having meetings with or whatever. They just don't do that."[35]

Goodin also testified that private meetings between the president and his staff were not typically videotaped.[36] As a result, such staff members would not be aware of the extent of WHCA's videotaping activities except to the extent they attended events videotaped by WHCA.[37]

THE INITIAL FAILURE TO IDENTIFY RESPONSIVE VIDEOTAPES

Chairman Thompson summarized the evidence accurately with respect to why responsive videotapes were not discovered in response to the Committee's original request for production. "We learned from the people at WHCA what happened in April. Basically, they received the so-called Ruff directive that [White House Counsel] Ruff prepared, and that somewhere between the Military Office and the White House and the WHCA people, the page that delineated fund-raisers and coffees got lost."[38] The Committee's investigation fully confirmed White House Counsel Lanny Breuer's assessment that the primary reason for the belated production was "a slipup of the most routine and the most innocent sort . . . the kind of mistake that happens every day in complicated litigation throughout the nation."[39]

On April 9, 1997, Majority Counsel sent to White House Counsel Lanny Breuer 28 separate requests for production of documents from the White House, including any materials related to three specified coffees.[40] Pursuant to this request, and several others from other investigations, White House Counsel Charles Ruff issued a four-page memo to the employees of the Executive Office of the President asking them "to conduct a thorough and complete search of ALL of your records (whether in hard copy, computer, or other form) . . . for materials responsive to the requests below."[41] The second page of the memorandum consisted of five numbered paragraphs, each with at least one subpart, containing specific document requests, including a request for all documents "referring or relating to White House coffees."[42] In addition, the first paragraph asked for the production of documents "referring or relating to any of the individuals or entities on Attachment A," which listed 99 individuals and entities on the last two pages of the Ruff memo.[43]

The Committee took deposition testimony from Alan P. Sullivan, director of the White House Military Office ("WHMO"). Sullivan has headed the WHMO since November 1994, prior to which time he was a colonel in the Marine Corps.[44] There are ten operating components of the WHMO (including for example, Air Force One, Camp David, and WHCA) and a combined staff of approximately

1800 personnel.[45] Sullivan recalled receiving the Ruff memo and processing it exactly as the office had processed numerous other document requests from the White House Counsel's Office: "disseminate it [the request] to each of the 10 operating units, request them to do a file search, respond to us in time so we could formulate a consolidated response to counsel by the due date."[46] According to the WHMO staffer who faxed the memos to the operational units, the Ruff memo was scanned by the fax machine just once and then pre-programmed to transmit to each of the WHMO command units directly from memory.[47] Four of these operational units—the Air Operations, U.S. Army Transportation Agency, Air Force One, and the Presidential Contingency Planning unit—were able to locate in their files a complete copy of the four-page Ruff memo faxed to them by WHMO. According to the fax-generated header information on each page, these fax transmissions occurred within less than an hour, further supporting the testimony that the Ruff memo was faxed in its entirety to WHCA at the same time it was faxed to other operational units. Five of the other operational units did not retain copies of the original fax transmission from WHMO.[48]

The WHCA official responsible for receiving and processing the document requests faxed from the White House Military Office was Colonel Charles Campbell, deputy commander of WHCA, who is now serving his second tour of duty in WHCA having previously served (in a different capacity) from 1986 to 1989 under the Reagan and Bush administrations.[49] Campbell testified that he recalled receiving a fax from the White House Military Office forwarding the April 28 Ruff memo. This document was placed on his desk by one of the four staff sergeants who constitute his administrative staff. He recalls seeing the first page of the Ruff memo and the two-page attachment, but not the second page, which contained the five numbered requests, including the request for documents related to "coffees." Asked to explain the missing second page, Campbell speculated that it had been lost or missorted with other fax traffic before it arrived on his desk.[50] Three of the four people working on the administrative staff in April 1997 subsequently left WHCA.[51] Campbell questioned the remaining individual about the missing fax page, but the individual had no recollection of the document.[52] Campbell also defended his staff: "Our administrative section is a hard-working group of young people. They process a lot of paperwork and do a lot of typing and that sort of thing. They do a very good job in support of [WHCA commander] Colonel Simmons and me. They're soldiers, airmen, and, you know, mistakes are made. And I don't know where this second page was mishandled. . . . But I don't believe that any of these administrative people did any intentional mishandling or held anything back from me regarding that April 29th package from the Military Office, which included the 28 April memo from the Counsel's office."[53]

Campbell's explanation that he had a good-faith belief that he had a complete copy of the fax despite the fact that a page was missing, was convincing. The first page of the Ruff memo specifically referred to Attachment A, by instructing recipients as follows: "Because this has been an ongoing process, some of the names listed on Attachment A are similar or identical to previous requests.

Therefore, if you are certain that you have previously provided a document in response to a Counsel's Office request, please do not provide it again."[54] The first page of the Ruff memo, however, made no reference to the requests contained in the five numbered paragraphs on the second page, leading Campbell to believe that the request related entirely to the names contained in Attachment A. Indeed, previous requests in December 1996 and January 1997 from the White House Counsel's Office had consisted entirely of lists of names. Moreover, the first page is self-contained, ending with a concluding paragraph and providing no clue that there is a second page. Campbell reasonably concluded that WHCA had been asked only to search for all documents related to the names appearing on Attachment A.

Campbell distributed the request by scanning Attachment A into his computer system to create a WordPerfect file and attaching the resulting document to an e-mail message that he sent to all WHCA personnel. The e-mail message summarized the first page of the Ruff memo and directed WHCA personnel to respond to the counsel's request with "a thorough search of all records (regardless of media) on file that were created from 20 Jan 93 to present relating to certain individuals and entities. They are listed on the 3-page attachment to this note."[55] Campbell expected the video and audio tape databases to be searched pursuant to this request and, in fact, they were searched.[56] The databases, however, are not indexed according to the names of individuals present at the recorded events. As a result, these searches failed to identify any responsive video or audio tapes.

WHITE HOUSE DEFINITION OF DOCUMENT

During the October 29th hearing, the Majority spent a great deal of time criticizing White House counsel for directing the White House staff, through the April 28 Ruff memo, to search "ALL of your records (whether in hard copy, computer, or other form) . . . for materials responsive to the requests below." The Majority argued that White House counsel may have intended to obstruct the Committee's investigation because the Ruff memo failed to forward the following lengthy definition of "document," contained in the Committee's April 9 document request, to White House staff:

> The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, telegrams, receipts, interoffice and intra office communications, electronic mail (E-mail), contracts, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matters, computer printouts, teletypes, invoices, transcripts, diaries, analyses, summaries, minutes, bills, accounts, projections, comparisons, messages, correspondence, press releases, financial statements, opinions, and investigations, (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and

> amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, compact discs, tape recordings and motion pictures), and electronic, mechanical, and electric records and representations of any kind.[57]

During both his deposition and his hearing testimony, Breuer explained that condensing this densely-worded, labyrinthine definition into a simple direction to search "ALL records (whether in hard copy, computer or other form)" was intended to ensure the fullest possible response from the numerous offices that make up the Executive Office of the President. "The reason is that the more complicated the definition, the more difficult it is for people who are not lawyers to understand the definition and to find responsive materials . . . [B]y saying we want all documents in whatever form, that is intended to be the most reasonable way of capturing such a long definition."[58]

Further complicating the task of the White House was that the Ruff memo was an attempt to search for documents responsive to requests from both this Committee and other investigations, each of which promulgated its own definition of "document." As Breuer explained in his deposition, "if I were to include your definition, then I would have to also include the House definition and the Justice Department definition. . . . I can't just sort of pick and choose."[59] Taking the Majority's position to its logical extreme, the boilerplate definitions of "document" generated by *each* entity requesting documents from the White House should have been distributed to White House staff in their entirety—a result that would appear to guarantee confusion.

The Majority's implied premise that the scope of the document production from the White House turned on sharing the Majority's exact definitional language with the entire White House staff is untenable. For example, WHCA personnel produced six responsive classified cables in response to the Committee's April 9 request. The Committee, however, did not specifically define "document" to include "cables" until the July 31 subpoena was issued. The language of the Ruff memo was adequate to identify and secure the production of a broader range of responsive documents than those specifically identified in the Committee's April 9 request, despite that request's lengthy definition of "document." Given this result, it is difficult to credit the suggestion that the White House Counsel's failure to forward the Committee's definition of document to all White House staff was motivated by a desire to obstruct the Committee's investigation. Breuer persuasively testified that "people, when they are looking for responsive material, don't parse definitions, and 13-lined definitions are not particularly helpful to them."[60]

The White House counsel's rewording of the Committee's definition was not only reasonable as a general principle, but was demonstrably adequate to identify the existence of responsive videotapes. The omission of the specific term "videotape" was of no moment in light of the fact that WHCA did not retain the videotapes themselves, but transmitted them to the National Archives. The

only records, therefore, of the existence of responsive videotapes, was contained in WHCA's computer databases, a form of record specifically identified by the Ruff memo's directive to search "ALL records (whether in hard copy, *computer* or other form)." Moreover, in response to the Ruff memo's directive, WHCA personnel did, in fact, search the videotape and audiotape databases for responsive materials. No responsive materials were identified at that time because of the way the databases were organized.

Col. Campbell, and other WHCA personnel who were deposed, were clear that if they had seen the second page of the Ruff memo, responsive materials would have been identified and produced. The critical word which would have elicited a response—"coffees"—appeared on page two of the Ruff memo. Col. Campbell testified that he would have scanned the second page of the Ruff memo into his computer system, as he did with Attachment A, and e-mailed it to the WHCA personnel.[61] In addition, due to the different nature of the requests on page two, keyed as they were to categories of events rather than specific names, Col. Campbell testified that he would have initiated discussions with the responsible persons in the Audiovisual Unit to assess the existence of responsive materials.[62] Likewise, Chief McGrath, the person actually responsible for querying the videotape databases in response to the Ruff memo, testified that if he had seen the second page of the Ruff memo, he would have queried the database on "coffees," identified responsive materials, and had discussions with his superiors about which of the resulting "coffee tapes" were being requested by the Counsel's office.[63] The evidence is clear that, but for the unintentional mishandling of page two of the Ruff memo by the career military personnel in the White House Communications Agency, the White House Counsel's document search procedures were adequate to identify the existence of responsive videotapes.

The Majority contended that the testimony of WHCA Director of Operations Steve Smith established that the White House counsel's condensation of the various Committee document requests concerning "coffees" was inadequate, assuming the second page of the Ruff memo had been distributed to WHCA personnel, to elicit the production of responsive videotapes.[64] This was a distortion of Smith's testimony. Smith simply testified that if he had received the second page of the Ruff memo in the spring of 1997, he would not have thought about identifying responsive videotapes because the audiovisual unit was not his responsibility at that time. "At the time I was in the Operations Division, not in the operational chain of command at the audiovisual unit. In the context of the tasking I got, I was thinking of documents in the true sense as file-type copies. Had I gotten this second page with the word "coffee" in it, it would have meant nothing to me at the time."[65]

WHITE HOUSE SEARCH PROCEDURES

The Majority's criticisms of the White House production effort must be viewed in the context of the size of the task confronting the White House staff. This Committee alone forwarded over 280 formal and informal requests for documents to the White House and received 120,000 pages of documents in response.[66] These documents frequently required time-consuming pre-production review

to protect against the disclosure of personal, confidential or classified information. White House counsel Breuer made the point that the Committee's document production priorities would frequently shift along with the Committee's plans for who would be deposed or be called to testify on a given day.[67] Breuer further explained that these last-minute requests frequently resulted in last-minute or belated productions of relevant materials.[68] The Minority's own experience during the life of this Committee confirms Breuer's observation that numerous depositions of White House personnel were taken with very little advance notice and that decisions on who would testify on any given hearing day were frequently not stated until the preceding day.

Breuer testified that White House counsel took reasonable steps to respond to all document requests, including: (i) issuing directives to the employees of the Executive Office of the President to search their files for relevant materials; (ii) designating members of the White House Counsel's office as available contact persons to answer any questions arising from the search directives; (iii) personally visiting and assisting in the search of offices which were most likely to have responsive materials pertaining to a specific request; and (iv) maintaining open lines of communication with Committee counsel to permit them to prioritize their document requests and to keep them informed as to the progress of the document production process.[69]

The Majority argued that White House counsel acted in bad faith by failing initially to interview WHCA personnel about the possible existence of videotapes of coffees and other White House events.[70] As Breuer testified, however, the possible existence of videotapes was not an issue raised by the Committee until the inquiries from Majority Counsel Bucklin in August 1997. "I think it's a fiction, Mr. Madigan, in all due respect, to say that there was some remarkable concern back in April about videotapes or recordings as much as some may think there was."[71] It is difficult to fault the White House Counsel's office in this regard given that the Committee itself, in its numerous depositions of individuals who attended the coffees, never once inquired of any of these witnesses about the presence of audio or videotaping equipment.[72]

WHITE HOUSE RESPONSES TO COMMITTEE INQUIRIES ABOUT VIDEOTAPES

On August 7, at the end of a meeting attended by White House counsels Lanny Breuer and Michael Imbroscio, Majority Counsel Bucklin and Minority Counsel, Bucklin took Imbroscio aside (after all other attendess had departed) and told him that he had information, the reliability of which he could not attest to, that all meetings in the Oval Office were surreptitiously taped either by videotape or audiotape.[73] Imbroscio was skeptical, but agreed to look into the issue.[74] This conversation, which lasted less than two minutes, left Imbroscio with the impression that Bucklin was asking him to look into whether there was clandestine taping in the Oval Office.[75] Bucklin did not mention the White House Communications Agency by name, but he did indicate that a "unit of the Department of Defense" might be responsible for the videotaping.[76] Bucklin did not request an immediate response or otherwise indi-

cate that this was a priority request.[77] Either that day or the following day, Imbroscio reported Bucklin's inquiry to Breuer, who confirmed in his deposition testimony that he understood Bucklin's initial inquiry to concern the possibility of clandestine taping in the Oval Office.[78] Breuer, while also expressing skepticism, instructed Imbroscio to follow up on the matter.[79] Sometime during the following week, Imbroscio also informed Chief White House Counsel Ruff about Bucklin's inquiry concerning clandestine taping.[80]

Eleven days later, Bucklin sent a letter to Breuer raising several issues, including a complaint about the lack of response to Bucklin's verbal inquiry of August 7. To the best of Imbroscio's recollection, Bucklin's August 19 letter inaccurately describes parts of their August 7 conversation.[81] Specifically, Bucklin's letter claimed that he had asked Imbroscio to ascertain immediately whether the entity which provided audio and visual taping services to the White House, which Bucklin identified in this letter for the first time as the White House Communications Agency, would require a separate subpoena in light of the fact that it was part of the Department of Defense.[82] Imbroscio has no recollection that this issue arose during their August 7 colloquy or that Bucklin had asked for an immediate response to any request he had made of Imbroscio at that meeting.[83] In addition, Bucklin's letter now characterized the audio and video taping as "routine," rather than the clandestine taping that was the subject of the initial inquiry.[84] In light of these differing recollections, the Minority proposed that Majority Counsel Bucklin be deposed concerning his initial inquiry to Imbroscio, but this request was rejected by the Majority.

Although taken aback by the inaccuracies in the letter, Imbroscio was entirely willing to address this somewhat broader request for information about video and audio taping activities within the White House.[85] The specific subject of videotapes of "coffees," however, was not raised either by this letter or in the contemporaneous discussions that Bucklin had with Imbroscio.[86] Moreover, Bucklin's inquiry was only one of numerous requests to the White House that the Committee was pressing. Most significant of these was the Committee's desire for prompt action on its August 1 subpoena to the White House, which consisted of 29 subparts and requested information on over 50 individuals and entities.[87] In addition, in the two months from the August 1 subpoena through the end of September, the Committee presented approximately 20 formal and informal requests for information to the White House.[88] During this same time period, from August through September, approximately 18,000 pages of documents were produced by the White House to the Committee.[89]

In order to respond to Bucklin's inquiry, Imbroscio personally visited the only WHCA office listed in the White House phone book—the office that provides pagers to White House personnel—and secured the name of WHCA Director of Operations Steven Smith.[90] Imbroscio made an appointment to meet with Smith on August 29.[91] Smith and Imbroscio have differing recollections of this discussion, but both agree that the topic of clandestine taping was raised by Imbroscio and quickly dismissed by Smith.[92] Both men also agree that Imbroscio asked in general about the kinds of events for which WHCA provided video and audio support and that

Smith advised Imbroscio that WHCA would typically film political fund-raisers attended by the President off the White House grounds.

Imbroscio also asked Smith whether WHCA would film small, private meetings in the Oval Office or the Map Room. He recalls Smith advising him that such "closed" events (a term of art used by WHCA to designate meetings closed to the public and the press) would not typically be filmed.[93] Smith, on the other hand, recalls informing Imbroscio that "it is very normal for us to be there video-wise for a closed press event."[94] Smith volunteered that Imbroscio's differing recollection may have resulted from confusing WHCA's video support with its audio support, which would not ordinarily be provided to a "closed press" meeting. Smith testified: "What I told him—and this is what I think got confused or . . . miscommunicated or understood or whatever it was the audio piece. I told him, that is, that we would not be there for a closed press, private-meeting type audio. We just don't do that . . . I suspect he got that all confused. There was a lot of information that went across the table to him, he and I, over a . . . 20–30 minute period. . . . He looked kind of glazed over. I mean, that's my personal opinion. I thought he was overwhelmed with information."[95]

Imbroscio left the meeting with the understanding that Smith would inquire into the existence of a comprehensive log of videotaped and audiotaped events that Imbroscio could review.[96] Majority Counsel Bucklin, prompted by a September 3 story appearing in the Washington Post, made another inquiry concerning WHCA, asking Imbroscio to determine whether WHCA kept a log of vice-presidential phone calls. Unlike the possible existence of videotapes, Bucklin placed a high priority on receiving a prompt response to this inquiry.

On September 9, at a meeting with Majority and Minority Counsel, Imbroscio reported on his meeting with Smith. Specifically, Imbroscio related that there was no clandestine taping in the White House, that the president's remarks at political fund-raisers were videotaped, but that it was his understanding that closed-press events would not be videotaped. However, Imbroscio also said that he had asked Smith to get back to him about the existence of a log of videotaped and audiotape events, that he would inquire further on the issue of such videotapes by reviewing the log, and committed to provide the Committee with access to such a log when it was located.[97] Imbroscio's testimony during the hearing was extremely clear on this point: "I said very clearly there were videotapes of fund-raising events and that—but to my understanding there were not videotapes of coffees, but that I would inquire further. . . . I did not have complete confidence that Mr. Smith knew precisely on a day-to-day basis what WHCA did, and so that is why I couched it in the terms I did, which is my understanding they were not filmed, but I wanted to satisfy myself on a first-hand basis whether or not they, in fact, existed."[98] Imbroscio also reported on his findings concerning the possible existence of a log of vice-presidential phone calls. It bears noting that, although the Majority was informed on September 9 that videotapes of fund-raisers existed, they made no immediate demand for expedited production of these tapes. Ultimately, these videotapes of public fund-raisers

constituted the vast majority of the videotapes responsive to the Majority's request and produced to the Committee.

The final sequence of events leading to the discovery of the videotapes began on September 25, when Imbroscio contacted Smith again to discuss both the videotape/audiotape logs and a lingering issue concerning the vice-presidential phone calls.[99] Smith informed Imbroscio that a paper or "hard-copy" log did not exist, and that all available information on the video and audio tapes was stored in computer databases. At Imbroscio's request, Smith had his staff prepare a description of the data fields for both the video and audio databases.[100] On Friday, September 26, this document was delivered to Imbroscio's office just before noon and reviewed briefly by him before he left at noon to visit family in North Carolina.[101] Upon his return to the office on Monday, September 29, Imbroscio began exchanging phone calls with Mr. Smith and arranged another meeting with him on Wednesday, October 1, to which Imbroscio brought a notepad with information concerning several of the specific events identified by the Committee.[102] [Smith recalls his initial meeting with Imbroscio occurring on September 30, but their accounts are otherwise substantially similar.] Smith arranged for Imbroscio to meet with Chief McGrath of the Audio/Visual unit in order to permit Imbroscio to actually query the relevant databases.[103]

During his meeting with Chief McGrath at 2:00 p.m. that afternoon (both Smith and Imbroscio agree that this meeting occurred on October 1), Imbroscio learned that there were two separate video databases. One was a database of events recorded in their entirety with only one event recorded per videotape.[104] The other databases, referred to as a photo-op databases, contained footage of events for which only the first few minutes had been recorded.[105] A week's worth of these events would be recorded on a single videotape, with the result being that these tapes were listed with date ranges, rather than specific dates.[106] Imbroscio queried the databases and ascertained that at least some of the coffees had been partially videotaped.[107] By his own account, Imbroscio was "surprised" and "stunned" by this discovery.[108] Chief McGrath confirmed in his testimony to the Committee that upon making this discovery, Imbroscio expressed shock and surprise.

Imbroscio asked that the videotapes identified by his search be retrieved from the National Archives so that he could review their contents. Imbroscio then informed Breuer, who was preparing to leave the office for Rosh Hashanah, that responsive videotapes of some coffees existed. Breuer instructed Imbroscio to find out everything he could. That same evening, Imbroscio reviewed the five or six tapes that Chief McGrath had successfully retrieved from the National Archives. Before leaving for the evening, Imbroscio left a voice-mail message with Majority Counsel Bucklin which, among other things, alerted Bucklin that Imbroscio had an updated status report on the WHCA issues.[109] Imbroscio and Bucklin finally spoke the next day at approximately 4:30 p.m., at which time Imbroscio informed him that, contrary to his prior understanding, there appeared to be approximately 30–40 partial videotapes of White House coffees and, consistent with his previous reports to Bucklin, approximately 100 videotapes of fund-raisers.[110] By Saturday, Octo-

ber 4, video footage of 44 White House coffees had been produced to the Committee.[111] By the following Tuesday and Wednesday, October 7th and 8th, The White House delivered an additional 66 DNC-related videotapes, as well as audiotapes, to the Committee.[112]

NOTIFYING THE DEPARTMENT OF JUSTICE OF THE EXISTENCE OF RESPONSIVE VIDEOTAPES

The White House Counsel's Office has been criticized for failing to communicate its discovery of responsive videotapes to the Department of Justice until October 4. This was one day after the Department issued a response to Rep. Hyde, Chairman of the House Judiciary Committee, declining to initiate a preliminary investigation under the Independent Counsel Act. Rep. Hyde's request for an investigation had raised a range of issues relating to alleged illegal activity by both President Clinton and Vice-President Gore, including issues involving White House "coffees." Both Ruff and Breuer acknowledged that the two-day delay in notifying the Department of Justice was unfortunate, but the record shows that this delay was not willful and did not impede the Department's campaign finance investigation in any material respect.

Ruff met with the Attorney General on Thursday, October 2, as he does every Thursday, to discuss legislation, policy, appointment issues and other issues of mutual concern.[113] Both parties, however, treat investigative matters regarding the White House as off-limits. Ruff testified that "[T]he one rule we have, not only in those meetings but across the board in my relations with the Attorney General, is we do not talk about investigative matters at all. . . . I think both of us believe that the integrity of the process is best preserved by not having those discussions at our level."[114] Although Ruff was generally aware that the Justice Department was preparing a response to Chairman Hyde, he did not focus on the fact that this response was expected from the Department the next day.[115] Instead, his primary focus was on the Attorney General's upcoming decision concerning the Department's preliminary inquiry into allegations concerning the Vice President's fund-raising phone calls.[116] Ruff, however, did not see the newly-discovered videotapes as being relevant to the Department's inquiry into the phone calls.[117] Nevertheless, Ruff testified to his "personal regret that I did not take steps to communicate this information to the Department on that day."[118]

As noted previously, Imbroscio personally spoke with Bucklin late in the day on Thursday, October 2, to inform him about the discovery of responsive videotapes. Later that same day, Imbroscio called Breuer on his car phone as he was returning with his family from celebrating Rosh Hashanah, briefed him on his conversation with Bucklin, and relayed the Majority's desire to have a meeting the following day to explain the belated production. The next morning, Friday, October 3, the White House Counsel "investigations" team, including Ruff, Breuer and Imbroscio, had a meeting to discuss how to gather, identify and produce all responsive videotapes and audiotapes as quickly as possible.[119] During that meeting, Breuer advised Ruff that he would be contacting his counterpart at the Department of Justice to advise them of the discovery of re-

sponsive videotapes.[120] Breuer met with Bucklin and Chief Minority Counsel Baron at 2:30 that afternoon to discuss the discovery of the videotapes and the steps being taken to ensure prompt production.[121] While these events were occurring, Breuer traded voicemail messages with his counterpart at the Department of Justice, but was not able to speak with him until Saturday morning.[122] Attorney General Reno publicly voiced her displeasure about the delayed notification, but concluded that the tapes did not change her assessment that the coffees were lawful.[123]

DEPUTY WHITE HOUSE COUNSEL AND THE VIDEOTAPES

The Majority seemed intent on establishing that White House Deputy Counsel Mills had actual knowledge that partial videotapes of the White House coffees existed. This was based solely on her involvement in drafting memos in 1996 concerning limits on the scope of audio or video services that WHCA could provide to the President in the context of political events occurring outside of the White House complex. While the circumstances surrounding the belated production of the videotapes certainly merited investigation, the Majority's oft-stated suspicions in this regard were not vindicated by the evidence. Mills testified during her deposition that she was generally unaware what WHCA was videotaping.[124] She was not involved with the coffees during the time they were occurring, did not attend any coffees, and did not even know there was a coffee "program."[125]

Mills' prior involvement with WHCA focused on advising them about the limits on their support activities during campaign-related travel, in order to ensure that the government was not paying for campaign activity in violation of the Hatch Act.[126] These discussions, however, focused on communication support being provided by WHCA during Presidential campaign trips, not on videotaping activities during small, closed-press events in the White House.[127] WHCA Director of Operations Smith, the main contact for Mills on these issues, confirmed during his testimony to the Committee that "I never discussed video, audiotaping with Ms. Mills at any time."[128] This is unsurprising since, at the time Mills had these discussions with Smith, the activities of the Audio-Visual Unit were not one of Smith's responsibilities.[129] Mills also had meetings with WHCA Commander Joseph Simmons concerning Hatch Act issues, who also testified that "videotaping was just not a subject that was brought up" in these meetings.[130] Even if the topic had come up, Col. Simmons did not have detailed knowledge of the scope of WHCA's videotaping activities. Indeed, it was his personal understanding at the time of his meetings with Mills that closed-press events such as "coffees," would *not* be videotaped by WHCA.[131] Accordingly, there is no basis to conclude that Mills had any specific knowledge of the extent to which closed-press meetings occurring within the White House, such as the coffees, would be videotaped by WHCA.

ALLEGATIONS CONCERNING ALTERATION OF THE VIDEOTAPES

Approximately two weeks after the belated production of the tapes, Rep. Dan Burton (R–Ind.) appeared on CBS's "Face the Nation" and alleged that the tapes had been altered in some way. "We

think some of these tapes may have been cut off intentionally, you know, altered in some way" because some "cut off very abruptly."[132] The Majority of this Committee hired a technical expert, Paul Ginsburg, to examine the originals of the videotapes produced by the White House for evidence of alteration or editing prior to the videotapes having been produced. Ginsburg concluded that there was no evidence of any alterations whatsoever, but had been instructed by the Majority not to divulge his conclusions. As weeks went by without disclosure, Senator Glenn wrote several letters to Chairman Thompson pointing out the unfariness of not clearing these career military personnel of any suspicion. Eventually, Chairman Thompson stated publicly that there had been no tampering.[133]

Suspicions about "alterations" were also initially aroused by the apparent lack of audio for a coffee attended by John Huang on June 18, 1996.[134] The Committee found that the apparent absence of sound on the tape of the coffee attended by Huang was a result of a technical mistake in the dubbing process. According to Smith's deposition testimony, the tape provided to the Committee *did* have sound, but it was mistakenly recorded onto the second audio channel normally used to record part of a stereo signal, rather than the first audio channel on which the mono sound from the videotape camera microphone is typically recorded, resulting in an apparent absence of sound when played on the non-stereo video players available to the Committee.[135]

OTHER PRODUCTION ISSUES

By the second day of the hearings on this topic, the Committee had already heard from WHCA personnel concerning the administrative mistake which had resulted in the failure to identify responsive videotapes in response to the Committee's earlier request. Since the record had already established that WHCA was responsible for the belated production, the Majority treated the appearance of White House Counsels Ruff, Breuer and Imbroscio as an opportunity to raise several other charges of failure to respond promptly to the Committee's document requests. Many of these charges were exceedingly unfair, while some raised issues of concern to the Committee as a whole about the effectiveness of White House document search and production procedures. In no instance, however, did the evidence support a conclusion that the White House deliberately delayed, concealed, or withheld documents from the Committee.

The Presidential "Diary"

During his opening statement on October 29, Chairman Thompson charged that, during the investigation into the belated production of the videotapes, the Majority had discovered the existence of a presidential "diarist" and that the "diary" she was responsible for maintaining had not been produced in response to the Committee's request for such materials.[136] White House Counsel Ruff, in lieu of an opening statement, immediately took issue with Chairman Thompson's "misleading assessment" and explained that the "diarist" to whom Thompson referred was an employee of the National Archives whose duties included collecting the President's

"schedules, briefing papers, phone logs, guest lists, and other records" for archival purposes.[137] The "diary" referred to by the Chairman is actually a computer database utilized by the diarist to index the collected presidential materials.[138] It strains commonsense for the Majority to argue that this computerized index maintained by a professional archivist is a "diary" within the meaning of the Committee's definition of "document." Moreover, using this index, over a thousand pages of responsive documents being held by the diarist had already been identified and produced.[139] White House document productions on March 20, May 20, June 13 and August 18th each clearly listed "the diarist" as the source of some of the documents produced.[140] Since the information in the index is drawn from the underlying documents themselves, production of the corresponding sections of the index would have provided the Committee with no additional information.[141]

By the end of the day, Chairman Thompson conceded that White House counsel had not failed to respond to the Committee's requests in this regard, but suggested that Committee counsel conduct a review of the diarist's index "to let us see whether or not there may be some dates there that would jump out at us that we know are relevant that you may not know is relevant."[142] Although the Majority continually emphasized the potential relevance of the diarist's work materials, no member of the Majority staff even called the White House to arrange to review these materials until late in December.[143] The Majority staff never followed up on this initial contact and the review was never conducted, although the offer to review the records was renewed as late as January 9 in a letter from Breuer.[144] Given that the Majority made no attempt to review these documents, it is difficult to credit their complaints that the belated "discovery" of the diarist impeded the Committee's investigation in any way.

WAVE records relating to Mr. Wu

The Committee's August 1 subpoena to the White House was precipitated by the White House's failure to produce White House entry records (known as "WAVE records") relating to an associate of Charlie Trie named Ng Lap Seng (also known as "Mr. Wu") until after the Committee had heard testimony concerning his contacts with Trie.[145] During the October 29 hearing, some members of the Committee suggested that the White House deliberately withheld the documents in question until after the public hearings concerning Trie had concluded.

Although the timing of the production of Wu's WAVE records was regrettable, the circumstances do not support the inference that the White House attempted to conceal the existence of the records from the Committee until after public hearings on this topic had concluded. First, in response to the Majority's request to expedite the production of specific categories of documents, the White House Counsel's office had put the Committee on written notice that they had not yet received the White House responses to their request for Wu's WAVE records.[146] In his testimony before the Committee, White House Counsel Breuer was very specific in his recollection that he had provided the Committee with detailed information about the White House's progress in responding to the

Committee's requests for expedited production contained in its letter of May 21.

> [A]s you know, I discussed this with [Majority Counsels] Mr. Bucklin and with Mr. Tipps. In fact, Mr. Tipps brought me out of a deposition because he knew that it was our position that we couldn't get you the May 21 information right away. It was my decision prior to—after the May 21 request, to meet with your staff so we could go over what you had and didn't have. It was at that time, Mr. Madigan, with all due respect, that the Committee knew what you had and what you didn't have. We worked out a schedule with you to complete those requests.[147]

Second, the Majority did not advise the White House of the upcoming hearings concerning Wu, which would have put them on notice that the Wu production was a priority.[148] Charles Ruff testified in his deposition that the Wu records were retrieved by a member of the White House press office in response to a press inquiry. When the Counsel's office learned that documents relevant to the Committee's ongoing hearings had been located, these WAVE records were produced to the Committee first before being given to the press.[149] During his deposition, Michael Imbroscio, one of the staff attorneys in the White House Counsel's Office, described a meeting wherein Breuer explained to Bucklin the circumstances surrounding the production of Wu's WAVE records and said that Bucklin "expressed, in essence, some sadness that he had not been communicated [the] explanation before, and that so much had been made of it." [150] Breuer also remembered Bucklin saying "something to the effect that if I had had the opportunity to explain to everyone exactly why we produced the Ng Lap Seng [Wu] document when we did, it may well have been that a lot of the uproar would have been unnecessary." [151]

Lisa Berg documents

Another issue concerning the timing of document productions arose on July 29 when the Committee received documents relevant to the deposition of Lisa Berg, a former Director of Advance for Vice President Gore, three hours after her deposition had concluded.[152] This deposition, however, was scheduled on very short notice with the Committee issuing a notice of deposition dated Friday, July 25, seeking Berg's appearance on Tuesday, July 29.[153] As Breuer testified before the Committee, such short lead times presented substantial challenges to the White House in producing all relevant documents in a complete and timely manner:

> I realize to some of the members sitting here, when you get something in the last minute, it appears like there is a pattern of obstruction or delay. I suggest to you that a fair reading is that often when you get documents in the last minute, it is a direct response to this Committee saying we are talking the deposition of Mr. Smith in three days, please drop everything and do whatever you can to get those documents to us as quickly as possible, and we have done that.[154]

Despite these circumstances, Majority Counsel Madigan suggested in public hearings that this lapse was a deliberate attempt by the White House to frustrate the Committee's work. This suggestion is untenable, however, in light of the White House's subsequent offer to make her available for additional questioning about the specific documents in question.[155]

> Mr. Madigan, time and again when in the public eye there have been complaints about getting documents later, we have said to you, if you truly feel disadvantaged by not getting a document, you can redepose or interview or have witnesses. Lisa Berg is an example where publicly you complained that you didn't have the Lisa Berg document. . . . we have promptly and in private, not to make it a public spectacle, said, Would you like the opportunity to speak to her about the documents . . . that you have received? And you have not taken us up on that offer.

As was the case with so many other allegations of supposed White House obstruction, the Majority declined the White House invitation to re-depose or re-interview Berg,[156] thereby casting substantial doubt on the Majority's assertion that the belated production of the Berg documents seriously compromised the Committee's investigation.

CONCLUSION

The Committee's hearings have produced numerous revelations about the Administration's fund-raising practices that have invited substantial criticism. The Minority has addressed the specifics of these issues in other parts of this report. It bears noting, however, that most of these stories were based in large part on documentary and testimonial evidence provided by the White House. Against this backdrop, accusations that the White House intermittently departed from its policy of cooperativeness in order to conceal material of questionable significance to the Committee's investigation are wholly unpersuasive.

During the questioning of White House counsels Ruff, Breuer and Imbroscio, the Majority frequently challenged the reasonableness of the procedures utilized by their office to identify and produce documents responsive to the Committee's numerous requests. The record is clear, however, that the White House search procedures were reasonable under the circumstances. The fact that these procedures sometimes failed to immediately identify and produce all relevant documents did not come close to supporting the inference that the White House acted with the intent to obstruct the Committee's investigation.

FOOTNOTES

[1] Exhibit 1488: Letter to Lanny Breuer from Majority Counsel, regarding "a request for production of documents," 4/9/97.

[2] Exhibit 1489: Letter to Lanny Breuer from Majority Counsel regarding "Second Request for Documents," 5/21/97.

[3] Two letters to Lanny Breuer from Majority Counsel regarding supplemental requests for documents, 6/9/97 and 6/11/97.

[4] Letter to Majority Chief Counsel from Charles Ruff, Counsel to the President, 7/25/97.

[5] Letter to Chief Counsel from Charles Ruff, Counsel to the President, regarding a summary of the status of the White House's production and "the understandings" reached between the White House and Committee staff concerning outstanding production of documents, 7/25/97.

[6] Exhibit 1490: Subpoena to the Custodian of Documents, The White House, issued by the Committee on Governmental Affairs for "all documents and other things identified or described in Schedule A," 7/31/97.
[7] Exhibit 1509: Letter to Lanny Breuer from Majority Counsel regarding "Supplemental Request for Documents," 8/19/97.
[8] Exhibit 2435M: Memorandum from Jack Quinn, Counsel to the President, to White House Staff re: Appropriate Use of Resources, 4/8/96.
[9] Exhibit 2433M: Memorandum from Antonio Lopez, Director, White House Military Office, to White House Staff re: White House Video Documentation Office, 5/8/89.
[10] Exhibit 2433M: Memorandum from Antonio Lopez, Director, White House Military Office, to White House Staff re: White House Video Documentation Office, 5/8/89.
[11] Exhibit 2433M: Memorandum from Antonio Lopez, Director, White House Military Office, to White House Staff re: White House Video Documentation Office, 5/8/89.
[12] Exhibit 2433M: Memorandum from Antonio Lopez, Director, White House Military Office, to White House Staff re: White House Video Documentation Office, 5/8/89.
[13] Exhibit 2433M: Memorandum from Antonio Lopez, Director, White House Military Office, to White House Staff re: White House Video Documentation Office, 5/8/89.
[14] Steven Smith deposition, 10/10/97, pp. 85/86.
[15] Stephen Goodin deposition, 10/21/97, p. 11.
[16] Stephen Goodin deposition, 10/21/97, pp. 15/16.
[17] Stephen Goodin deposition, 10/21/97, pp. 16 & 55/56.
[18] Stephen Goodin deposition, 10/21/97, pp. 17/18.
[19] Stephen Goodin deposition, 10/21/97, pp. 24/25.
[20] Steve Smith deposition, 10/10/97, p. 53.
[21] Stephen Goodin deposition, 10/21/97, pp. 23 & 77.
[22] Stephen Goodin deposition, 10/21/97, pp. 24–25.
[23] Stephen Goodin deposition, 10/21/97, p. 28.
[24] Chief Charles McGrath deposition, 10/20/97, p. 216.
[25] Chief Charles McGrath deposition, 10/20/97, p. 206.
[26] Chief Charles McGrath deposition, 10/20/97, p. 207; Stephen Goodin deposition, 10/21/97, p. 28.
[27] Stephen Goodin deposition, 10/21/97, pp. 32 & 35.
[28] Chief Charles McGrath deposition, 10/20/97, p. 175.
[29] Stephen Goodin deposition, 10/21/97, p. 35.
[30] Chief Charles McGrath deposition, 10/20/97.
[31] Steve Smith deposition, 10/10/97, pp. 185–186.
[32] Stephen Goodin deposition, 10/21/97, pp. 40.
[33] Chief Charles McGrath deposition, 10/20/97, pp. 26–27.
[34] Chief Charles McGrath deposition, 10/20/97, pp. 52–53.
[35] Steven Smith deposition, 10/10/97.
[36] Stephen Goodin deposition, 10/21/97, p. 77.
[37] Stephen Goodin deposition, 10/21/97, p. 78.
[38] Chairman Thompson, 10/29/97 Hrg., p. 91.
[39] Lanny Breuer, 10/29/97 Hrg., p. 106.
[40] Exhibit 1488: Letter to Lanny Breuer from Majority Counsel regarding "a request for production of documents," 4/9/97.
[41] Exhibit 2423M: Memorandum from Charles F.C. Ruff, Counsel to the President, to Executive Office of the President re: Document Request, 4/28/97.
[42] Exhibit 2423M: Memorandum from Charles F.C. Ruff, Counsel to the President, to Executive Office of the President re: Document Request, 4/28/97.
[43] Exhibit 2423M: Memorandum from Charles F.C. Ruff, Counsel to the President, to Executive Office of the President re: Document Request, 4/28/97.
[44] Alan P. Sullivan deposition, 10/16/97, pp. 5–8.
[45] Alan P. Sullivan deposition, 10/16/97, p. 10.
[46] Alan P. Sullivan Deposition, 10/16/97, p. 62.
[47] Col. Charles Kenneth Campbell deposition, 10/21/97, p. 109.
[48] Col. Charles Kenneth Campbell deposition, 10/21/97, p. 57.
[49] Col. Charles Kenneth Campbell deposition, 10/21/97, p. 11.
[50] Col. Charles Kenneth Campbell deposition, 10/21/97, p. 78.
[51] Col. Charles Campbell, 10/23/97 Hrg., p. 69.
[52] Col. Charles Campbell, 10/23/97 Hrg., p. 69.
[53] Col. Charles Kenneth Campbell deposition, 10/21/97, pp. 107–108.
[54] Exhibit 2423M: Memorandum from Charles F.C. Ruff, Counsel to the President, to Executive Office of the President re: Document Request, 4/28/97.
[55] Exhibit 2428M: E-mail message from Col. Charles Kenneth Campbell to WHCA personnel re: HOT SUSPENSE—Document Search, 4/29/97.
[56] Col. Charles Kenneth Campbell deposition, 10/21/97, p. 105.
[57] Exhibit 1488: Letter from Majority Counsel to White House Counsel Lanny Breuer, 4/9/97.
[58] Lanny Breuer, 10/29/97 Hrg., p. 177.
[59] Lanny Breuer deposition, 10/17/97, p. 41.
[60] Lanny Breuer deposition, 10/17/97, p. 42.
[61] Col. Charles Kenneth Campbell deposition, 10/21/97, p. 83.
[62] Col. Charles Kenneth Campbell deposition, 10/21/97, p. 84.
[63] Deposition of Chief Charles McGrath, 10/20/97, pp. 89–90.
[64] Majority Counsel, 10/29/97 Hrg., p. 138.
[65] Steven Smith, 10/23/97 Hrg., p. 93.
[66] Lanny Breuer, 10/29/97 Hrg., p. 108.
[67] Lanny Breuer, 10/29/97 Hrg., p. 109.

[68] Lanny Breuer, 10/29/97 Hrg., p. 109.
[69] Lanny Breuer, 10/29/97 Hrg., pp. 110–111.
[70] Michael Madigan, 10/29/97 Hrg., p. 139.
[71] Lanny Breuer, 10/29/97 Hrg., p. 145.
[72] Lanny Breuer, 10/29/97 Hrg., p. 180.
[73] Michael Imbroscio deposition, 10/17/97, pp. 60–61.
[74] Michael Imbroscio deposition, 10/17/97, p. 61.
[75] Michael Imbroscio deposition, 10/17/97, pp. 63 & 67.
[76] Michael Imbroscio deposition, 10/17/97, pp. 64–66.
[77] Michael Imbroscio deposition, 10/17/97, p. 73.
[78] Lanny Breuer deposition, 10/17/97, p. 54.
[79] Lanny Breuer deposition, 10/17/97, p. 56.
[80] Michael Imbroscio deposition, 10/17/97, pp. 74–75.
[81] Michael Imbroscio, 10/29/97 Hrg., p. 118; Michael Imbroscio deposition, 10/17/97, pp. 79–81.
[82] Exhibit 1509: 8/19/97 letter from Majority Counsel to White House Counsel Lanny Breuer.
[83] Michael Imbroscio deposition, 10/17/97, p. 81.
[84] Michael Imbroscio deposition, 10/17/97, p. 79.
[85] Michael Imbroscio deposition, 10/17/97, p. 83.
[86] Michael Imbroscio, 10/29/97 Hrg., p. 118.
[87] Michael Imbroscio deposition, 10/17/97, p. 78.
[88] Michael Imbroscio, 10/29/97 Hrg., p. 117; Michael Imbroscio deposition, 10/17/97, p. 121.
[89] Michael Imbroscio, 10/29/97 Hrg., p. 117; Michael Imbroscio deposition, 10/17/97, p. 122.
[90] Michael Imbroscio deposition, 10/17/97, pp. 76–77 & 85–86.
[91] Michael Imbroscio deposition, 10/17/97, p. 85.
[92] Michael Imbroscio deposition, 10/17/97, p. 88.
[93] Michael Imbroscio deposition, 10/17/97, p. 91.
[94] Steven Smith deposition, 10/10/97, p. 138.
[95] Steven Smith deposition, 10/10/97, pp. 139–140.
[96] Michael Imbroscio deposition, 10/17/97, pp. 103 & 105–106.
[97] Michael Imbroscio deposition, 10/17/97, pp. 111–112.
[98] Michael Imbroscio, 10/29/97 Hrg., pp. 163 & 190.
[99] Michael Imbroscio deposition, 10/17/97, pp. 139–140.
[100] Michael Imbroscio deposition, 10/17/97, p. 137; Steven Smith deposition, 10/10/97, p. 151.
[101] Michael Imbroscio deposition, 10/17/97, p. 140.
[102] Michael Imbroscio deposition, 10/17/97, pp. 146–148.
[103] Michael Imbroscio deposition, 10/17/97, p. 150.
[104] Michael Imbroscio deposition, 10/17/97, pp. 151–152.
[105] Michael Imbroscio deposition, 10/17/97, pp. 151–152.
[106] Michael Imbroscio deposition, 10/17/97, pp. 151–152.
[107] Michael Imbroscio deposition, 10/17/97, p. 153.
[108] Michael Imbroscio deposition, 10/17/97, p. 158.
[109] Michael Imbroscio deposition, 10/17/97, p. 156.
[110] Michael Imbroscio deposition, 10/17/97, pp. 163–164.
[111] Lanny Breuer deposition, 10/17/97, p. 99.
[112] Lanny Breuer deposition, 10/17/97, p. 99.
[113] Charles F.C. Ruff, 10/29/97 Hrg., p. 223; Charles F.C. Ruff deposition, 10/27/97, p. 34.
[114] Charles F.C. Ruff, 10/29/97 Hrg., pp. 223 & 225.
[115] Charles F.C. Ruff deposition, 10/27/97, p. 38.
[116] Charles F.C. Ruff, 10/29/97 Hrg., p. 224.
[117] Charles F.C. Ruff's deposition, 10/27/97, p. 37.
[118] Charles F.C. Ruff, 10/29/97 Hrg., p. 224.
[119] Charles F.C. Ruff's deposition, 10/27/97, p. 56; Lanny Breuer's deposition, 10/17/97, p. 74.
[120] Charles F.C. Ruff's deposition, 10/27/97, p. 56.
[121] Lanny Breuer's deposition, 10/17/97, pp. 99–100.
[122] Charles F.C. Ruff's deposition, 10/27/97, p. 38.
[123] *1Washington Post* , 10/10/97.
[124] Cheryl Mills deposition, 10/18/97, pp. 57–59.
[125] Cheryl Mills deposition, 10/18/97, pp. 54–57.
[126] Cheryl Mills deposition, 10/18/97, p. 58.
[127] Cheryl Mills deposition, 10/18/97, pp. 65–73.
[128] Steve Smith, 10/23/97 Hrg, p. 90.
[129] Steve Smith, 10/23/97 Hrg., p. 90.
[130] Col. Joseph Simmons IV's deposition, 10/16/97, p. 45.
[131] Col. Joseph Simmons IV deposition, 10/16/97, p. 125.
[132] Washington Post, 10/20/97.
[133] 12/5/97 letter from Ranking Minority Member Senator John Glenn (D–Ohio) to Chairman Thompson (R–Tenn.) (urging that Ginsburg's findings be made public and referencing earlier letter dated 11/19/97 to the same effect).
[134] New York Times, 10/7/97.
[135] Steven Smith's deposition, 10/10/97, pp. 157–158.
[136] Chairman Thompson, 10/29/97 Hrg., pp. 93–94.
[137] Charles Ruff, 10/29/97 Hrg., p. 99.
[138] Charles Ruff, 10/29/97 Hrg., p. 100.
[139] Charles Ruff, 10/29/97 Hrg., p. 101.
[140] Michael X. Imbroscio, 10/29/97 Hrg., pp. 114–115.
[141] Charles Ruff, 10/29/97 Hrg., p. 199.
[142] Chairman Thompson, Hrg., p. 219.

[143] Letter from Lanny Breuer, Special Counsel to the President, to Majority Counsel, 1//9/98.
[144] Letter from Lanny Breuer, Special Counsel to the President, to Majority Counsel, 1//9/98.
[145] The Washington Post, 7/31/97.
[146] Lanny Breuer, 10/29/97 Hrg., p. 151.
[147] Lanny Breuer, 10/29/97 Hrg., p. 151.
[148] The Washington Post, 7/31/97.
[149] Charles Ruff deposition, 10/27/97, p. 31.
[150] Michael Imbroscio deposition, 10/17/97, p. 62.
[151] Lanny Breuer, 10/29/97 Hrg., pp. 183–184.
[152] Majority Counsel, 10/29/97 Hrg., p. 150.
[153] Lisa Berg deposition, 7/29/97, Exhibit 1: Notice of Senate Deposition.
[154] Lanny Breuer, 10/29/97 Hrg., p. 109.
[155] Lanny Breuer, 10/29/97 Hrg., pp. 160–161.
[156] Lanny Breuer, 10/29/97 Hrg., pp. 160–161.

9353

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PART 8 MINORITY RECOMMENDATIONS

ISSUES THAT WARRANT FURTHER INVESTIGATION

The U.S. Department of Justice, Internal Revenue Service and Federal Election Commission are already engaged in civil and criminal enforcement actions related to the 1996 and prior federal elections. Examples include the Justice Department's recent criminal convictions of the Kims and Lums and recent indictments of Charlie Trie and Maria Hsia; the IRS's rejection of the National Policy Forum's application for tax-exempt status; and the FEC's 1996 civil suit against the Christian Coalition for coordinating election-related activities with candidates. Many of the persons and organizations discussed in this Report are already under investigation by one or more of these federal agencies. The Minority hereby refers this Report to all three agencies to provide them with the Minority's analysis and to allow evaluation and commencement of investigations of violations of the applicable laws where warranted.

Based upon the evidence before the Committee, and the evidence contained in the Minority report, the Minority also recommends additional investigation by the Department of Justice of individuals and entities that appear to have engaged in the obstruction of this investigation, or willfully provided testimony that they did not believe to be true to the Committee.

RECOMMENDATIONS

By Constitutional design, investigations undertaken by the U.S. Senate are not law enforcement efforts, but inquiries made "in aid of the legislative function." The investigation undertaken by the Senate Committee on Governmental Affairs has exposed numerous flaws in existing law rendering the federal campaign finance system vulnerable to circumvention and exploitation. If the vulnerabilities so starkly revealed are not a catalyst for reform of the campaign finance system, then the Committee's investigative efforts will have failed in a principal purpose. Accordingly, the following section offers legislative recommendations to repair and strengthen the campaign finance system. Many of these proposals are included in S. 25, the McCain-Feingold campaign finance reform bill. The consideration by the Senate of that legislation, as well as other proposed campaign finance reforms, will be a measure of the lessons learned from the 1996 elections.

Legislative recommendations on campaign finance reform

• Eliminate Soft Money: Eliminating unrestricted contributions to political parties from individuals, corporations and unions is the most important step towards reducing the influence of money in the campaign finance system. The McCain-Feingold proposal would ban soft money contributions to political parties. If the flow of soft money is not halted, the campaign finance abuses and loss of public confidence that tainted the 1996 elections are likely to worsen by the year 2000.

• Address Issue Advocacy: A soft money ban, however fundamental to reform, must be coupled with reforms addressing candidate advertisements masquerading as issue ads. The McCain-Feingold proposal contains provisions which will bring advertisements that

function as candidate ads, but use technicalities to avoid disclosure and contribution limits, within the same laws that govern other candidate ads. One of these provisions would require any communication that mentions a federal candidate within 60 days of a general election to comply with disclosure requirements and restrictions on the use of union and corporate funds. This provision would not prevent or ban any advertisement; it would provide limits on how certain ads may be financed.

• Strengthen and clarify the statutory prohibitions against foreign contributions and contributions in the name of another. Currently, neither prohibition clearly applies to soft money donations, and the foreign money prohibition does not explicitly prohibit foreign nationals from participating in a campaign through direct expenditures.

• Give the Federal Election Commission the resources it needs to do its job. Any reform, from the most modest improvements in disclosure to the most comprehensive revision of campaign financing, will not be complete if the agency charged with enforcing the law lacks the resources to do so.

• Give the Federal Election Commission the authority needed to enforce the law. The Commission's enforcement authority should be strengthened and Commission procedures streamlined. Needed changes include:

  • Increase the size of the Commission to an odd number of Commissioners to avoid voting deadlock;
  • Grant the Commission the power to seek injunctions in federal court;
  • Streamline the process for initiating investigations by eliminating requirements for a formal Commission vote and formal finding that a violation occurred; and
  • Permit the Commission to assess automatic fines for late disclosure reports.

• Improve public disclosure. Disclosure is fundamental to informing voters and deterring corruption in the political process. Advances in technology make electronic disclosure of campaign reports a viable option that would make information about candidates" funding available to the widest possible audience in a timely manner.

  • Mandate electronic filing for all candidates and political committees to speed the disclosure process and allow more disclosure to voters. Such a provision is contained in the McCain Feingold proposal and includes a waiver for candidates raising less than a certain threshold amount;
  • Require that disclosure reports of Senate candidates be filed directly with the FEC rather than with the Secretary of the Senate;
  • Require that all reports be electronically filed by the due date of the report;
  • Require committees raising in excess of $100,000 per calendar year to file a monthly report;
  • Develop a constitutionally acceptable means to improve public disclosure of election-related issue advertising; and
  • Require all issue advertising which identifies a specific federal candidate in an election year to include a disclaimer iden-

tifying the ad sponsor, and require the ad sponsor to provide additional information identifying any individual or organization providing significant funding for the communication.

• For all contributions over $1,000, require certification, under penalty of perjury, that a contribution meets the requirements of federal law, including that the contributor is a citizen or legal permanent resident and that the contribution was made from the funds of the contributor.

• Reduce the costs of campaigns. During the 1996 campaign, federal candidates spent $400 million on television advertising. Congress should consider mandating some free time from broadcasters as one way to decrease the amount candidates buy and parties are required to spend to get out their message.

• Clarify and strengthen applicable tax law. Tax exempt organizations have become increasingly influential in federal elections, while operating under legal requirements that provide insufficient guidance on permissible campaign activity and disclosure obligations.

• Clarify campaign restrictions applicable to organizations operating under section 501(c)(4) of the tax code. The current restrictions appear primarily in IRS regulations and require clarification regarding what social welfare organizations are legally permitted to do;

• Ensure public disclosure of all organizations whose primary purpose is to influence elections by requiring that all organizations claiming an exemption from taxes under Section 527 also file with the FEC or the applicable state body. This limitation would ensure that issue advocacy organizations claiming a section 527 exemption from taxation for the purpose of influencing federal elections do not circumvent the public disclosure requirements now applicable to other organizations established to influence federal elections; and

• Consider requiring the IRS to approve or disapprove all applications for tax exempt status within one year, and requiring that an application for exempt status be approved before an organization may hold itself out as tax-exempt.

Recommended procedures for future Senate investigations

• Special investigations by the Senate into potentially serious misconduct by high level executive branch officials should be given a bipartisan structure similar to that of the Watergate and Iran-Contra committees. The Committee undertaking such an investigation should consider the elevation of the Ranking Member to Vice Chair, and the hiring of a single chief of staff assisted by a nonpartisan staff to carry out the investigation.

• The Senate should establish uniform protocols and procedures to govern special investigations. Such process rules should mandate offering both Minority and Majority staff the opportunity to be present at all investigative interviews and depositions, establish notice requirements for the taking of depositions and calling witnesses at hearings, and establish procedures for the issuance of subpoenas. At a minimum, notice requirements should guarantee all witnesses and Committee Members at least 72 hours notice of persons being called to testify at a Committee hearing. Procedures

concerning the use of classified information at public hearings should also be provided.

- Procedures should be established for the consideration of requests for immunity. Before a Committee vote is held on a grant of immunity, Committee Members should be fully informed of any proffer of testimony by the person requesting immunity and of the position of the Justice Department regarding the immunity request.

Other recommendations

- Democratic and Republican Parties: Both parties should improve their procedures for ensuring the legality and propriety of the contributions they accept.
- Republican Party: To the extent the following foreign funds have not already been refunded, the Republican Party and its affiliate, the National Policy Forum, should immediately refund $800,000 resulting from a 1996 loan default involving a foreign national and foreign dollars from Hong Kong; $215,000 from a 1992 contribution by Michael Kojima utilizing foreign funds from Japan; $50,000 from a 1996 contribution by Panda Industries, Inc., a company owned by a foreign national; and $25,000 from a 1996 contribution by the Pacific Cultural Foundation, a foreign organization based in Taiwan.
- Department of Commerce: While the Department of Commerce has made changes to its procedures granting security clearances, the operation of the Commerce Department Security Office should be restructured to enhance communication between the divisions and establish better procedures for tracking employee clearances.
- Federal Bureau of Investigation: The FBI should review its current provisions regarding security clearance procedures granted to legislative and executive branch employees and appointees and report its findings to the Committee.
- Central Intelligence Agency:
  - The CIA should consider establishing enhanced procedures and guidelines to maintain records of classified documents shown to executive branch officials. This investigation did not provide any evidence that the CIA improperly disseminated classified information to John Huang. However, the investigation did demonstrate that the CIA does not maintain complete records of all materials shown to individuals in the executive branch. Enhanced records would serve to protect the CIA from allegations of impropriety as well as function as an aid in investigating the merits of future allegations.

• The CIA should consider establishing enhanced procedures and guidelines for the provision of information to other executive branch agencies. During this investigation, there was controversy over the National Security Council's request for, and the CIA's distribution of, information regarding Roger Tamraz. The Minority could not determine why reports from two CIA divisions were not consistent or complete or why one CIA division contacted the NSC for the purpose of providing information over the telephone that appeared to be inaccurate and unwanted. It is important for executive branch agencies to make use of information obtained by the CIA, but the general restrictions and determinations regarding that information should be known to both the CIA and the requesting agencies.

PART 9 RESPONSE TO MAJORITY REPORT

INTRODUCTION

The Senate Resolution establishing the Special Investigation into the 1996 elections stated that the Committee on Governmental Affairs was to examine allegations of impropriety and illegality by *both* political parties. Despite the language of the Resolution, the investigation was conducted in a highly partisan fashion: The hearings focused almost entirely on allegations relating to Democrats, while largely ignoring allegations relating to Republicans. It is thus not surprising that the Majority Report on the investigation is a highly partisan document. The partisan bias is manifested in many ways, including questionable interpretations of the evidence, the use of double standards when discussing similar conduct by Democrats and Republicans, and even outright misstatements of the facts and the law.

This part of the Minority Report provides an introduction to the Minority's critique of the Majority's Report. In pointing out the rather egregious errors, omissions, misstatements, and unsupported allegations in the Majority Report, we do not mean to suggest that we are defending the system used by both the Democratic and Republican parties to raise campaign funds in 1996. It is one thing to defend against a false allegation that a fundraising practice is illegal. It is another to say that the practice should continue to be legal. That distinction is clear in the Minority Report.

Much of the evidence presented to the Committee was open to widely varying interpretations. When the evidence is unclear, it is unfair for the Committee to pretend otherwise by hurling accusations either directly or by innuendo that may result in unfairly damaging the reputations of innocent people. This Committee had an unfortunate history in the early 1950's in this regard, and it would be shameful to repeat it.

Unfortunately, the Majority has repeatedly chosen to interpret facts in such a way that Democrats are portrayed in the most unfavorable light while Republicans are given the benefit of the doubt. A case in point is the contrast between the Majority's treatment of Harold Ickes, former Deputy Chief of Staff in the Clinton White House, and its treatment of Haley Barbour, the former chairman of the Republican National Committee. The Majority refuses to accept Ickes's denial of accusations made against him by Warren Meddoff despite the lack of any supporting evidence for these accusations and despite numerous facts which undermine Meddoff's credibility. By contrast, the Majority accepts Barbour's testimony about the National Policy Forum's loan transaction even though it conflicts with testimony from several credible sources and a great deal of documentary evidence.

This double standard in the treatment of witnesses is also evident in the Majority's chapter on the White House coffees. That chapter contains a lengthy discussion of the allegation by Karl Jackson that a solicitation was made at a coffee he attended. Jackson had been a White House aide during the Bush Administration and later went into business with former Vice President Dan Quayle (the latter fact is omitted from the Majority Report). Jackson's GOP ties have utterly no bearing on his credibility, in the

Majority's view, and yet the Democratic ties of witnesses who contradict him are given overwhelming importance. Moreover, the Majority includes a completely baseless insinuation that the Democratic witnesses misled the Committee, by stating that they "claim" not to have recalled the alleged solicitation.

The Majority Report also applies a double standard to the two political parties when the parties have engaged in similar conduct. While Democratic examples are highlighted, comparable Republican examples are downplayed or simply ignored. Thus, for example, the Majority criticizes the Democratic National Committee's coordination with the Clinton White House, ignoring similar coordination by the Republican National Committee with the Dole for President campaign and former Republican Presidential campaigns. Similarly, in the discussion of the use of access to elected officials as a fundraising tool, the Majority strongly criticizes the White House coffees organized by the Democratic National Committee ("DNC'), while ignoring egregious practices on the Republican side, such as charging specific prices for access to Republican officials.

Partisan bias is evident throughout the Majority's chapter on Ted Sioeng, which either minimizes—or simply omits—Sioeng's Republican connections. For example, the Sioeng chapter mentions $100,000 in contributions to California State Treasurer Matt Fong but fails to mention that Fong is a Republican. The chapter also notes that political contributions afforded Sioeng access to President Clinton and Vice President Gore, but fails to mention that Newt Gingrich, the Republican Speaker of the House, was the guest of honor at a Sioeng-organized luncheon the day after a Sioeng family company gave $50,000 to a Republican think tank. Nor does the chapter mention that the donation was solicited by a top adviser to Speaker Gingrich and that the think tank was, according to the Internal Revenue Service, essentially an arm of the Republican National Committee.

The Majority Report not only contains dubious interpretations of the facts, it often misstates the facts. The Majority also misstates the facts by supplying partial evidence. For example, in the Majority's Charlie Trie chapter, the Majority states that Xiping Wang testified that the DNC did not reimburse her for her contribution, implying that the contribution was not returned by the DNC. Actually, the DNC did return the contribution—to the United States Treasury, as was appropriate for a contribution that had been made by a conduit who was not legally entitled to the money. Similarly, in the Majority Report's chapter on DNC/White House coordination, there are citations to the testimony of former DNC Chairman Donald Fowler to support conclusions regarding the knowledge and activities of DNC officials Marvin Rosen and Richard Sullivan without any reference to Rosen's and Sullivan's own testimony on these subjects.

The misleading character of the Majority's factual assertions is also illustrated by internal contradictions within the Majority Report itself. Evidence used to support one claim is often used to support a contradictory assertion in another chapter—sometimes even in the same chapter. Similar inconsistencies are apparent in the Majority's treatment of witnesses who are deemed credible when

they support the Majority's position but are deemed not credible when they dispute the Majority's conclusions. Thus, throughout the Majority's chapter on John Huang at the DNC, the testimony of Richard Sullivan is cited and relied upon as an honest recitation of the practices and beliefs of all DNC employees during the 1996 election cycle. Yet, in the Majority's chapter on the Teamsters, the Majority discredits Sullivan's testimony. Similar inconsistencies are apparent in the Majority's treatment of Donald Fowler, whose testimony is credited and relied upon with respect to his disagreements with Ickes, but deemed dishonest in the Majority's Tamraz chapter.

The mishandling of evidence is one of the most disturbing aspects of the Majority Report. Again and again, evidence that undermines or contradicts the Majority's theories and allegations is downplayed, mischaracterized, or more often ignored, while disproved allegations are perpetuated. For example, a great deal of evidence gathered by the Committee undermines the theory that John Huang engaged in espionage when he was employed at the Commerce Department. This exculpatory evidence is largely absent from the Majority Report. As noted in Chapter 4 of the Minority Report, Huang failed on many occasions to exploit his post to obtain classified information. Moreover, he offered to testify to the Committee under a grant of immunity that would not have shielded him from prosecution for espionage-related offenses; his offer was not mentioned in the Majority Report. In the Minority's view, the most neutral interpretation of the facts is that Huang was probably not engaged in espionage. The Majority Report also repeats the baseless suggestion that the President was involved in a criminal conspiracy with a consultant to the International Brotherhood of Teamsters, in spite of the fact that Chairman Thompson admitted at a hearing that the Committee now had evidence that disproved such an allegation.

Similarly, the Majority's chapter on Johnny Chung includes his allegation (made in unsworn statements to journalists) that a $50,000 contribution he made to the DNC had been solicited by Margaret Williams, then Chief of Staff to First Lady Hillary Clinton. The Majority Report fails to mention that Williams denied this allegation, under oath, when she was deposed by this Committee, and when she testified before a House committee. And the Majority ignores a host of other witnesses whose testimony before that committee supported Williams's testimony. By publishing the allegation and not the denial, the Majority creates the false impression that the allegation is not only unchallenged, but unquestionably true.

Because of the Majority's questionable use of evidence, sourcing is an extremely important issue. Every assertion that might be in dispute should be attributed to a source, such as testimony to the Committee or a document produced in response to a Committee subpoena. In a number of cases, dubious assertions in the Majority Report are not footnoted. In some other cases, the footnotes show that questionable sources were used, such as staff interviews at which the Minority staff was not present.

The most important task of the Special Investigation was to probe allegations of improper or illegal activity, and, thus, a clear

understanding of the campaign finance laws is fundamental. It is thus surprising to find that the Majority Report contains many allegations of illegality based on misstatements of the law. A few examples will suffice:

• The Majority's chapter on Clinton White House coordination with the DNC alleges that this coordination was illegal and yet fails to cite a single statute, court decision, or regulation to support its position in this chapter. As demonstrated in the Minority Report, coordination of an issue advocacy advertising campaign between a party and its candidates does not appear to violate provisions of the existing campaign finance laws.

• Allegations in the Sioeng chapter are based on a misstatement of the law governing foreign contributions. Contributing "foreign money" is not illegal so long as the donor is legally entitled to give and is not acting as a conduit for someone else. In Sioeng's case, the issue was not whether he used funds from foreign bank accounts, but whether he directed or participated in contribution decisions (which would have been illegal given his status as a foreign national). On the basis of its misstatement of the law, the Majority analyzes the $100,000 in Sioeng-related money contributed to Matt Fong and concludes that most of these funds were donated legally, because only $16,000 could be traced to foreign sources. In fact, Fong's deposition testimony to this Committee—which is not mentioned in the Majority Report—strongly indicates that Sioeng was the donor. If Sioeng was the donor, the entire $100,000 was contributed illegally, regardless of whether domestic or foreign funds were used.

A major shortcoming of the Majority Report is its failure to acknowledge the fact that some of the most scandalous conduct in federal elections is perfectly legal. The campaign finance laws are so riddled with loopholes that legal restrictions are largely meaningless. Because of the soft-money and issue-advocacy loopholes, large corporations and wealthy individuals are free to spend vast sums of money on behalf of specific candidates. In both the hearings and in the Majority Report, the Majority has given short shrift to these systemic problems.

One of the most disturbing aspects of the Majority Report is that it suggests, on the basis of inconclusive evidence, that certain named individuals were spies or foreign agents. These serious charges are supported solely by weak circumstantial evidence and speculation—as acknowledged by the Majority's use of phrases like "may" and "if true." Allegations of espionage are grave charges and should not be made without specific credible evidence. Such serious allegations can inflict irreparable damage to the reputations of innocent people, and to do so without having sufficient evidence is irresponsible.

The remainder of this Response consists of detailed comments on the Majority Report. It is organized both thematically and on a chapter-by-chapter basis.

RESPONSE TO ISSUES INVESTIGATED BY THE COMMITTEE

FOREIGN INFLUENCE

The Majority Report addresses the issues of foreign influence and foreign money in the 1996 election by focusing almost exclusively on the alleged role of the Chinese government. The report includes a declassified chapter describing efforts by the Chinese government to influence the U.S. government. The Majority Report also includes a chapter on Indonesian-born businessman Ted Sioeng, four chapters on John Huang, and one on Maria Hsia. Taken together, these chapters are designed to suggest that the so-called China Plan involved efforts to influence the 1996 presidential election and that by using Sioeng, Huang, and Hsia as intermediaries, the Chinese government succeeded in infiltrating the Democratic Party's fundraising operations.

The Majority's analysis of foreign influence is deeply flawed. It weaves together conspiracy theories by taking unrelated facts and occurrences and giving them the most sinister possible interpretation. The Majority also uses facts in a highly selective manner. For example, classified information that contradicts the Majority's theories is simply disregarded.

Moreover, the Majority fails to acknowledge foreign money that flowed to Republicans. As discussed in Minority Chapter 3, the Republican National Committee received hundreds of thousands of dollars from a Hong Kong businessman who provided backing for a loan to an RNC affiliate. The Minority also found strong indications that businessman Michael Kojima, who gave a half-million dollars to the RNC, acted as a conduit for Japanese businessmen (see Minority Chapter 6). The Majority Report makes no mention at all of Representative Jay Kim, a California Republican, who pleaded guilty to violating the campaign finance laws because he had accepted illegal foreign contributions (see Minority Chapter 8).

INDEPENDENT GROUPS

The 1996 campaign saw a surge in activity by organizations which are not registered with the Federal Election Commission as political committees. These groups were typically nonprofit organizations, registered with the Internal Revenue Service as tax-exempt, social-welfare organizations. These supposedly "nonpartisan" groups spent tens of millions of dollars on behalf of candidates and political parties. Many of them ran political attack ads—under the guise of "issue advocacy"—during the closing weeks of the campaign, and some of the ads appear to have determined the outcome of close races. Despite the importance of this phenomenon, the Majority failed to conduct a serious investigation of these groups.

In its Report, the Majority asserts that it was impossible to form "meaningful conclusions" about nonprofit groups because of obstruction by several organizations that were served with Committee subpoenas. While the Majority cited the AFL–CIO as the prime example of obstruction, several conservative groups also failed to comply with Committee subpoenas, including the Christian Coalition, Americans for Tax Reform, the National Policy Forum, and two tax-exempt organizations controlled by Triad Management Services.

The Majority's assertion that it could form no meaningful conclusions about such groups is questionable on several grounds. First, such an obstacle did not stop the Majority from forming conclusions about other investigatory targets who failed to cooperate, including Democratic fundraisers John Huang and Charlie Trie. Second, as far as the nonprofit groups are concerned, the Committee obtained a great deal of information about conservative groups in spite of those groups' lack of cooperation—sufficient information to conclude that several such groups engaged in improper and likely illegal activity during the 1996 cycle. See Minority Chapter 3 on the National Policy Forum and Minority Chapters 10 through 13 and Chapter 15 on other nonprofit groups.

The activity by these and other organizations in the 1996 election cycle sounded only a warning note of what is to come. As several experts testified in the Committee's hearings on proposals for campaign finance reform, the use of nonprofit and other independent organizations to air "issue advertising" that is simply disguised advertising on behalf of candidates will only continue to grow. Given an opportunity for a watershed examination of the direction that the election system is heading, the Majority chose not to address any of the substantial wrongdoing by these groups and actively prevented the Minority from presenting hearings on the evidence it had developed.

CONTRIBUTION LAUNDERING/THIRD-PARTY TRANSFERS

The federal election laws require that contributors donate their own funds. Thus, it is illegal for a donor to channel funds through a conduit, for an individual to act as a conduit, and for a donor to be reimbursed by a third party after having made a donation. The laws help to ensure that the public knows who is really paying for elections and also discourage contributions from individuals who are not legally entitled to donate, such as foreign nationals who do not have permanent resident status.

The Majority Report addresses several cases in which there were allegations that political contributions were made in the names of third parties during the 1996 election cycle. These included contributions made in the names of Yogesh Gandhi, Hsi Lai Temple monastics, and Yue F. Chu and Xiping Wang.

Although these Democratic examples are discussed at length, the Majority Report ignores several Republican examples, including some cases where laundering schemes have been acknowledged by the donors or proven in court. Several Republican examples involving Simon Fireman (a national Vice Chair of the Dole campaign), officers and employees of Empire Landfill, and DeLuca Liquor and Wine are mentioned in Chapter 22 of the Minority Report.

The Majority Report also fails to discuss third-party contributions as a systemic problem that could perhaps be addressed through legislative reform, regulatory reform, or improved vetting of contributions by political parties and candidates.

FUNDRAISING AND POLITICAL ACTIVITIES OF THE NATIONAL PARTIES AND ADMINISTRATIONS

Although the national political parties play a central role in the federal election process, the Majority Report does not contain a de-

tailed, balanced discussion of the two parties. Instead, it is largely a diatribe against the Democratic National Committee. Using evidence in a highly dubious manner, it examines coordination of election activities among the White House, the Democratic National Committee ("DNC"), and the Clinton Campaign (Chapter 2), the DNC's system to check the legality and appropriateness of contributions, fundraising in the White House, fundraising phone calls made from the White House, the vetting of individuals with access to the President, DNC donor Johnny Chung, and DNC donor Roger Tamraz.

A fundamental problem with many of these chapters is that they characterize certain activities as illegal without citing any legal authorities for this position. In fact, many of the practices—notably coordination between the White House and the DNC—appear to be acceptable under the current campaign finance laws.

Moreover, the Majority Report states and implies that many activities were unique to the Democrats. As shown in the Minority Report, the Republican National Committee similarly coordinated with the Dole for President campaign. See Minority Chapter 33. The Minority Report also discusses how Republicans have used access to public officials as a fundraising tool and have used federal property for fundraising purposes (see Minority Chapter 28). Regarding the vetting issue, the Minority Report notes that in the 1992 and 1994 election cycles the Republican National Committee took the position that it had no legal duty to review contributions (see Minority Chapter 25). The Minority Report also presents evidence that a number of controversial individuals met with Republican Presidents at the White House and at other events (see Minority Chapters 6 and 31). Finally, the Minority Report contains detailed discussions of the Republican Party's close coordination with—and financial support to—several supposedly "independent" and "nonpartisan" nonprofit groups (see Minority Chapters 10 and 11).

ALLEGATIONS OF QUID PRO QUO

A major goal of our campaign finance laws is to curb corruption and the appearance of corruption, as the Supreme Court recognized in *Buckley* v. *Valeo*. When political campaigns are financed with private money, there is always a risk of quid pro quos. Examples of alleged quid pro quos to Democratic contributors are discussed in Majority chapters regarding the DNC and Indian Gaming, the Hudson Casino, and the Cheyenne-Arapaho contributions.

It is seldom easy to prove a quid pro quo, and inquiries into alleged quid pro quos tend to rely heavily on circumstantial evidence. Nonetheless, the extent to which the Majority Report reaches its conclusions by marrying innuendo to coincidence is startling. In its chapter detailing the DNC's efforts to raise money from the Indian gaming community, the Majority candidly acknowledges that, except for two instances—the Hudson casino matter and the Cheyenne Arapaho matter—it was unable to investigate whether "there was any connection between the financial support to the Democratic party and the Interior decisions. . . ." Nevertheless, the Majority goes on to imply that numerous contributions received from Indian tribes involved in gaming were all given in expectation of

specific government actions and that these expectations were fulfilled. The factual bases for these conspiratorial suspicions, by the Majority's own admission, amount to nothing more than "troubling coincidences." Indeed, this chapter is so insubstantial that it resembles nothing so much as an outline created at the beginning of an investigation rather than a final product purchased at a cost of well over $3 million in taxpayer money.

One chapter of the Majority Report deals with Interior Secretary Bruce Babbitt's supposed involvement in the decision to deny an application to take land into trust for a gambling casino in Hudson, Wisconsin—a community which strongly opposed such a use. That community opposition—a crucial factor in Interior's decision—is scarcely mentioned in the Majority report, along with the fact that the tribes who sought to locate the casino in Hudson lived on reservations located 80 to 190 miles away. Even more disturbing is the Majority's insistence on interpreting evidence and documents in ways that are uniformly contradicted by the sworn testimony of the career Interior employees and officials involved. The Majority not only fails to resolve these contradictions, it does not even mention the great weight of testimony that contradicts the Majority's interpretation of events.

Finally, in its chapter on political contributions made by the Cheyenne-Arapaho Tribes, the Majority reaches the condescending conclusion that these tribes' expressions of political support, including contributions, for the Democratic Party were the result of their naivete and political gullibility at the hands of manipulative Democratic fundraisers. In spinning this tale, the Majority Report studiously ignores the ample evidence that these tribes were sophisticated, politically aware, and made a hard-headed calculation that the Democratic Party would likely assist them in prevailing over Republican politicians who, in siding with powerful oil and gas interests, consistently obstructed the tribes' efforts to regain lands that they considered to be rightfully theirs.

The Minority Report's chapters on the Hudson Casino and the Cheyenne-Arapaho Tribes demonstrate that the evidence does not support the quid pro quo allegations contained in the Majority Report (see Minority Chapters 35 and 37). The Minority Report also discusses the Republican Party's ties to one of its biggest sources of funds: the tobacco industry (see Minority Chapter 36).

PROCESS

The Majority Report covers the origins and procedures of the Committee's investigation into the 1996 election by focusing almost exclusively on document production by the White House and the Democratic National Committee, which are the subjects of two separate chapters. A third chapter of the Majority Report discusses the compliance of nonprofit groups that were subpoenaed by the Committee. Although the Majority castigates all entities that did not comply with subpoenas, the most pointed criticism is directed at the AFL–CIO. There is no particular overarching theme that ties these chapters together, except for a general refrain that Democratic individuals, entities, organizations, and sympathizers tried to thwart the Committee's investigation.

While the Majority discusses the history and debate over Senate Resolution 39, which clearly stipulated that the Special Investigation was to be conducted on a bipartisan basis, the Majority spends the bulk of its chapter on procedural issues lamenting the deadlines imposed unanimously by the full Senate as the reason the Committee was not able to pursue enforcement of its subpoenas. Moreover, while the Majority's chapter on compliance by nonprofit groups does mention some of the Republican entities that failed to comply with subpoenas, it fails to discuss the Republican National Committee, the Dole campaign, the National Policy Forum, Americans for Tax Reform, and Triad, all of which were among the first entities subpoenaed by the Committee and all of which failed to comply fully with subpoenas. Several individuals associated with conservative groups failed to appear for depositions; others appeared but refused to answer any substantive questions. The Majority does not even mention that the Republican National Committee—alone among the dozens of entities subpoenaed—unilaterally redacted as much as one third of all the documents it produced.

The massive obstruction of the Committee's investigation should never have been tolerated; indeed, the damage done to this body's investigative authority as a result of that failure may be the longest standing legacy of this investigation. Obstruction of the Committee began, however, not with the AFL–CIO, as the Majority has often asserted, but in July when the National Policy Forum willfully refused to obey an order issued by the Chairman to produce documents pursuant to subpoena. No effort was made to hold the National Policy Forum in contempt of the Senate, and on September 3, eight groups, including the Christian Coalition and the National Right to Life Committee, notified the Committee that they would not produce documents. On September 8, Triad Management and its affiliated organizations notified the Committee that its employees, officers, and directors who were under personal subpoenas to appear and answer questions would refuse to do so. While Ranking Minority Member Glenn repeatedly expressed a willingness to support a finding of contempt against all entities not in compliance with Committee subpoenas, no motion for contempt was ever brought before the Committee by the Chairman.

A detailed response to each Majority chapter follows.

Majority Report Chapter 2: Procedural Background and Overview

The Majority Report lays out a procedural chronology and an overview of the investigation. The Majority also presents its view of the conduct of the investigation and the impact the Majority believes the deadline had on the investigation as a whole. Finally, the Majority summarizes the issues addressed in testimony the Committee received in public hearings and issues addressed in its Report.

While addressing the procedural history of the Committee's investigation, the Majority seizes yet another opportunity to highlight its version of "Democratic obstruction" including harsh criticism of the White House and DNC for what the Majority calls "poor" productions. In addition, the Majority claims the Committee's deadline for ending the investigation—unanimously agreed

upon by the full Senate—precluded procedural enforcement proceedings regarding Committee subpoenas.

• The Majority Report states that one of the main purposes of the investigation was to let the public "know what went on during the 1996 campaign," when, in fact, the Majority only investigated what happened in Democratic fundraising circles during that time. The Majority neglects to mention that the Minority requested only six of the 32 days of public hearing time to present evidence of Republican fundraising transgressions and was granted only three. Had the Minority been allowed the additional three days it repeatedly requested, the American people would have received a fuller picture of "what went on during the 1996 campaign."

• While the Majority Report complains numerous times about the deadline imposed on the investigation, it fails to mention statements by Democrats that consideration of reauthorization of the budget of the Committee would be appropriate if the investigation had not been completed by the end date, December 31, 1996. Every Member of the Committee—Republican and Democrat—voted for S. Res. 39, the Resolution authorizing the investigation, which included the deadline.[1] Committee Democrats also stated publicly that they would have voted for enforcement of all of our subpoenas and orders, including those against Democrats, if enforcement was sought regarding *all* Committee subpoenas.[2] However, such motions were never brought to a Committee vote.

• The Majority Report claims that the decision not to enforce the Committee's subpoenas was at least partially based on a dearth of resources. While the Minority respects the Majority's wish not to waste taxpayer monies, nearly $1 million of the original $4.35 million authorized by the Senate remained at the end of the investigation.

• The Majority Report claims that "Committee staff . . . conducted over 200 witness interviews" yet fails to mention that at least 20 of these interviews were conducted unilaterally by the Majority. Some of these unilateral interviews were with witnesses who later testified at Committee hearings and some witness affidavits were received that were never shared with the Minority.[3]

Response to Majority Chapter 4: "The Thirst for Money"

In this chapter, the Majority places blame for all problematic contributions received by the DNC on an insatiable "thirst for money" emanating from the White House. The ability to raise funds, however, is clearly an essential factor in any election campaign. During the 1996 elections, a Democratic President was running for re-election confronted by a Republican Party that had outraised and outspent the Democratic Party in all recent election cycles. Consequently, the Majority's conclusion that the Democratic Party felt pressure to raise funds for the 1996 election is a statement of the obvious. In reaching its conclusion, the Majority alleges violations of law without providing supporting facts or legal citations, ignores the costs of federal elections, and ignores the fact

[1] *Congressional Record* vote No. 29, pp. S2124–2125. The vote was 99–0.
[2] Senator Glenn, 10/8/97, hrg., pp. 73–74.
[3] See Appendix of Unilateral Interviews Conducted by the Majority.

that the Republican Party again out-raised and out-spent the Democratic Party in 1996.

• The Majority asserts that the DNC and the Clinton campaign violated campaign laws in their coordinated effort to raise money, but provides no facts or legal citations to support such a conclusion.

• The premise of this chapter—that the need to raise advertising money caused the "panoply of DNC fundraising irregularities"—rests on a single incorrect statement. The Majority claims that "[d]ue to the DNC's need to feed the advertising beast [that was planned following the November 1994 Democratic losses in Congressional elections], it dismantled its process for vetting contributions." In fact, the DNC's system for checking contributions was changed in May of 1994, five months before the November 1994 elections and over a year before the idea for a large scale DNC advertising campaign was first conceived.

• The Majority focuses entirely on fundraising by the Democratic Party, and fails to mention that the Republican Party also broke all previous records in 1996, raising almost $100 million more than Democrats. The Majority ignores the fact that in the 1996 election cycle, the RNC out-raised (and out-spent) the DNC by nearly $100 million, with the RNC raising $306 million and the DNC raising $212 million.[4]

• The Majority ignores the across-the-board explosion of money raised in the 1996 election. The Majority also ignores the fact that in 1996, the national parties together raised and spent almost 900 million dollars, a 43 percent increase over the 1992 presidential election cycle.[5] The Majority's characterization of the Democratic Party as having a "thirst for money," fails to take into account that in the 20 years since the campaign finance laws took effect, total hard money raised by *both* parties has jumped from $110 million to $658 million.[6]

Response to Majority Report Chapter 5: "Coordination Among the White House, DNC and Clinton Campaign"

In this chapter, the Majority purports to present a detailed chronology of coordination among the White House, the Democratic National Committee ("DNC"), and the Clinton campaign during the 1996 elections and concludes that this coordination was illegal. The Majority, however, fails to provide legal support for this conclusion. The Majority also makes no reference to a virtually identical advertising campaign coordinated between the RNC and the Dole campaign.

• The Majority incorrectly claims that coordination between the White House, DNC, and the Clinton campaign organization violated the law. Despite the unsupported conclusions drawn by the Majority, federal statutes, regulations, and legal precedent establish that coordination between a political party and the party's can-

[4] Federal Election Commission press release *FEC Reports Major Increase in party fundraising*, 3/17/97, available at www.fec.gov.

[5] Federal Election Commission press release *FEC Reports Major Increase in Party Fundraising*, 3/17/97, available at www.fec.gov.

[6] Federal Election Commission press release *FEC Reports Major Increase in Party Fundraising*, 3/17/97, available at www.fec.gov.

didates and campaigns is legal, appropriate, and expected.[7] For example, the Majority spends several pages on the sharing of polling information between the party and the campaign when FEC regulations specifically permit the allocation of the costs of polling after a poll is conducted, and multiple campaigns and organizations routinely share the costs of polling.[8] The FEC has also issued an opinion that parties may create and air issue advertisements that do not count as spending on behalf of particular candidates if the advertisements "focus on national legislative activity and promote the . . . party," and that advertisements that name particular federal candidates may still qualify as issue advertisements.[9]

• The Majority asserts that coordination between White House staff and both the Clinton campaign and the DNC was "unprecedented," when, in fact, similar coordination occurred in previous Republican administrations. President Clinton's former Deputy Chief of Staff Harold Ickes testified at length about the roles played by White House staff in both re-election campaigns and party affairs during both the Bush and Reagan Administrations.[10] Ickes noted that in 1992, President Bush appointed James Baker as White House chief of staff and also charged him with running the Bush-Quayle re-election effort.[11] Bush campaign manager Fred Malek said at the time, "[Baker] knows how to run a campaign, and he knows how to run a White House, and I think he'll bring the two together in a very good fashion."[12] Outgoing White House Chief of Staff Samuel Skinner said, "Jim is the logical choice to be chief of staff if he's also going to be the national campaign manager."[13] Baker held twice daily campaign meetings in his White House office. Baker did the same in 1988, serving as White House chief of staff while running then Vice President Bush's campaign for the presidency.

• The Majority mistakenly asserts that political consultants involved in the DNC advertising campaign were given insufficient legal guidance. DNC General Counsel Joseph Sandler and Clinton-Gore counsel Lyn Utrecht not only personally approved every advertising script and sat in on meetings to draft advertising, they also provided detailed guidelines to consultants working on the advertising. The guidelines ensured that the advertising did not contain express advocacy, required that advertising relate to important legislative issues, and required that the advertising express the view of the Administration and the Democratic Party. The guidelines also set restrictions on the timing of advertisements, precluded advertising during the general election, and forbade advertising in a state within six weeks of a primary, and set restrictions on use of the likeness or image of Republican candidates.[14] Campaign consultant Dick Morris complained that the lawyers were "obsessively" concerned with following the law: [T]hey would

[7] For a detailed legal analysis see Chapters 24 and 32 of the Minority Report.
[8] 11 CFR section 106.4.
[9] FEC Advisory Opinion 1995–25.
[10] Harold Ickes Opening Statement, Hrg. 10/7/97.
[11] See Minority Chapter 32; Harold Ickes, 10/7/97 Hrg., pp. 86–90.
[12] *Christian Science Monitor*, 8/19/92.
[13] *Chicago Sun-Times*, 8/18/92.
[14] Richard Morris deposition, 8/20/97, pp. 143–44. The guidelines established by counsel were presumably directed at ensuring that the advertising did not contain an electioneering message, a currently undefined standard.

bend over backward in ways that I considered ridiculous to comply with what would have been [an] overly conservative interpretation of the law.[15]

• The Majority fails to note that the RNC conducted a virtually indistinguishable ad campaign that had the intended effect of promoting the Presidential campaign of former-Senator Bob Dole, and was closely coordinated with Dole campaign officials and consultants. See Minority Report Chapter 33.

Response to Majority Report Chapter 6: "The DNC Dismantled Its System for Vetting Contributions"

In this chapter, the Majority attempts to paint a picture of a DNC which consciously disregarded the law. The Majority asserts that the DNC's vetting system was fatally flawed because "the fundraisers did not understand that they were to be the first line of defense against illegal contributions" and because there was a conflict of interest for fundraisers due to the fact that "fundraisers want to raise money, not reject it." The Majority, however, ignores contrary evidence before the Committee.

• The Majority falsely implies that the DNC completely abandoned its system for vetting contributions. Although the DNC did stop conducting LEXIS/NEXIS searches on contributors to determine their "appropriateness," the DNC continued to successfully vet the vast majority of contributions to determine their legality.

• The Majority Report unfairly concludes that "no one thought to restore the vetting process, as that might slow or limit the money flowing to the DNC." The Majority cites no testimony or documentary evidence to support this conclusion which implies that the DNC purposely dismantled its vetting system to allow receipt of illegal contributions. In fact, the conclusion ignores testimony that the DNC general counsel's office consistently vetted for legality and that contributions were, in fact, not accepted by the DNC.[16]

Response to Majority Report Chapter 7: "DNC Fundraising in the White House: Coffees, Overnights and Other Events"

In this chapter, the Majority is harshly critical of the Democratic National Committee for organizing "coffees" at the White House and other events for supporters of the President. The coffees are characterized as fundraising events, and the Majority repeats the allegation by one coffee attendee that funds were solicited at one of the coffees. The Majority also criticizes the DNC and White House for inviting some campaign contributors to stay overnight at the White House.

The Majority's treatment of these subjects is seriously flawed. For one thing, it fosters the false impression that these practices were unprecedented. The Majority condemns the coffees and overnights without ever saying these practices were illegal. Nor does it allege that they were improper because they involved providing access to contributors or the use of federal property for fundraising purposes. If the Majority had made that point, it might have been

[15] Richard Morris deposition, 8/20/97, p. 410.

[16] Joseph E. Sandler deposition, 5/15/97, pp. 75–76; Joseph E. Sandler deposition, 5/30/97, pp. 130–132.

forced to condemn the Republican National Committee and a series of Republican candidates on the same grounds.

• The Majority Report incorrectly concludes that because "almost one-third" of those who attended White House coffees contributed within a month, the coffees were fundraisers. Although this statistic is used to make the case that the coffees were fundraising events, a more logical inference is that they were not fundraisers. After all, more than two-thirds of the attendees contributed nothing to the DNC within a month of the coffee. In addition, the Majority fails to mention that several coffee attendees contributed *nothing* to the DNC during the entire 1996 election cycle.[17]

• The Majority condemns the coffees and overnights and implies that these practices were unprecedented when, in fact, they were not. The Majority fails to mention that donors were frequently invited to the Reagan White House and Bush White House to motivate them to contribute to the Republican National Committee and Republican campaigns. These events are discussed in more detail in Chapter 28 of the Minority Report.

• The Majority fails to mention that of the over 1,000 people who attended coffees at the White House, Karl Jackson stands alone in his accusation of a solicitation at a coffee.

• The Majority unfairly asserts that Karl Jackson's Republican ties have no bearing on his credibility while asserting that the Democratic ties of witnesses who contradict him make those witnesses less credible. The Majority barely mentions that Karl Jackson—the only coffee attendee to claim that he was solicited—is a Republican with strong ties to the Bush White House and business ties to former Vice President Dan Quayle. From 1991 to early 1993, Jackson served as Quayle's National Security Advisor and he currently is connected with Quayle in private business.[18] The Majority credits the testimony of this one former Bush Administration official but explains away the contradictory testimony of other attendees with ties to the Democratic Party. The Majority states that these individuals "claimed not to recall hearing Huang solicit DNC contributions" because "their memory may be influenced by their strong affiliations with the DNC, the White House, or both." The Majority's statement that the witnesses who contradict Jackson "claimed not to recall" Huang's solicitation mischaracterizes their testimony. In fact, all the witnesses listed above testified that they were not solicited at this or any other coffee.

Response to Majority Report Chapter 8: "Fundraising Calls From the White House"

The Majority concludes that the Vice President violated the law by making fundraising phone calls to raise money for the DNC's issue advocacy campaign in 1995. The Majority asserts that the Vice President violated the Pendleton Act, an 1883 law that prohibits certain solicitation on federal property, because he made calls from his office in the White House complex and because the DNC deposited a portion of the funds he solicited into hard money accounts.

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[17] Exhibit 2049M: Minority-created chart detailing the finding that a number of attendees at a November 9, 1995 coffee never contributed to the DNC during the 1996 election cycle.

[18] See *Los Angeles Times*, 10/10/94; *Financial Times*, 9/6/93; *Business Times*, 6/28/94.

• The Majority incorrectly asserts that the Vice President violated the Pendleton Act which prohibits solicitation of contributions within the meaning of the Federal Election Campaign Act ("FECA") on federal property, and condemns the failure to appoint an independent counsel on this basis.[19] The Pendleton Act was enacted in 1883 to protect federal workers from coerced campaign contributions. The government has not prosecuted a case under the act since 1954 and have never prosecuted a case in a situation, like that of the Vice President's, where fundraising calls were placed to a non-federal employee outside the workplace.[20] After a thorough examination of the facts surrounding these calls and the applicable law, the Attorney General issued a lengthy opinion finding that there was insufficient evidence that the Vice President had violated the Pendleton Act.[21] The Majority's contrary conclusion—based on less information—and virtually no analysis of the applicable law is unpersuasive.

• Even though the Pendleton Act does not apply to the solicitation of soft money, the Majority nonetheless attempts to argue that the Vice President's solicitation of soft money violated the Act. It is undisputed that in 1995, the Vice President made calls to contributors asking for donations of soft money for the DNC's issue advocacy campaign. Under the Federal Election Campaign Act, contributions of soft money are not considered "contributions" as defined under FECA and therefore the Pendleton Act does not apply to the solicitation of such contributions. The Majority claims, however, that soft money contributions should now be considered "contributions" under the Federal Election Campaign Act. However, the law is clear that the term "contribution" as defined by 2 U.S.C. § 431(8)(A)(i) is exactly equivalent to "hard money," money raised and spent pursuant to the requirements and restrictions of federal law.

• The Majority asserts that the Vice President actually solicited hard money contributions, despite the evidence to the contrary. The Majority relies on an FEC regulation that states that if a federal "campaign" is mentioned in a solicitation, it is presumed that the solicited funds will be used for federal election purposes through "hard money," unless the presumption is rebutted.[22] In the case of the Vice President, this presumption is easily rebutted by the facts gathered by the Committee. The Committee interviewed 45 individuals who likely received phone calls from the Vice President. Of those, none "state[d] that the Vice President explicitly or implicitly asked them to give money to the DNC's federal account [hard money] or to any federal political campaign."[23] In fact, most of those interviewed stated that if any specific purpose of the money was mentioned at all, it was the DNC's soft money issue advocacy campaign. Furthermore, the evidence establishes, and the Majority acknowledges, that during the phone calls, the Vice President solicited amounts of funds that could only be soft money because they

[19] The Pendleton Act, 18 U.S.C. § 607.
[20] *Washington Post*, 10/2/97.
[21] See *In Re Albert Gore Jr.*, Notification to the Court Pursuant to 28 U.S.C. § 592(b) of Results of Preliminary Investigation, Dec. 2, 1997.
[22] 11 CFR § 102.5(a)(3).
[23] FBI Interviews.

exceeded the limit on the amount any individual may contribute in hard dollars.

• The Majority unfairly insists that, even if the Vice President did not solicit hard money, he may have known that a portion of some contributions he solicited would be deposited by the DNC into its hard money contribution account. It is established that the DNC at times deposited the first $20,000 of contributions received from a variety of contributors into hard money accounts without notifying or receiving permission from the contributors. The Majority alleges that the Vice President may have known about this practice because one DNC memorandum that was attached to another memorandum and forwarded to his office stated generally that contributors are permitted to give their first $20,000 in contributions in hard money. There is no evidence, however, that the Vice President personally reviewed this memorandum or that he would have any reason to know of this practice at the DNC.[24] The Attorney General also concluded in determining not to appoint an independent counsel that the Vice President did not have independent detailed knowledge regarding how the DNC processed and deposited contributions.[25]

• The Majority generally asserts that the Vice President violated the law by soliciting contributions from his White House Office. The Majority fails to note that the Hatch Act specifically exempts both the President and the Vice President, as well as Members of Congress, from the general prohibition on solicitation of campaign contributions[26] and that former and current Republican presidents and leaders have also solicited funds from federal property. The Majority also ignores the facts that at least one Republican President, Ronald Reagan, made solicitation phone calls from the White House and that other Republicans have acknowledged that they have raised funds from federal property. See Chapter 28 of this Minority Report.

Response to Majority Report Chapter 9: "White House Vetting of Individuals With Access to the President"

In this chapter the Majority addresses the alleged failure of the White House to appropriately screen visitors invited to attend events at the White House with the President and Vice President from 1993 to 1997. Although the Majority makes a number of valid observations, its inclination to engage in unfounded speculation and to ignore evidence of similar procedures in Republican administrations undercuts its credibility on this issue.

• Without presenting any evidence, the Majority Report speculates that the problems with the White House vetting procedures from 1993 to 1997 might have been a "conscious design for fundraising purposes." There is no evidence to support this speculative assertion, and the Majority does not cite any such evidence.

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[24] In an interview with the Attorney General, the Vice President stated that he did not recall seeing a memo that stated the DNC would treat the first $20,000 of any contribution as hard money. See *In Re Albert Gore Jr.*, Notification to the Court Pursuant to 28 U.S.C. § 592(b) of Results of Preliminary Investigation, Dec. 2, 1997.

[25] See *In Re Albert Gore Jr.*, Notification to the Court Pursuant to 28 U.S.C. § 592(b) of Results of Preliminary Investigation, Dec. 2, 1997.

[26] 5 U.S.C. § 7323.

• The Majority ignores evidence obtained by the Committee establishing that the procedures for screening political functions at the White House have been in effect for several administrations. A career White House employee testified that during her 18-year tenure at the White House, the procedures for screening political guests were the same.[27] The National Security Advisor similarly testified that NSC procedures for providing information as part of the screening process have been in place since the 1970s.[28]

• The Majority ignores that the system in place for years has also resulted in a variety of individuals with controversial backgrounds meeting with Republican Presidents. Although the Committee's investigation of Republican vetting was limited due to the Committee's focus on the Democratic Party, it did uncover several examples where individuals with controversial backgrounds were provided access to President Bush. See Minority Report Chapter 28.

• The Majority omits the fact that both the White House and the DNC have implemented policies to formalize and improve their procedures for assessing potential guests at most DNC events.[29]

Response to Majority Report Chapter 10: "Johnny Chung and the White House Subway"

In this chapter, the Majority alleges that Chung's status as a DNC donor afforded him extraordinary access to the White House, including "access to the President and the First Lady" and to "the First Lady's office." The chapter devotes considerable space to a $50,000 contribution to the DNC which Chung gave to Margaret Williams, then-Chief of Staff to the First Lady. The Majority alleges that the $50,000 contribution was solicited by Williams and that Chung was provided with access to the White House as an explicit quid pro quo for this contribution.

• The Majority Report refers repeatedly to Chung's access to "the White House," misleadingly implying that he had frequent access to the executive mansion. The Majority Report fails to distinguish between the White House itself—the executive mansion—and the "White House Complex," a term that includes the White House and some nearby buildings, including the Old Executive Office Building ("OEOB"). The vast majority of Chung's visits were to the OEOB;[30] he frequently dropped in on Margaret Williams or her assistant, Evan Ryan.[31]

• The Majority Report incorrectly implies that Chung had frequent access to President and Mrs. Clinton. The evidence before the Committee shows that Chung only met the Clintons on a handful of occasions, usually at Democratic fundraising events where he was one of a large number of attendees. The references to his visits

[27] Judith Spangler deposition, 5/9/97, pp. 39–40.

[28] Samuel R. Berger, 9/11/97 Hrg., p. 6.

[29] Exhibit 1073: New DNC Compliance Procedures and Fundraising Manual; Exhibit 1072: Memorandum from Erskine Bowles to All Executive Office of the President Staff, 1/21/97; Exhibit 1071: Memorandum from Samuel R. Berger to all National Security Council staff, 6/13/97.

[30] For example, Secret Service "WAVE" records, which record visits by individuals who do not hold White House passes, show that Chung visited the White House complex 30 times in 1995 and that most of those visits were to Williams's office in the OEOB.

[31] Margaret Williams's and Evan Ryan's offices were located in Room 100 of the Old Executive Office Building.

to "the First Lady's office" are misleading because he actually visited the office of Margaret Williams, the First Lady's Chief of Staff, in the Old Executive Office Building.[32]

• The Majority alleges that Margaret Williams solicited a $50,000 contribution from Chung. The Majority's discussion of the $50,000 contribution is based largely on unsworn allegations to journalists by Johnny Chung and it ignores a great deal of contradictory evidence in the form of testimony to the Committee by Margaret Williams and Evan Ryan. The Majority also ignores Williams's testimony on the same subject to the House Government Reform and Oversight Committee (even though evidence presented to that Committee has been used elsewhere in the Majority Report). For example, the Majority Report ignores Williams's denial that she solicited the $50,000 contribution from Chung and her testimony that she initially rebuffed him when he tried to hand her the check.[33] Ultimately, according to her testimony, she decided to treat the check the same way she had treated unsolicited checks that had arrived in the mail: She simply forwarded it to the DNC.[34] By ignoring these and other important parts of Williams's testimony, the Majority has created a distorted impression of what the Committee learned about Johnny Chung.

• The Majority alleges that Williams provided Chung with access to the White House as an explicit quid pro quo for a $50,000 contribution. Regarding the alleged quid pro quo for the $50,000 contribution, the Majority relies again, on unsworn statements to journalists by Johnny Chung and ignores contradictory evidence, including testimony to this Committee by Margaret Williams and Evan Ryan. According to their testimony, neither of them suggested to Chung that his requests would be expedited if he contributed to the DNC. By ignoring this evidence, the Majority has elevated press accounts over actual evidence received by the Committee.

Response to Majority Report Chapter 11: "The Contribution of Yogesh Gandhi"

In this chapter, the Majority concludes that Yogesh Gandhi was able to use a $325,000 contribution to gain access to the President for Gandhi's own purposes. It concludes that the contribution both originated from foreign funds and was laundered through Gandhi. The Majority suggests that DNC officials had concerns about the contribution at the time it was received and concludes that DNC General Counsel Joseph Sandler and the DNC willfully postponed returning the contribution until after the election.

The Minority agrees that this contribution should have been handled more carefully, but disagrees with the Majority's presentation of the facts.

• Despite evidence to the contrary, the Majority asserts that the presentation of the Gandhi award to Clinton was arranged well in advance of the DNC event. The evidence obtained by the Committee indicates that the presentation of the award to Clinton was not

[32] Evan Ryan deposition, 8/7/97, pp. 11–12: The suite of offices in the OEOB where Williams and Ryan worked does not contain an office for the First Lady.
[33] Margaret Williams deposition, 5/29/97, p. 184.
[34] Margaret Williams deposition, 5/29/97, pp. 184–86.

arranged in advance, but was handled at the event.[35] Gandhi told Committee staff that he did not mention the award to anyone until the event, and that he did not meet John Huang until the event.[36]

• The Majority incorrectly claims that evidence indicates that the DNC purposefully delayed return of the Gandhi contribution until after the election. Sandler testified that the date of the 1996 election was not a factor in the decision to return the Gandhi contribution.[37] He returned the contribution approximately two weeks after press allegations first surfaced raising questions about Gandhi's solvency.[38]

• The Majority unfairly insists that there was concern over the Gandhi contribution inside the DNC at the time it was received. The Committee developed no evidence suggesting anyone at the DNC was initially concerned about the Gandhi contribution. DNC Finance Director Richard Sullivan actually testified that "John [Huang] showed me the $325,000 contribution from Gandhi, from Yogesh Gandhi, and I believe he stated he was holding on to it until he could vet it with Joe." Although Sullivan testified that Huang later told him he had spoken to Sandler about the contribution, Sandler testified that Huang did not bring the contribution to him for review and that he would have remembered if Huang had done so.[39] Sullivan similarly testified that Huang represented that at least one other contribution had been reviewed, while Sandler testified Huang never brought it to him.[40]

Response to Majority Report Chapter 12: "Ted Sioeng"

In this chapter, the Majority examines political contributions by Ted Sioeng, his family, and related business interests in the United States. Sioeng is a wealthy Indonesian-born businessman with extensive business interests in China. The recipients of his contributions included the DNC, the RNC's National Policy Forum, and Matt Fong, a Republican currently serving as California State Treasurer. Although the Majority acknowledges that it cannot establish any connection between these Sioeng-related contributions and the Chinese government, the Majority's principal conclusion is that approximately half of the $400,000 contributed by Sioeng-related interests to the DNC consisted of "foreign money."

The Majority's analysis is misleading and incomplete as to the central question of whether any of these contributions violated federal campaign laws. Existing law does not prohibit using "foreign money" to fund federal political contributions by individuals so long as those contributions are, in fact, made by persons legally eligible to contribute (i.e., U.S. citizens or legal permanent residents) with their own funds.[41] Much of the Majority's analysis of the bank records underlying the contributions at issue completely ignores this critical issue.

• The Majority report ignores Jessica Elnitiarta's contribution to the National Policy Forum ("NPF"). The Minority Report raises

[35] Joseph Sandler deposition, 5/15/97, pp. 105–14. Joseph Sandler, 9/10/97 Hrg., p. 100.
[36] Staff Interview of Yogesh Gandhi, 3/26/97.
[37] Joseph Sandler deposition, 5/15/97, p. 116.
[38] Joseph Sandler deposition, 5/15/97, pp. 116–18.
[39] Richard Sullivan deposition, 6/5/97, pp. 37–39; Joseph Sandler, 9/10/97 Hrg., p. 13.
[40] Joseph Sandler, 9/10/97 Hrg., p. 13.
[41] See Minority Report Chapters 1 and 20.

troubling questions about the actual source of the funds donated to the NPF, a de facto subsidiary of the Republican National Committee. The day before Sioeng's daughter, Jessica Elnitiarta, donated $50,000 to the NPF, the Panda Industries account which funded the contribution had a balance of only $1,300.[42] That same day, Ted Sioeng wrote a check for $50,000 from his personal account into the account of Panda Industries.[43] These transfers raise the fair inference that Sioeng both directed and was the real source of the NPF donation. In examining this same transaction, the Majority overlooks the evidence that Sioeng, a nonresident alien, probably directed the NPF contribution and, instead, merely concludes that, based on the evidence available to the Committee, it is impossible to determine whether Sioeng's reimbursement of his daughter's contribution came from foreign monies. This does not, however, remove the principal concern raised by this contribution: that Sioeng may have directed the contribution of $50,000 to the NPF.

The Majority also ignores that Elnitiarta's contribution to the NPF was solicited by Steve Kinney, an aide to Speaker Gingrich, and was collected by Kinney the day before Sioeng sat next to Speaker Gingrich at a Beverly Hills event in 1996.[44] These facts raise the strong inference that Sioeng's seating next to the Speaker was a reward for his daughter's contribution to NPF, but are ignored by the Majority.

• The Majority ignores the crucial legal questions regarding Sioeng-related contributions because it focuses solely on identifying possible "foreign money" sources of those political contributions. As noted above, a U.S. citizen or legal permanent resident, such as Sioeng's daughter and his associates, can make contributions funded entirely by "foreign money" so long as the money belongs to the donor and the donor of record is actually the person making the contribution decision, not simply acting as a conduit for others.[45] The issue of whether part of the monies contributed to Fong comes from overseas is not nearly as significant as the fact that Fong actively solicited a $100,000 contribution from Sioeng, a person ineligible to donate, personally received a check for $30,000 from him, and failed to ascertain whether Sioeng was eligible to contribute. Fong then unpersuasively testified that he thought that Sioeng was making a contribution on behalf of one of his sons—which would still be illegal as a contribution in the name of another.[46] Indeed, the Majority Report contains no reference whatsoever to the deposition testimony which Fong provided to the Committee.

• Without sufficient evidence, the Majority characterizes a $50,000 contribution to the DNC from Kent La, a business associate of Sioeng's, as Sioeng-related. The Majority suggests that Sioeng may have directed this contribution; it bases this on La's characterization of Jessica Elnitiarta (in a telephone interview) as

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[42] Memorandum from Steven E. Hendershot, FBI detailee, to Minority Counsel, re: "Jessica Elnitiarta Record Review," 8/22/97.

[43] Memorandum from Steven E. Hendershot, FBI detailee, to Minority Counsel, re: "Jessica Elnitiarta Record Review," 8/22/97.

[44] Memorandum from Steven E. Hendershot, FBI agent, to Senate Investigating Team re: China Press newspaper article of 7/22/95", 7/23/97; Memorandum from Steven E. Hendershot, FBI detailee, to Minority Counsel, re: "Jessica Elnitiarta Record Review," 8/22/97; Staff interview with Jessica Elnitiarta, 6/19/97; *Los Angeles Times*, 7/4/97.

[45] See Minority Report Chapters 1 and 20.

[46] Minority Report Chapter 7: Ted Sioeng.

his "supervisor."[47] This is an extremely slender reed upon which to ascribe La's contribution to Ted Sioeng. The Majority failed to mention another Committee interview in which La's wife described the contribution at issue: "La advised that after she and her husband learned from Jessica [Elnitiarta] that Ted Sioeng had made a big donation to the President, La's husband decided to do the same. La advised that another reason they gave money to President Clinton was because the President supported trade increases with China and granted favorite nation status to China. La advised that no one forced or coerced them into donating the money."[48]

The Majority also notes that it sought to depose La, but was unable to get the Minority's approval for the issuance of the subpoena. The resulting unstated inference—that the Minority's failure to approve the proposed subpoena was motivated by a desire to obstruct the Committee's investigation—is unfair and inaccurate. What the Majority Report failed to explain was that a subpoena to La had already been issued with the Minority's approval, but that the Majority came to discover it had issued an invalid subpoena which mistakenly named La's cousin, Vinh B. La.[49] When the Majority proposed to re-issue corrected subpoenas for both Kent La and Vinh B. La, the Minority sought equivalent technical corrections of subpoenas that had been issued to RNC officials. When the Majority made it clear that it was unwilling to extend the Minority the courtesy of reciprocal technical corrections on subpoenas already issued, the Minority declined to approve the requested subpoenas for Kent La and Vinh B. La.[50] The Majority had the authority to vote to issue the requested subpoenas over the Minority's objections, but did not do so.[51]

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[47] The factual support for the Majority's contention that La described Elnitiarta as his "supervisor" is exceedingly unclear. The Majority's characterization of La's statements is not supported by the only report of a telephone interview with La that is known to the Minority. On May 13, 1997 FBI detailee Steven E. Hendershot contacted Kent La and, because La's English was "not very good," conducted an interview in Chinese. Memorandum from Steven E. Hendershot to Senate Investigative Team re: Contact with Kent La, 5/14/97. During that interview, La offered no characterization of his business relationship with Elnitiarta. *Id.* There are no records of any additional FBI interviews of La and it is unlikely, given La's lack of English fluency, that members of the Majority staff could have conducted such an interview.

[48] Memorandum from FBI detailee Vo Duong Tran to Senate Investigative Team re: Interview of Nancy La, 5/25/97.

[49] Letter from Laura S. Shores, counsel to Kent La, to Majority Counsel, re: Kent La, 11/6/97.

[50] The text of Senator Glenn's 11/19/97 letter to Chairman Thompson on this matter is as follows:

> Pursuant to the Rules of the Governmental Affairs Committee, I am writing to object to the Majority's proposed issuance of two subpoenas—a corrected subpoena for Vinh B. La and a new subpoena for Kent La. I do so reluctantly because I have no interest in impeding the legitimate course of the investigation. I am compelled to object, however, because precisely the same requests by the minority for subpoenas to correct alleged technical defects have been ignored and effectively denied. For example, The Committee issued deposition subpoenas for Curt Anderson and Jill Hanson that asked for depositions on dates that had already passed by the time that service was effected. The Minority has twice unsuccessfully sought to have these technical defects corrected by new subpoenas. On another occasion, we detailed for the Majority how Martin Weinstein, counsel for several RNC officials, misled the Committee about his representation of Tim Barnes and caused the Committee to serve a deposition subpoena on Mr. Weinstein rather than his actual counsel, Mr. Burchfield. Our request that a corrected subpoena be served on Mr. Barnes was ignored.
>
> The Minority has asked your staff to correct these subpoenas at the same time that your requested subpoenas are issued, but have received no response. Under these circumstances, I am compelled to object to the issuance of the Majority's proposed subpoenas to Vinh B. La and Kent La.

[51] Memorandum from Majority Counsel Michael Bopp to Chief Minority Counsel Alan Baron re: Notice of Deposition Subpoenas, 11/14/97.

• The Majority's unwillingness to explore Sioeng's dealings with Republican candidates contrasts starkly with its willingness to use bank records to tie Sioeng to Chinese government officials. In one notable instance, the Majority appears to have overreached considerably in suggesting that a $10,000 check made out to the "O.C. Chinese Friendship Ass." in 1995 "may have been intended for an organization called the Overseas Friendship Association" which the Majority Report describes as an instrument of the Chinese Communist Party. From the Minority's perspective, a more reasonable interpretation (at least one that takes into account the "C" following the "O") is that Sioeng donated this $10,000 to a slightly more benign organization: the Orange County ("O.C.") Chinese Friendship Association.

Response to Majority Report Chapter 13: "Huang's Years at Lippo"

In this chapter, the Majority suggests that the Lippo Group's shifting focus from Indonesia to the emerging markets of the People's Republic of China over the last five years indicates that the Lippo Group has a suspicious relationship with the Chinese Government. The Majority also claims that John Huang engaged in a pattern of illegal political contributions on behalf of the Lippo Group.

The Majority provides scant evidence for its conclusions, however, and ignores much evidence to the contrary.

• Based on scant evidence, the Majority asserts that Lippo Group joint venture partner China Resources is a corporate agent of espionage for the government of China. The only evidence developed by the Committee indicates that the Lippo Group has a *business* relationship with China Resources, a major conglomerate owned by the Chinese government that acts as a licensed intermediary for outside businesses doing business in China.[52] The Majority fails to mention, for example, that according to a 1992 estimate, China Resources has 29 wholly owned subsidiaries and "hundreds" of joint ventures, including ventures with U.S. corporations.[53] While there have been allegations that China Resources engages in intelligence gathering on behalf of the Chinese Government, no evidence has been developed that suggests that the Lippo Group has ever acted as agent of China Resources or provided any intelligence information to the Chinese Government.[54]

• The Majority asserts that an audiotape of a DNC event attended by the Vice President indicates that Huang may have ar-

[52] Thomas Hampson, 7/15/97 Hrg. pp. 67–68.

[53] Xinhua wire service, 11/10/92. On 2/7/96, the Harris Corporation, an NYSE-listed company, issued a press release announcing that it had been awarded a $2.7 million contract to supply radio terminals to a Northwest Electric Power Group, an electric company in the PRC. The press release states that China Resources National Corporation, a branch of China Resources Group, represented Northwest Electric Power. The press release described China Resources National Corporation as "an import/export company that acts as a licensed intermediary for outside companies doing business in China." A 6/26/85 press release of the Universal Satellite Corp., a public company based in New York, announced a contract to sell high-resolution television projectors to Strong Progress Ltd., a subsidiary of China Resources Group of Hong Kong.

[54] According to the *Los Angeles Times*, the Riady family issued a statement in February of 1998 explaining the nature of their commercial relationship with China Resources and asserting that they have not "gathered classified information or [performed] other intelligence operations" in the course of their dealings with international partners. *Los Angeles Times*, 2/23/98. In addition, the classified information provided to the Committee supports the conclusion only that the Riadys' relationship with the Chinese Government involved normal business dealings within China.

ranged a White House meeting between Vice President Gore and the vice chairman of China Resources, Shen Jueren. The Majority alleges that Huang may have arranged three "meetings" between Shen Jueren and the Vice President—a "meeting" in the White House on Friday, September 24, 1993; a "meeting" at a California law firm in the afternoon of Monday, September 27, 1993; and a "meeting" at a DNC event in California later that same Monday. There is scant evidence, however, to support these alleged "meetings." The meeting on Friday was a short visit with the Vice President's Chief of Staff, not the Vice President;[55] and the meeting on Monday in the afternoon was with approximately 25 Asian Americans and Shen Jueren was not listed as an attendee.[56] Finally, the meeting on Friday evening was in fact a DNC "Reception/Dinner" attended by approximately 50 individuals, including Shen Jueren. The Vice President was not seated at the same table as Shen at this event.[57] Despite the documentary evidence, the Majority relies on an alleged exchange captured on audiotape at the law firm event to argue that on the previous Friday, a White House meeting may have occurred. This audiotape is largely inaudible but appears to reflect that at the law firm event, an individual stated that "Kevin said he met you last Friday and I also come."[58] The tape does not seem to refer to Shen, nor, more importantly, was Shen listed as in attendance at that afternoon event.[59] The Majority's reliance on this tape to allege a meeting, despite all evidence to the contrary, is unpersuasive.

• The Majority implies that John Huang improperly transmitted information to members of the Lippo Group and to the Chinese government, despite insufficient evidence. The Committee developed no evidence that Huang ever mishandled or passed classified or other sensitive information. Moreover, evidence gathered by the Committee indicates that Huang's contacts with Lippo employees were for administrative or personal reasons.[60] For example, James Per Lee, the current president of Lippo Bank in California testified in his deposition that he had investigated the approximately 200 calls exchanged between Huang and Los Angeles-based Lippo employees and concluded that these calls were routine and brief. Per Lee testified that the calls were exchanges primarily between Huang and the bank's executive secretary in order to relay messages of calls received, and that calls to other employees concerned such matters as important bank clients, an appearance by Huang in a Chinese New Year's parade, and administrative matters deal-

[55] White House Communications Agency audio tape, 9/27/93, Letter to Jack Quinn, 10/7/93, EOP 49490.

[56] List of attendees at 9/27/93 afternoon event, EOP 965–969.

[57] Briefing papers and attendees for DNC "Reception/Dinner," 9/27/93, 6:00 p.m., EOP 962–964.

[58] White House Communications Agency audio tape, 9/27/93.

[59] List of attendees at 9/27/93 afternoon event, EOP 965–969; In addition, even if the reference of "Kevin" is to Shen Jueren, the individual could very well have been speaking to the Vice President's Chief of Staff, Jack Quinn, who accompanied the Vice President to the law firm event and who had briefly met Shen Jueren the Friday before that event.

[60] Among one summary of Huang's "Lippo contacts" were calls placed from Huang's Glendale home to the home of Lippo bank employee Ken Yuen, although Mr. Yuen testified in deposition that his wife was friends with Jane Huang. Ken Yuen deposition, 4/30/97, p. 23. No attempt was made to determine if Huang was in Glendale or Washington at the time such "contacts" occurred.

ing with the domestic subsidiaries.[61] After Per Lee's deposition, the Majority abruptly canceled his scheduled appearance before the Committee[62] and fails in its Report to recognize the Lee's deposition testimony.

• The Majority incorrectly asserts that three 1993 contributions from Lippo subsidiaries in the United States to the DNC were reimbursed with foreign funds. There is no evidence to support the Majority claim that three contributions to the DNC in September 1993 from three Lippo-owned California corporations were reimbursed with funds from abroad. Documents suggest that the contributions consisted of income generated in the U.S. For example, the Committee discovered a reimbursement request for a 1992 contribution from Hip Hing Holdings, but did not discover similar requests for the 1993 contributions, despite reviewing all such reimbursement requests for the relevant time period.[63] In addition, contrary to the Majority's assertions, administrator Juliana Utomo did not testify that these contributions were reimbursed from Indonesia.[64] And finally, unlike the domestic income generated for the 1992 contribution, the domestic income generated for each of the three companies that contributed in 1993 was more than sufficient to make the contributions from those funds.[65] The Majority's assertion that the 1993 contributions were reimbursed by funds from Indonesia has no evidentiary support.

• The Majority asserts that the Lippo Bank of California is controlled by the Lippo Group from abroad. In public testimony before the Committee, former bank President Harold Arthur testified the bank is owned and controlled by James Riady and managed by the Bank's Board. Arthur testified, "To the extent that any company controlled by a Riady family member is included within the portfolio of companies and investments under the common name of The Lippo Group, it could be argued that it is part of the Lippo Group. However, . . . the Bank is neither a subsidiary, nor a division of, nor controlled by, any company, group, partnership trust or other person or entity within the Lippo Group or otherwise."[66]

Response to Majority Report Chapter 14: "Huang at Commerce"

In this chapter, the Majority attempts to suggest that John Huang, while employed at the Department of Commerce, was a spy for the Riadys's Lippo Group, and, by extension, the Chinese government. After first implying that Huang was purposefully and carefully restricted from policy matters relating to China, the Majority then suggests that Huang improperly accessed and misused classified materials. The Majority also makes a point of noting that

[61] James Per Lee deposition, 5/2/97, pp. 93–102.
[62] Harold Arthur, 7/15/97 Hrg., pp. 140–141.
[63] Lippo Group holding companies requests for reimbursement of expenses from August to December 1993, HHH 0236–37.
[64] Juliana Utomo, 7/15/97 Hrg., pp. 12–15.
[65] Exhibit 105. During the July 15 hearing, Senator Thompson referred to an Advisory Opinion issued by the Federal Election Commission, the summary of which states that "in order for a contribution to be legal, a domestic subsidiary must make contributions out of net profits." Advisory Opinion 1992–16. While the Opinion holds it is proper for the particular domestic subsidiary seeking the Opinion to make contributions from its net profits, it does advise whether contributions from the net income of a domestic subsidiary operating at a loss are permissible. See legal analysis in Chapter 1, supra.
[66] Harold Arthur, Opening Statement, 7/15/97 Hrg., p. 10.

the Committee's work was complicated by Huang's refusal to cooperate.

The Majority fails to note, however, that Huang had offered to testify before the Committee without any restrictions as to allegations that he had engaged in espionage.[67] The rest of the Majority's conclusions are similarly based on ignoring or mischaracterizing evidence before the Committee.

• The Majority's assertion that it could not adequately investigate Huang's role at Commerce because Huang refused to cooperate with the Committee is partially correct. The Majority ignores the fact that the Committee took dozens of depositions, received thousands of documents and held public hearings on Huang's role while at Commerce.

• The Majority asserts that Huang was excluded from policymaking at the Department of Commerce because he "was not capable of doing the work." In fact, Huang was not explicitly excluded from any policy area or from receiving any policy-related information. Huang was hired by his immediate supervisor Charles Meissner to fulfill a primarily administrative position with the concurrence of Undersecretary of International Trade, Jeffrey Garten.[68] While Huang played a limited policy role at Commerce, this was primarily due to the administrative nature of his position and inter-department tension. Responsibility for high-profile areas was vested primarily at the Undersecretary and Deputy Undersecretary level, two levels above Huang.[69] No directive of any sort was ever issued by any of Huang's superiors that Huang was to be restricted from access to any policy area, including China, or that he be "walled off." [70] Huang was also never restricted, implicitly or explicitly, from receiving information regarding any particular country.

• The Majority asserts that the Department of Commerce security clearance procedures were inadequate and that "warning signs" pertaining to Huang were ignored. In fact, procedures used for Huang's clearance were identical to every other political appointee and no issues were uncovered in this investigation to suggest that Huang should have been denied a security clearance. Several issues relating to issuance of the clearances follow:

• The Majority asserts that the Clinton Administration initiated the policy of granting all Department of Commerce Officials an interim clearance. In fact, the policy of granting all political employees interim clearances was determined by career Department of Commerce Officials and not by political appointees or other Administration officials.[71] Although interim clearances had been issued in previous administrations, Steven Garmon, a career employee was then the Director of the Department of Commerce Security Office, instituted a policy of automatically granting interim clearances to all appointees in reaction to criticism which had been leveled at the Security Office in previous administrations over the delays political appointees had faced in obtaining their clearances and their consequent inability to attend certain meetings or receive certain in-

[67] Opening Statement of Senator Glenn, 7/8/97 Hrg., pp. 30–34.
[68] Jeffrey Garten, 7/16/97 Hrg., pp. 120–21.
[69] Jeffrey Garten, 7/16/97 Hrg., p. 122.
[70] Jeffrey Garten, 7/16/97 Hrg., p. 122, 137.
[71] Steven Garmon deposition, 5/23/97, pp. 25–27; Paul Buskirk deposition, 6/3/97, pp. 31–35.

formation.[72] The policy was changed by Secretary William Daley in February 1997.

• The Majority asserts that a background check prior to issuance of Huang's interim security clearances showed that he had been "arrested or detained," and contends the finding was not followed up. In fact, Huang was never arrested or detained, and the NCIC record was reviewed by the agent handling the Huang clearance and by his superior, Security Office Deputy Director, Paul Buskirk.[73] Buskirk determined that the Immigration and Naturalization Service entry was within days of Huang's marriage in 1972, and was likely a fingerprint check as a part of the initiation of Huang's application for citizenship.[74] Buskirk's determination is supported by INS records produced to the Committee that indicate Huang was fingerprinted prior to being granted permanent resident status and was never arrested or detained.

• The Majority asserts that the lack of an overseas background check of Huang has left unresolved questions about Huang's contacts with the Chinese government. An overseas investigation was not conducted because the Office of Personnel Management determined that it was not necessary based on the fact that Huang had emigrated from Taiwan in 1969 and had been living in the U.S. since that time. Moreover, no derogatory information was discovered in the domestic background investigation.[75]

• The Majority asserts that an OPM investigator made a notation on Huang's file that signified he was a "potential security problem," and that this notation was ignored by the Department of Commerce Security Office. In fact, the "E" notation on a security file refers to unresolved issues such as a medical problem, not to indicate a potential security risk. No evidence was found in OPM's background check on Huang that related to loyalty, terrorism, dishonesty in the application or examination process, felony offenses, liquor law violations, employment information, or even disturbing the peace.[76]

• The Majority implies that Huang may have improperly accessed classified information while at the Department of Commerce or received classified information beyond his 18-month tenure at Commerce. In fact, there is no evidence that Huang ever improperly accessed classified information or accessed any classified information outside of his 18 months of employment at the Department of Commerce. None of the intelligence officials questioned by the Committee indicated that there was any evidence of mishandling of classified information on the part of John Huang.[77]

• The Majority asserts that Huang had access to unprecedented amounts of classified information. In fact, Huang repeatedly declined access to additional classified information and received less classified material than either his predecessor or other individuals at his level. Huang turned down the suggestion of Meissner and

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[72] Steven Garmon deposition, 5/23/97, pp. 33–34.
[73] Joseph Burns deposition, 5/23/97, pp. 55–56.
[74] Paul Buskirk deposition, 6/3/97, pp. 53–54.
[75] Letter to Rep. Larry Combest from James King, Director of OPM, 10/30/96.
[76] *Federal Investigative Programs Manual,* Office of Personnel Management, 1991. The Majority could not have regarded this as a serious issue as the Minority was never notified of the interview of the OPM staff person, and no witness was questioned about the "E" notation.
[77] 7/16/97 Hrg., pp. 222–227.

Security Officer Bob Gallagher that he get an SCI clearance, a level above top secret.[78] Huang also never developed his cable profile to receive anything other that cables at the secret level addressed directly to him.[79] Huang's predecessor Rick Johnston received more frequent briefings and more extensive information than John Huang.[80] Testimony established that Huang's role, while primarily administrative, required him to be able to make informed decisions on a variety of policy issues about which he received classified information.[81]

• The Majority asserts that Huang's use of the Washington D.C. office of Stephens, Inc. is "cloaked in mystery," and implies that Huang's visits to Stephens were used to pass secret information to outsiders. Although the details of Huang's visits to the Stephen's office are not fully known to the Committee, the Majority neglected to request the appearance at public hearings of those individuals with knowledge of these details. For example, the Majority did not call as a witness Vernon Weaver, the head of the Washington office of Stephens, Inc., although Weaver had explained to the Committee in an interview the uses of the Stephens office. Weaver explained that Huang had used the office before he began employment at Commerce, that other people used the office, and that Weaver in turn used an office in the Lippo Bank when he was in California.[82] Rather than call Weaver as a witness, the Majority instead called Paula Greene, a secretary at the Stephens office, although she was not able to provide similar information.[83] The Majority is correct that the purpose of Huang's visits is unclear, but it is unfair to cast this ambiguity in the most sinister light possible.

• The Majority asserts that Huang arranged a meeting between Weaver and California State Treasurer Matt Fong which resulted in Stephens receiving business from the State of California. The Majority appears to rely exclusively on Huang's agenda in making this assertion. Neither Fong nor Weaver were ever questioned about this meeting or the business relationship between Stephens and the state although Fong was deposed and Weaver was interviewed by Committee staff.

RESPONSE TO MAJORITY REPORT CHAPTER 15: "JOHN HUANG MOVES FROM COMMERCE TO THE DNC"

In this chapter, the Majority goes to great lengths to imply that there was something sinister in the hiring of John Huang by the Democratic National Committee ("DNC"). The Majority repeatedly asserts that Huang was hired based upon the President's intervention on his behalf.

The Majority's conclusions are not supported by accurate descriptions of the testimony and omit critical facts. There is no evidence that Huang's hiring was suspicious, that it was part of an effort to raise foreign money, or that the President's involvement in the process was either significant or inappropriate.

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[78] Robert Gallagher deposition, 5/30/97, p. 13.
[79] Staff Interview with Lewis Williams, 6/12/97.
[80] Staff interview of Richard Johnston, Jr., 6/12/97.
[81] David Rothkopf deposition, 6/2/97, p. 30.
[82] Staff Interview of Vernon Weaver.
[83] Paula Greene, 7/17/97 Hrg.

• The Majority falsely implies that there was something inappropriate about the President being involved with Huang's move to the DNC to raise money in the Asian American community. The Majority's discussion of the President's "involvement" in Huang's hiring is misleading and a distortion of the facts. As noted below, the President did not play a "central role" in Huang's hiring, but even if he had, as the leader of his party, it is perfectly appropriate for the President to take an interest in DNC personnel matters, particularly when the DNC was reaching out to a new community, Asian-Americans. Nor does the fact that Huang was hired to raise money in the Asian-American community mean that there was a plan to funnel foreign money into federal elections. With the November 1995 initiation of the Asian Pacific American Leadership Council, the DNC was formally reaching out to a new community;[84] previously, the DNC had established fundraising and outreach programs in other minority communities such as in the Hispanic, African-American, and Jewish communities, and it also had fundraising and outreach to women's groups.[85]

• The Majority's claim that the President "played a central role" in Huang's hiring is supported by misleading, and inaccurately characterized testimony. The Majority cites to press accounts and unsworn interviews to describe a conversation between DNC Finance Chairman Marvin Rosen and the President relating to Huang, despite the fact that the Committee deposed Rosen and therefore sworn testimony was available. The Majority fails to mention that Rosen stated in his deposition that his conversation with the President regarding Huang was "very brief, seconds of time."[86] The Majority's conclusion that "the President himself intervened" with the DNC to hire Huang is supported only by this brief conversation that occurred when the President happened to see Rosen in the receiving line at a fundraiser. In addition, DNC National Chairman Don Fowler testified that he personally made the decision to hire Huang, without consulting anyone from the White House and without knowledge of the President speaking to Rosen.[87]

• The Majority Report falsely implies that Huang received no training. Despite a discussion about Huang's hiring and conversations about his training (and additional discussion of this subject in other chapters), the Majority fails to mention the *uncontested* fact that Huang was trained. The Majority extensively investigated this issue, asking numerous witnesses about Huang's training and developed a significant record that clearly establishes that Huang was trained. Huang was placed at a group training session by fellow Finance staffer and office mate Sam Newman;[88] a copy of the DNC's legal guidelines for fundraising was found in his files;[89] DNC General Counsel Joseph Sandler testified that after reviewing checks with Huang after a fundraising event, Sandler determined that Huang was familiar with the laws and guidelines by which he

[84] Donald L. Fowler deposition, 5/21/97, pp. 190–191; Richard L. Sullivan deposition, 6/5/97, pp. 12–13.
[85] Richard L. Sullivan deposition, 6/5/97, p. 9.
[86] Marvin S. Rosen deposition, 5/19/97, pp. 139–140.
[87] Donald L. Fowler deposition, 5/19/97, p. 171.
[88] Samuel Newman deposition, 7/17/97, pp. 142–143.
[89] Joseph E. Sandler, 9/10/97 Hrg., p. 13.

was to raise money;[90] and Sullivan testified that Sandler communicated this to him.[91] Despite this uncontested record developed by the Majority, there is absolutely no mention of these facts in the Majority Report, which instead focuses on discussions before Huang was hired regarding the type of training that Huang should receive. These omissions leave the reader with the false impression that Huang was not trained.

RESPONSE TO MAJORITY REPORT CHAPTER 16: "JOHN HUANG'S ILLEGAL FUNDRAISING AT THE DNC"

In this chapter, the Majority discusses Huang's fundraising while at the DNC. The Majority states that there were concerns regarding Huang's fundraising before he even undertook his first event and concludes that Huang's involvement in and/or organization of several events should have been a "warning sign" for the DNC.

In so doing, however, the Majority draws conclusions that are not supported by the evidence.

• The Majority Report falsely claims that there is "contradictory testimony on whether Sandler trained Huang." The testimony is absolutely consistent that Huang was trained (see Response to Majority Chapter 15). In this chapter the Majority tries to exploit a minor contradiction regarding the "type" of training Huang received—the training given to all DNC fundraisers or a special training just for Huang. Even this contradiction has been reconciled in testimony before the Committee: former DNC Finance Director Richard Sullivan's understanding that Huang received private training[92] most likely resulted from the session in which Sandler reviewed checks with Huang after his first event.[93]

• The Majority Report illogically asserts that contributions solicited by Huang and returned by him in March of 1996 were a "warning sign." Far from being evidence that Huang was acting improperly, Huang's returns of contributions suggest that he knew the rules and was following them by initiating the return of funds he believed to be problematic.

• The Majority Report fails to mention the lack of any corroboration of Rawein Soberano's statements regarding Huang and the DNC. The alleged lunch between Soberano and Huang is not noted on Soberano's calendar, and Soberano says there was no credit card, reservation, or other documentary evidence of his lunch.[94] Moreover, the Minority discovered that the Majority made undisclosed failed attempts to corroborate Soberano's story. When the Minority called the Organization of Chinese Americans to determine whether Huang was registered for its June 1996 conference in San Francisco (at which Soberano claimed that he saw Huang), we learned that Huang was not on the registration list, and that the Majority had (undisclosed to the Minority) called and received the same information. Indeed, the sole corroboration the Majority

[90] Joseph E. Sandler deposition, 8/21/97, p. 17. Sandler also testified that he communicated this level of comfort to either DNC Finance Director Richard Sullivan or DNC Treasurer Scott Pastrick.

[91] Richard L. Sullivan deposition, 6/5/97, p. 23.

[92] Richard L. Sullivan deposition, 6/5/97, pp. 23–24.

[93] Joseph E. Sandler deposition, 8/21/97, p. 15.

[94] Rawlein Soberano, 9/16/97 Hrg., pp. 211–212; Rawlein Soberano deposition, 5/13/97, pp. 29–31, 39.

claims to have for Soberano's story is an interview with Jerry Parker (from whom Soberano rented office space). It should be noted that the Majority neither notified nor invited the Minority to this interview. The Majority also failed to provide the Minority with either a transcript or a memorandum from this interview. According to the Majority, Parker "confirmed" in this interview that Soberano told him he had lunch with Huang. If the Majority had, in fact, obtained corroboration of Soberano's allegations, it is unclear why the Majority did not provide this information to the Minority or mention the information during the public hearing on this subject.

RESPONSE TO MAJORITY REPORT CHAPTER 17: "THE HSI LAI TEMPLE FUNDRAISER AND MARIA HSIA"

In this chapter, the Majority discusses the DNC-sponsored event at the Hsi Lai Buddhist Temple in Hacienda Heights, California. The Majority spends nearly half of the chapter discussing the activities of Democratic activist Maria Hsia and her associates, including DNC fundraiser John Huang. The Majority details the contributions made by monastics since 1993 who were reimbursed by the Temple. Finally, the Majority discusses the DNC event held at the Hsi Lai Temple on April 29, 1996, focusing on what the Majority believes the Vice President knew and when he knew it.

The Majority's analysis is riddled with inaccuracies and baseless conclusions. In the most serious of these conclusions, the Majority inaccurately claims that this event was a fundraiser, that the Vice President knew this in advance of the event, and that he proceeded to participate in this event despite this information.

• By mischaracterizing testimony and using documents in a misleading fashion, the Majority incorrectly asserts that the Vice President and his staff were aware as early as January 1996 that the Hsi Lai event was to be a fundraiser. The Majority cites to several memoranda from White House Deputy Chief of Staff Harold Ickes to prove that the Vice President was personally and specifically informed of amounts of money the Temple event was intended to raise. All of these memoranda are spreadsheets with dozens of other events and goals listed; none specifically discusses or names the Hsi Lai Temple event. Contrary to the Majority's assertion, the Vice President's Deputy Chief of Staff, David Strauss, testified in his deposition that the Vice President did not look at these spreadsheets. There were events on those spreadsheets which never, in fact, occurred but which stayed on the list.[95] In making these allegations, the Majority ignores the testimony of all witnesses with first-hand knowledge about the scheduling practices of the Vice President's office and about the events that surrounded the sched-

[95] David Strauss deposition, 8/14/97, p. 236.

uling of the Temple event, including Strauss,[96] Kimberly Tilley[97] and Ladan Manteghi.[98] In fact, the Majority refused to call Manteghi as a public witness despite a letter of request from every Minority Member of the Committee. For a full discussion of these events, see Minority Chapters 4 and 21.

• The Majority's basis for concluding that the Temple event was a fundraiser ignores significant evidence that establishes that it was not. The DNC routinely organizes both fundraisers and community outreach events since it is important to motivate both financial and political supporters during a campaign.[99] At the Temple event, there was no entrance fee; tickets were not collected or sold at the door; the speakers did not solicit donations; and many of those who attended did not contribute to the DNC at all.[100] In addition, attendees at the event confirm that it did not appear to be a fundraiser. Charlie Woo, told Committee investigators that there was "no mention of money at the event."[101] Mona Pasquil, DNC Western States political director and former director of Asian-Pacific affairs, testified that she saw no signs of fundraising, such as a table at the door, name tags, checks being exchanged, or solicitations for money.[102] DNC Chairman Fowler described it as an "outreach event" similar to those he attended at churches in the 1960s; not everyone who attended also contributed, and there were none of the typical trappings of a fundraiser.[103] Fowler also testified, "[T]here were three people who made presentations there—myself, the temple master, and the Vice President. None of the three of us made any reference to raising money, contributing money, giving money before or after."[104]

Persons associated with the Temple who helped organize the event also indicated that they did not consider the event to be a fundraiser.[105] Man-Ho, assistant to the Temple abbess, testified at the hearing that Temple personnel did not focus on fundraising during planning before the event.[106] In her deposition, she said that the guests "were not required to pay a buck for [the] luncheon. . . ."[107] She also told the Committee that she did not see anything

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[96] David Strauss, 9/5/97 Hrg., pp. 31, 39. And see pp. 41–44 where Strauss testifies:

Q: Prior to the time that the newspaper articles appeared in the fall of 1996, did you have any reason to believe that anybody on the Vice President's staff had heard that there was any fundraising engaged in by Ms. Hsia, by virtue of a call from Mr. Huang?

A: I have no knowledge that anyone did know.

Q: Did you ever know anything about contributions having been collected or monies having been collected prior to the April 29th event at the Hsi Lai Temple? There has been testimony that a certain amount of money was generated in advance of the event.

A: I had no knowledge of that.

Q: Do you have any reason to believe that the Vice President knew anything relative to this event, either prior to the event or that after the event any monies had been collected?

A: I have no reason to believe that he knew anything about this.

[97] Kimberly Tilley deposition, 623/97, p. 124.

[98] Ladan Manteghi deposition, 8/26/97, pp. 53–57, 67.

[99] See Chapter 25 of the Minority Report for further discussion of the distinction between fundraisers and community outreach events.

[100] Donald L. Fowler, 9/9/97 Hrg., pp. 26–29.

[101] Staff interview of Charlie Woo, 5/30/97.

[102] Mona Pasquil deposition, 7/30/97, pp. 59–62.

[103] Donald L. Fowler, 9/9/97 Hrg., pp. 26–29, 71–72.

[104] Donald L. Fowler, 9/9/97 Hrg., pp. 29.

[105] Man-Ho Shih, 9/4/97 Hrg., p. 83; Man-Ho Shih deposition, 8/6/97, pp. 136–146.

[106] Buddhist nuns, 9497 Hrg., p. 143.

[107] Man-Ho Shih deposition, 8/6/97, pp. 134–37.

at the event that would indicate that it was a fundraiser.[108] The head of the Temple, Venerable Master Hsing Yun, provided a statement to the Committee with consistent information.[109]

Ignoring this evidence, the Majority concludes that the event was a fundraiser based on unfounded inferences:

According to the Majority's Report, Immigration and Naturalization Service official Daniel Hesse heard references to money raised, but what the Majority writes that he heard—"they had raised X amount of dollars"—does not amount to a solicitation. A solicitation is generally believed to be a request for contributions whereas this is merely a statement of what the DNC had raised; far from a request for funds. Furthermore, this interview was conducted unilaterally by the Majority, and, though the Majority cites the interview as having occurred in August of 1997, *before* the Committee's hearings on the Temple event, this information was not introduced at the Committee's public hearing which might have presented a fuller picture of the event.

The Majority's reliance on Sherry Shaw's assertion that she heard a solicitation from a luncheon speaker is also not credible; not one of the approximately 100 others in the audience claims to have heard this. Moreover, Shaw's assertion does not comport with Hesse's statements to the Majority or the recollections of Charlie Woo (another attendee) or *Boston Globe* reporter John Aloyisius Farrell. According to the Majority, in addition to Shaw's statement to Committee FBI agents on May 14, 1997, Shaw submitted a sworn statement to the Committee in August 1997 which contained this information. Again, this was the month before Committee hearings on the Temple event, and once again, the Majority did not divulge this material which it believed to have been relevant to the investigation.

• The Majority inaccurately states that the solicitation of contributions by Hsia assistant Matt Gorman and the nuns proves the Temple event was a fundraiser. While Huang and Hsia used the event to encourage contributions to the DNC the day after the event occurred, there is no evidence that the DNC was aware of these activities nor do the activities establish that the Temple event was a fundraiser.

• The Majority incorrectly asserts that the Vice President's March 15, 1996, meeting with Master Hsing Yun was set up for the sole purpose of the Master inviting the Vice President to the Hsi Lai Temple for a DNC event. Temple administrator Man Ho testified that the Master was not particularly interested in going to Washington for a possible meeting with the Vice President.[110] Although the meeting took place, it lasted only 10 minutes.[111] Briefing memos prepared for the Vice President for the meeting do not mention a DNC event at the Temple in April of 1996; the Master simply invited the Vice President to visit the Temple.[112] Moreover, there is no evidence that a DNC event was ever discussed, and the

[108] Man-Ho Shihm 9/4/97 Hrg., pp. 137–139.

[109] Statement of the Venerable Master Hsing Yun presented during his interview with Committee investigators, 6/17/97, p. 3.

[110] Man-Ho Shih deposition, 8/6/97, p. 96.

[111] Statement of the Venerable Master Hsing Yun presented during his interview with Committee investigators, 6/17/97.

[112] David Strauss, 9/5/97 Hrg., p. 12.

Majority's assertion to the contrary is nothing more than speculation.

• The Majority incorrectly states that there never really was a second event planned at a restaurant in Southern California for April 29, 1996. While there is little testamentary evidence that such an event was planned, this does not prove that Huang and Hsia never contemplated such an event. At least two documents produced by Hsia's consulting firm, Hsia & Associates, show that such an event was contemplated by Hsia at one time.[113] And Charlie Woo, an attendee at the April 29, 1996 event, told Committee FBI detailees that Huang originally invited him to attend an event at a restaurant in Southern California and later called to tell him that the location had been changed to the Hsi Lai Temple.[114]

• The Majority concludes that the nuns' alteration and destruction of documents constituted "deliberate destruction of evidence" and was done to protect the Vice President and Maria Hsia. After the Temple events were publicized, two nuns involved in Temple bookkeeping and administration altered and destroyed some documents.[115] There is, however, absolutely no evidence that their actions were undertaken with the knowledge or consent of anyone at the White House or the DNC. Nonetheless, the evidence does indicate that at least some Temple officials were conscious of possible wrongdoing. Yi Chu, the Temple bookkeeper, testified that she knew the Temple could not contribute directly, in its own name, which is why she had to go through the process of finding individuals to write checks.[116]

• The Majority falsely implies that beginning in the 1980s, Maria Hsia had inappropriate access to then-Senator Gore based on her fundraising activities. What the Majority does not mention is that fundraising and political outreach organizations are not only an appropriate and legitimate means of stimulating public interest in the democratic process, they are also commonplace. The Majority's insinuation that when organizations and leaders within the Asian-American community participate in these activities, something untoward or sinister must be involved is disturbing. In the 1980s, Hsia helped form the Pacific Leadership Council and was an active and open fundraiser in the Asian-American community. There is nothing sinister about the Vice President reaching out to and raising money in this community. Hsia was one of hundreds of people who raised money for the Democrats throughout this country.

• The Majority repeats its allegations that Maria Hsia is an "agent," without stating that the classified information that forms the basis for this allegation—certain activities she undertook while an immigration consultant in the early 1990s—has no connection whatsoever to Hsia's fundraising for the Democratic party.[117]

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[113] Exhibit 772: 3/23/96 letter from Maria Hsia to the Vice President, SEN 01719; Invitation to DNC Asian Pacific American Leadership Council event at Harbour Village Restaurant in Monterey Park, California; the name of the restaurant is crossed out and Hsi Lai Temple is written in, SEN 00111.

[114] Staff interview of Charlie Woo, 5/30/97; see also Richard Sullivan deposition, 6/25/97, pp. 21–22.

[115] Man-Ho Shih, 9/4/97 Hrg., pp. 34–35; Yi Chu, 9/4/97 Hrg., pp. 60–61.

[116] Yi Chu deposition, 8/7/97, p. 31.

[117] See Minority Chapter 2. See also Affidavit of Maria Hsia, 2/98.

• In this chapter, the Majority also takes the opportunity to mischaracterize the Democratic Senatorial Campaign Committee's ("DSCC's") tally program. The Majority falsely states that the tally program serves as a means by which contributors can "earmark" large "soft money" contributions to particular senate candidates in circumvention of the FECA's hard money limits. The Majority also incorrectly suggests that the tally program was "ultimately found to be illegal" and terminated. The Majority is wrong on all scores. First, the Majority is incorrect in its characterization of the tally program as a program that permits "earmarking." In fact, the Federal Election Commission rejected this precise claim when it was made by the National Republican Senatorial Committee in 1996.[118] When it dismissed that complaint, the FEC's general counsel stated that "there is no evidence that the DSCC accepted earmarked tallied contributions or pass [sic] earmarked contributions on to the Democratic Senate candidates in the form of coordinated party expenditures."[119] In fact, an earlier agreement between the DSCC and FEC was premised on the fact that the DSCC did not earmark tallied contributions—although some contributors' participants in the program may have been confused. As the FEC stated in its April 14, 1997, letter to the DSCC dismissing the NRSC's complaint about the tally program "[u]nderlying the need for the remedial requirements in the August 1995, conciliation agreement was the belief that participants in the tally program did not understand how the tally program differed from earmarking." The FEC dismissed allegations that the 1996 tally program amounted to earmarking or violated the law.

Response to Majority Report Chapter 18: "The China Connection: Summary of Committee's Findings Relating to Efforts of the People's Republic of China to Influence U.S. Policies and Elections."

In this chapter, the Majority explains that the Committee's investigation of campaign finance activities included both a public examination of foreign interests connected to the U.S. political process during the 1996 federal election cycle, and an examination of classified information regarding possible Chinese Government involvement in the U.S. political process. The Majority states that the public and classified information together warrant a number of conclusions. The Majority identifies six individuals with "extensive ties" to the Chinese Government who "produced or facilitated foreign campaign contributions" from "the Greater China area" and states that "discussions took place and actions were taken that suggest . . . that a variety of PRC entities were acting to influence U.S. elections." The Majority concludes:

> The Committee has learned in sobering detail of a wide range of covert PRC efforts in the U.S. and overseas designed to influence elections in this country. Many of these activities may or may not have been part of a single, coordinated effort. Regardless, a coordinated approach may have evolved over time. Other efforts, though undertaken

[118] See Complaint filed 9/27/96 in MUR Nos. 4490 and 4502.
[119] MUR Nos. 4490 and 4502 at 12 (General Counsel's Report.)

> by PRC government entities, have been characterized as rogue activities. Such fine distinctions fall beyond the scope of this report.

Unfortunately, the Majority chapter addressing these important issues does not lay out the information received by the Committee and then draw clear conclusions based on that evidence. For example, the chapter does not identify sources for most of its conclusions or state whether the information for those conclusions came from the Committee's public investigation or from the Committee's review of classified information. In fact, the vast majority of the statements made in the Majority chapter are derived from public information that has been available to the Committee and the public for some time.

Another example of this obfuscation is the Majority's identification of six individuals who it states have "extensive" ties to China or the Chinese Government followed by its assertion that these ties are demonstrated by political contributions or other activities that in fact have stronger connections to Indonesia, Taiwan, Cambodia or Hong Kong. Having found that there is very little evidence connecting the individuals it has targeted to China, the Majority curiously refers to these Asian countries and the then-British controlled property as the "Greater China" area.

Along the way, the Majority chapter also makes a number of inaccurate or exaggerated statements to support its case. The Majority chapter contains errors in fact and characterization even when they are based on *public* information. Such false and exaggerated statements based on public information raise significant questions about the accuracy of the Majority's conclusions based on classified ("non-public") information, which is not available for independent public assessment.[120]

Most important is the fact that, after the Committee's year-long investigation into the "China Plan," the Majority chapter does not provide clear or useful information to the public. For an analysis of the classified information received by the Committee during its investigation, see Chapter 2 of this Minority Report.

The Minority responds to some of the statements set forth in the Majority chapter:

• Most of the Majority's conclusions are based on media allegations and public information that has been available to the Committee and the public for months. Throughout the Majority's chapter on the China Plan, there are bold assertions about connections to Chinese Government officials and other fundraising activities without clarifying upon what information those assertions are based. As a result, the Majority makes no clear statements about what conclusions can be derived from public information presented to the Committee and what conclusions are drawn from classified (or "non-public") information. This approach implies that the Com-

[120] The conclusions based on classified information, as stated in the Majority and Minority Reports, were not approved by any Executive Branch agency. Letter from George J. Tenet, Director, Central Intelligence Agency to Senator John Glenn, 2/18/98; Letter from George J. Tenet to Chairman Fred Thompson, 2/18/98; Letter from Robert M. Bryant, Deputy Director, FBI to Senator John Glenn, 2/25/98. See also Letter from Andrew Fois, Assistant Attorney General, Department of Justice to Chairman Fred Thompson, 7/11/97.

mittee received more non-public information than it actually did to support the Majority's conclusions.

• The Majority's quotations of newspaper articles do not appropriately or accurately describe information made available directly to the Committee. Reliance in a Senate Committee report on the media's second hand characterizations of non-public information is unwarranted, particularly here where the Committee had the direct information available for its review.[121]

• The Majority's chapter on the China Plan fails to make any clear conclusions, demonstrated by the fact that the chapter contains 25 statements that include phrases such as "may or may not," "possibly," "believed to be," "indicated," and "suggest."

• The Majority chapter also makes a number of contradictory assertions and also ignores, without explanation, crucial facts regarding the foreign connections uncovered in the Committee's investigation. Some examples are:

• The Majority does not explain how contributions from Indonesia, Taiwan, Cambodia or Hong Kong demonstrate that the Chinese Government "may or may not" have funneled money into political campaigns. The contributions and activities listed by the Majority in its chapter derive from a variety of independent Asian countries. The Majority's use of the term "Greater China" or the "Greater China Area" is an unjustifiable attempt to bend the facts to make all connections to every Asian country look like a connection to China.

• The Majority does not explain why it has focused exclusively on certain individuals' "ties to China" without recognizing that the individuals targeted in its chapter have equal, if not stronger, ties to Taiwan and Indonesia. It is clear from the Majority chapter itself that most of the individuals it lists as having "extensive ties" to China or the Chinese Government in fact have strong ties to Taiwan, Indonesia or Hong Kong, entities not under the control of the Chinese Government during the 1996 election cycle. For example, John Huang was raised in Taiwan before moving to the United States in 1969 and becoming an American citizen; Maria Hsia was born in Taiwan and is an American who continues to have strong family and institutional ties to that country; and the Riadys are Indonesians with business interests around the world. The Majority chapter provides no explanation or analysis of why it ignored ties to other Asian countries in order to focus exclusively on China or why it assumes all ties to any Asian country demonstrates a tie to China. The Majority also provides no explanation for why it ignored non-public information about other countries and their political activities in the United States. See

[121] For example, the Majority chapter cites a February 13, 1997 *Washington Post* article that stated that Executive Branch agencies had discovered information that the Chinese Government "sought to direct contributions from foreign sources to the Democratic National Committee before the 1996 presidential campaign." Several months later, however, the Committee received direct testimony from the Executive Branch agencies themselves that, based on the information available at the time, there was no indication that the China Plan was directed at influencing the presidential race or that it had affected that race with campaign contributions. Closed Committee Hearing, 7/28/97, pp. 41–44, 54. The Majority chapter also cites a March 9, 1997 *Washington Post* article in order to describe a 1996 FBI briefing to members of Congress regarding the China Plan. Several months after that article appeared, however, the Committee received direct information and testimony from the Executive Branch agencies about this and similar briefings. Closed Committee Hearing, 7/29/97, p. 19–12, 84.

Minority Chapter 2, Information Not Pursued by the Committee.

- The Majority ignores the contradiction in its assertion that connections to Taiwan demonstrate connections to China. The Majority states in its Report that Taiwan is considered by China to be "a rogue province" but nonetheless assumes that certain individuals" connections to Taiwan may also demonstrate connections to China or to the China Plan.
- The Majority chapter explains that a China Plan was developed after Taiwanese President Lee's visit to the United States in the spring of 1995, but does not explain why a number of the activities it highlights occurred before that time period. The Majority states that after Taiwanese President Lee's visit to the U.S. in 1995, the Chinese Government "[s]ecretly" developed a plan that went beyond increasing lobbying efforts to include "influencing U.S. policies and elections through, among other means, financing election campaigns." The Majority then highlights, among other things, a 1989 trip to Taiwan organized by Maria Hsia, 1993 political contributions from Lippo Group subsidiaries, and 1993 "meetings" involving Shen Jureun. Whether these activities are connected to the Chinese Government is one question. Another question is why these activities are highlighted when the Committee was informed in closed-door proceedings that prior to 1995 and the formulation of the so-called China Plan, the Chinese Government's efforts to promote its interests in the United States were focused almost exclusively on using traditional diplomatic means.[122]

- The Majority chapter also makes assertions based on *public* information that are unsupported by either publicly available or classified information. This raises serious questions about the accuracy of the Majority's assertions that it claims are based on classified information not available to the public. A few examples of the Majority's misstatement and exaggerations based on public information are:

- The Majority inaccurately claims that in September 1993, contributions to the DNC by three Lippo Group subsidiaries located in California were " paid with foreign money" from Jakarta, Indonesia. The Majority then uses this unproven conclusion to tie the supposed foreign contributions to "meetings" between the Vice President, and John Huang and Shen Jueren. According to the Majority, Shen is the head of a commercial enterprise "identified as a PRC intelligence gathering operation."

There are several inaccuracies in these Majority assertions.

First, while it is true that the Committee received evidence that in August of *1992*, one subsidiary of the Lippo Group made a $50,000 contribution to the DNC and, according to a reimbursement requests obtained by the Committee, the subsidiary was likely reimbursed for this contribution from Indonesia, no such evidence was received regarding the 1993 contributions. The Committee reviewed the same reimbursement forms for the three subsidiaries that contributed to the DNC

[122] Closed Committee Hearing, 7/28/97, p. 5–6.

in 1993 and found no document requesting reimbursement for those checks.[123] In addition, the Majority's general citation to the testimony of a LippoBank employee does not establish that the 1993 contribution was reimbursed.[124]

Second, the Majority apparently makes this new allegation about the 1993 contributions so it can falsely assert that foreign funds were connected to two "meetings" attended by Huang and Vice President Gore in that same month of 1993. Even here, the Majority has it wrong. The Majority states that "the day after Huang wrote" the checks, he "escorted Shen Jueren to a White House meeting with Gore's chief of staff, Jack Quinn, and may have met with Gore as well."[125] Public documents received by the Committee, however, establish that Huang and Shen Jueren did *not* have a meeting with Vice President Gore on that day.[126] Regarding the second alleged "meeting," the Majority is referring to a "DNC Reception/Dinner" in Santa Monica attended by the Vice President and approximately 50 other people. The Vice President was not seated at the same table as Shen.[127] The Majority assertions that Shen had a meeting in the White House with Vice President Gore is not supported and its description of a DNC reception and dinner as an additional "meeting" between Shen and Vice President Gore is a mischaracterization of the facts.

Third, the Majority's description of "China Resources Holding," a company then "head[ed]" by Shen Jueren who retired in 1995, as one "identified as a PRC intelligence-gathering operation" is apparently designed to imply there was contact between a Chinese Government intelligence official and the Vice

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[123] Lippo Group holding companies requests for reimbursements of expenses from August to December 1993, (HHH 0236–37).

[124] See Juliana Utomo, 7/15/97, Hrg. pp. 14, 53. (Utomo did not testify that the 1993 contributions were reimbursed and, in fact, she did not even take over the relevant responsibility when working for these subsidiaries until 1994.)

[125] The Majority chapter, as provided to the media in February 1988 and as provided to the Minority in "final" form on March 2, 1998, stated that "Huang escorted Shen Jueren to a White House meeting with Gore and his chief of staff, Jack Quinn." On March 3, 1998, the Majority changed the language to assert that Huang "may" have met with Vice President Gore on that day. This change was welcome, but as described below, the Majority has continued to make this less definitive assertion despite the fact that the evidence does *not* suggest that a meeting with Vice President Gore occurred on that date.

[126] The first "meeting" was in reality a "stop by" meeting with Jack Quinn, a staff member in the Office of the Vice President. Letter from Huang to Quinn, 10/07/93 (EOP 049490). In fact, despite the Majority's assertions in its report about the possibility of a "meeting" with Vice President Gore, the Majority never requested the schedules for the Vice President or Quinn on that day, or requested any other information from the Vice President's office or Quinn about this alleged meeting. As a result, the schedules were not received by the Committee because they were not requested, nor are they responsive to other Committee requests. In order to assess the Majority's new allegation in its Report, the Minority requested documents and information regarding the activities of that day. In addition to the fact that Huang's letter to Quinn makes clear that Huang and Shen did not meet with the Vice President on September 24, 1997, documents also establish that no "meeting" took place. Schedule of Vice President Gore for 9/24/93; Schedule of Jack Quinn for 9/24/93. Instead, it appears that Huang, Shen and Shen's assistant dropped by for a visit with Quinn. Letter from Huang to Quinn, 10/17/93 (EOP 049490).

[127] Briefing papers for Vice President Gore, DNC Reception, 3/27/93(EOP 000959J–64J) (approximately 50 attendees and Shen Jureaun is not listed as one of the few people seated at the Vice President's table.). Earlier that day, Vice President Gore met with over 20 Asian American leaders at a Los Angeles law firm for approximately 40 minutes. In its chapter on Huang's activities while at the Lippo Bank, the Majority asserts that an audio tape proves that Shen was present at that event as well. However, the attendance list for that afternoon event does not include Shen and the audio tape also does not refer to Jueren. Briefing papers for Vice President Gore, Meeting with Asian American Leaders, 4:35–5:15, 9/27/93 (EOP 000965–69); Audio tape, 9/27/93, White House Communications Agency (Produced to the Committee 10/97). See Minority Response to Majority Chapter 13.

President. In addition to falsely stating that the 1993 contributions came "from foreign funds" that had some connection to "meetings," the Majority's description of China Resources Holding is also an exaggeration. According to public information, China Resources Holding is apparently the current name of the entity once called, and often still referred to as, China Resources.[128] The company has been located in Hong Kong for 50 years and engages in trading and investment involving "retailing, property development, hotels and infrastructure," with an estimated asset value of 6.5 to 8 billion dollars, 76 percent of which is in Hong Kong, 17 percent in Mainland China and 7 percent overseas.[129] The organization is also known to be a Chinese Governmen-owned trading and import/export intermediary that does business within China as well as with foreign companies, including American companies.[130] The Minority does not set forth any conclusions about this organization because the Committee did not conduct a meaningful investigation on the topic. However, the Majority's characterization of the organization as a "PRC intelligence-gathering operation," something the Majority also alleged during the Committee's public hearings in July 1997,[131] appears to be an exaggeration of the facts in order to support its unwarranted conclusion.

• The Majority's statement that "Ted Sioeng was one of the DNC's largest contributors during the 1996 federal election cycle" is not supported by the evidence. The Majority states that "Sioeng, his family and his business enterprises contributed $400,000 to the DNC in 1995 and 1996." Public records show, however, that the $400,000 apparently attributed to Sioeng by the Majority includes $250,000 given to the DNC by Sioeng's adult daughter, a U.S. permanent resident and businesswoman, or from companies that she legally controls, and $150,000 from two individuals who are not employed by Sioeng and who are also eligible to contribute to the DNC.[132] Although Sioeng is associated with these individuals and attended several DNC events with his family, there certainly is not sufficient evidence to state that Sioeng, who is not attributed with

[128] See www.chinaresources.co in the internet. The site provides information about the group and states that China Resources Holding is the current name of the entity once called, and often still referred to as, China Resources.

[129] *Financial Times* (London), 8/21/93; *Time,* 5/5/97; *Washington Post,* 7/18/97; www.chinaresources.co.

[130] *Time,* 5/5/97; Reuters Wire, 3/31/96, 6/26/85, 2/7/96; Xinhua Wire, 11/10/92; *Washington Post,* 7/18/97.

[131] Thomas Hampson, 7/15/97 Hrg. pp. 67–73; Senator Bennett, 7/15/97, Hrg. pp. 67–73.

[132] Staff interview with Jessica Elnitiarta, Sioeng's daughter, 6/19/97; Memorandum of Steven Hendershot, FBI Agent detailed to the Committee, "Re: Jessica Elnitiarta Record Review," 8/22/97; Letter From Thomas McLish, counsel for Elnitiarta, 6/18/97; FEC Records; Other contributions came from Subandi Tanuwidjaja and Kent La, both of whom are associated with Sioeng and Elnitiarta, but neither of whom are employees of Sioeng's. FEC Records; Staff interview with Jessica Elnitiarta, 6/19/97; FBI Special Investigator interview with Kent La, 5/13/97 (La is an independent distributor who does business with Sioeng). This interview was conducted in Chinese by an FBI agent detailed to the Committee who transcribed the contents of the interview in a report to the Committee dated 5/14/97. There is nothing in the interview report that states that La works for Sioeng or that La contributed to the DNC based on requests from Sioeng.

giving any money to the DNC, was one of the "largest contributors" to the DNC in the last election cycle.[133]

• The Majority's conclusion that the Chinese Government consulate in Los Angeles gave a hotel owned by Sioeng $3,000 "for the purpose of making or reimbursing" Sioeng for a political contribution to a California state candidate is not based on a sufficient investigation. The Majority states that "the Committee has concluded" that the Chinese Government provided $3,000 to a hotel in California in order to reimburse Sioeng for a $5,000 political contribution to a Republican California state candidate. The Majority apparently reached this conclusion based only on review of two bank transfers.[134] The Majority did not request information from the hotel about the reason for this $3,000 payment and it appears that the payment may have been made to the hotel to cover expenses of a Chinese Government television crew that stayed there in 1996.[135]

• The Majority's statement that Charlie Trie's contributions solicited for the Presidential Legal Trust Fund were "ultimately" reimbursed with money from Taiwan and Cambodia is an exaggeration. Putting aside the propriety of Trie's unsuccessful attempt to provide the private trust fund with nearly $500,000 in contributions,[136] the evidence before the Committee supports the conclusion that of the nearly $500,000 of attempted contributions, only $70,000 came from abroad: $40,000 from Taiwan and $30,000 from Cambodia.[137]

• The Majority chapter's pattern of misstating and mischaracterizing public information received by the Committee is continued in the Majority's treatment of classified information received by the Committee. When the Executive Branch agencies reviewed the portions of the Majority and Minority report regarding the China Plan, they expressly noted that their review was limited to deleting direct factual errors or classified information. The agencies informed the Committee that they did not take any position regarding conclusory statements made by either the Majority or the Minority based on classified information.[138] And indeed, the Minority here re-

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[133] The Majority also states that Sioeng and his family and business interests "spent over $550,000 on political campaigns and organizations in 1995 and 1996." This figure is derived from the $400,000 contributed to the DNC by his daughter, her companies and associates; $100,000 contributed to Matt Fong, a Republican California official, apparently by Sioeng's companies in Hong King and $50,000 contributed by his daughter's company to the National Policy Forum, an arm of the RNC. See Chapter 7 of this Minority Report.

[134] See footnotes 13 and 14 of the Majority chapter.

[135] *Los Angeles Times,* 2/23/97 (stating that attorneys for the hotel supplied billing records to verify that the hotel charges were to cover the expenses of a Chinese government television crew in early 1996). The Committee did not request such information and therefore the Minority is unable to reach a conclusion about the purpose of the payment to the hotel.

[136] In Majority Chapter 20, which discusses Charlie Trie's attempted contributions to the Presidential Legal Expense Trust, the Majority claims that the amount of Tries' attempted contributions was not "nearly $500,000," but instead "$789,000." The Majority's figure in this chapter is the accurate one.

[137] Zhi Hua Dong deposition, 6/17/97, pp. 98–105. Interviews reports and other analyses on this topic written by FBI agents on detail to the Committee do not suggest that additional funds came from abroad.

[138] The conclusions based on classified information, as stated in the Majority and Minority Reports, were not approved by any Executive Branch agency. Letter from George J. Tenet, Director, Central Intelligence Agency to Senator John Glenn, 2/18/98; Letter from George J. Tenet to Chairman Fred Thompson, 2/18/98; Letter from Robert M. Bryant, Deputy Director, FBI to Senator John Glenn, 2/25/98. See also Letter from Andrew Fois, Assistant Attorney General, Department of Justice to Chairman Fred Thompson, 7/11/97.

sponds to some of the most egregious allegations made by the Majority against American citizens and other individuals based on ill founded conclusions of classified and other information.

• The Majority's two statements about John Huang do not show that he had "extensive ties" to the Chinese Government. The Majority states that Huang is one of six individuals identified by the Majority who had "extensive ties" to the Chinese Government and then describes two activities to support its assertion: (1) that in 1993 Huang made a political contribution reimbursed by funds from Indonesia and escorted Shen Jueren to "two meetings" and that (2) the Committee obtained a "single piece of unverified information . . . that indicates that Huang himself may possibly have had a direct financial relationship with the PRC government." The first activity is based on public information and the factual inaccuracies of the Majority's assertions regarding these contributions and "meetings" are discussed above. The second activity highlighted by the Majority is based on non-public information. Indeed, the facts are derived from an unsubstantiated hearsay speculation gathered well after Haung's campaign finance activities were extensively publicized in the press.

• The Majority's statements about Maria Hsia also do not demonstrate "extensive ties" to the Chinese Government. The Majority states that Hsia also had "extensive ties" to the Chinese Government and then lists several activities to support its assertion: (1) a long standing relationship with the Hsi Lai Temple in California, (2) contributions "laundered" through the Temple, (3) a trip to Taiwan organized by Hsia in 1989, (4) fundraising for the Democratic Party generally, (5) attendance at the Santa Monica "meeting" attended by Shen Jueren in 1993, (6) activities considered to constitute being an agent for the Chinese Government and (7) information that Hsia worked with Sioeng and Huang to identify donors for the Democratic Party. The first four activities, which are based solely on public information, demonstrate that Hsia has a long-standing relationship with Taiwan as well as with a Temple in California that is both wealthy and ardently pro-Taiwan. The fifth activity, also based on public information, is Hsia's attendance at a 1993 "meeting" with Shen Jureun. This meeting, however, was in fact a "DNC Reception/Dinner" in California attended by approximately 50 individuals.

• Regarding the sixth activity mentioned by the Majority, it should be noted that the Committee received no information suggesting that Hsia's fundraising activities were connected to the Chinese Government. Indeed, the information characterized by the Majority from the classified information regarded some of Hsia's duties while an immigration consultant in California in the early to mid 1990s. In an affidavit submitted to the Committee, Hsia explains those duties, raising doubt regarding any improper ties to China. The allegations made by the Majority against an American citizen without a thorough analysis of the facts is troubling. The final activity of Hsia described by the Majority, number seven above, is again based on the same non-public information in which Huang is referred,

which contained a hearsay speculation gathered well after allegations of fundraising improprieties against these individuals were publicized in the media.

• The Majority's assertions that the Committee uncovered connections between the Riadys and a Chinese intelligence entity does not imply that the Riadys were involved in foreign spy or similar intelligence activities. The Majority's conclusions about the Riady's business interests and their connections to Chinese intelligence sources is based primarily on public information presented to the Committee during its open proceedings.[139] The non-public information received by the Committee supports the conclusion that the Riady's business dealings may have involved a relationship with a Chinese intelligence entity, but does not support the implication that the Riadys were involved in foreign spy or other similar intelligence activity. The Minority agrees that the Riadys have ties to China but is unable to assess whether those ties are "extensive" or whether they are appropriate ties based primarily on business dealings within China.

• The Majority Report's assertions regarding Charlie Trie are based solely on public information received by the Committee. The Majority does not make any conclusion about Trie based on non-public information and the Minority agrees with this decision. For information about Trie, see Chapter 5 of the Minority Report.

CONCLUSION

In describing the basic elements of the China Plan, the Majority provides information that the plan, for the most part, contemplated legitimate activities that have been undertaken by most other countries for years. However, in order to expand on the plan and its significance in the 1996 election cycle, the Majority makes a series of speculative assertions and conclusions. The Majority strings together a number of activities connected to several Asian countries, labels those countries the "Greater China Area," and implies or assumes that they "may or may not" be related to the China Plan or the Chinese Government. This is a necessary predicate for the Majority to establish because the activities the Majority lists in support of its theory have limited connections to China. Huang's contribution though a Lippo Group subsidiary in 1993 is connected to Indonesia; Trie's attempted contributions to the President's Legal Expense Trust was partially reimbursed by funds connected to Taiwan and Cambodia; Hsia's association with the Hsi Lai Temple is connected to Taiwan; and the Riadys are connected to Indonesia and have global business interests.

The incidents mentioned by the Majority in its China Connection chapter that actually show any possible connection to China are (1) alleged "meetings" with Shen Jueren in 1993; (2) Hsia's immigration work on behalf of Chinese nationals, (3) the Riady's business dealings with China Resources; (4) an event attended by Wang Jun[140] and (4) Sioeng's contacts and business interests in China.

[139] Thomas Hampson, 7/15/97, Hrg. pp. 67–73.

[140] The Majority repeats its characterization of Wang Jun as a "Chinese arms" dealer, despite the fact that the Committee was informed that Wang Jun is primarily associated with the Chi-

While these connections are important, they are greatly exaggerated by the Majority chapter. The Minority does not downplay the seriousness of the allegations of foreign connections that were exposed by the Committee's public hearings or closed proceedings. In fact, as stated in Chapter 2 of the Minority Report, the allegations and information raised legitimate questions about contributions from a number of countries making their way into the 1996 federal elections.

The Majority's treatment of the important issue of foreign influence in the 1996 election cycle and its highly questionable and damaging conclusions based on the information presented to the Committee were unfortunately driven by a conclusion looking for supporting information that was not available. Ultimately, the information presented to the Committee demonstrated a number of foreign contributions making their way into both political parties from businessmen and companies in a variety of Asian countries. The information submitted to the Committee to date, however, does not demonstrate that these troubling instances were connected to a grand scheme by the Chinese Government to influence our electoral process.

Response to Majority Report Chapter 19: "Charlie Trie and Ng Lap Seng's Laundered Contributions to the DNC"

In this chapter, the Majority analyzes Charlie Trie's contributions to the DNC and possible involvement in contribution conduit schemes, and concludes that Trie used foreign funds supplied by Macao businessman Ng Lap Seng to pay for both his own contributions and to reimburse others for making contributions to the DNC. The Majority also implies that the DNC failed to return a conduit contribution by Xiping Wang.

The Minority generally agrees with the Majority's conclusions in this chapter, but notes that several facts have been omitted. For example, the Committee did not receive evidence that most of the money Trie raised for the DNC involved conduit funds. In addition, the Majority fails to mention that the DNC returned the Xiping Wang contribution to the U.S. Treasury.

• The Majority concludes that Trie used foreign funds supplied by Macao businessman Ng Lap Seng to pay for both his own contributions and to reimburse others for making contributions to the DNC. The Minority agrees with the Majority's conclusion, but disagrees that "most" of the money Trie raised for the DNC involved conduit funds; for example, there is no evidence that Trie reimbursed the $325,000 contribution by Yogesh Gandhi which comprises more than half of the funds attributed to Trie by the DNC.

• The Majority suggests that the DNC has not returned Xiping Wang's contribution. The Majority references Xiping Wang's testimony indicating that she was not reimbursed by the DNC for her contribution. However, the Majority fails to note that the DNC did in fact return the contribution—it sent the money to the United

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nese investment company CITIC, which has a board of international advisors that includes prominent Americans. Staff interview with Robert Suettinger, Director, Asian Affairs, National Security Council, 6/3/97. The Minority does not make any conclusions about Wang Jun, but believes that this repeated characterization of Wang Jun by the Majority is, at best, simplistic.

States Treasury after failing in an attempt to locate Wang and it informed her attorney of that fact.[141]

Response to Majority Report Chapter 20 : "Charlie Trie's Contributions to the Presidential Legal Expense Trust"

In this chapter, the Majority analyzes Charlie Trie's fundraising efforts on behalf of the Presidential Legal Expense Trust ("PLET" or "Trust"). The Majority concludes that the donations were "highly questionable," may have been "coerced," and that the Trust acted improperly in how it investigated the donations, returned them, altered the Trust's accounting procedures, and delayed revealing the matter to the news media. The Majority further suggests that Trie's PLET fundraising efforts may have been linked to, among other things, his appointment to a Presidential Commission and to his obtaining an invitation for Wang Jun to a White House coffee.

The Majority's analysis of Trie's fundraising efforts for PLET is deeply flawed. The Majority chapter apparently double counts a number of the checks that Trie presented to the Trust; notes the bipartisan, impressive credentials of the trustees, but then ascribes partisan motives to their actions and; speculates on linkages between the PLET donations and Trie's Commission appointment, Wang Jun's coffee invitation.

• The Majority incorrectly states that Trie presented PLET with donations totaling $789,000. This figure apparently double counts a number of the checks. In Trie's first meeting with the Trust, the Trust declined to accept checks totaling $70,000, whose deficiencies Trie promised to correct. Bank records establish that the Trust actually deposited $380,000.[142] In Trie's second meeting, the Trust declined to accept checks which Trie said totaled $179,000. In a third meeting, the Trust declined to accept checks which Trie said totaled $150,000. The $380,000 bank deposit and the $150,000 figure Trie used in the final meeting result in a total of $530,000, almost a third less than the inflated figure used in the Majority chapter.

• The Majority acknowledges the bipartisan, impressive credentials of the Trustees, but then attributes partisan motives to the trustees. The Majority suggests that the trustees sought White House permission for the Trust's actions, while failing to acknowledge testimony by the Trust's executive director that the Trust never took direction from the White House. The Majority also suggests that the trustees hid the Trie-related donations to protect the President until after the election, while failing to acknowledge that the trustees' accounting decisions were made on a unanimous, bipartisan basis for substantive reasons. In short, the Majority unfairly impugns the motives of the respected, bipartisan trustees and fails to acknowledge that the Trust acted prudently and with restraint in declining to accept apparently eligible contributions.

• The Majority's analysis of a link between Trie's Commission appointment and the PLET donations fails to acknowledge the documentary evidence that Trie's appointment was finalized before he

[141] Letter from DNC retained counsel, Judah Best, Debevoise & Plimpton, to R. Michael Haynes, Esq., attorney for Xiping Wang, 2/20/98.

[142] See Michael Cardozo, 7/30/97 Hrg., p. 7. See also Minority Chapter 5 on Trie.

ever met with the Trust.[143] The facts do not establish any link between the PLET donations and Trie's Commission appointment, the Wang Jun invitation, or Trie letter. The Majority fails to cite any facts linking the PLET donations to the DNC's decision to invite Wang Jun to a White House coffee as Trie's guest. There is no evidence before the Committee that the DNC personnel involved in the coffee invitation. DNC officials David Mercer, Richard Sullivan, and Marvin Rosen were aware of the PLET donations. In addition, the White House personnel involved in responding to Trie's letter to the President have stated that they handled the letter routinely, using standard language they had developed to respond to a host of letters on the same subject.[144] The Majority chapter also fails to acknowledge testimony by FBI detailee Jerry Campane that Trie's letter was apparently prompted by one of his employees, had no connection to China, and no impact on U.S. policy.[145]

• The Majority labels the donations made by members of the Buddhist Ching Hai sect as "highly questionable" and, in part, "coerced," even though the majority of PLET donations met the Trust's requirements. The Majority fails to acknowledge the evidence that most of the donors appeared to be U.S. citizens who contributed voluntarily to help the President.[146] The recent indictment of Trie does not reference any questionable conduct in connection with the PLET donations.

Response to Majority Report Chapter 21: "The Saga of Roger Tamraz"

In this chapter, the Majority describes Tamraz's attempts to gain access to U. S. Government officials and concludes that in the spring of 1996, senior U.S. Government officials looked for "any reason" to support Tamraz's pipeline project based on his political contributions to the Democratic Party. The Majority's conclusion that Tamraz was successful at gaining access to U.S. Government officials is correct. Before Tamraz made political contributions to the Democratic Party, he met with several Government officials. After he made contributions, he attended several DNC events where senior Government officials were in attendance.

The Majority's chapter, while containing several statements and conclusions with which the Minority agrees, also contains omissions of significant evidence, assumptions not based on evidence, and conclusions contrary to the evidence.

• The Majority Report erroneously states that the DNC "pressure[d] NSC officials to change their position on the merits of Tamraz's Caspian Sea Pipeline." The Majority claims for the first time in its Report that the DNC did more than invite Tamraz to

[143] See Minority Chapter 5, including analysis of a 12/15/95 White House personnel office memorandum stating that "President Clinton has approved" Trie for the Commission appointment, and 2/5/96 White House legal counsel memorandum reporting successful completion of a background check and stating that the Commission appointment of Trie and another individual "may proceed." Trie first contacted the Trust on 3/20/96.

[144] See Minority Chapter 5; staff interview of Robert Suettinger, director, Asian affairs, National Security Council, 6/3/97.

[145] See Minority Chapter 5; Jerry Campane, 7/29/97 Hrg., pp. 58, 77–78, 95; staff interview of Robert Suettinger, director, Asian affairs, National Security Council, 6/3/97.

[146] See Minority Chapter 5; see also Michael Cardozo, 7/30/97 Hrg., p. 80.; Sally Schwartz deposition, 5/6/97, p. 144; 5/9/96 memorandum from Sally Schwartz to Michael Cardozo, Document 0078.

DNC events in the spring of 1996. The Majority now claims that the DNC and the White House actually pressured "NSC officials" to change U.S. Government *policy* regarding Tamraz's pipeline project. This assertion is contradicted by the facts.

The Majority provides absolutely no citations for its conclusion that seven months after U.S. policy was implemented,[147] senior Government officials were looking for "any reason" to support Tamraz's pipeline proposal. In fact, the evidence contradicts these assertions. Tamraz testified that he mentioned his pipeline in March and April 1996 during a brief "introduction to the President" and "for about 30 seconds" to White House official Thomas ("Mack") McLarty, both at DNC events.[148] He testified that he described his pipeline proposal during those brief encounters as one that would supposedly bring peace to the region and jobs to Americans. In response, McLarty asked his Energy Department contact, Kyle Simpson, to provide him with information about the pipeline project.[149]

In addition, despite the assertions that this request was based on Tamraz's political contributions, both McLarty and Simpson testified unequivocally that they were not aware of Tamraz's political contributions at the time of this request nor did they mention political contributions to anyone.[150] Tamraz himself testified that he had never mentioned political contributions to anyone in the White House "ever."[151] The Majority ignores the fact that even Jack Carter, another Energy Department official, testified that Simpson's request for information about the pipeline was not, in any way, an attempt to tie alleged information about political contributions to U.S. Government support for, or meeting with, Tamraz.[152]

• Apparently recognizing that its conclusion is unsupported by the evidence, the Majority makes several questionable assertions in its attempt to support its assertion that U.S. officials were "looking for any reason" to change U.S. policy in the spring of 1996. The Majority unsuccessfully attempts to cast doubt on the testimony of other witnesses whose testimony was consistent. The Majority suggests that Simpson's testimony about his exchange with Carter may have been influenced by a call from McLarty and is less credible because he attended a fundraiser in his home town of Houston. Simpson's deposition and hearing testimony, however, demonstrate

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[147] U.S. policy was implemented in October of 1995 and Tamraz played no role in that policy. Sheila Heslin, 9/17/97 Hrg. pp. 5–6, 19–20, 28, 52, 72.

[148] Mack McLarty deposition, 6/30/97, pp. 5–9; Memorandum for Jonathan Marks to Ann Ngo, 10/25/95; E-mail from Ira Sockowitz to Jonathan Marks, 10/27/95; Melissa Moss Deposition, 6/11/97, pp. 190–193.

[149] Thomas McLarty deposition, 6/30/97, p. 56; Kyle Simpson deposition, 6/25/97, p. 26. Simpson testified that requests for information about American companies and their projects are not uncommon. He explained that the U.S. Government sees value in U.S. companies participating in foreign projects although it is "not terribly particular" about which U.S. company it is if more than one is vying for a project. Kyle Simpson deposition, 6/25/97, p.54.

[150] Thomas McLarty deposition, 6/30/97, pp. 30. 56–57; Kyle Simpson, 9/18/97 Hrg. pp. 50–51; Kyle Simpson deposition, 6/25/97, pp. 43, 46–48.

[151] Roger Tamraz, 9/18/97 Hrg. p. 73.

[152] Jack Carter deposition, 6/23/97, pp. 44–45. The Majority relies on Carter's testimony to assert that political contributions motivate this request for information. However, the Majority at the same time asserts that Carter's recollection of other issues are not accurate. The Majority also attempts to bolster its decision to rely on Carter's testimony by stating that Carter's "handwritten notes of his encounter with Simpson corroborate that they discussed Tamraz and suggest also that Simpson made clear President Clinton's interest in the matter." The statement is correct only as far as it goes. The notes say "do background on Tamraz" and "consider distance" and "memo to Pres." The notes do *not* contain any figures or any mention of political contributions whatsoever. Exhibit 1199, p. JC–007 (Notes of Jack Carter, 4/3/96).

that these suggestions are false.[153] The Majority's allegations regarding a DNC-generated list of Tamraz's contributions also ignores the testimony of four witnesses. McLarty, Simpson and Carter all testified that they have never seen this list[154] and Tamraz himself testified that he never showed the list to anybody. Tamraz also testified that "nobody at the White House has ever talked to me about contributions, ever."[155] Finally, the Majority's speculation that Carter was acting at the behest of someone else fails to address the inaccuracies of the speculation, the contrary testimony by all other witnesses, and the documentary evidence that demonstrate what actually occurred. See Minority Chapter 30.

• The Majority Report's discussion of Tamraz's attempt to meet with the Vice President is incorrect. The Majority recounts that at "some point in August or early September 1995" the Vice President "expressed interest in Tamraz's pipeline and 'requested that Harut Sassounian set up a meeting about the proposal.' . . . and that "[a]s a result, Tamraz was invited to a breakfast with the Vice President scheduled for October 5, 1995." The Majority also states that Tamraz was disinvited from the coffee due to Sheila Heslin's efforts, but was "not unhappy" because he attended a private fundraiser on October 2, 1995 and sat at the head table with a number of individuals, including Vice President Gore. There are several factual misstatements in this version of events. Although relatively minor points, the Majority's treatment of this issue is the looseness with which the Majority handles the facts.

The Vice President's staff did receive a request that the Vice President meet with Sassounian and his associate, Roger Tamraz.[156] Contrary to the Majority Report, however, the response to this request was *not* to invite Tamraz "to a breakfast with the Vice President scheduled for October 5, 1995." Rather, the evidence establishes that the Vice President's staff responded by sending a memorandum to the Vice President on September 13, 1995, suggesting that he *not* agree to such a meeting.[157] And in fact, after that memorandum was sent, the Vice President's staff notified Sassounian and Tamraz that no meeting would be scheduled. No meeting was ever scheduled, nor did one occur.[158]

Tamraz's attendance at a October 2 private fundraising dinner was scheduled by the DNC and, upon discovering this, the Vice President's staff, not Heslin, caused Tamraz to be "disinvited" from the October 5, 1995 coffee. The DNC organized the fundraiser on

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[153] Kyle Simpson deposition, 6/25/97, p. 83 (Simpson called McLarty in March of 1997 in response to an answer Simpson gave to a reporter that confused a 1995 meeting between Tamraz and Jack Carter and McLarty's later request for information on the pipeline); Kyle Simpson, 9/18/97, Hrg. pp. 135–38 (Simpson was given a complimentary seat at the fundraiser during his tenure at the Energy Department and did not raise money for the DNC while he was at the Department.)

[154] Thomas McLarty deposition, 6/30/97, p. 30; Kyle Simpson deposition, 6/25/97, p. 50; Jack Carter deposition, 6/23/97, p. 32.

[155] Roger Tamraz, 9/18/97, Hrg. p. 73.

[156] Exhibit 1127: Memorandum to the Vice President from Leon Fuerth, 9/13/95, EOP 45766–67. The Vice President received this request after meeting with Sassounian on August 8, 1995, not in "early September," as the Majority asserts. Exhibit 1126; Exhibit 1127; EOP 045766 and EOP 56535, 5639–40.

[157] Exhibit 1127: Memorandum to the Vice President from Leon Fuerth, 9/13/95, EOP 45766–67.

[158] EOP 25006–006; 250–4; Exhibit 1135.

October 2 and decided whom to invite.[159] On October 3, 1995, having learned that the DNC had invited Tamraz to an event the night before, the Vice President's staff faxed to the DNC a copy of Vice Presidential National Security Advisor Leon Fuerth's September 13, 1995 memorandum advising the Vice President not to meet with Tamraz, apparently to make clear to the DNC that it should not invite Tamraz to future events with the Vice President.[160] It was this fax that resulted in the DNC withdrawing Tamraz's invitation to the October 5, 1995 coffee.

Ultimately, the assertion that the Vice President or the DNC responded to a request for an official meeting by inviting Tamraz to the October 5 coffee is inaccurate.

• The Majority Report's description of the two phone calls between Bob of the CIA and DNC National Chairman Donald Fowler is incomplete. The Majority Report states that Fowler called Bob of the CIA twice, once on October 19, 1995 and again on December 13, 1996. The Majority states that "Fowler was closely engaged in efforts to contact Bob at the CIA" and that Fowler was not truthful in his testimony before the Committee when he denied having any memory of calling the CIA. The Majority analysis of these phone calls is incomplete.

First, the Majority's factual statement is correct as far as it goes, but evidence omitted—most notable relevant references to Bob of the CIA's deposition—casts serious doubt on the Majority's conclusion. Regarding the October phone call, the Majority ignores the testimony of Bob, who stated that he called Fowler first on October 18, 1995 and left his name, and possibly his phone numbers, with a receptionist who answered the phone. Fowler returned the call the next day.[161] There is no explanation in the Majority Report why they call Bob's name and phone number "classified" in the context of these calls.

Second, the Majority also ignores the fact that Bob testified that during both phone calls with Fowler his affiliation with the CIA was never mentioned. Bob testified that during the October phone call he was working undercover, that he never mentioned his CIA affiliation and was "not sure that Fowler [knew] who he [was] talking to."[162] Bob testified that during the December phone call he still could "not say for certain how [Fowler] knew who he was talking to because CIA was never mentioned."[163]

Finally, although the Majority criticizes Bob for lobbying the NSC's Sheila Heslin on issues regarding Tamraz, the Majority ignores the evidence that establishes that Bob's lobbying began in June 1995, long before Bob had his first contact with Fowler in October of 1995. In fact, according to Heslin, Bob's lobbying from June through October 1995 focused on getting Tamraz's proposal accepted by the U.S. Government and, accordingly, stopped after October of 1995, probably because Bob was aware that U.S. policy regarding the Caspian Sea pipeline had already been determined and Tamraz had already been excluded.[164] Fowler's contacts began

[159] Exhibit 1136.
[160] Exhibit 1137 and Exhibit 1138.
[161] Bob of the CIA deposition, 7/11/97, p. 3.
[162] Bob of the CIA deposition, 7/11/97, p. 6.
[163] Bob of the CIA deposition, 7/11/97, p. 11.
[164] Sheila Heslin, 9/17/97, Hrg. p. 20; Staff interview with Sheila Heslin, 5/28/97.

after U.S. policy was already established and were focused on gaining information on Tamraz to permit him to attend DNC events. The Majority's conclusion that "Fowler was closely engaged in efforts to contact Bob at the CIA" is called into serious doubt when all the evidence about their two phone conversations is examined.

• The Majority Report incorrectly asserts that Tamraz was not able to obtain access to Republicans. The Majority agrees that in the 1980s, Tamraz "gave enough money to become a Republican Eagle." However, the Majority states that "Tamraz received no response to his overtures from the Reagan Administration; he could not even gain access to the Reagan White House." Although Tamraz testified that he did not visit the Reagan White House, the evidence before the Committee shows that in 1985, the chairman of the Republican National Committee, Frank Fahrenkopf, apparently endorsed Tamraz for a position in the Reagan Administration by sending a letter to Robert Tuttle, Reagan's White House Personnel Director. The letter of endorsement was clearly based on Tamraz's political contributions to the Republican Party.[165] Tuttle responded to the letter by requesting that the RNC forward Tamraz's résumé to the White House. Tamraz also testified that he received two letters from President Reagan thanking him for his contributions to the Republican Party[166] and that during the 1980s, he had access to high level CIA political appointees.[167] As late as 1997, Tamraz was offered meetings with Republican Senators in exchange for contributions to the Republican Party.[168]

Response to Majority Chapter 22: "DNC Efforts to Raise Money in the Indian Gaming Community"

In this chapter, the Majority purports to show that favorable government action with respect to Indian gaming issues was purchased by Native American tribes through campaign contributions to the DNC. The Majority fails, however, to offer proof in support of any allegedly improper quid pro quos, choosing instead to rely on innuendo and speculation.

• Contrary to assertions in the Majority Report, contributions to Democrats by the Mashantucket Pequots had nothing to do with defeating a proposed 35 percent tax on Indian casinos. The Majority takes pains to suggest that the recent success of some Indian gaming interests has created a "perfect recipe for the solicitation of political contributions" because, *inter alia*, the government can pressure tribes through "its authority to impose a tax on gaming revenues." The Majority then details what it views as Democratic complicity in tribal efforts to avoid a 35 percent tax on casino profits which was proposed as part of the 1995 budget. In a supposed example of the abuse of Government authority, the Majority describes a meeting between DNC National Chairman Donald Fowler and representatives of the Mashantucket Pequot tribe of Connecticut on November 13, 1995. Prior to that meeting, A DNC staffer wrote a briefing memo for Fowler urging him to remind the tribal

[165] Roger Tamraz deposition, 5/13/97, p. 36; Roger Tamraz, 9/18/97 Hrg. p. 18; Senator Levin, 9/18/97 Hrg. pp. 64–44; Exhibit 1064M.

[166] Roger Tamraz deposition, 5/13/97, p. 40.

[167] Roger Tamraz deposition, 5/13/97, pp. 11–14, 123–24; Roger Tamraz, 9/18/97 Hrg. pp. 3–4.

[168] Roger Tamraz, Hrg. pp. 67, 169–170; Exhibits 1065 & 1066.

representatives that he had "played an active role in expressing" tribal opposition regarding the tax.

The Majority Report also notes that the Mashantucket Pequots donated at least $475,000 to the DNC and to Democratic campaigns *between 1993 and 1996*. (No attempt is made to show that the tribe made a contribution close in time to the November 13 meeting.) The Majority offers no additional evidence in support of its suggestion that the contributions made by the Mashantuckets to the DNC were the result of pressure applied through the Clinton Administration's "authority to impose a tax on gaming revenues." Relevant facts which the Majority declined to include in their report include the following: (i) the 35 percent casino tax was proposed by Congressman Bill Archer, chairman of the House Ways and Means Committee;[169] (ii) the tax was vigorously opposed by prominent Republicans, including Senators Pete Domenici and John McCain.[170] Moreover, by the time of Fowler's November 13 meeting with the Mashantucket representatives, Republican senators had already publicly promised to oppose the casino tax in the House-Senate conference, thereby making it highly improbable that the tribe felt it necessary to contribute to Democratic causes in order to kill the casino tax. Indeed, the tribe has since confirmed that it viewed Fowler's attempt to take credit for the killing of the tax as an exaggeration, since the tax died in a Republican-controlled Congress.[171] None of these inconvenient facts are mentioned by the Majority.

• The Majority incorrectly alleges that contributions by the Mashantucket Pequot influenced the Interior Department's approval of an expansion of the tribe's already-existing casino. The most regrettable part of the Majority's chapter suggests, in an echo of the controversy surrounding Interior Secretary Bruce Babbitt's supposed involvement in the Hudson casino matter, that Mashantucket contributions influenced Interior's decision to approve two separate expansions of the Mashantucket's existing casino over community opposition. The Majority offers no evidence, but simply notes that Interior approved the expansions and that the Mashantucket Pequots made contributions to the DNC. These contributions were not even contemporaneous with those actions, but simply occurred within the 1996 election cycle. Indeed, the Majority frankly acknowledges that its inferences are not substantial: "It is unknown if the DNC assisted the [Mashantucket] Pequots in convincing Interior to rule in their favor."

• The Majority unfairly attacks Interior Deputy Secretary John Garamendi and Assistant Secretary for Indian Affairs Kevin Gover for their tangential involvement in fundraising activities prior to assuming their government positions. The Majority takes Garamendi to task for having suggested to DNC officials that they solicit Mark Nichols, chief financial officer of the Cabazon Tribe of Mission Indians, for a political contribution. The Majority argues that it was "unseemly" for Garamendi to be involved in soliciting money from tribal leaders over whom he would eventually exercise authority in his government position, but the Majority does not

[169] *New York Daily News,* 6/9/97.
[170] *Albuquerque Tribune,* 11/3/95; *The Santa Fe New Mexican,* 10/28/95.
[171] *The Hartford Courant,* 2/11/98.

even contend that Nichols was told that Garamendi had suggested him for a solicitation. As the Majority Report acknowledges, Nichols had already committed to raising $100,000 for Clinton Campaign before being contacted by the DNC. Ultimately, he donated a total of $125,000.

Even more attenuated is the Majority's criticism of Gover. Over two years before being sworn in as Assistant Secretary of Indian Affairs, Gover, along with several other attorneys acting as advocates for tribal leaders who had been invited to a meeting at the White House, wrote a memorandum to White House political directors pointing out that Indian tribes had contributed monies in the past and asking that attention be paid to the Administration's political supporters. These facts failed to raise significant concern during Gover's confirmation hearing in November 1997.[172] During his hearing testimony, none of which is mentioned in the Majority Report, Gover explained that he had long advocated greater political involvement by American Indians. "I believe that tribes need to become more involved in national politics. I have preached that message."[173] Gover explained that he also worked on several grassroots advertising and get-out-the-vote drives; the type of activities which he believed helped to explain why tribes with only 9 percent of U.S. population cast 14 percent of the vote in the 1996 presidential election.[174] Following his testimony, the Chairman of the Senate Indian Affairs Committee, Ben Nighthorse Campbell, publicly confirmed his continued support for Gover.[175] Gover's nomination was approved by the Committee and quickly approved by the Senate without debate, under prodding from another supporter on that Committee, Senator Pete Domenici.[176] Whatever significance the Majority ascribes to Gover's past activities, they posed no obstacle to his confirmation by the Republican-controlled Senate.

Response to Majority Chapter 23: "Hudson Casino"

In this chapter, the Majority examines the circumstances surrounding the Interior Department's denial of an application by three Indian tribes and a gambling company to take land near Hudson, Wisconsin, into trust for the purposes of establishing a casino. The Majority draws the limited conclusion that "[t]here is strong circumstantial evidence" that Interior's decision in the Hudson case "was caused in large part by improper political considerations, including the promise of political contributions from opposition tribes." This conclusion is not fully supported. The Majority Report fails to acknowledge key facts about the Hudson casino proposal and mischaracterizes many others.

• Contrary to assertions by the Majority, Galaxy Gaming, not the applicant tribes, was the moving force behind the Hudson casino application. The Hudson casino application was made by an entity known as the Four Feathers Partnership, which consisted of three Indian tribes and another partnership known as the Galaxy

[172] *Albuquerque Journal,* 10/31/97.
[173] *Albuquerque Journal,* 10/31/97.
[174] *Albuquerque Journal,* 10/31/97; *The Santa Fe New Mexican,* 11/10/97.
[175] *Albuquerque Journal,* 10/31/97.
[176] *The Santa Fe New Mexican,* 11/10/97.

Gaming Company, headed by Fred Havenick.[177] This Florida-based gambling company owned a money-losing dog track in Hudson, Wisconsin, and hoped to salvage that investment by establishing a casino on the same site in partnership with the Indian tribes. Galaxy Gaming is a sophisticated, politically savvy entity with considerable resources that spent significant amounts on lobbying government officials, including its retention of Paul Eckstein, a lobbyist with seemingly little of value to offer other than his willingness to prevail on his personal friendship with Interior Secretary Bruce Babbitt to secure a result for his new clients. In 1993, Galaxy Gaming spent more money on lobbying in Wisconsin—over $60,000—than any other gambling entity.[178] Given these facts, the Majority's insistence on characterizing the Hudson casino matter as a battle between "impoverished" Indian tribes and wealthy lobbyists hired by the opposing tribes is unfair and disingenuous.

• The Majority Report unfairly omits key facts justifying Interior's denial of the application, such as the distance between the applicants' reservations and the proposed casino site. One of the most controversial aspects of the Hudson casino application was the proposal to take into trust land far removed from the reservations of the applicant tribes. Although the Majority Report never mentions it, the fact that the reservations of the applicant tribes were between 80 and 190 miles away from Hudson, Wisconsin, was critical to an understanding of Interior's decision. Different, and far stricter, criteria apply when an Indian tribe petitions the government to take off-reservation land in someone else's community into trust for gambling operations. As Secretary Babbitt testified in the hearings before the House Committee on Government Reform and Oversight, of the nine off-reservation applications initially approved by the regional Bureau of Indian Affairs office since the Indian Gaming Regulatory Act was passed in 1988, only one led to the establishment of a casino.[179] In that case, unlike the casino proposed in Hudson, the local community supported the application.[180] One of these denials occurred during the Bush Administration.[181]

• The Majority Report unfairly omits key facts justifying Interior's denial of the application, such as the depth and intensity of local opposition to the casino. Although the Majority makes passing references to the opposition by persons on the local, state, and federal levels, it is suggested that whatever local opposition existed was actually generated by the opposing tribe's lobbying activities. Although lobbying certainly occurred on both sides, it is unrealistic to suggest that these lobbying efforts were primarily responsible for the widespread opposition to the proposed Hudson casino. The Committee's investigation found overwhelming evidence of legitimate opposition to the casino expressed by both Republican and Democratic elected officials on the ground that the casino would be

[177] *Washington Post,* 12/21/97.
[178] *Chicago Tribune,* 8/5/93.
[179] Testimony of Secretary Babbitt before the House Government Reform and Oversight Committee, 1/29/98, p. 20.
[180] Testimony of Secretary Babbitt before the House Government Reform and Oversight Committee, 1/29/98, p. 20.
[181] Testimony of Secretary Babbitt before the House Government Reform and Oversight Committee, 1/29/98, p. 20.

detrimental to the community. The opposition was widespread, intense, and bipartisan. See Minority Chapter 37.

• The Majority Report omits key facts justifying Interior's denial of the application, including the fact that Interior never "reversed course" on the Hudson casino application. The Majority seriously mischaracterizes the record by suggesting that Interior was initially inclined to approve the Hudson casino application, but changed its mind after being subjected to "pressure" (through some mechanism which the Majority is not able to identify). As the career staff at Interior have testified, they never recommended approval of the Hudson casino proposal. The Majority makes much of the fact that the local Bureau of Indian Affairs office approved the application, but fails to acknowledge that all such applications are reviewed by Interior staff at headquarters—pursuant to sound policy established by the Bush Administration—to ensure consistent application of the law.[182] The Majority treats the differing conclusions reached by the local BIA office and the Interior Department in Washington as a matter of grave suspicion, but refuses to acknowledge that the Interior Department has often rejected local BIA recommendations to approve applications for off-reservation gambling.[183]

Turning to the specifics of the Report, the Majority twists the record in asserting that George Skibine, an Interior Department official, "favored granting the Hudson application." This is a mischaracterization of Skibine's testimony. Skibine first formulated his recommendation in June 1995, based on the record, and his recommendation was that the application be denied.[184] The only issue of debate in the weeks leading up to the issuance of the decision was the statutory basis on which to rely in denying the application, not on whether to approve it.[185]

The Majority relies heavily on the two memos prepared by Tom Hartmann, a financial analyst, which concluded that, notwithstanding the intense local opposition, there was insufficient evidence in the record to support a finding that the proposed casino would be "detrimental to the surrounding community." Skibine and Hartmann both testified, however, that Skibine, the deciding official, never agreed with Hartmann's view expressed in these memoranda and never adopted that analysis.[186] Skibine thought the application should be denied and he initially recommended denial based on the Indian Reorganization Act.[187]

• Contrary to the Majority's claim, "reopening" the administrative record was not an unusual step. The Majority views with dark suspicion the agreement by two Interior officials, in response to complaints from representatives of the opposing tribes during a meeting in February 1995, to allow those tribes to submit supplemental factual information to Interior concerning the extent to which the proposed casino would hurt their existing casinos. The

[182] Testimony of Secretary Babbitt before the House Government Reform and Oversight Committee, 1/29/98, p. 20.
[183] Testimony of Secretary Babbitt before the House Government Reform and Oversight Committee, 1/29/98, p. 20.
[184] George Tallchief Skibine deposition, 11/17/97, pp. 49, 61–65, 70.
[185] George Tallchief Skibine deposition, 11/17/97, p. 70.
[186] George Tallchief Skibine deposition, 11/17/97, pp. 61–62.
[187] George Tallchief Skibine deposition, 11/17/97, p. 151.

Majority Report opines, without factual support, that this "reopening" of the record was "an unusual step." In fact, Interior officials have testified that there was no "reopening" of the record in light of the fact that it was never formally "closed" prior to the issuance of the decision. Unlike, for example, agency rule-making, there is no formal deadline for the submission of materials relevant to a quasi-adjudicative decision like the trust application decision. Skibine has testified that, in allowing the opposing tribes to submit additional information, he simply allowed persons with relevant information to present that information to the Department.[188] Indeed, in an order unmentioned by the Majority Report, United States District Court Judge Barbara Crabb rejected the applicant tribes' claims in their lawsuit against Interior that this action was inappropriate.[189] Instead, Judge Crabb held that Interior's decision to accept the additional information was especially justified "when both the town of Troy and city of Hudson had passed resolutions opposing the project during the period between the area office's submission of its report and the February 8 meeting." There was nothing improper about Interior's decision to consider this additional information.[190]

• The Majority Report mischaracterizes the testimony of Paul Eckstein. In its Report, the Majority states that Paul Eckstein testified that Secretary Babbitt "made comments suggesting that Interior had come under political pressure to deny the application." In fact, Eckstein testified Secretary Babbitt denied his request for a delay of the issuance of the decision on the grounds that "Harold Ickes had directed him to issue the decision that day." (Ickes was then Deputy Chief of Staff at the White House.) In his deposition and in his testimony to the Committee, Eckstein was clear that he understood the comment that he ascribed to Babbitt to relate only to the timing, not the substance, of Interior's decision. Indeed, Eckstein agreed that he had "no basis" to believe that anyone from the White House had "directed the substance of the decision denying the application."[191] The Majority Report unfairly draws inferences from Eckstein's testimony without ever acknowledging that Eckstein himself did not draw those same inferences from the remarks he ascribed to Babbitt.

Response to Majority chapter 24: "The Cheyenne Arapaho Tribes: The Quest for the Fort Reno Lands"

This Majority chapter characterizes the decision by the Cheyenne-Arapaho Tribes to contribute to the DNC as a "sordid" chapter in the DNC's 1996 fundraising efforts, and a "cynical political exploitation." According to the Majority:

> Democratic fund-raisers led the tribes, who were politically naive, to believe that making a large contribution would secure them the long-sought Fort Reno lands. The

[188] George Tallchief Skibine deposition, 11/17/97, p. 21 ("[T]his is an informal decision-making process. So we don't have any regulations. There are no guidelines that apply to Central Office action. There are no deadlines.")

[189] *Sokaogon Chippewa Community, et al.* v. *Bruce C. Babbitt, et al.,* 929 F. Supp. 1165, 1183 (W.D. Wisc. 1996).

[190] *Sokaogon Chippewa Community, et al.* v. *Bruce C. Babbitt, et al.,* 929 F. Supp. 1165, 1183 (W.D. Wisc. 1996).

[191] Paul Eckstein Deposition, 9/30/97, pp. 90–91.

> tribes made contributions to the DNC, received encouragement about their land claim from many quarters, including the President himself, but ultimately received nothing. The tribes then fell into the hands of a series of Democratic operators, who attempted to pick their pockets for legal fees, land development fees, and additional contributions.

The Majority's conclusions are based on a series of misleading mischaracterizations, misstatements of facts, and unwarranted inferences.

• The Majority makes misstatements of fact and creates misleading impressions in its characterization of the source of the money used by the tribes to contribute to the DNC. While it correctly states that the money was derived from the operation of a bingo hall, it incorrectly describes the role of the tribes with respect to the hall. The Majority states, "Although the hall was not profitable—it has incurred millions in losses since opening—the C/A receive a monthly $5,000 payment from the entity that manages the bingo hall on their behalf." This statement leaves two false impressions: (1) that the tribes had contracted out to an outside entity to manage the bingo hall for them, and (2) that the tribes were losing millions of dollars as a result of the bingo hall operations. In fact, the tribes did not hold the gambling license for the bingo hall. They merely managed the hall for the licensee, Southwest Casino and Hotel Corporation, and received a $5,000 monthly payment for this service. Any losses which might have resulted from the bingo hall operations would have been incurred by Southwest Casino, not by the Tribes. The money which the Tribes derived from the bingo hall operation was thus money which came to them free and clear and not as the result of a money-losing tribal business venture.

The Majority Report states, "[W]hile the account from which the money is drawn does not appear to be a specially-earmarked welfare fund, it is frequently used to pay for such things as funeral costs, heating bills, and general assistance for needy tribal members." While that may be the case today, that was not the case at the time the tribes made the decision to contribute to the DNC. The Majority ignores the fact that the chairman and secretary of the tribes' business committee, as well as the chairman of its business development corporation, all denied that the tribes had a welfare fund at the time they made their contribution.[192] The Majority also ignores the fact that Tribes' attorney had informed the Committee staff that the money from the bingo hall operations had been placed into certificates of deposit and had not been used previously for any other purposes.[193]

• The Majority falsely states that Democratic fund-raisers took advantage of the Tribes' political naivete, leading them to believe that making large contributions would secure them the long-sought Fort Reno Lands. Not only is this statement incorrect, but the basic premise upon which it rests—that the tribes were politically naive—is inaccurate. By the time the Cheyenne-Arapaho made

[192] Staff interview with Charles Surveyor, 8/22/97; Staff interview Tyler Todd, 8/21/97. See also, *Daily Oklahoman*, 3/11/97.

[193] Staff interview with Barry Coburn, 9/16/97.

their decision to contribute to the DNC in 1996, they were politically active tribes which had been lobbying at the local, state, and national levels for years. Their representatives had made numerous trips to Washington to meet with members of Congress and officials from the Departments of Interior, Agriculture, and Justice. They had hired Patton, Boggs & Blow, an influential Washington lobbying firm, to argue their case. They had held protest rallies and had spent over $100,000 on political advertising targeting politicians they saw as opposed to their interests. Their decision to contribute to the DNC was a calculated decision to take their political involvement to another level, not the result of political naivete.

The Majority's contention that someone at the DNC promised the tribes the return of their lands in exchange for a large contribution is unsupported by any facts. The tribes made their decision to contribute before they had even spoken to anyone at the DNC.[194] The Majority cites no direct evidence to show that Jason McIntosh, Terry McAuliffe, or anyone associated with the DNC or the Clinton/Gore campaign ever promised the tribes the return of the Fort Reno lands in exchange for their contribution. Furthermore, the Majority ignores the unequivocal statement of Tyler Todd, the chairman of the tribes' business development corporation, who said, "We didn't ask for anything and we weren't promised anything." [195]

The Majority's approach to this issue is curious. The Majority seems to imply that the tribes were somehow taken advantage of because they received no direct, tangible policy benefit from their contribution. At the outset of the chapter on the tribes, the Majority states, "The tribes made contributions to the DNC, received encouragement about their land claim from many quarters, including the President himself, but ultimately received nothing." The chapter then concludes by stating, "They [the tribes] have nothing to show for their $107,000 in contributions, except memories of a Presidential luncheon and the hollow echoes of "encouragement" to contribute given them along the way." Just what the Majority believes the tribes should have "received" or should "have to show" for their contribution is not clear. Had the tribes received some direct policy benefit in exchange for their contribution, would that not have amounted to an illegal quid pro quo? The fact that the tribes received nothing for their contribution is therefore not an indication that they were taken advantage of, but rather an indication that their dealings with the DNC and the Administration were wholly legal and appropriate.

• The Majority falsely states that the tribes fell into the hands of a series of Democratic operators, who attempted to pick their pockets for legal fees, land development fees, and additional contributions. The Majority castigates Nathan Landow and Peter Knight for their attempts to negotiate a contract with the tribes prior to agreeing to undertake work on their behalf. It should be noted that it was the tribes who approached Landow and Knight for their services, not vice-versa. From the beginning of their deal-

[194] The tribes discussed the idea of contributing to the DNC in meetings of their business committee on February 12, 1996, and April 30, 1996. Staff interview with Tyler Todd, 8/21/97 and Staff interview with Barry Coburn, 9/16/97. They informed Michael Turpen, whom they had hired as a lobbyist, of their decision in May 1996, whereupon Turpen put the tribes in touch with Jason McIntosh of the DNC. Staff interview of Barry Coburn, 9/21/97.

[195] *Daily Oklahoman*, 3/11/97.

ings with the tribes, both Landow and Knight's firm were clear as to their fees and the need for a written contract. Their actions in this regard were nothing more than standard business practices. The Majority presents no evidence either that the proposed contract terms were onerous or that the amount of the fees was excessive in comparison to similar arrangements. Indeed, both Landow and Knight's firm were aware that their contracts would require the approval of the Bureau of Indian Affairs, and they drafted the contracts to conform to the requirements of the Bureau of Indian Affairs.

It appears that the Majority's main reason for casting Landow and Knight in a negative light is the fact that they were "Democratic operators." While it is true than Landow and Knight had ties to the DNC and the Clinton/Gore campaign, their dealings with the tribes had nothing to do with those entities. Indeed, the Majority presents no evidence that Landow or Knight at any time in their dealings with the tribes acted at the behest of, on behalf of, or even with the knowledge of the DNC or the Clinton campaign. The opprobrium which the Majority has cast upon these individuals by comparing them to pickpockets is unwarranted and unworthy of this Committee.

Response to Majority chapter 25: The Offer of R. Warren Meddoff

In this chapter, the Majority discusses Florida businessman Warren Meddoff who, shortly before the 1996 election, approached President Clinton at a Florida fundraiser concerning a possible $5 million donation to the President's campaign. The Majority concludes that White House Deputy Chief of Staff Harold Ickes's conduct in faxing Meddoff a memorandum listing several possible tax-exempt organizations to receive the contribution "was an attempt to circumvent both the federal general election contribution prohibition and spending limits imposed on campaigns receiving public financing." At one point, the Majority states that Ickes subsequently told Meddoff to "shred" this memorandum, but later backs away from this assertion and reaches no conclusion as to whether Ickes made this statement. Nevertheless, the Majority insinuates that Ickes's conduct amounted to an obstruction of justice.

The Majority's conclusions are based on the testimony of a witness who lacks credibility and are also contrary to any reading of the law.

• The Majority's allegations of circumvention of campaign finance laws and improper coordination concerning Harold Ickes are contrary to the Majority's own reading of the law. The Minority disagrees with the Majority's contention that Ickes attempted to circumvent campaign finance laws. The Minority found that Ickes would have been well-advised to refrain from providing the information contained in the fax to a potential contributor, in order to avoid any appearance of improper coordination. Nevertheless, the simple fact that Ickes identified nonprofit groups in response to a desire by a potential contributor to make a tax-deductible contribution does not establish that improper coordination occurred. As the Majority has recognized in its Report, current law does not prohibit a federal government employee or party official from directing con-

tributions to tax-exempt organizations.[196] And as the Majority has also recognized, the Committee did not determine whether nonprofit organizations Vote Now '96, the National Coalition of Black Voter Participation, and Defeat 209 communicated with Clinton/Gore campaign officials about the steering of donors to these entities or whether these organizations knew that Ickes was referring donors to them for the purpose of advancing the President's re-election. If such communications had occurred, any contributions might be considered illegal. Moreover, the Republican National Committee ("RNC") routinely engaged in far more troubling activity than this. As admitted by the Majority in its Report (and as discussed more throughly in the Minority Report), the RNC "routinely supported nonprofit groups that it considered sympathetic to its cause. This support principally took the form of financial contributions directly from the RNC or from funds raised by RNC officials."[197] The Majority concludes, however, that there was nothing illegal or improper about these activities. To draw such a conclusion, while at the same time concluding that Ickes's conduct was inappropriate, is disingenuous at best.

• The Majority's discussion of Meddoff's allegations omits critical evidence. As discussed more fully in Minority Report Chapter 17, the Minority found that the evidence before the Committee raised grave doubts about Meddoff's credibility given the questionable nature of his business dealings and associates, his apparent personal agenda in appearing before the Committee, and his apparent attempt at bribery in connection with a previous proposed contribution. Meddoff's testimony that Ickes told him to shred the memorandum, considered in this context, lacks credibility.

• The Majority claims that Ickes potentially violated the law by his use of White House staff and equipment to send the fax to Meddoff when, in fact, the evidence on this point is not clear. In a footnote, the Majority states, "If Ickes solicited Meddoff for contributions, it would appear that he violated criminal provisions of the Hatch Act, specifically 5 U.S.C. § 7323(b) which prohibits a federal employee from soliciting political contributions from any location at any time." (Majority Report Chapter 25, n.54) Although this was not a "solicitation" or a "political contribution," the Majority seems to suggest that the fax was nonetheless improper. The Minority disagrees with this suggestion, because, as the Minority points out in Chapter 24 of its Report, the White House Office of Political Affairs is permitted to engage in certain types of political activity. That office maintains a separate fax machine for its political work.[198]

Response to majority chapter 26: "White House, DNC and Clinton-Gore campaign fundraising efforts involving the International Brotherhood of Teamsters"

In this chapter, the Majority makes serious allegations regarding the Teamsters' activities during the 1996 election cycle. Specifi-

[196] The Majority asserts that Congress "would do well to examine whether it should continue to be legal for campaigns to refer donors to nonprofit entities that, for all intents and purposes, will further the campaign's election. . . ." Majority Report Chapter 25.

[197] Majority Report Chapter 28; see Minority Report Chapters 10 and 11–13. These nonprofit groups included Americans for Tax Reform and Coalition for Our Children's Future.

[198] Jennifer O'Connor deposition, 10/6/97, pp. 149–50.

cally, the Majority alleges that the Committee's investigative efforts into relevant activities of the Teamsters were substantially limited by several factors, including the refusal by subpoenaed entities to produce documents, individuals' assertions of their Fifth Amendment rights in refusing to testify, witnesses' providing "inaccurate or misleading testimony," and the Committee's agreement to limit the scope of the investigation because of the Southern District of New York U.S. Attorney's investigation. The Majority alleges that Harold Ickes and other Administration officials, in possible violation of federal law, provided assistance to the Teamsters on policy matters "with the intention of enticing" the Teamsters to participate in Democratic campaigns and causes. The Majority also alleges that DNC officials participated in a contribution swap scheme in which they solicited funds for Ron Carey's reelection campaign of Ron Carey, who was then president of the Teamsters Union.

The Majority's analysis is based on misstatements of facts and its conclusions are unsupported by the evidence.

• In its Report, the Majority perpetuates its admittedly inaccurate assertion that the President was involved in or had knowledge of Martin Davis's improper activities. At the October 8, 1997 hearing, Chairman Thompson falsely implied that the President was involved with the Teamsters swap proposal. The Chairman stated:

> The concern is that, according to the Southern District of New York, you have a conspiracy in May and June of 1996 for this contribution swap, the Democratic National Committee and the Teamsters Union. *The people involved in that met with the President on June 17.* Then four days later, the decision was made to implement at least part of the plan, apparently, by sending $236,000 to state Democratic parties. [Emphasis added.] [199]

During later testimony, however, it was established that the Chairman was incorrect when he suggested that there was a private meeting with the President at which the Teamsters swap proposal was discussed. The evidence presented at the hearing established that the allegedly "private meeting" between the President and the Teamsters consultants who later pleaded guilty to fraudulent conduct was actually a luncheon that was attended by numerous people.[200] After receiving the evidence, the Chairman acknowledged that there was no private meeting and that all of the lunch attendees lunch entered the White House at approximately the same time.[201]

Astonishingly, the Majority repeats these same false allegations against the President in its Report, stating: "Because the Committee has not been unable to speak with Davis, it cannot determine whether Davis ever discussed Teamster fundraising or Carey's campaign with the President." The Majority's use of random speculation and discredited evidence to make allegations against the President is both reckless and unworthy of a Senate Committee.

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[199] Chairman Thompson, 10/8/97 Hrg., pp. 25–26.
[200] 10/8/97 Hrg., pp. 38–39; Exhibit 2396.
[201] Chairman Thompson, 10/8/97 Hrg., pp. 166–67.

• The Majority wrongly charges that the Committee's investigation of possible connections between the 1996 election of officers for the International Brotherhood of Teamsters ("IBT") and the 1996 federal elections was "substantially limited" because the AFL–CIO did not cooperate with the Committee's investigation. The Majority claims the AFL–CIO "[r]efused to produce documents reflecting dealings with the White House, DNC and Clinton-Gore campaigns" and "[r]efused to produce relevant materials from the files of Political Director Steven Rosenthal, Secretary-Treasurer Richard Trumka, President John Sweeney, and other individuals involved in AFL–CIO campaign-related activities." The Majority's claim is wrong, and it is misleading. As is plain from its timing—May 1997—and content, the Committee's document subpoena to the AFL–CIO was not related to allegations about the Carey campaign—allegations that in fact surfaced long after the document subpoena to the AFL–CIO was issued by the Committee. The Committee's subpoena issued to the AFL–CIO covered the entire range of the AFL–CIO's involvement in electoral and legislative politics; it did not target matters related to the Teamsters or the Carey campaign. Further, the "swap schemes" referred to by the Majority were not revealed until long after May 23, the date the Committee issued the subpoena to the AFL–CIO. The circumstances of the AFL–CIO's objections addressed to the document subpoena are described in the Minority's response to Majority Chapter 23 and are entirely unrelated to allegations of wrongdoing in the Teamsters election.

• The Majority Report falsely states the AFL–CIO Secretary-Treasurer Richard Trumka "refused to comply" with a deposition subpoena issued by the Committee. Again, the Majority's statements are misleading. As explained in the Minority's response to Majority Chapter 27, Trumka did not "refus[e] to comply" with the Committee's deposition subpoena. Counsel for the AFL–CIO, after being told by the Majority Chief Counsel on Thursday, September 18, 1997, that there would be no further depositions, received three faxed deposition subpoenas on the evening of Friday, September 19. One of the depositions requested was Trumka's and it was scheduled for 9:00 on the very next Monday, September 22—a day when Majority counsel knew the witnesses in question would be out of town at the AFL–CIO Convention. Counsel for the AFL–CIO wrote to the Committee explaining why Trumka and other witnesses could not appear, but did not refuse to produce the witnesses on another date.[202]

• The Majority incorrectly claims that its investigation of the "contribution swap" allegation was limited. The Majority's investigation was not limited. As the Majority itself acknowledges it conducted 15 depositions and "dozens of interviews relating to [the] allegations" involved in the contribution swap scheme. The Majority also conducted a day of hearings regarding these allegations. Moreover, contrary to the Majority's claim, thousands of pages of documents related to the Teamsters issues that the Majority was investigating were produced by the Teamsters, the DNC, the White

[202] See Letter from Robert M. Weinberg and Robert F. Muse to Michael J. Madigan, Chief Counsel, and Philip Perry, Majority Counsel, Sept. 22, 1997.

House, Vote Now '96, and the law firm that represented Judith Vazquez. Similarly, contrary to the Majority's assertion, no witness asserted his or her Fifth Amendment privilege and refused to appear for a deposition or hearing relating to the Teamsters issues. Moreover, as detailed in the Minority Chapter 18, on the Teamsters allegations and as more thoroughly discussed below, the Majority's claim that witnesses provided "inaccurate or misleading" testimony is not supported. Finally, while the U.S. Attorney's office did request that the Committee not subpoena several witnesses, most of these witnesses have given testimony or statements that are available to the Committee (and, indeed, these materials are cited in both the Majority and Minority Reports), and this "limitation" did not impede the Majority's investigation.

• The Majority claims without sufficient evidence that there is a suggestion that the Administration took steps to improperly "benefit the Teamsters" in connection with the Diamond Walnut strike. While it would not have been illegal or inappropriate for the Administration to get involved in the Diamond Walnut strike, there is no evidence that the Administration in fact took steps that benefitted the Teamsters with respect to this strike. To the contrary, although the Majority Report omits mention of this fact, the Diamond Walnut strike is still ongoing—no Administration action known to the Minority assisted the Teamsters with the resolution of their dispute with Diamond Walnut.

• The Majority presents a slanted version of the facts surrounding the "contribution swap" scheme. The Majority falsely implies that the idea for the so-called "contribution swap" scheme originated with the DNC which was concerned because the Teamsters were not "participating in federal electoral politics at the same extraordinary level as it had in the 1992 campaign." The Report states, after discussing this purported decrease in political participation, "In May or June 1996, a plan for a 'contribution-swap scheme' between the DNC and the Teamsters was conceived. It was relatively simple: the DNC agreed to find a $100,000 donor for Ron Carey's campaign for reelection as Teamsters president; in exchange, the Teamsters' PAC director, Bill Hamilton, would steer approximately $1 million to state Democratic parties." As the Majority well knows based on the evidence before the Committee, the idea for the scheme was entirely that of Martin Davis, Ron Carey's election campaign consultant, and it was Davis who contacted Terry McAuliffe. The Majority's implication that the DNC broached the subject with the Teamsters as part of the DNC's plan to raise money from the Teamsters is not based on the evidence.

Throughout the Majority Report, the Majority also presents a slanted version of the so-called scheme by ignoring key deposition testimony from credible witnesses regarding the scheme. For example, its chapter does not contain a single citation to the deposition of Laura Hartigan, whose testimony confirmed that of DNC Finance Director Richard Sullivan. She stated that it was never her understanding that Davis was suggesting some sort of quid pro quo or a nexus between raising money for Carey and raising funds for the DNC.[203]

[203] Laura Hartigan deposition, 9/16/97, pp. 24, 20.

• The Majority fails to prove allegations that testimony by Democratic witnesses was false or misleading. As discussed more thoroughly in Minority Report Chapter 18, the Minority disagrees with the Majority's contention that Richard Sullivan provided misleading and inaccurate testimony to the Committee. Sullivan was forthcoming to the Committee about the relevant circumstances examined by the Committee surrounding Judith Vazquez's potential contribution. The Minority also disagrees with the claim that White House Deputy Chief of Staff Harold Ickes was not truthful to the Committee. Ickes testified that he "discussed Diamond Walnut with Jennifer" O'Connor, his assistant,[204] and the Majority failed to ask him about the substance of those conversations.[205] The Majority then claims that Ickes was not forthcoming based on O'Connor's description of that conversation—her testimony that she and Ickes discussed whether Mickey Kantor contacted Diamond Walnut. Moreover, as Ickes testified, the Administration did not "do [anything] regarding the Diamond Walnut strike."[206] The Administration did not intervene in this strike, and the strike is still underway, indicating that the Teamsters were not benefitted by any Administration action relating to this strike.

Response to majority report chapter 27: "Compliance by Non-Profit Groups with Committee Subpoenas"

The Majority criticizes a number of tax-exempt groups, ranging from the Christian Coalition to the AFL–CIO, for refusing to comply with Committee subpoenas. It alleges that this pattern of noncompliance began in August 1997, when the AFL–CIO announced that it would not comply with a document subpoena. The Majority also contends that the subpoenas issued by the Committee to these groups could not have been enforced because the Minority would have blocked enforcement efforts and because the Committee's mandate expired on December 31, 1997. Finally, the Majority complains that because of the noncompliance of subpoenaed groups, it was "unable to draw any meaningful conclusions about the activities of nonprofit groups during the 1996 elections."

• The Majority wrongly accuses the AFL–CIO of "deliberately adopt[ing] an obstructionist strategy designed to thwart production" of documents and witnesses to the Committee in the "cynical hope of escaping scrutiny . . ." To the contrary, the AFL–CIO's responses to the Committee's document and deposition subpoenas were based on legal positions that were presented to the Committee in a manner well within the procedural rules set forth both by this Committee and by the full Senate. The AFL–CIO was presented with an extraordinarily broad subpoena, requesting 48 separate categories of documents that reached deeply into nearly every aspect of the AFL–CIO's internal organization and structure and, particularly, into its participation in the political system. This subpoena differed markedly in its breadth and scope from any other subpoena issued by the Committee. The AFL–CIO repeatedly in-

[204] Harold Ickes deposition, 9/22/97, p. 133.

[205] The issue of Administration policy with regard to Diamond Walnut was not fully explored during Ickes's deposition due, in part, to objections properly posed by Ickes's attorneys on the proper scope of the deposition.

[206] Harold Ickes deposition, 9/22/97, p. 141.

formed the Committee of its concerns regarding the breadth and scope of these demands[207] and, after an initial review of some of the millions of documents demanded by the subpoena, the AFL–CIO provided the Committee with a lengthy, detailed statement of its legal grounds for objection.[208]

• The Majority falsely asserts that the document subpoena directed to the AFL–CIO was issued because of "press accounts link[ing] the leadership of the AFL–CIO with an illegal conspiracy to funnel general treasury funds from the International Brotherhood of Teamsters ("IBT") to the reelection campaign of IBT President Ron Carey." This claim is untrue. The document subpoena was issued in May 1997—long before the IBT election was overturned; there were at that time no "press accounts" linking the AFL–CIO or its leadership to alleged wrongdoing in the Carey campaign. Further, the subpoena did not focus on any connection between the AFL–CIO and the IBT, or make any requests for documents related to the Carey campaign.

• The Majority falsely claims that the AFL–CIO refused repeated offers extended by the Committee to narrow the May 23 document subpoena. To the contrary, Majority Counsel repeatedly informed the AFL–CIO that the subpoena would not be narrowed. For example, in a June 19, 1997 meeting of counsel for the AFL–CIO with both Majority and Minority counsel, Majority counsel explicitly stated that the Committee would not agree to a narrowing of the subpoena. And in fact, an August 23 letter signed by the Majority Chief Counsel—and incorporated by the Chairman in his September 3 Ruling and Order—simply set forth the Majority's demands for an "immediate production," which was clearly labeled as an "initial production" sought by the Majority.[209]

• The Majority falsely claims that the AFL–CIO "refused to produce witnesses pursuant to deposition subpoenas, or to allow the Committee to interview persons affiliated" with the AFL–CIO. The record shows that this characterization is wrong. Deposition subpoenas were sent to a total of five AFL–CIO officials or consultants. The AFL–CIO did not refuse to produce any of these witnesses.[210]

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[207] See Letter from AFL–CIO counsel, Robert Weinberg and Robert Muse to Majority and Minority Chief Counsels, June 5, 1997; Letter from AFL–CIO counsel to Majority and Minority counsel, July 11, 1997; Letter from AFL–CIO counsel to Majority counsel, Aug. 6, 1997; Letter from AFL–CIO counsel to Majority and Minority Chief Counsels, 8/20/97.

[208] See Memorandum of Points and Authorities in Support of the AFL–CIO's Objections to the Subpoena Duces Tecum, 8/27/97.

[209] Letter from Majority Chief Counsel to AFL–CIO counsel, Aug. 25, 1997, at 4 (stating that "the Committee agrees not to enforce the following specifications at this time.').

[210] As documented in a September 22, 1997 letter to Majority Chief Counsel from AFL–CIO counsel, subpoenas for three of the AFL–CIO witnesses (Richard Trumka, Gerald Shea, and Steve Rosenthal) were sent by Majority counsel by *facsimile at 5:35 p.m. on Friday,* September 19, 1997, to the offices of AFL–CIO counsel. The subpoenas demanded appearances *at 9:00 a.m on Monday,* September 22, of the AFL–CIO's Secretary-Treasurer, Political Director, and Executive Assistant to the President. No notice preceded these subpoenas and, indeed, they arrived approximately 24 hours after the Majority Chief Counsel had assured the AFL–CIO that the Committee would not be taking any depositions of AFL–CIO witnesses. The Majority had been informed that all three individuals were in Pittsburgh for the AFL–CIO's biannual convention, which was scheduled to continue through the week of September 22. Counsel for the AFL–CIO submitted a letter to the Committee on the morning of September 22 explaining why the three witnesses would not be appearing on that day. That letter did not state that the witnesses would not appear on another date. The Majority made no effort at any time to secure the presence of these witnesses on another date. With regard to the deposition subpoenas issued to two AFL–CIO consultants, the majority's claims of "defiance" are similarly false. One of these wit-

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• The Majority is wrong in its claim that the Minority would not have supported contempt actions against *all* groups that did not comply with subpoenas. In fact, the record is clear that on a number of occasions, the Minority asked the Committee to enforce its subpoenas. The Minority believed that a refusal to enforce subpoenas not only impeded the Committee's investigation, but set a terrible precedent. As Senator Lieberman noted, "We are the people's representatives. We are the people's opportunity to find the facts, to search for the truth, and when the parties that we subpoena are asked for information, do not cooperate, it is an insult to the Congress, and it sets a precedent that is not one that we should accept."[211] When Chairman Thompson asked Senator Glenn on October 8 if he would vote to hold liberal-leaning, as well as conservative-leaning, groups, in contempt, Senator Glenn responded:

> I would probably vote for contempt for the whole, for everybody that has denied our subpoenas, for everybody who has said they will not appear and has stiffed us. I think the authority of this Committee, the jurisdiction of the Committee, the jurisdiction of the United States Senate to enforce subpoenas is what is at issue here. . . . Let us support all of [the Committee's subpoenas].[212]

Thus, months before the Committee's mandate expired, the Minority expressed its willingness to support contempt actions against noncompliant groups.

• The Majority Report fails to acknowledge that defiance of the Committee's authority began when the National Policy Forum ignored an order by Chairman Thompson and refused to produce documents. On April 9, 1997, the Committee issued a subpoena calling on NPF to produce responsive documents by April 30. NPF provided a limited number of documents on June 6 and June 30, but stated that these documents were not responsive and claimed that the subpoena was invalid. On July 3, Chairman Thompson issued an order that stated, "The National Policy Forum is ORDERED and DIRECTED to produce all documents in its files that are responsive to the NPF subpoena . . . by 9 a.m. on Monday, July 14. . . ."[213] NPF flatly refused to obey this order. The Committee failed to initiate contempt proceedings. A month later, a number of other groups, including the Trail Lawyers, the Christian Coalition, the AFL–CIO, and the National Right to Life Committee, announced that they would challenge the Committee subpoenas.

• The Majority Report fails to acknowledge that defiance of the Committee's authority continued when individuals associated with Triad Management refused to appear for depositions or answer questions pursuant to Committee subpoena. On September 8, 1997, counsel for employees, officers and directors of Triad, Citizens for Reform, and Citizens for the Republic informed the Committee that

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nesses—Geoffrey Garin—appeared at his deposition and testified fully in response to questions by Committee counsel. The other witness, Ray Abernathy, was subpoenaed for a deposition to take place on September 20, but prior to his appearance, counsel for the AFL–CIO was informed by Majority staff that it would not be necessary for Abernathy to appear.

[211] Senator Lieberman, 10/7/97 Hrg. p. 41.

[212] Senator Glenn, 10/8/97 Hrg. pp. 73-74.

[213] Order to National Policy Forum from Chairman Thompson to produce all documents responsive to the National Policy Forum subpoena, 7/3/97.

they would not appear for deposition pursuant to subpoena. While three individuals did later appear, they refused to answer any questions. This was the first instance of individuals refusing to comply with subpoenas.[214]

• The Majority's claim that noncompliance by nonprofit groups prevented it from drawing "any meaningful conclusions about the activities of nonprofit groups during the 1996 elections" is disingenuous. The Majority has used the noncompliance of Republican nonprofit groups as an excuse for not examining the activities of these organizations. Although the recalcitrance of these groups did hamper the Committee's investigation, as Part 3 of the Minority Report shows, there is ample documentary evidence to conclude that the Republican Party improperly used tax-exempt groups, such as Americans for Tax Reform, the National Right to Life Committee, the Christian Coalition, and Coalition for Our Children's Future, for political purposes. And it was the Majority's own failure to seek enforcement of the subpoena that created that problem the Majority now relies on for an excuse.

Response to majority chapter 28: "The Role of Nonprofit Groups"

The Majority and the Minority agree that nonprofit organizations played a major role in the 1996 campaign. These groups spent tens of millions of dollars distributing "voter guides" aimed at helping specific candidates win election or broadcasting purported "issue advocacy" ads that were clearly designed to help specific candidates. The law governing issue advocacy is extremely liberal: Advertisements that avoid using certain language to "expressly advocate" the election or defeat of specific candidates is generally deemed by the courts to fall into the "issue advocacy" category. As a result, the funds used to pay for the ads are not treated as campaign contributions. Thus, donors who want to evade campaign finance restrictions have been able to assist candidates by donating money to nonprofit groups that run political attack ads under the guise of issue advocacy.

In discussing the role of nonprofit groups, the Majority correctly states that there was "an unprecedented level of political activity by nonprofit groups" during the 1996 election. The Majority is also correct in stating that several nonprofit groups failed to cooperate with the Committee's investigation. But the Majority's chapter on this subject is seriously flawed on several grounds.

Overview

• The Majority mischaracterizes the degree to which different nonprofit groups cooperated with the investigation. Most notably, the Majority focuses on AFL–CIO as being extremely recalcitrant while downplaying or ignoring similar examples of noncooperation by several conservative groups. It also states that the Committee was unable to question several former officials of the Republican

[214] In September, the Majority subpoenaed three individuals associated with the AFL–CIO. The Committee issued these subpoenas after it had announced its intention to suspend investigative hearings and proceed with hearings on campaign-finance reform. Even though the Committee knew that the subpoenaed individuals had previous time commitments, it ordered them to appear for depositions only three days after the subpoenas were issued. The individuals informed the Committee that they would not appear at the scheduled time, but the Committee made no attempt to reschedule their depositions.

National Committee ("RNC'), without noting the reason: The Minority's efforts to serve at least one of the individuals with knowledge of the RNC's interaction with outside groups was impeded by the Majority.[215]

• The Majority asserts that the Committee faced an "inability" to depose key personnel of the RNC, Americans for Tax Reform, Triad and others and states that it is unable to form conclusions as the result of such non-cooperation. In fact, the Committee could easily have found these individuals in contempt of the Committee and enforced the subpoenas. The Committee could also have held public hearings on these groups.

• The Majority applies a different standard to the AFL–CIO, which ran issue ads aimed at benefiting the Democrats, than it applies to Republican groups. For example, the Majority discusses allegations that the AFL–CIO coordinated with the Democratic National Committee and the Clinton re-election campaign, and yet it minimizes—or simply ignores—disturbing evidence regarding the Republican National Committee's coordination with pro- Republican groups. As noted below, the RNC not only engaged in extensive coordination with a long list of nonprofit organizations, it established nonprofit front groups and it provided millions of dollars in financial help (directly or through fundraising assistance) to several other tax-exempt groups.

The AFL–CIO

• In asserting that the AFL–CIO engaged in illegal coordination with the Clinton campaign, the Majority applies a double standard. Relying upon a legal analysis for coordination of an independent expenditure containing express advocacy, the Majority concludes, contrary to the facts, that the AFL–CIO engaged in illegal coordination while Triad Management did not. The Majority's claims that a nonprofit group violates the law regarding coordination with campaigns only when the group spends money "at the request of the candidate . . . or based upon information obtained from the candidate." The Majority concludes that the AFL–CIO illegally coordinated with he Clinton campaign although they fail to offer evidence that any candidate, campaign staff, or White House officials provided information or direction to the AFL–CIO.

• The Majority improperly assumes that all communications between the AFL–CIO and the White House were for the purpose of electoral politics. As Garin and Ickes testified, meetings between the AFL–CIO and White House officials were principally related to then pending legislative issues, and the AFL–CIO often shared information with the White House to persuade White House officials to support the AFL–CIO position with respect to those issues.[216]

• The Majority inaccurately asserts that the AFL–CIO and staff of the Clinton campaign improperly coordinated timing and strategy of balanced budget advertising in December 1995. In fact, the

[215] In early August 1997, Curt Anderson, through his attorney, indicated he would voluntarily appear for a deposition. Subsequently, he changed his mind, and at the request of the Minority, the Majority issued a Subpoena with a September 18 return date. Anderson could not be located immediately and the subpoena was served on September 19, one day after the return date. Anderson's attorney claimed the subpoena was invalid, and the Majority refused the Minority's request to issue a second subpoena to Anderson.

[216] Geoffrey Garin deposition, 9/5/97, p. 41.

testimony is consistent that both White House staff and Clinton campaign officials believed that the only advertisements viewed were advertisements already on the air, and that they took steps to ensure they would not coordinate content, strategy or location of advertising in advance. The Majority report falsely states that both Harold Ickes and Dick Morris testified that organized labor and the DNC previewed each others advertising. In fact, Morris testified organized labor showed ads they "either had run or were planning to run, I was never quite clear what it was. And we showed them ads that had already run."[217]Ickes testified "I think that these ads were up and running and that the AFL–CIO just wanted to show us what they were running," and Doug Sosnick testified that he had no specific recollection of the ads but recalled discussing with Ickes that White House staff "would not discuss with labor either the content or placement of their ads prior to them doing it," and that White House staff likewise would not discuss what the DNC would air or where it would air.[218] Thus, there is no evidence that DNC or labor advertisements were ever previewed, and there is no evidence that there was ever any advance discussion of content or placement of such advertising.

• The Majority improperly relies on testimony of political consultant Dick Morris, that an official of organized labor, who he cannot recall, suggested that 1995 balanced budget advertising be coordinated. In fact, Morris also testified that there was never any agreement to coordinate and no coordination took place. Morris testified that the suggestion of coordination was immediately rejected and at no time during the campaign were the ads coordinated in any way.[219] Several other individuals including then Chief of Staff Leon Panetta and George Stephanopoulos, who were also present had no recollection of any suggestion of coordination.[220] While Ickes had no specific recollection of such a suggestion, he testified that there "could well have been" a suggestion of coordination, as there were many suggestions made at meetings.[221] However, Morris, Sosnick, and Ickes testified that no coordination of advertising schedules actually occurred.[222]

• The Majority details no evidence that the AFL–CIO coordinated any 1996 issue advertising with any congressional candidate. AFL–CIO advertising in 1996 contained advertisements that focused on the records of specific candidates for the House of Representatives. In the spring of 1995, the AFL–CIO made a public announcement of its intent to target many freshman Members of Congress. While the AFL–CIO informed Ickes of this intent, the information hardly amounts to "the sneak preview" alleged by the Majority. Similarly, the Majority recites information about a "draft" memorandum from Jennifer O'Connor without mentioning the fact that on the face of the memorandum it is clear that the memorandum relates to the "Coordinated Campaign," the permissible an-

[217] Dick Morris deposition, 8/20/97, p. 216–17.
[218] Harold Ickes deposition, 9/22/97, p. 193; Doug Sosnick deposition, 9/12/97, pp. 148–49.
[219] Dick Morris deposition, 8/20/97, p. 217.
[220] Leon Panetta deposition, 8/29/97, p. 190; George Stephanopoulos deposition, 9/6/97 p. 98.
[221] Harold Ickes deposition, 9/22/97, p. 193.
[222] Harold Ickes deposition, 9/22/97, p. 193, Dick Morris deposition, 8/20/97, p. 217, Doug Sosnick deposition, 9/12/97, p. 46.

nual get-out-the-vote programs undertaken by groups sympathetic to both political parties.

Triad Management services

• The Majority incorrectly states that Triad Management provides services to conservative contributors in exchange for a set fee. Evidence received by the Committee shows that Triad does not charge regular fees, is largely financed by a single backer and generates no profits. See Minority Report Chapter 12.

• The Majority incorrectly states that Citizens for Reform and Citizens for the Republic Education Fund simply paid management fees to Triad and aired issue advertising under Triad's guidance and omits a full description of their relationship with Triad. Citizens for the Reform and Citizens for the Republic Education Fund were created and controlled by Triad. Both organizations existed largely on paper and lacked offices, staff, and telephones. Moreover, these organizations undertook no activities apart from those arranged by Triad. See Minority Chapter 12.

• The Majority insists that Triad's pattern of visiting campaigns, meeting with candidates and campaign staff, reviewing advertisements, providing advice to candidates and staff, and gathering information on key issues in the race did not rise to the level of illegal coordination. The Majority simultaneously concludes that the AFL–CIO did engage in illegal coordination based on less compelling, and often undocumented facts and evidence. The reports of meetings between Triad's consultants and Republican candidates and campaigns document an unprecedented level of coordination between allegedly independent organizations and campaigns. The FEC has repeatedly enforced violations for activity similar to and less extensive than Triad's.[223] The Majority also employs a double standard under which it concludes that all AFL–CIO and White House communications were sufficient to establish coordination, but Triad and candidate communications were not.[224]

• The Majority asserts that Triad did not make an illegal corporate contribution to the Brownback for Senate campaign when Triad employee Meredith O'Rourke was sent to the National Republican Congressional Committee ("NRCC") to help Senator Brownback "dial for dollars." In fact, O'Rourke testified that she went to help Brownback at the instruction of her superior at Triad, Carolyn Malenick.[225] The Majority relies on press statements of Triad's attorneys rather than O'Rourke's testimony in claiming that O'Rourke appeared at the NRCC as a "volunteer."

• The Majority asserts that there is insufficient evidence to conclude that employees of Triad engaged in an illegal scheme to launder contributions through PACs to Republican candidates. The Majority further offers instances of overlapping contributions from individuals and PACs to Democratic candidates as evidence that coincidental contributions are not necessarily illegal. The Majority ignores compelling evidence developed by the Committee that Triad employees personally solicited the names of potential PAC contrib-

[223] FEC Matter Under Review 3918 Hyatt Legal Services; FEC Matter Under Review Orton for Congress; FEC Matter Under Review, 3608, Bush-Quayle '92.

[224] FEC Matter Under Review 3608, Bush-Quayle, and J. Stanley Huckaby as treasurer.

[225] Meredith O'Rourke deposition, 9/3/97 pp. 94–95.

utors from candidates, solicited those individuals for PAC contributions, delivered contributions to the PACs, were in regular communication with people at each PAC, and delivered PAC contributions to recipient candidates. The Committee established that Malenick was involved as an intermediary in the making of contributions to *multiple* PACs that *all* made contributions to the same candidate within days.[226] No similar evidence of earmarking was uncovered in relation to contributions received by Democratic candidates. See Minority Report Chapter 12.

• The Majority fails to mention evidence that over $1 million of Triad's ad campaign was financed by a secret organization, the Economic Education Trust, that required Triad use its political consultants, and that also appears to have funded advertising through other organizations. The Minority twice requested a Committee subpoena for the financial records of the Economic Education Trust. No subpoena was ever issued, virtually ensuring that the identity of the individuals or corporations who may have influenced the outcome of elections will remain unknown. See Minority Report Chapter 12.

• The Majority asserts that the Minority has repeatedly leaked documents pertaining to Triad in violation of the Committee protocol. The Majority specifically relies on a May 2, 1997 *Kansas City Star* article detailing suspicious PAC contributions to the Brownback for Senate campaign. The article makes no reference to information obtained from the Committee, is based on information available on the public record, and was written months before Triad produced records to the Committee. Further, an October 29, 1997, *Wall Street Journal* article on the subject of Triad states: "*Republican* investigators said the Kochs paid Triad a fee, indicating they are a client of the company, which advises donors on where to contribute."[227] The Majority's assertion about leaks is ironic, considering that several major newspaper articles specifically stated that they were based on documents and transcripts (covered by the Senate protocol) obtained from the Republican staff of the Committee.[228]

The RNC's relationships with tax-exempt groups

• The Majority insists, contrary to the evidence, that the Republican National Committee did not coordinate its activities with nonprofit groups that received millions of dollars of RNC funds in the weeks prior to the election. In fact, the investigation revealed that the RNC was in constant communication with nonprofit groups regarding election-related activities and that the RNC actually instructed Republican candidates on how to coordinate with outside groups. See Minority Report Chapters 10, 11, 13, and 14.

• The Majority asserts that the Committee "found no evidence that the RNC directed or controlled" the expenditure of the millions of dollars it provided to nonprofit groups in the weeks before the election. In fact, substantial evidence shows that Americans for Tax

[226] Minority Report Chapter 12.

[227] *Wall Street Journal*, October 29, 1997 (emphasis added).

[228] See *New York Times* 9/14/97: "A copy of the deposition, taken on June 26 and 27 in the Hart Senate Office Building, was obtained by The Times from a Republican staff member in the Senate;" *Washington Post*, 11/14/97 citing classified information provided to a few Committee Members.

Reform received from the RNC $4.6 million to spend on a massive phone bank and direct-mail operation aimed at helping Republican candidates. As then RNC-Chairman Haley Barbour has acknowledged, the RNC could not permissibly have paid for the ATR activity itself without using a combination of hard and soft dollars. Other documents involving the American Defense Institute and National Right to Life Committee suggest that the RNC withheld the delivery of substantial third party contributions pending participation in desired activities. The Majority view of this activity contrasts sharply with its characterization of Harold Ickes's discussions with Warren Meddoff.[229]

• The Majority Chapter fails to mention nonprofit groups that were actually founded by the RNC, one of which ran issue ads as a proxy for the RNC. The National Policy Forum was established in 1993 by RNC Chairman Barbour as a policy arm of the party and was later denied tax-exempt status due to its close connections to the Republican Party. In 1995, the RNC created the Coalition for Our Children's Future, another 501(c)(4) entity, for the sole purpose of running "issue ads," on behalf of the Republican Party and its candidates. By using working through CCF, the RNC lent credibility to the ads, since they seemed to emanate from a legitimate grassroots organization, and avoided spending scarce hard money. See Minority Report Chapters 3 and 13.

• The Majority falsely asserts that Americans for Tax Reform "complied with the Committee's subpoenas." ATR in no way complied with the Committee subpoena, refusing to accept the Committee's authority to compel the production of documents, making a unilateral determination to "voluntarily" produce certain documents and alleging that the Committee lacked jurisdiction over it because it claimed not to have engaged in election activity in 1996. This despite the fact that ATR received $4.6 million from the RNC right before the 1996 elections. An unknown amount of documents that would have been responsive to the subpoena were withheld. See Minority Report Chapter 11.

• Despite consistent efforts of the Minority, the Committee failed to interview a single person from the RNC or ATR regarding the $4.6 million transfer.

RNC coordination with the Dole Presidential campaign

• The Majority asserts that "the Committee cannot draw any meaningful conclusions about the allegations that the RNC coordinated its issue advocacy expenditures with the Dole campaign." In fact, the Committee has developed evidence that the RNC and the Dole for President campaign coordinated its issue advertising campaign in an almost identical fashion to the Clinton campaign and the DNC. Thus the Majority's inability to draw conclusions is puzzling in view of the clear conclusion that the Democratic coordina-

[229] As discussed in Chapter 25 of the Majority Report and Chapter 17 of the Minority Report, Florida businessman Warren Meddoff approached Harold Ickes, then Deputy Chief of Staff in the Clinton White House, and said his business associate was interested in making a large contribution to the Democrats. Later, Meddoff asked Ickes to provide him with a list of tax-exempt groups to which Meddoff's associate could contribute. The Majority condemns this activity despite the fact that Ickes merely recommended certain nonprofit groups—in response to a specific request—but finds no fault with the RNC which provided substantial funding to several groups, heavily coordinated with those groups, and founded two such groups.

tion was extensive and illegal. The investigation has shown that Dole campaign manager Scott Reed controlled the budget of the RNC's issue-advocacy campaign; Dole consultants Don Sipple and Tony Fabrizio created and produced the RNC's ads; and the Dole fundraiser who left the Dole payroll to become RNC deputy finance director, raised the money used to fund the Dole-RNC media campaign. See Minority Report Chapter 33. Moreover, no provision in current federal law forbids national parties to coordinate with their presidential candidates.

Response to Majority Chapter 29: "Allegations Relating to the National Policy Forum"

In this chapter, the Majority attempts to provide a defense for the National Policy Forum by depicting it as an independent, nonpartisan, tax-exempt organization which fully cooperated with the Committee. The Majority defends the Republican National Committee's role in creating and funding the organization. The Majority also spends a great deal of time discussing former RNC Chairman Haley Barbour's solicitation of a loan from Young Brothers Development, Hong Kong. According to the Majority, Barbour did not use the loan to help finance Republican congressional elections in 1994. In fact, the Majority Report concludes that "the facts cannot be twisted to support a charge that Barbour's testimony was anything less than truthful." In coming to the defense of Barbour, the Majority raises questions about the credibility and clarity of other witnesses' testimony, including Fred Volcansek, Richard Richards, Ambrous Young, and Benton Becker.

The Majority's chapter on the NPF twists the facts:

• The Majority falsely claims that "the NPF and NPF witnesses fully complied with the Committee's inquiry." In fact, the NPF challenged the authority of the Committee and never produced a single document pursuant to the Committee subpoena. For instance, the NPF never produced the letter or the memorandum which Michael Baroody, the president of the NPF, submitted to RNC and NPF Chairman Haley Barbour when Baroody resigned. Nor did NPF witnesses fully comply: Daniel Denning, former president of the NPF, refused to answer numerous questions that were posed to him during his deposition.

• The Majority chapter contradicts itself on the issue of whether "the RNC had knowledge that the funds for the YBD Team 100 contributions were derived from a foreign source rather than the U.S. earnings of a domestic corporation." Although the Majority claims that the RNC had no knowledge about the source of these contributions, the Majority itself acknowledges in its chapter that Richard Richards testified that Alex Courtelis, an RNC official, "knew at the time that the Young Brothers USA contributions to the RNC arose out of the Young Brothers Hong Kong money." [230]

• In its discussion of the origin of the NPF loan guarantee, the Majority omits any reference to evidence that demonstrates that the funds would be used to assist Republican candidates in the 1994 congressional elections. The Majority has created a novel theory that was not presented by any witness at the NPF hearings:

[230] Exhibit 402: Affidavit of Richard Richards, 7/14/97.

"The NPF recognized that, as a result of the impending congressional elections, the RNC and congressional campaigns would present stiff competition for available fundraising sources through November, 1994." In fact, several sources—including the Volcansek talking points,[231] Ambrous Young's September 9, 1994, letter hand-delivered to Barbour,[232] and Richard Richards's September 17, 1996 letter[233]—make clear that Barbour approached Ambrous Young by stating that the money supplied by Young Brothers Development would ultimately be used to help Republican candidates in the 1994 election.

• In its attempt to bolster the credibility of Barbour, the former RNC chairman, the Majority either ignores contradictory testimony or tries to impeach witnesses who contradicted him. Even though Barbour is contradicted on several points by numerous witnesses and documents, the Majority asserts his testimony was credible. As detailed in Chapter 3 of the Minority Report, Barbour's testimony was contradicted on several important points by Fred Volcansek, Steve Young, Ambrous Young, Benton Becker, and Richard Richards.[234] Moreover, the documents obtained by the Committee also either contradict, or do not support, Barbour's version of events.

• The Majority has mischaracterized the commitment that Haley Barbour made to Young Brothers Development in order to secure the loan guarantee for NPF. The Majority Report references Barbour's August 30 letter to Benton Becker and notes that "Ultimately, Barbour responded with a letter committing to raise the issue with the RNC Budget Committee and seek its approval in the event that the NPF defaulted on an outstanding debt to a 'domestic corporation.'" In fact, Barbour made a much stronger commitment, "Moreover, as Chairman of the RNC, in the event NPF defaults on any debt, I will ask the Republican National Committee to guarantee me such authority to pay off any NPF debts. I am confident the RNC would grant me such authority. . . ."[235] Indeed Senator

[231] Exhibit 277: Talking Points for Haley Barbour, 7/28/94.

[232] Exhibit 289: Letter from Ambrous Young to Haley Barbour regarding support of the Republican Party and NPF, 9/9/94, 0040.

[233] Exhibit 349: Letter from Richard Richards to Haley Barbour regarding the YBD loan to NPF, 9/17/96, RB 014591.

[234] The Majority goes to great lengths to impeach the credibility of former RNC Chairman Richard Richards, particularly as it relates to his letter to Barbour on September 17, 1996, concerning the purpose of the loan. The Majority Report quotes from an affidavit signed by Richards on July 14, 1977, in which he states that "I now understand that these funds could not and were not used to directly benefit congressional candidates." The circumstances surrounding the signing of this affidavit were described by Richards's attorney, Benton Becker, in a letter to the Committee on December 16, 1997. According to Becker, RNC attorney Martin Weinstein contacted his office to inquire if, among other things, Richard "might submit to [a] 'brief interview'. . . ." Becker was later informed by Steve Richards that "Mr. Weinstein asked Richard Richards to execute an affidavit that had been prepared by Mr. Weinstein." Becker eventually obtained the affidavit and determined that there were "factual errors therein." Becker advised Richards to execute a new affidavit correcting the errors, which Richards subsequently did. In the affidavit prepared by Weinstein and signed by Richards on July 14, Richards described the letter he had written to Haley Barbour on September 17, 1996: "Accordingly in the letter, I made several serious statements which, upon reflection, were made as *negotiating tools* [emphasis added] and were not accurate." In his testimony before the Committee on July 24, Haley Barbour testified in response to a question from Counsel Alan Baron whether he viewed Richards's September 17 letter as credible: "Now that's what I took the letter to be, a *negotiating tool* [emphasis added], to put pressure on me. That's why I didn't respond. It's also why I didn't give it credibility." Despite the remarkable similarity between Richards's affidavit and Barbour's testimony, Richards consistently testified that Barbour told him in 1994 that the money was to be used for the 1994 congressional elections. Richards's testimony in that regard is corroborated by Volcansek and by the documents.

[235] Exhibit 285: Letter from Haley Barbour to Benton Becker regarding loan guarantee for the National Policy Forum, 8/30/94, 0037.

Thompson, apparently recognizing this commitment, remarked to Barbour, "[I]t looks to me like you had a situation there where this gentleman, whether he is a citizen or not, caused his company to put up some money that was lost at a time when he was thinking, anyway, that the RNC, had a moral obligation to step in there and do what it could. . . . So legalities aside, you know, a deal is a deal, and don't you think maybe that you and I both ought to urge that thing be looked at again?"[236]

• The Majority claims that "the NPF did not misuse its tax status," but it fails to describe the NPF's relationship with the RNC. The Majority acknowledges that "the NPF was initially envisioned as a wing or subsidiary of the RNC." The Majority even quotes Michael Baroody, NPF's first president, in support of this view. However, the Majority fails to note that Baroody resigned because he believed Barbour had allowed the ties between the NPF and the RNC to become so close that the NPF's status as an independent, nonpartisan organization was a fiction. Baroody wrote, "I believe that what has happened over many months has undermined my efforts, distorted our purpose, blurred the separation of the RNC and the NPF in such a way as to conceivably jeopardize our 501(c)(4) application. . . ." He went as far as to say that "in recent months, it has become increasingly difficult to maintain the fiction of separation."[237] Indeed, as the Majority notes, the NPF 501(c)(4) application was rejected by the Internal Revenue Service in 1997. The Majority notes that the IRS's decision has been appealed but fails to quote the IRS's letter explaining that decision. The IRS found substantial evidence that the NPF was far from being the "nonpartisan" organization it claimed to be when it applied for (c)(4) status. The IRS noted, among other things, Haley Barbour's dual roles as chairman of both the RNC and NPF and NPF's heavy reliance on the RNC for funding.[238]

Response to Majority Report Chapter 30: "White House Document Production"

In this chapter, the Majority asserts that the delays in document production by the White House were the result of a deliberate attempt by the White House Counsel's Office to obstruct the work of the Committee. Although the Minority shares the Majority's disappointment with certain delays, the Majority grossly exaggerates this problem. Moreover, the Majority Report never details how the alleged instances of "non-cooperation" obstructed the Committee's investigation.

• The Majority's complaints about the scope of the White House's assertion of executive privilege are overstated. The Majority describes, in the most dramatic terms possible, the White House's assertions of executive privilege as overly broad, a violation of previous understandings with the Committee, and a substantial impediment to the progress of the Committee's investigation. First, as the Majority Report acknowledges, the Committee adopted a docu-

[236] Chairman Thompson, 7/24/97 Hrg., p. 170.
[237] Exhibit 273: Memorandum from Michael Baroody to Haley Barbour regarding Baroody's reasons for resignation from NPF, 6/28/95.
[238] Exhibit 353: Letter from the Internal Revenue Service to the National Policy Forum denying NPF tax exempt status, 2/21/97.

ment production protocol on April 1, 1997, which specifically contemplated that the White House could assert executive privilege as to some documents and, in that event, that Committee staff would be provided an opportunity to review such documents and to renew requests for production. Although the Majority Report implies that the Clinton Administration's concern for executive privilege compares unfavorably to previous Republican administrations (which the Report claims "voluntarily waived executive privileges applicable to documents requested by investigative bodies,") the actual historical record is far more mixed. Both the Reagan and the Bush Administrations invoked executive privilege to prevent disclosures of materials to Congress.[239]Indeed, the Reagan Administration invoked executive privilege on no fewer than three occasions.[240]

• The White House did not withhold WAVE record[241]information from the Committee. Perhaps the most egregious distortion of the record is the Majority's insistence that White House Counsel (1) deliberately declined to provide certain categories of information maintained by the Secret Service as part of their WAVE records, (2) deliberately misled the Committee about the existence of these categories of information, and then (3) reluctantly provided the requested information only after being confronted with the facts by the Secret Service in a meeting between Committee staff, White House Counsel and the Secret Service. Each of these assertions is simply wrong. Such false allegations betray the partisan intent of this chapter.

The category of information at issue consists of notations made by the Secret Service to reflect whether their check of the database records maintained by the National Crime Information Center ("NCIC") indicate past criminal activity by a potential White House visitor. The Secret Service referred to this as the "double XX" information because a double XX was placed in the records maintained by the Secret Service next to these entries. Under the Privacy Act, 5 U.S.C. § 552a, this "double XX" information could not be disclosed by the Secret Service unless the disclosure came under specific exemptions contained in the Privacy Act.[242] Because of the sensitivity of this information and the legal restraints of the Privacy Act, which imposes personal liability on individuals who make unauthorized disclosures of protected information, the "double XX" information was *never included* in the monthly printouts of WAVE records provided to the White House.

The Secret Service also provided accompanying computer tapes to the White House containing WAVE record information, including the double XX information, but the software which enabled the White House to print out additional copies of these reports from the computer tape did not allow the White House to access the "double XX" information. Therefore, when the White House received the monthly WAVE records from the Secret Service or print-

[239] *Substantiality of White House Claims of Executive, Attorney-Client and Work Product Privilege for Documents Relating To The Hudson Dog Track Matter,* Congressional Research Service, 12/3/97; *Washington Post,* 2/20/98.

[240] *Washington Post,* 2/20/98.

[241] The Secret Service's WAVE records record visits to the White House Complex by individuals who do not hold White House passes.

[242] Letter from Thomas A. Kelly, FBI Acting General Counsel, to Thomas Dougherty, Senior Counsel, United States Secret Service, re: propriety of releasing NCIC information to the Senate Governmental Affairs Committee, 8/11/97.

ed out additional copies of those records from the computer tape provided by the Secret Service, White House personnel did not see the "double XX" information. Indeed, the White House Counsel's office was not aware of the existence of the "double XX" notations maintained by the Secret Service prior to receiving inquiries from the Majority Counsel about this category of information.[243]The Majority Report is mistaken, therefore, when it suggests that the White House deleted or withheld the "double XX" information before providing the requested WAVE records to the Committee: The White House provided the Committee with all of the WAVE record information in its possession. White House Counsel Charles F.C. Ruff restated this explanation to a Majority Deputy-Chief Counsel on July 29, 1997: "Your assertion that my office receives USSS Waves records from the Secret Service in a format different from that provided to the Committee is simply erroneous."[244]

When Majority Counsel met with the Secret Service in April 1997 and discovered the existence of the "double XX" information, the Committee inquired of White House counsel Karen Popp, who truthfully responded that she knew nothing about the "double XX" information and that the WAVE records which the White House received from the Secret Service did not contain such a category of information. Nevertheless, Popp promised to inquire further and she contacted the Secret Service's Office of General Counsel. Even this Committee had no familiarity with the "double XX" category of information and had to make its own inquiries of the agents who briefed the Committee to establish that this information existed and to learn how it was maintained. Popp advised two Majority counsel that she had confirmed the existence of the double XX information and that both the White House Counsel's office and the Secret Service's Office of General Counsel had not previously known about this information. The Majority Report is in error when it suggests that Popp was not forthcoming when dealing with the Committee staff on this issue.

During a subsequent meeting between Secret Service representatives, Majority Counsel and White House Counsel Popp on August 8, the Secret Service raised the concern that disclosing the "double XX" information to the Committee might violate the Privacy Act. The attendees placed a call to the then-acting General Counsel for the FBI, Thomas A. Kelly, who subsequently provided a letter to the Secret Service stating that the Secret Service could disclose the requested "double XX" information to the Committee without violating the Privacy Act.[245] Therefore, although the Majority claims that the White House "eventually produced complete copies of the WAVE records," the truth is that the "double XX" information was provided directly by the Secret Service, in accordance with the restrictions of the Privacy Act.[246] Indeed, in its letter to the Committee accompanying the double XX information, the Secret Service ex-

[243] Telephone interview with White House Counsel Karen Popp, 2/20/98.

[244] Letter from White House Counsel Charles F.C. Ruff to Majority Counsel Don Bucklin, 7/29/97, p.3.

[245] Letter from Thomas A. Kelly, FBI Acting General Counsel, to Thomas Dougherty, Senior Counsel, United States Secret Service, re: propriety of releasing NCIC information to the Senate Governmental Affairs Committee, 8/11/97.

[246] Letter from William H. Pickle, Executive Assistant to the Director (Congressional Affairs), United States Secret Service, to Chairman Thompson re: providing "double x and comment field" information in response to Committee's request for information concerning White House visitors.

plicitly distinguished the "double XX and comment field information" held by the Secret Service from the "WAVES visitor information" that the Secret Service provided to the White House on a monthly basis.[247]

• The Majority's criticisms of White House Counsel Michael Imbroscio are unfair. The White House's belated production of videotapes responsive to production requests was disappointing but, as the Minority Report explains in detail, there is no evidence that anyone at the White House acted to obstruct this Committee's investigation. The Majority Report suggests that White House Counsel Michael Imbroscio—who ultimately discovered the existence of responsive videotapes—actively misled Committee staff members when he informed them that the White House Communications Agency ("WHCA") did not videotape events that were closed to the press and that he would produce a paper log of videotaped events for review by the Committee. Such accusations ignore Imbroscio's consistent deposition and hearing testimony. For example, at a September 9 meeting with Committee counsel, Imbroscio testified that he had asked the WHCA representative he had interviewed to get back to him about the existence of a log of videotaped and audiotape events, that he would inquire further on the issue of such videotapes by reviewing the log and, most importantly, he committed to provide the Committee with access to such a log when it was located.[248] Imbroscio's also testified during public hearings that:

> I said very clearly there were videotapes of fundraising events and that—but to my understanding there were not videotapes of coffees, but that I would inquire further.... I did not have complete confidence that Mr. Smith knew precisely on a day-to-day basis what WHCA did, and so that is why I couched it in the terms I did, which is my understanding they were not filmed, but I wanted to satisfy myself on a first-hand basis whether or not they, in fact, existed.[249]

Although there were miscommunications and misunderstandings that delayed the production of responsive videotapes, the Majority ignores the consistent testimony of Imbroscio regarding his representations to Committee counsel during their September 9 meeting.[250] Significantly, the Minority proposed that the Majority Counsel who was present at the September 9 meeting, be deposed concerning his communications with Imbroscio, but this request was rejected by the Majority. The Majority also ignores the fact that as soon as the coffee tapes were discovered, Imbroscio called the Majority Counsel immediately.

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[247] Letter from William H. Pickle, Executive Assistant to the Director (Congressional Affairs), United States Secret Service, to Chairman Thompson re: providing "double x and comment field" information in response to Committee's request for information concerning White House visitors.

[248] Michael Imbroscio deposition, 10/17/97, pp. 111–112.

[249] Michael Imbroscio, 10/29/97 Hrg. pp. 163 & 190.

[250] The Majority Report also unfairly accuses Imbroscio of misrepresenting WHCA's practices of document retention to Committee Counsel during the September 9 meeting by reporting that WHCA's phone logs were destroyed after 60 days. Majority Report, Chapter 24, n. 87. Imbroscio explained in response to a question from Chairman Thompson that he was not aware at the time of the September 9 meeting that WHCA maintained *separate* logs for the President or that copies of those logs were provided to the diarist. Michael Imbroscio, 10/29/97 Hrg., pp. 214–215.

• The Majority falsely asserts that the Ruff memo's definition of "document" was the reason that WHCA failed to identify responsive videotapes. The evidence is clear that, but for the mishandling of page two of the Ruff memo by the career military personnel in the White House Communications Agency, the White House Counsel's document-search procedures were adequate to identify the existence of responsive videotapes. Notwithstanding the Ruff memo's simple definition of "document," WHCA personnel did, in fact, search their videotape and audiotape databases for responsive materials. Indeed, WHCA Deputy Commander Charles Campbell had directed his subordinates to conduct a thorough search of all records (regardless of media).[251] No responsive materials were identified at that time because of the mishandling of the second page of Ruff memo with its request for materials related to coffees. Both the Campbell and Chief Charles McGrath, the person actually responsible for searching the audio and video databases, testified to the Committee that they would have identified responsive videotapes if they had seen page two of the Ruff memo.[252] In its determined attempt to shift blame from the WHCA to the White House Counsel's Office, the Majority Report inexplicably characterizes the above-described testimony from the career military personnel at WHCA concerning matters within their direct experience and area of responsibility as a "purely speculative assessment of the impact of this mysterious and inadvertent transmission error."

• The Majority ignores the testimony of the WHCA individual who actually conducted the search for the videotapes. The Majority takes the comments of one WHCA official, Steve Smith, out of context when it quotes him as saying, "if somebody wanted the White House Communications Agency to look for tapes, audiotapes, videotapes, . . . that's what they should ask for you know, video or audiotapes." At the time of the Ruff memo, however, Smith had not assumed his present position with WHCA, was not in the operational chain of command for the Audiovisual Unit, and bore no responsibility for directing the search of the audiotape and videotape databases.[253] Furthermore, Smith never testified that the Ruff memo, with its simpler definition of document, was inadequate to allow WHCA personnel to identify responsive videotapes. Most important, however, is the fact that the Majority ignores the testimony of the WHCA officials who *actually* had responsible for responding to the Ruff memo. Those officials testified that they would have identified responsive videotapes if the second page of the Ruff memo, which specifically asked for materials relating to "coffees," had not been inadvertently omitted from the e-mail transmitted to WHCA personnel. See Minority Chapter 42.

• Contrary to the Majority's assertion, inclusion of the Committee's definition of "document" would not have been likely to put others on notice that WHCA had failed to identify all responsive material. The Committee's investigation, however, failed to identify any individual with both the requisite knowledge of WHCA

[251] Exhibit 2428M: E-mail message from Col. Charles Kenneth Campbell to WHCA personnel re: HOT SUSPENSE—Document Search, 4/29/97.

[252] Col. Charles Kenneth Campbell deposition, 10/21/97, p. 83; Chief Charles McGrath deposition, 10/20/97, pp. 89–90.

[253] Steven Smith, 10/23/97 Hrg., p. 93.

videotaping activities and close involvement with the document production process who might have identified responsive videotapes earlier with the benefit of the Committee's full definition of "document." For example, the Majority broadly claims that White House Deputy Counsel Cheryl Mills knew that one of WHCA's function was to videotape the President and that she attended meetings of lawyers working on the campaign finance investigation. Mills testified during her deposition, however, that she was generally unaware which events WHCA was videotaping.[254] Moreover, she was not involved with the coffees during the time they were occurring, did not attend any coffees, and did not even know there was a coffee "program."[255] Moreover, Mills did not play a major role in the White House's responses to the Committee's document requests.[256] Similarly, other members of the White House Counsel's Office, although more involved with producing materials to the Committee, did not have detailed knowledge of the kinds of events videotaped by WHCA.

• The Majority provides insufficient evidence that the White House tried to "manipulate" the investigation by disclosing materials to the press. The Majority Report is especially inchoate in its repetitive criticisms of the White House for allegedly attempting to "manipulate" the Committee's investigation by providing some materials to both the Committee and the press at the same time. The Majority, however, never explains why it considered the White House provision of information to the press and the public as inappropriate. Nor does the Majority explain how that process "manipulated" the Committee's investigation.[257] In addition, the Majority's complaints in this regard conflict with claims it makes elsewhere that the Committee efforts "led to the exposure by the White House—either though the Committee's hearings *or through the White House's production of information directly to the press*—of much that would otherwise have remained undisclosed." Finally, the White House's release to the press of information that had been requested by the Committee was not prohibited by any Senate rule, Committee protocol, or informal agreement. In sharp contrast, information from numerous confidential deposition transcripts and staff interviews regularly appeared in the press throughout the course of the Committee's investigation in direct violation of Committee protocol.[258]

Response to Majority Report Chapter 31 : "DNC Document Production"

In this chapter, the Majority contends that the Democratic National Committee acted in bad faith in connection with the Committee's document subpoena and chose to ignore the subpoena's return date. The Majority states that the DNC was "slow walking" its response to the subpoena, knowing that the DNC could use the

[254] Cheryl Mills deposition, 10/18/97, pp. 57–59.
[255] Cheryl Mills deposition, 10/18/97, pp. 54–57.
[256] Cheryl Mills deposition, 10/18/97, p. 52.
[257] Letter from White House Counsel Lanny Breuer to Majority Chief Counsel, 7/11/97. Letter from Majority Chief Counsel to Lanny Breuer, 7/18/97.
[258] Letter from Thomas C. Hill to Chairman Thompson re: unauthorized disclosure of Heather Marbeti's deposition transcript to the *Washington Post,* 9/30/97; Letter from White House Counsel Lanny Breuer to Majority Chief Counsel re: complaint that Committee staff has provided deposition testimony from multiple witnesses directly to reporters, 9/2/97.

allegedly more urgent subpoenas issued by federal grand juries as an excuse for delaying its response to the Committee.

The Majority fails to note the extent of cooperation provided by the DNC in making staff available for depositions and testimony without subpoenas, in stark contrast to the lack of cooperation exhibited by other groups, including the Republican National Committee.

• The Majority's claim that the DNC intentionally delayed production of documents is unfounded and untrue. The DNC made significant efforts to respond to the Committee's subpoena, which, according to DNC Chairman Roy Romer, "reached far beyond the legitimate needs of the Committee's investigation."[259] In apparent frustration with the refusal of the Committee to narrow the scope of the subpoena, Romer sent a letter to Chairman Thompson on July 17, 1997, in which he wrote that the scope and attendant cost of document production would rival or exceed the costs associated with the largest civil cases in U.S. history, "cases brought against huge corporations with thousands of employees and resources vastly exceeding the limited funds of the DNC."[260] By the end of 1997, the DNC had incurred logistical, technical, and staff costs of $4.75 million responding to various investigations. This figure *does not* include legal fees, which significantly increases the total expenditures made by the DNC in response to the Committee and other investigative demands.[261]

The DNC attempted to adjust to the shifting deposition schedules, document demands, and priorities of the Committee. The Committee conducted the equivalent of 38 days of depositions, 14 interviews, and five days of public hearings of current and former DNC officials who voluntarily provided sworn testimony to the Committee, unlike several former and current RNC officials, who insisted on Committee subpoenas before they would cooperate. Even when subpoenas were issued, RNC officials largely ignored them, ultimately providing only two half days of deposition testimony.

The DNC faced approximately 18 separate subpoena and document demands from various investigative bodies including the Committee. In order to respond, the DNC reviewed over 9 million documents. Unlike the RNC, which produced only about 70,000 pages of responsive documents, many of which were heavily redacted, the DNC produced about 230 boxes of unredacted documents, exceeding 450,000 pages.[262] In August 1997, to meet the demands placed upon it, the DNC doubled the number of employees dedicated to document production from 17 to 34.[263] The DNC made every effort to meet the Committee's requests in a timely manner,

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[259] Letter from DNC General Chairman Roy Romer to Chairman Thompson, 9/2/97.

[260] Letter from DNC General Chairman Roy Romer to Chairman Thompson, 7/17/97.

[261] *Washington Post,* 1/19/98.

[262] Letter from Chairman Thompson to DNC General Chairman Roy Romer, 7/23/97; telephone conversation with Paul Palmer of Debevoise & Plimpton, counsel to the DNC, 12/15/97; letter from Chairman Romer and Steve Grossman, DNC National Chairman, to Chairman Thompson, 9/2/97; telephone conversation with Paul Palmer of Debevoise & Plimpton, counsel to the DNC, 1/7/98.

[263] Letter from Roy Romer, DNC General Chairman and Steve Grossman, DNC National Chairman, to Chairman Thompson, 9/2/97; Joseph Birkenstock deposition, 8/28/97, pp. 9–10.

but was overwhelmed by the frequency, extent, and compressed time schedules imposed by the Majority.

• The Majority contends that as part of a "pattern of gamesmanship," the DNC's first production of 25 boxes of documents was mostly "of no value." The Majority staff specifically asked the DNC to first produce documents relating to John Huang. Within a week of that request, the DNC produced 25 boxes of documents, including *all* of John Huang's files, *all* of his e-mail (five full boxes), the results of an exhaustive search of the DNC's computer network for documents relating to Huang and certain others, and *all* of the Ernst & Young work product from the accounting firm's review of contributions conducted on behalf of the DNC.[264]

• The Majority's contention that the DNC was not looking for e-mail responsive to the subpoena until September 1997 is incorrect. The DNC produced five boxes of Huang's e-mail—dating back to March 1996—weeks before the Committee hearings began.[265] Printouts of other e-mail records were also produced, consistent with priorities established by Majority staff.

• The Majority contends that the DNC produced documents in a manner calculated to impede and obstruct the investigation. The Majority also complained that the DNC routinely produced documents relevant to particular witnesses the afternoon before their deposition, even though the documents had been gathered by the deponents long before. In his August deposition, DNC attorney Joseph Birkenstock testified about the DNC's efforts to comply with the Committee's document subpoena. He stated that he was instructed to carry it out as expeditiously as possible, and there was no apparent deviation from those instructions. Birkenstock testified that while the documents frequently required time-consuming preproduction review to protect against disclosure of personal, confidential, or privileged information, there was no DNC practice or policy to delay production of documents for any reason, nor did the DNC establish different document production priorities from those established by the Committee. Birkenstock stated that the political or legal sensitivity of particular documents or categories of documents was not a factor in determining when they would be produced to the Committee.[266]

In a June 11, 1997, letter to Chairman Thompson, DNC Chairman Romer wrote, "our lawyers have not 'waited' to produce any documents to the committee, much less until shortly before the depositions. To the contrary, we have been working intensively with the limited resources we have to produce whatever prioritized documents we can before the depositions. To then complain that we could not produce those documents even sooner, so that your multimillion dollar, taxpayer-financed legal staff could peruse them at a more leisurely pace (while our lawyers work night and day to try to accomodate their unrealistic and ever-shifting schedule), seems to me to be totally unreasonable."[267] The Committee itself caused a decrease in efficiency in the DNC's document production efforts. The DNC's ongoing document production was often disrupted as

[264] Letter from DNC General Chairman Roy Romer to Chairman Thompson, 6/11/97.
[265] Letter from DNC General Chairman Roy Romer to Chairman Thompson, 6/11/97.
[266] Joseph Birkenstock deposition, 8/28/97, pp. 131–133.
[267] Letter from DNC General Chairman Roy Romer to Chairman Thompson, 6/11/97.

the Committee's priorities changed regarding who would be deposed or would testify on any given day. This required the DNC change course and identify new documents relevant to each newly identified witness or issue and then review, sort, copy, and produce thousands of pages of documents.

The Majority suggested that the documents sought by the Committee had been previously gathered by the DNC but failed to note that having hundreds of thousands of pages of documents gathered by DNC staff at different times, which were being searched and produced in response to numerous different requests, was of little help when the Committee failed to advise the DNC which witness files it wanted reviewed and produced until immediately before the witness's deposition.

• The Majority contends that the late production of DNC Finance Director Richard Sullivan's files may raise criminal issues. In its Report, the Majority raises the possibility that Sullivan's files were intentionally withheld, which would constitute criminal obstruction of Congress. In fact, the late production of Sullivan's files occurred because the documents were not among those that Sullivan identified to the DNC as being his files, and the files in question were believed to be "generic" Finance Department or staff files. When they were determined to be Sullivan's documents, Romer immediately personally informed Chairman Thompson of their existence. Thereafter, the documents were immediately reviewed by DNC staff and produced to the Majority on August 4, in accordance with Romer's commitment to Chairman Thompson.[268] The Committee then had the opportunity to recall Sullivan, which it did.

Despite the Majority's unusual claims that the DNC may have violated 18 U.S.C. 1501, there is is *absolutely no evidence* of the physical assault of a process server nor is there evidence of DNC obstruction of compliance with the Committee's subpoena. Similarly, there is no evidence that documents were intentionally withheld from the Committee.

• The Majority's claim that the DNC should have been well-prepared for the Committee's subpoena, because the Committee gave a draft of the subpoena to the DNC on March 18, 1997, is unfounded. In his June 11, 1997, letter to Chairman Thompson, DNC Chairman Romer wrote that although the Committee's Majority staff provided the DNC's counsel a draft of the subpoena, it did so on the express conditions that only one DNC employee could see the draft and that he was required to return it to the Committee's staff within 24 hours. The Committee Majority staff also advised the DNC that the draft subpoena was subject to revision, and it was, in fact, changed before it was issued. The DNC did not receive the final subpoena—which had been changed from the draft version—until April 10, 1997. Additionally, the DNC did not receive answers from Majority staff on priorities for production until April 24, 1997.[269]

• The Majority contends that in his August 29 Order to the DNC, the Chairman specifically determined that the DNC willfully refused to comply with the lawful subpoena the Committee issued

[268] Letter from Roy Romer, DNC general chairman, and Steve Grossman, DNC national chairman, to Chairman Thompson, 9/2/97.

[269] Letter from DNC General Chairman Roy Romer to Chairman Thompson, 6/11/97.

on April 9, 1997. On September 2, 1997, DNC Chairman Romer sent Chairman Thompson a letter responding to the Order which he branded as "nothing more than a partisan political maneuver designed to accomplish some end other than the legitimate investigative purpose of the Committee." According to Romer, "Although the Committee's subpoena was issued on April 9, the relevant terms and scope were not finalized through negotiations until April 24. Even before the process began, however, all the parties—including you [Chairman Thompson] and the Committee staff—knew that the April 30 return date was at best humanly impossible and at worst totally absurd. That is why in April the Committee staff agreed to a "rolling production" by the DNC. Even with this oppressive demand, the DNC managed, contrary to your representation, to produce 50,000 pages of documents, including all of John Huang's files, by April 30." [270]

In the September 2 letter Romer also wrote, "The DNC *never* instructed its employees in April to complete a review of their files by July 31, 1997. Instead, they were told in writing, to review their files by May 9, 1997, and as documents were submitted, they were reviewed for responsiveness and produced. Although certain files were not collected until late July pursuant to a final deadline set in that month, they had been previously reviewed for more narrow document requests, and the additional review process for materials responsive to the Committee's subpoena could not have been concluded earlier." [271]

Response to Majority Report Chapter 32: "Soft money and Issue Advocacy: Systemic Problems of the Campaign Finance System"

In this chapter, the Majority offers its analysis of many of the issues covered in the course of the Committee's investigation. The Minority generally agrees with the Majority's general proposals for reform, such as the banning of soft money, the institution of a 60-day bright line test for so called "issue advocacy" advertisements aimed at influencing federal elections, improvements in the structure and processes of the Federal Election Commission, and codification of the Supreme Court holding in the *Beck* case. The Majority laudably notes that banning soft money without addressing the issue advocacy loophole would "encourage candidates to hide their donations through unreported coordinated issue advocacy with third parties."

Other proposals the Minority believes merit further exploration include public financing of campaigns and the provision of free air time in an attempt to reduce the overwhelming need for money experienced throughout the political system. Had the investigation not been conducted on a partisan basis, we could have joined together in a bipartisan report, recogning those reforms on which we agreed and submitting a report in time to have had an impact on the 1988 debate regarding campaign finance reform legislation.

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[270] Letter from Roy Romer, DNC general chairman, and Steve Grossman, DNC national chairman, to Chairman Thompson, 9/2/97. The subpoena was signed by Chairman Thompson on April 9, 1997 and received by the DNC on April 10, 1997.

[271] Letter from Roy Romer, DNC General Chairman and Steve Grossman, DNC National Chairman, to Chairman Thompson, 9/2/97.

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JOHN GLENN.
JOE LIEBERMAN.
RICHARD J. DURBIN.
MAX CLELAND.
CARL LEVIN.
DANIEL K. AKAKA.
ROBERT G. TORRICELLI.

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ADDITIONAL VIEWS BY SENATOR JOHN GLENN

The Minority report analyzes in exacting detail the results and conduct of the investigation as well as the Majority report. As I look at what the committee has wrought following the passage of Senate Resolution 39 authorizing the investigation, I am struck as much by what the committee didn't do as by what it did do.

Among other things, the committee should have examined in more detail the need for better law enforcement through the FEC for campaign finance violations. Larger penalties and quicker investigations of allegations might concentrate the minds of potential violators better than the current system in which the FEC is underfunded, understaffed and hamstrung in reaching decisions in difficult cases. But this isn't the main lacuna in the committee's investigation.

It is astounding and symptomatic of what is wrong with our political system that a high-profile investigation of our campaign finance system could be carried out by Congress using millions of dollars of taxpayer money and only the Executive Branch is put under scrutiny. It is an incontrovertible fact that every abusive campaign finance practice described in the committee's hearings last summer happens on Capitol Hill with regularity, yet this committee shied away from investigating its own. It is an omission that deserves serious criticism. The American people are not stupid. They know that their lives are being affected much more by the extraordinary amount of political money from home grown special interests for Congressional campaigns than by whatever money may have slipped into our political system from abroad and not been caught. They have no faith that Congress will make major changes in reforming the system, and the events of recent years, including this year, show that their skepticism is justified. But we must keep trying, and doing it by half steps may not work.

Since 1976, I have supported complete public financing of federal campaigns. This investigation has reinforced my conviction that moving to a system of complete federal financing is the best way to clean up our campaign system. It is, I believe, the only way to stop the chase for campaign dollars, and the only way to stop the sale of access to elected officials.

This investigation has shown the appalling lengths to which individuals will go to exploit access to elected officials for their own end. Whether they are individuals residing in other countries seeking to enhance their own stature, or people in this country seeking approval of specific projects, legislation, or the awarding of contracts, they have the potential ability to pressure our elected officials to favorably view their special agenda by virtue of the officials' need for campaign funds. And if they didn't think their money had at least the potential of buying something, they wouldn't spend it. It is a fact that the investigation uncovered no

hard evidence of campaign funds affecting Congressional votes or Executive Branch policy, but even the appearance of such quid pro quos can be as corrosive to public trust as the reality. The best way to ensure that our government and our politicians are not exploited in this manner is to provide clean money from the federal government for federal election campaigns—money that truly represents the interests of all the people, not special interests.

I believe that the elimination of soft money, i.e., unlimited contributions from corporations, from unions, and from individuals, and the regulation of campaign ads funded by special interests must go hand in hand, and are two key elements in reforming the system. I am firmly convinced that this can be done without running afoul of the First Amendment. The reforms of the McCain-Feingold proposal would be salutary in correcting some of the worst abuses of the campaign finance system. But the passage of this bill should only be considered a first step in reforming of the system. For as long as election campaigns are driven by private money there will be inevitable temptations to bend, if not break, the rules in order to gain an electoral advantage. And clever people can devise clever loopholes.

This investigation has revealed attempts to bring money from abroad into U.S. elections, numerous instances where contributions have been laundered through individuals to hide the true sources of the funds, and it has revealed *many* examples of the selling of access by both parties via campaign contributions.

Until we finally move to a system where the government funds our federal elections, these problems will continue to exist, and will continue to undermine the American public's confidence in its elected officials and its government. While the Congress has shown no interest up to now in reforming the system in this fashion some states have illustrated more imaginative thinking along this line.

The state of Maine has adopted a "clean money" state-financed system for funding elections, and a dozen other states are contemplating similar action. It appears that we shall have to look to the states for leadership in this area.

Finally, without necessarily disagreeing with the additional views of any of my Democratic colleagues, I wish particularly to associate myself with the additional views of Senator Akaka.

JOHN GLENN.

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ADDITIONAL VIEWS OF SENATOR CARL LEVIN

When the Committee began its investigation into campaign finance abuses last year, some of us said that the real problems with the 1996 campaign were not, for the most part, what was illegal, but what was legal. The Committee investigation proved that to be true. While illegal foreign contributions and contributions made in the name of another found their way into both political parties, the bulk of the activity which came under public scrutiny involved candidate and party conduct that was legal, including the solicitation and receipt of soft money contributions in massive amounts clearly violating the intent of legislated contribution limits; the intentional misuse of so-called issue advocacy commercials to elect or defeat a particular candidate; and the blatant offers of access in exchange for contributions.

Yet back in March of 1997, we had to fight to have these activities included in the scope of the Committee's investigation. The Republican leadership at that time was committed to limiting the scope of the Committee's investigation to activities that were already illegal and excluding activities that should be illegal. In the end, Members on both sides of the aisle fought to defeat that limitation and to include "improper," as well as illegal, activities within the jurisdiction of the Committee's work.

The significance of that issue becomes apparent when we look at what we learned from this investigation: the driving force behind most of the conduct we investigated in the 1996 federal elections is the currently legal chase for large donations of money—soft or unrestricted money—which could be used to pay for the activities of the national parties on behalf of their candidates, outside the contribution and expenditure limits of the federal election laws.

Restrictions that apply to contributions of hard money—for example, prohibitions on contributions in the name of another and solicitations of persons on federal property—don't even apply to soft money. And the various uses of soft money—issue ads designed and used to support or defeat specific candidates; contributions of soft money to non-profit organizations; and coordination of the expenditure of soft money between candidates and their parties—slip under and between the current prohibitions in federal election laws.

The Republican leadership did not want to face the reality of the role of soft money in the 1996 elections, because the Republican leadership did not want to fuel the fire for campaign finance reform. But the reality of our campaign finance system could not be avoided, and, in the end the real message of the 1996 elections has been the evasion of our campaign finance laws through the solicitation and use of large amounts of soft money.

Tamraz is a bipartisan problem

Roger Tamraz, a large contributor to both parties, became the bipartisan symbol for what's wrong with the current system. Roger Tamraz served as a Republican Eagle in the 1980s during Republican Administrations and a Democratic Trustee in the 1990s during Democratic Administrations. Tamraz's political contributions were not guided by his personal support for or against the person in office; Tamraz was unabashed in admitting his political contributions were made for the purpose of getting access to people in power. Tamraz showed us in stark terms the all-too-common product of the current campaign finance system—using unlimited soft money contributions to buy access. And despite the condemnation by the Committee and the press of Tamraz's activities, when asked at the hearing to reflect on his $300,000 contribution in 1996, Tamraz spoke plainly when he said, "I think next time, I'll give $600,000." He spoke plainly, because he knows selling access is legal and he told us as much. He said, "[Y]ou set the rules, and we are following the rules. . . . this is politics as usual. What is new?"

Ironically and poignantly, while Republican Committee members criticized the access Tamraz obtained to the Clinton White House in the face of the opposition of the National Security Council, we learned that the Republican Party was simultaneously soliciting Tamraz to be a special donor to Republican campaign efforts.

Tamraz received the solicitation in early 1997 from the National Republican Senatorial Committee to join the "exclusive Republican Senatorial Inner Circle." The invitation was signed by Majority Leader Trent Lott, and stated at the end, "I look forward to meeting you personally and formally welcoming you to the Inner Circle in the near future." The letter said Tamraz was being nominated to fill one of the "28 Inner Circle nominations open in New York." On February 18th, Tamraz got a follow-up letter from Senator Mitch McConnell, Chairman of the Republican Senatorial Inner Circle. Senator McConnell, referring to the earlier letter from Majority Leader Lott, wrote:

> The Inner Circle Leadership Committee placed your name in nomination to receive this honor at our last meeting based on the fact that your personal accomplishments and your proven commitment to our Party will make you a perfect Inner Circle Member.

The letter promised Tamraz that once he "signs on" to become a member of the Inner Circle, he will receive invitations "twice a year to attend high-level Washington policy briefings, receptions and special dinners" with Republican Senators "as well as the top leaders of the Republican Party." Included, according to the letter, would be "the entire Republican Senate leadership of Senate Chairmen and Subcommittee Chairmen who are driving the national Republican agenda." The letter also promised "an exclusive dinner where the Republican Senate leadership will honor you as a new Inner Circle member."

These offers of special access to leading Republican officials in return for contributions to the Republican Party were made to the

very same man Republican Committee Members were saying should not have been allowed in the White House.

Lack of balance

The failure to acknowledge the Republican side of the Tamraz problem was symptomatic of the Committee's entire investigation. Throughout the investigation, the Majority was unwilling to see or to admit that the problems caused by the chase for soft money under our current campaign finance system are problems of both parties. The curse of soft money has caused good people in both parties to push the limits, not because the persons involved have an insatiable "thirst for money," but because, to succeed, the current campaign finance system leads to an unending chase for money. While few candidates or party officials would knowingly risk defeat by engaging in illegal campaign conduct, many candidates and party officials from both parties are willing to use available, legal loopholes to raise the huge sums of money needed to stay competitive.

In the same way that the Majority loudly condemned Tamraz's relationship to the Democratic Party, while treating his relationship to the Republican Party with silence, the entire investigation lacked balance. It lacked a balanced presentation of the evidence, a balanced presentation of the issues, a balanced presentation of the involvement of both parties.

Republican campaign conduct

Despite evidence that some campaign practices by the Republican National Committee took loopholes in the law even further than the Democratic National Committee, the Committee chose not to examine such information in public hearings, other than with respect to the National Policy Forum. One example is the open offer of access for contributions.

Harold Ickes, White House deputy chief of staff, testified that the Democrats learned about offering access in exchange for campaign contributions from longstanding Republican practice. The most blatant example of this Republican practice was a fundraising document prepared and issued by the Republican Party in connection with the 1992 Republican President's Dinner, an event attended by President Bush. It lists so-called "benefits" available to persons who contribute or raise certain amounts of money for the Republican Party by buying or selling tickets to the Dinner. Top contributors and fundraisers get a private reception hosted by President Bush at the White House. They get a reception hosted by the President's Cabinet. They get a luncheon at the Vice President's residence hosted by Vice President Quayle. At the end of the invitation are these words: "Note: Attendance at all events is limited. Benefits based on receipts." In other words, it's only when the Republican Party gets the contributions in hand, that the benefits become available. That's how far this system went before President Clinton became President—the direct sale of access to President Bush, Vice President Quayle, and top government officials in exchange for large campaign contributions.

This fundraising tactic is not, of course, unique to 1992. In 1995, an invitation to join the Republican Congressional Forum states

that contributors who pay a $25,000 membership fee get a host of "membership benefits," including "monthly private dinners with the Chairmen and Republican Members of key Congressional Committees."

In 1997, in the midst of the Committee's investigation and public criticism of fundraising excesses, the Republican Party issued a RNC Annual Gala invitation listing the same types of "benefits" for contributors and fundraisers. The invitation offers persons who contribute or raise at least $250,000, for example, a future breakfast with Senate Majority Leader Trent Lott and House Speaker Newt Gingrich, and a future lunch with the House or Senate Committee Chairman of the contributor's choice.

Such offers of access, like the DNC's excessive use of the White House, are not illegal, but they do create an appearance that access to elected officials is for sale. Making such offers of access illegal would be constitutionally difficult, since elected leaders must have access to their constituents and the public, whether or not they have contributed to their campaign. It would also defy common sense to bar elected officials from speaking to or meeting with their financial supporters. But like so much else in public life, there are appropriate limits to conduct that should or could be self-regulated, requiring the use of good judgment and common sense. The problem is a bipartisan one, and although the Majority shrinks from acknowledging that the Republican Party also sold access in exchange for campaign contributions, the public knows both parties did it. By ignoring that reality, the Majority diminishes the value and credibility of both the Committee hearings and the Majority Report.

Another practice of concern during the 1996 elections was the degree to which the RNC coordinated campaign activities with outside organizations which held themselves out as independent and, in many cases, nonpartisan. As described in the Minority Report, but never examined in a Committee hearing, the Republican National Committee spent millions of dollars financing the election-related activities of some key groups. The RNC gave over $4.6 million to Americans for Tax Reform, an allegedly independent, nonpartisan tax-exempt organization, which then used the money to advance the Republican agenda and Republican candidates, in coordination with the RNC. If the DNC had given $4.6 million to a labor union or environmental group in the month before the 1996 election—an unprecedented transfer of funds by a political party—I have no doubt that there would have been a searching investigation of the facts, if not full scale public hearings, which would have been appropriate. But here—where the money was paid by the RNC to a pro-Republican tax-exempt organization—not a single hearing witness was called. Worse, the Committee never interviewed a single person from either the RNC or Americans for Tax Reform about the $4.6 million.

Internal RNC documents show that the RNC also explicitly planned to raise millions of dollars from third parties for outside pro-Republican groups, analyzed whether contributions would be tax deductible and whether they would have to be publicly disclosed, then actually collected and delivered specific checks from third parties to such organizations as Americans for Tax Reform,

the American Defense Institute and National Right to Life Committee. The Minority Report also describes specific instances in which the RNC itself coordinated election-related activities with particular organizations, as well as instances in which pro-Republican entities, such as Triad Management, Coalition for Our Children's Future and the Christian Coalition, engaged in election-related activities in possible violation of federal election laws. Not one of these activities was examined in a Committee hearing.

The Majority ignored these serious evasions of the law and focused, instead, on one instance in which Harold Ickes identified three possible non-profit organizations to which a potential contributor could make a tax deductible contribution. The Committee called a witness of questionable credibility to lay out the incident, without calling Mr. Ickes at the same hearing to provide his side of the story. Instead of looking at the extensive activities of the RNC in orchestrating support for Republican candidates among non-profit organizations in which millions of dollars changed hands, the Majority focused its fire on one incident involving proposed contributions that never actually took place. The Committee held an entire day of hearings on the Ickes' incident; it refused to call even one witness to testify about the RNC's systematic efforts to finance tax-exempt organizations supporting Republican candidates.

The Committee's kid-glove treatment of RNC and Dole campaign officials further demonstrates the imbalance. In the nine months of the investigation, only 2 RNC officials were deposed and they answered questions only on the National Policy Forum. The Committee never deposed or took hearing testimony from a single RNC official on RNC policies or practices. The finance director of the DNC was deposed and testified publicly at length; the finance director of the RNC did neither. The general counsel for the DNC was deposed and testified publicly at length; the general counsel for the RNC did neither. Top officials of the Clinton campaign answered hundreds of questions at sworn depositions; not a single official from the Dole campaign ever answered a single question from this Committee.

Thus, when the Majority Report states that, "Based on the available evidence, the Committee finds no basis for concluding that any illegal coordination between the RNC and Dole campaign took place," the "available evidence" conveniently did not include any interviews of RNC or Dole campaign officials about these topics. This Committee has, in fact, concluded its investigation into the 1996 elections without ever asking the RNC or Dole campaign about soft money, coordination, issue ads, tax-exempt organizations, contribution laundering or any other campaign matter, other than the National Policy Forum.

Having won the battle to conduct a broad investigation into both illegal and improper campaign activity, those of us who thought the result would be a bipartisan investigation, in the end, lost the war. The Majority focused its investigative power almost exclusively on the Democratic Party, providing the American people with a one-sided view that failed to communicate the whole truth—a campaign finance breakdown taken advantage of by both parties.

Democratic campaign conduct

Even the Committee's examination of Democratic campaign conduct was, all too often, one-sided. On several occasions, Democratic Committee Members requested specific witnesses to provide a more balanced presentation of the facts, but our requests were denied. For example, for the hearing on the Hsi Lai Temple, we asked that Ladan Manteghi, the key scheduler on the staff of the Vice President, be called as a witness. She would have testified unequivocally and convincingly that she, the Vice President's office and the Vice President himself understood the Temple event to be a community outreach event and not a fundraiser. Manteghi was not called. Her testimony is quoted at length in the Minority Report, but was never presented to the American people during the key hearing on this event.

On other occasions, the Majority failed to call key witnesses with important information. For example, a key issue associated with John Huang involved his use of the Stephens office. Vernon Weaver, head of the Stephens' Washington office and the person responsible for giving Huang permission to use it, was interviewed by the Committee but never called as a witness to answer questions about Huang's conduct. According to his interview, Weaver would have testified that he had known Huang for years from Arkansas, Huang routinely used the Stephens' Washington office well before becoming a Commerce Department employee, and Huang never did anything that made Weaver concerned that he might be engaging in wrongdoing.

Still another example of imbalance involves videotapes of President Bush's fundraising events in the White House. Despite claims by some Committee Members that the Clinton Administration's use of the White House for fundraising purposes was "unprecedented," the Majority refused repeated requests by the Minority to join in a request to the Bush Library for copies of those tapes. The Majority's failure to pursue or to allow the examination of information that might demonstrate both parties using the White House in the same manner is another glaring instance in which the Committee declined to present the whole truth about campaign conduct in this country.

The China Plan

The Majority's investigation into the China Plan is one of the most disturbing examples of partisanship overwhelming the treatment of an important issue that should have been handled in a careful, bipartisan manner and presented in a balanced way to the American public. The origin of this plan was the Chinese Government's perception, following the 1995 congressional resolution advocating that Taiwanese President Lee be permitted to visit the United States, as well as President Lee's subsequent visit, that Congress and state officials were more influential in foreign policy decisions than the Chinese Government had previously determined. Consequently, the China Plan was designed to increase the Chinese Government's influence with the United States Congress and state legislatures; it was not designed to affect the 1996 presidential race.

The Majority Report mischaracterizes existing evidence regarding the focus and intent of the China Plan when it speaks of the China Plan in the context of the 1996 presidential election. None of the information the Committee obtained suggests that the China Plan targeted the presidential campaign. While there is direct evidence that the China Plan targeted state and congressional races, there is, again, no such direct evidence regarding the presidential elections. Yet, the Majority takes the China Plan, mixes it with evidence of contributions from foreign sources to the Democratic National Committee, and then improperly concludes that the two are linked, stating that the Committee's investigation suggests that "China's efforts involved the 1996 Presidential race."

The Majority Report begins its description of the China Plan by citing early 1997 newspaper articles based on unnamed sources. The only evidence cited in the Majority's Chapter to substantiate the allegation that China's effort involved the 1996 presidential race is a reference to "fragmentary reporting" by a "U.S. agency" that relates to "China's efforts to influence the U.S. Presidential election." The Majority Report states that, because the information—which is "fragmentary"—is "part of a criminal investigation," it "cannot be discussed" further.

In the absence of direct evidence supporting the allegation that the China Plan targeted the presidential election, the Majority Report tries to connect six DNC contributors to the People's Republic of China (PRC). To do so, because the six individuals have links to Taiwan, Macao or Hong Kong, the Majority states that some of their DNC contributions used funds from "bank accounts in the Greater China area." The Majority Report defines "Greater China" as "territories claimed or recently acquired by the PRC, including Hong Kong, Macao, and the Republic of China on Taiwan." While in the context of economic, cultural or other common interests, it may be acceptable to use the term "Greater China" to refer in one phrase to all four areas, in the context of allegations that individuals are acting as agents of the Government of the People's Republic of China, the use of this phrase is inappropriate, unfair and misleading.

The Majority claims, for example, that contributions to the DNC using funds from bank accounts in Taiwan, Macao or Hong Kong are evidence of possible ties to the China Plan. Following that logic, why not put Haley Barbour on the list of possible PRC agents, since he solicited $2 million in collateral from Ambrous Young of Hong Kong; and why not add Simon Fireman, a national vice chair of the Dole campaign, who funded employee contributions using a company he owned in Hong Kong. After all, it is undisputed that Ambrous Young accompanied Haley Barbour on a trip to China in late 1995, in which they met with Chinese officials, including the Chinese Foreign Minister. Simon Fireman wired funds from Hong Kong to the United States for the express purpose of funding illegal contributions to the Dole campaign. By the Majority's standard, such actions are equally likely to be part of the China Plan.

Aside from bank account information and without going into the Majority's evidence with respect to each of the six individuals, a few items are worth noting. With respect to Maria Hsia, the Majority Report states that Hsia "has been an agent of the Chinese gov-

ernment . . . [and] has attempted to conceal her relationship." Substantiation for that serious charge consists of the words, "The Committee has learned." The Majority Report makes no mention of Hsia's sworn affidavit denying the charge, and explaining that her family's support for Taiwan is longstanding and deep, and that her immigration work has put her in contact with the PRC government only on behalf of her immigration clients. Nor does the Majority Report offer any explanation why a person with strong ties to Taiwan and who has worked to introduce Taiwanese leaders to U.S. officials would act as an agent of the Chinese Government to influence U.S. elections.

The Majority Report links Huang to the PRC by the following sentence: "A single piece of unverified information shared with the Committee indicates that Huang himself may possibly have had a direct financial relationship with the PRC government." The thinness of the evidence and the tenuousness of the statement itself demonstrate how little may responsibly be drawn from the information before the Committee.

The Majority freely uses speculation and innuendo to make numerous serious charges throughout the Chapter, unaccompanied by documentation or support. Take for example: "The source of the Temple's money is believed to be Buddhist devotees and may derive from overseas." "Many of these activities may or may not have been part of a single, coordinated effort. Regardless, a coordinated approach may have evolved over time." "Other efforts, though undertaken by PRC government entities, have been characterized as rogue activities." "It appears that the PRC money was in fact used to make or reimburse a contribution to Wong in the amount of $5,000." "Huang himself may possibly have had a direct financial relationship with the PRC government." "It is likely that the PRC used intermediaries, particularly with regard to political contributions."

Weaving together this web of possibilities, the Majority attempts to create a conspiracy by the six individuals it has identified and the PRC. The Report's analysis is strewn with words like "suggest," "seemingly," "possible," "possibly related," "suspected," "alleged," with conjecture layered upon conjecture. The unsubstantiated claims in the Majority Report do not meet the standards of proof and responsibility expected of a U.S. Senate Committee. Nor does it serve the Senate or the American people to be so loose with facts and conclusions, particularly when it comes to suggesting political activity by United States citizens against the interests of the United States.

The Majority Report's analysis is further undermined by lapses in its examination of key figures. To establish a link between the China Plan and campaign contributions, the Majority used public hearings to get at the facts regarding campaign contributions and fundraising efforts by John Huang, the Riadys, Maria Hsia and Charlie Trie. But with respect to the key figure of Ted Sioeng, a person linked to campaign contributions made to both Republicans and Democrats, the Majority balked—it held no public hearing.

The Committee had important information, for example, establishing that Matt Fong, the Republican Treasurer of the State of California, solicited and received contributions totalling $100,000

from Ted Sioeng. There is also evidence that Fong was involved in a solicitation of a $50,000 contribution for the National Policy Forum, an arm of the Republican National Committee, along with Joseph Gaylord and Steve Kinney, aides to the Speaker of the House Newt Gingrich. Fong arranged for Sioeng to meet and have his picture taken with Speaker Gingrich in Washington, D.C., and Fong accompanied Sioeng to that meeting with the Speaker. The Committee also was in possession of a photograph that appeared in a Chinese-American newspaper in California of a luncheon attended by Speaker Gingrich, Sioeng and other Asian Americans shortly after the $50,000 contribution to the National Policy Forum. Yet the Committee never called Fong as a witness at a hearing to learn more about Sioeng and any possible connection to the China Plan. Nor did the Committee call Gaylord or Kinney as hearing witnesses. Nor did the Majority ever hint in any public hearing that the China Plan had a Republican component. Conspicuously missing from the Majority's Chapter on the China Plan, despite its relevance, is any mention of Fong, who is now running for the Republican nomination to be a U.S. Senator from California.

What is particularly disturbing about the Majority's failure is the fact that we know the China Plan explicitly focused on state candidates. As the Majority itself says in its Report, one of the "several activities China undertook to influence our political processes during the 1996 election cycle" was that a "PRC government official devised a seeding strategy, under which PRC officials would organize Chinese communities in the U.S. to encourage them to promote persons from their communities to run in certain state and local elections." So despite a major contribution to a state candidate by the person most closely identified as having a financial connection to the PRC, the Committee didn't pursue it. The glaring omission from the Majority's China Plan Chapter of any mention of Sioeng's contributions to Fong or meetings with Speaker Gingrich speaks volumes about the Majority's partisan approach to the China Plan.

The China Plan Chapter in the Majority Report makes a partisan stretch, using innuendo and hypothesis, to connect the China Plan to campaign misconduct in the presidential election, yet ducks discussing evidence connecting the China Plan with state and congressional campaigns because that evidence would involve Republicans. The Majority Report concocts a place called the "Greater China area," lumping together the People's Republic of China, Taiwan, Macao and Hong Kong as though they had the same interests, to try to link the China Plan to DNC contributions. The China Plan did not receive the careful, bipartisan, balanced treatment warranted.

Need for reform

In the end, despite all the efforts of the Republican Majority to focus on illegalities, one message from the 1996 campaign dominates—the need to reform the federal campaign finance system. The system is broken and in desperate need of repair.

The first priority should be to eliminate the raising and spending of soft money by both parties. As the Supreme Court said in *Buckley* v. *Valeo* when it upheld contribution limits:

> Under a system of private financing of elections, a candidate lacking immense personal or family wealth must depend on financial contributions from others to provide the resources necessary to conduct a successful cam paign. . . . To the extent that large contributions are given to secure political quid pro quo's from current and potential office holders, the integrity of our system of representative democracy is undermined. . . . Of almost equal concern is . . . the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. . . . Congress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical . . . if confidence in the system of representative government is not to be eroded to a disastrous extent."

As enacted, the campaign finance laws' contribution limits never contemplated individual, corporate or union contributions of $100,000, $1 million or more, creating the expectation, actual or perceived, that these enormous sums were being repaid with something more than a thank-you note or attendance at a large banquet.

In tandem with a ban on soft money, we must also tackle the problem of so-called issue ads. The most vicious combination in the 1996 election season was the use of huge contributions unregulated by federal election laws to pay for candidate attack ads mislabelled as issue ads. This combination encapsulates for me, more than any other single image, the collapse of our campaign finance system and the rock-bottom need for reform.

We identified numerous examples of political advertisements which attacked candidates by name, but claimed to be issue discussions outside the law's limits on contributions. These candidate attacks ads were broadcast by parties, companies, unions and interest groups of all kinds on behalf of both parties. The Annenberg Public Policy Center estimates that parties and outside groups spent at least $135 million broadcasting these ads, almost 90 percent of which named candidates while sidestepping the contribution limits and disclosure requirements that are the bedrock of our campaign laws.

Issue ads have been compared to drive-by shootings in which the sponsor of the attack is neither known nor held accountable. And they are using unlimited and unregulated money to pay for it.

Congress cannot get off the hook by using its investigative powers to point fingers at campaign improprieties, while avoiding its share of the blame for failing to close the loopholes and reinvigorate federal campaign finance laws. Congress alone writes the laws, and we have no one to blame but ourselves for the sorry state of the federal election laws. It is not enough to know that the system is broken and lament that condition; Congress must also fix it. That is our legislative responsibility. Without legislative reform, we

will be haunted by the words of Roger Tamraz that in the next election, he will give $600,000 to buy access to a candidate and will do so legally.

CARL LEVIN.

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ADDITIONAL VIEWS OF SENATOR JOSEPH LIEBERMAN

Of the thousands of statements the Senate Governmental Affairs Committee heard through the course of its investigation of the 1996 Federal elections, one of the most telling was a brief comment by former White House Deputy Chief of Staff Harold Ickes. Challenged about his handling of a questionable transaction during the final week of the 1996 Presidential campaign, Mr. Ickes defended his conduct in part by pointing to the chaotic atmosphere of the time. "We were like the mad hatters," he said.[1]

This metaphor for the fundraising madness of the 1996 election cycle seems right on the money—too many good people running around like mad hatters doing all kinds of bad things. There was in fact a surreal quality to the whole of the scandal, with the bizarre cast of characters that came before the Committee, the torturous twists of logic many of the witnesses used to rationalize their actions, and the overarching sense emerging from the investigation that our polity has fallen down a long dark hole into a place that is far from the vision and values of those who founded our democracy.

In that strange place, we have learned, the law appeared to be written in invisible ink. It was somehow possible, for example, for wealthy donors to give hundreds of thousands of dollars to finance campaigns even though the law was clearly intended to limit their contributions to a tiny fraction of those sums. It was possible for unions and corporations to donate millions to the parties at the candidates' request, despite the decades old prohibition on those entities' involvement in Federal campaigns. It was possible for the two presidential nominees to spend much of the fall shaking the donor trees even though they had pledged under the law not to fundraise for their campaigns after receiving $62 million each in taxpayer funds. And it was possible for tax-exempt groups to run millions of dollars worth of television ads that clearly endorsed or attacked particular candidates even though they were barred by law from engaging in such partisan activity.

Where Harold Ickes' analogy breaks down, of course, is that the story of how Washington turned into Wonderland on the Potomac has no fairy tale ending. Surreal as much of it seems, the fundraising scandal of 1996 was a very real tragedy with very real consequences for our democracy. The truth is that the mad hatters from both parties did more than just beg credulity, they betrayed the public trust. In their breathless, boundary-less rush to raise more money to pay for more television ads, they effectively hung a giant "For Sale" sign on our government and the whole of our political process. In so doing, they also hung out to dry some of the most fundamental values underpinning our American experiment

Footnotes appear at end of chapter 41.

in self-rule. And they gave most Americans, already beset by cynicism, good reason to doubt whether they had a true and equal voice in their own government. That is the dark hole we find ourselves in today.

In its work, the Committee was challenged to hold up a looking glass to the machinations of the mad hatters during the 1996 election cycle, to expose the sham that our campaign finance laws have become, and to show the American people the consequences of conducting elections without any limits or standards to protect the public interest and discourage our worst impulses. The Committee was challenged to cut through the Jabberwockian legalisms that witnesses and their lawyers often invoked to justify their side's incredible behavior and get at the facts, regardless of what they revealed or who they jeopardized.

I emphasized that last point at the commencement of the hearings when I said that our job was not to be prosecutors or defense attorneys, but "searchers for truth."[2] While noting that there would be a strong temptation to give in to our partisan instincts in light of the high political stakes involved, I argued that we had an obligation to temporarily put aside our individual party allegiances for the duration of the Committee's work. "With each witness we question, we must seek only the truth, no more and no less," I said, "and we must accept that truth and not try to force it improperly into any preconceived construct that any of us may bring to the table."[3]

Although I was disappointed with the partisanship that too often crept into our proceedings and diminished our effectiveness, I nevertheless believe the Committee succeeded in compiling a compelling record, one that leaves little question that our political system was subverted in 1996 by an unquenchable thirst for money and that our democratic process suffered grievous harm as a result. It was an unseemly, disheartening story in many respects, but one that had to be told to dramatize the need for bold campaign finance reform, and I am grateful for having had the opportunity to work with my colleagues of both parties on the Committee and their staffs to gather and tell this story to the American people.

I have joined in the Minority Views because they are the product of an open and constructive effort among the Democratic members of the Committee, which far more often than not resulted in findings and recommendations that are consistent with my conclusions about what happened during the 1996 Federal election cycle. The Democratic report offers criticism where criticism is most due, detailing and then condemning numerous examples of impropriety and wrongdoing associated with members and officials of both political parties and both political branches of government. At the same time, it appropriately notes several instances where such criticism is not warranted by the facts. While the Minority Views may sometimes seem partisan, they are in the end much less partisan and much more objective in their evaluation of the evidence before the Committee than the Majority's report, and the Minority's recommendations for reform are much more responsive to the facts the Committee found.

I have nevertheless chosen to offer these Additional Views to note some points of disagreement with the Majority and Minority

views, to underscore some points of agreement, and ultimately to present my own overview of the significance of the Committee's investigation. Working on this investigation was an important experience for me, and I came away from it with some strong personal conclusions about the implications of the Committee's findings, which I want to summarize here. In particular, I want to focus on the moral breakdown that coincided with and contributed to the political one.

An important part of what is at issue here, I believe, are the distinctions we make between illegal and improper conduct in public life and the standards we use to judge them, something the Senate struggled with in initially defining the scope of our investigation and the Committee itself wrestled with through the course of its proceedings.[4] To this day, some contend that these distinctions are essentially irrelevant to the Committee's work, arguing that the bulk of the activities we investigated violated laws already on the books and therefore the appropriate response should simply be tough punishment now and tougher enforcement in the future. The facts our Committee found in this investigation strongly suggest otherwise, and point to a real need to ask some much broader and more fundamental questions about this scandal—among them, how we in politics have drawn ethical lines, how those lines should be drawn in the future, and whether in fact simply recalibrating them within the law will be enough to rescue us from the dark hole into which we have fallen.

That is not to gloss over the evidence that some individuals appear to have broken the law in the course of the 1996 Federal elections.[5] The Committee heard testimony about people using other people's money to fund political contributions,[6] foreign nationals channeling money into American campaign coffers,[7] and Federal workers soliciting campaign contributions[8]—all activities that certainly appear to have violated applicable and existing laws. The Committee's investigation helped expose those events, and it is now for the Justice Department and the Federal Election Commission ("FEC") to investigate them and, if appropriate, to take civil enforcement actions or prosecute those involved. That is an important part of responding to the excesses of the 1996 elections, and it must not be devalued by those who wish to prevent these abuses from happening again. For it is by holding accountable those who violate our laws that we engender the respect those laws deserve and create a real incentive for the people operating in the campaign finance system to abide by the rules in the future.[9]

But with that said, the sad truth is that most of the worst behavior that occurred in the 1996 elections was legal. Consider again the examples I cited above to illustrate the surreal nature of the current system—the blatant skirting of the limits on individual contributions, the subversion of the restrictions on presidential candidates who receive public funds, the conversion of supposedly nonpartisan, tax-exempt groups into political agents, and the infusion of millions of union and corporate dollars into the two parties despite the law's absolute ban on their involvement in Federal campaigns. Each of these acts compromised the integrity of our elections and our government in 1996. Each of these acts plainly violates the spirit of our laws. Yet each appears to be legal.

In effect, then, what the law permitted in 1996 was as outrageous as any crimes that were committed. This point is enormously significant not just in terms of gauging the import of this scandal, but in determining the steps our polity should take to repair our broken campaign finance system. Criminal indictments brought by the Justice Department, FEC enforcement actions, and changes in party compliance procedures will go far to prevent a recurrence of the illegal activities that occurred during the 1996 cycle. Yet we can make no similar statement for the wide range of corrosive activities that continue to be legal. In fact, just the opposite is true—we know for a certainty that these behaviors will not end with the 1996 elections unless we make them illegal.

Our investigation also revealed something more profoundly unsettling—it is not just the system that has been compromised and corrupted, but the values and standards of those operating within it. As in many segments of our society today, from the professional sports leagues that wink at the outrageous behavior of big stars that help them generate big revenue to the TV talk show producers who sink to new lows in degradation and exploitation every day to gain higher ratings and more advertising revenue, the bottom line in politics—raising money to win elections—has too often become the dominant line. In the process, basic differences between right and wrong have been blurred to the point that the operative standard for campaigns today is not what is right but what is technically legal. This helps to explain how we got to Wonderland in Washington.

Plugging the most egregious loopholes to make the clearly improper clearly illegal will make the law more consistent with our values and likely deter some future wrongdoing, which are more than sufficient reasons to do so. But these changes in the end will not be enough. We must reduce the unrelenting pressure to raise vast sums of money. It is this pressure that wore down the mad hatters' moral immune system and pushed them to duck, dodge and ultimately debase the laws we have now. And it is this pressure that will continue to drive good people to do bad things, almost regardless of what the law calls for, if we do not comprehensively recast the system to permanently defuse the fundraising arms race and stem the corrosive influence of big money. That is the challenge now ahead of us.

Partisanship of the investigation

Before turning to the substance of the Committee's investigation, I want to comment on its process, because the manner in which it was conducted significantly affected the topics the Committee chose to investigate, colored the Committee's findings, and by extension determined in large part the subjects I discuss below.

I firmly believe that the Committee's investigation and hearings served the valuable purpose of shedding light on the failings of the campaign finance system and those who operate within it. The Committee leaves behind an extensive factual record that builds a powerful case for campaign finance reform.

Compelling as that record is, though, it is incomplete. That is because the persistent partisanship of the investigation kept it from living up to its full potential, leaving the American people with

only a partial picture of the extent of the abuses committed during the last election cycle. As the Minority Views extensively detail, the Committee's investigation and hearings focused primarily and overwhelmingly upon the Democratic Party and its affiliates, despite significant evidence that the Republican Party and its affiliates also engaged in questionable activities.

The Committee omitted from public view entire areas of inquiry, such as the use of independent and tax-exempt groups to improperly conduct surreptitious campaign activity, a topic that touched closely on persons and entities associated with the Republican Party. And, although the Committee's investigation appropriately examined the fundraising practices of those associated with the DNC and the Democratic Administration, it wrongly declined to review strikingly similar activities of the leadership of the RNC and the Republican-controlled Congress, who raised significant amounts of money in connection with the presidential campaign, often by selling access to large contributors.

Some will say this partisanship was inevitable given the difficulties in conducting such an inherently political investigation, but I am not convinced of that. In retrospect, the Senate should have, as has been done in the past, assigned the investigation to a bipartisan Special Committee with a joint, nonpartisan staff, or the Governmental Affairs Committee should have created a joint bipartisan staff for this investigation. Neither of these courses was taken, and so this non-traditional investigation proceeded with the Members of the majority party retaining their traditional and almost unlimited power to control the subjects and targets of the proceedings. As a result, the investigation split into two, with Members of the Majority too often putting on the case as if they were prosecutors, and Members of the Minority too often concluding they had to act as defense counsel.

Because the Republicans are in the Majority and so had final say on determining who the Committee subpoenaed and on whom the Committee's hearings focused, it was their partisanship that ultimately had the greatest impact. Most of the Committee's subpoenas targeted people and organizations associated with the Democratic Party, and most of the Committee's public hearings were spent exploring Democratic misdeeds. As a result, most of the examples I discuss below involve the Democratic Party, but I emphasize that is because I have chosen to address the Committee's record as I have found it, not because I believe the Republican Party is devoid of similar wrongdoing.

I cannot leave the topic of partisanship without commenting on what is perhaps its most damaging long-term legacy: its impact on the ability of future Senate investigations to use compulsory subpoenas to obtain the information needed to do their job. As detailed in the Minority Views, the Committee repeatedly failed to enforce subpoenas it issued to Republican Party organizations and affiliates and to a number of outside groups espousing ideologies traditionally associated with the Democratic and Republican parties.[10] Although it is questionable whether the Committee ever would have taken action against these groups, there is no doubt that the groups were significantly emboldened by their knowledge that the Committee's investigation had a pre-ordained end date of Decem-

ber 31, 1997. These groups calculated—correctly as it turned out—that if they could stall long enough, the Committee's mandate would wear out long before it found the will to take action against recalcitrant recipients of its subpoenas. For this reason, I firmly believe it was a mistake for the Senate to have imposed a fixed end-date to the Committee's investigation.

What is the lesson the subjects of future Senate investigations will take from this experience? They will stall and stonewall and assume that Senate investigators will not take them to court. I hope that the committee conducting the next politically-charged Senate investigation acts quickly to prove this assumption unfounded.

The Origin of the problem: The Supreme Court's decision in Buckley v. Valeo [11]

To understand how the excesses of the 1996 election cycle came to pass, one must start with the untenable legal framework within which our campaign finance system has been operating. The basic law took shape through the campaign finance reforms that Congress enacted in 1974 in the aftermath of Watergate. The goal of this law sounds familiar—to temper the corrosive impact of money in our politics. It attempted to do so by limiting the contributions people could make to parties and campaigns "with respect to any election for Federal office" [12] and by limiting the amount of money campaigns could spend.[13] By squeezing campaigns on both sides of the ledger, the 1974 law aimed at creating a tight lid on the overall flow of money into the system and thereby reducing the potential of large contributors to have a corrupting influence on our elected officials.

The Supreme Court, however, prevented us from ever really testing that theory by quickly striking down the law's spending limits as unconstitutional in its landmark 1976 decision in *Buckley* v. *Valeo*. At the heart of the Court's ruling was the finding that money equals speech under the First Amendment. The Court reasoned that because most forms of campaign communication (television and radio commercials, newspaper ads, and the like) cost money, a cap on spending would significantly diminish the quantity of a candidate's or a campaign's speech and therefore undercut their ability to disseminate their message.[14] Applying its usual test for reviewing restrictions on First Amendment interests, the Court therefore required a showing that the law was narrowly tailored to meet a substantial or compelling state interest.[15] A majority of the Justices concluded that although the government did have a compelling interest in preventing corruption and the appearance of corruption, the spending limits passed by Congress did not meet the narrowly-tailored standard, because the Court did not see how unlimited spending left candidates or parties improperly indebted to their contributors.[16]

The Supreme Court took a much different approach to the law's limits on contributions. Those restrictions, the Court found, impose a much smaller burden on speech than do spending limits, because a contribution's speech value lies in its symbolic communication of support, something that "does not increase perceptibly with the size of [the] contribution, since the expression rests solely on the

undifferentiated, symbolic act of contributing."[17] The Court also concluded that unlimited contributions pose a much greater threat to the government's interest in avoiding corruption. Allowing a candidate or lawmaker to accept huge sums of money from a small group of individuals, the Court said, truly did threaten to corrupt the government, or at least to create the appearance of corruption, by giving the impression that the candidate was indebted to wealthy contributors[18]—something, it is worth noting, the current system does now through its soft money loophole. That is why, in the end, the Supreme Court upheld the law's contribution limits while striking down its spending limits.[19]

What the Court in *Buckley* failed to realize, as our experience through the intervening years has shown, is that it is impossible to separate the threat posed to the democratic process by uncontrolled spending from the threat of unchecked giving. The fact is that they are inextricably intertwined, just as are the laws of supply and demand. Indeed, as those of us who live in the system know, candidates and parties that are free to spend as much as they want will do so, especially given the spiraling costs of campaigns. So, faced with the dilemma of persistent demand for money and strict limits on its supply, candidates will feel great pressure to be aggressive and evasive in finding new sources of funding, to bend the law by exploiting loopholes and weakspots and perhaps even to break it on occasion. In that regard, the Court's spending/contributing dichotomy has increased the potential for misbehavior, just the opposite of the Court's intent.

The Committee's investigation of the 1996 Federal elections shows that ironic and unfortunate result to be so. One consequence of the relentless pressure the parties were under to raise vast sums of money was that they sometimes became careless in the way they went about their business. Both sides missed serious warning signs of wrongdoing, granted highly questionable favors, and lowered their standards of acceptable conduct. But these unintentional slips pale in comparison to the calculated efforts of both sides to evade, avoid, and subvert the laws regulating who can give what to whom.

No loophole has been more widely abused or more disastrous in its consequences than the soft money loophole, which also is part of *Buckley*'s unintended legacy of pushing parties to find additional sources of money. The soft money loophole dates to a 1978 FEC ruling allowing individuals, corporations and unions to avoid the law's limits on contributions if they give to party committees for non-candidate specific purposes, such as voter registration drives and party- building, rather than "with respect to any election for Federal office."[20] Standing alone, this loophole was problematic, because it provided a way for contributors and parties to vitiate the explicit limits the election law imposed on their contributions. But it was not until the soft money exception was wed to a second distinction articulated in *Buckley*—one between "issue" advocacy and "express" advocacy—that the national parties and their candidates were able to exploit the law's weaknesses to decimate its clear intent and debase the whole of the system.

The law the Court reviewed in *Buckley* limited what individuals could spend "relative to a clearly identified candidate."[21] The Court found this provision troubling, because it raised fears that the gov-

ernment would go beyond regulating commercials that express support for an individual candidate and would try to put limits on ads advocating a point of view on an important issue of the day. In particular, the Court worried that this provision would unfairly limit the speech of individuals and groups who did nothing more than point out a candidate's position on a particular issue while making a statement about the importance of their cause.[22]

The only way to get around this threat, the Court concluded, was to read the law narrowly to limit contributions only when they supported "communications that include explicit words of advocacy of election or defeat of a candidate."[23] In a footnote to its decision, the Court explained that this standard would cover ads that included such words as "'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'"[24]

Although there is nothing in the Court's decision to suggest that this footnote defined the exclusive universe of candidate-focused speech Congress could regulate—or that that narrow interpretation even applied to parties as opposed to outside groups—the result of this decision was as predictable as the consequence of striking down spending limits. Just as the Court's ban on spending limits inevitably spurred both parties and many candidates to push the contribution limits to their breaking point, it was only a matter of time before parties and outside groups would find the issue advocacy/express advocacy loophole and harness soft money to exploit it. And that is exactly what began to happen over the course of the last several national elections—and what ultimately went out of control in 1996. Both parties wound up using tens of millions of dollars in soft money to help pay for ads that were clearly designed to aid a particular candidate but were nevertheless claimed to be legal because they did not invoke *Buckley*'s so-called magic words.

Thus, the post-Watergate law, as interpreted by the Court and the FEC, begat a devastating absurdity. The parties may use money supposedly not given in connection with a particular election for Federal office—even though parties solicit the contributions explicitly to help their candidates—to run advertisements that pretend not to advocate a particular candidate's election or defeat—even though any reasonable person would view those ads as promoting a specific candidate. From the beginning, this framework was ridiculous on its face; in 1996, it became scandalous in practice.

Activities of the political parties and candidates during the 1996 election cycle

My colleague Senator Pat Moynihan once used the term "defining deviancy down" to characterize the process by which abnormal forms of behavior come to be considered normal by the greater society. According to this theory, conduct that once was considered aberrant by society slowly gains a foothold of acceptability, which spreads throughout the culture and ultimately establishes itself as the new norm.

This process aptly describes what has happened to our politics over the last two decades, culminating in the breakdown of 1996. Otherwise good people, caught up in the urgency to raise huge amounts of money to fund their campaigns, gradually lowered the

bar of acceptable behavior until they no longer were able to see what they were doing as those outside of the system would—and ultimately did. In this insular world, each side wound up pegging its ethical standards not to any independent or common norms but to what the competition was doing. And because the stakes were so high, it was an unquestioned assumption that if the other side was doing it, you had to do it as well—the common justification being that one side would not "unilaterally disarm." This was how candidates, campaign workers and party officials were transformed into mad hatters and how their standards sadly became as fungible as the various pots of money they amassed.

The use of the White House as a marketing tool during the 1996 election cycle provides a troubling case in point. No one would dispute that candidates, including the President and Members of Congress, can and should meet with their supporters—financial or otherwise—both to express gratitude and to motivate those friends to continue their support. Nor would anyone dispute that previous Presidents, presidential candidates of both parties, and Members of Congress have marketed access to themselves and their offices to raise campaign contributions. But in 1996, as part of the overall breakdown of the system, the White House was used more systematically and broadly than ever before to raise millions of dollars in large soft money contributions, with seemingly little consideration given to the troubling signal this would send to the broader public or the consequences it could have for our government.

This was particularly true of the White House coffees. The evidence the Committee collected regarding the many occasions on which attendance at a White House coffee and a large donation to the DNC temporally coincided is telling. A review of these events conducted by FBI Agent Jerry Campane found that 40 percent of the 532 people who attended 60 coffees sponsored by the DNC contributed to the DNC within one month of their coffee attendance, and 90 percent contributed either individually or through their businesses at some point during the 1996 election cycle.[25] Campane also provided the Committee with several examples of individuals contributing within one week of the coffees.[26] These statistics well support Campane's conclusion that, although money may not have been raised at these coffees, it was certainly raised *from* them.[27]

The laws of the marketplace tell us that if you are selling something of value, there will be people ready to buy. The laws of politics tell us that if you are selling access, some of those willing to buy will not have the best motives. We therefore should not be surprised by the litany of opportunists who took personal advantage of the DNC's willingness to use the White House as part of its fundraising strategy. Johnny Chung, for instance, was able to get a group of Chinese businessmen photographed with the President and First Lady—a picture the businessmen later used, without the White House's knowledge, to promote their company's beer in China.[28] And Pauline Kanchanalak successfully insisted on being allowed to bring Thai business executives with her to a White House coffee, despite DNC Finance Director Richard Sullivan's argument that bringing people who could neither lawfully support nor vote for the President to a meeting scheduled for the President's political and financial supporters would be inappropriate.[29]

Roger Tamraz's repeated presence at DNC-sponsored events provides perhaps the most damning evidence of how the White House was exposed to contributors on the make. Tamraz, an American citizen, sought the support of the U.S. government for his plan to build an oil pipeline in the Caspian Sea region. After government officials involved in the issue at the Energy Department and the National Security Council ("NSC") determined that Tamraz's plan did not serve U.S. policy and learned that Tamraz was falsely claiming U.S. government support for his project, the NSC recommended in the Summer of 1995 against any high level government contact with him.[30] Despite this advice, Tamraz, who began donating large amounts of money to the DNC around this time, was able to gain access on a number of occasions to the President and Vice-President through DNC events—and even obtained help from DNC Chairman Don Fowler in trying to lift the bar on his interaction with high level officials.[31] Once again, the lure of big money led party officials into an inexcusable lapse in judgment.

I agree with the Minority Views that this extensive use of the White House during the 1996 campaign was neither illegal [32] nor without precedent—the Minority Views cite ample evidence of previous Administrations engaging in similar behavior and of Republican Members of Congress using Congressional buildings for similar purposes. Nevertheless, I believe that it was highly improper, and more broadly speaking, it shows just how far the mad hatters succeeded in defining political deviancy down during the 1996 election cycle.

The extensive use of the White House as part of the DNC's fundraising strategy, of course, is far from the only example of this problem. Take, for instance, the case of Harold Ickes and Warren Meddoff, which was the genesis of the mad hatter metaphor. At a fundraising event in Florida shortly before the election, Meddoff handed a business card to President Clinton which allegedly contained a written message on the back that said Meddoff had an associate who wanted to donate $5 million to the President's campaign.[33] This card found its way to Ickes, who subsequently contacted Meddoff by phone. In their conversation, Meddoff repeated his offer of a multi-million dollar contribution, and Ickes pointed out that the presidential public financing laws prohibited making such contributions to the President's campaign. Meddoff then asked Ickes to recommend other ways to help the campaign, suggesting that his associate would like to donate at least some of the money to tax-exempt groups. Ickes responded by sending Meddoff a list of such organizations.[34]

I agree with the Minority Views' conclusion that the evidence before the Committee does not support a finding that Ickes acted illegally in directing Meddoff to tax-exempt organizations. I also believe, however, that he did not act properly. Meddoff explicitly told Ickes that his goal was to give millions to the President's reelection efforts (circumventing the public financing law's limits on contributions to the presidential campaign) and to obtain a tax deduction for these plainly political contributions. Instead of willingly participating in this behavior, a governmental official in Ickes' high position should have told Meddoff that his request for assistance in avoiding the restrictions of the presidential public financing law

and making political contributions that were tax-deductible was improper and refused to take part in it.[35]

Although, as explained above, the Committee's failure to sufficiently investigate Congressional and Republican activities leaves me unable to comment authoritatively on the scope of wrongdoing committed in that party's name, the investigation that was done makes clear that questionable activities were not confined to the Democratic Party. As discussed further below, for example, Ickes' actions have disturbing parallels in the behavior of a number of persons associated with the RNC who also improperly directed contributions to tax-exempt organizations.

And, as the Minority Views explain in detail, the one RNC-related event closely examined by the Committee shows that officials of that party were not immune to the devaluing of their public behavior. Officials of the RNC started the National Policy Forum ("NPF") in 1993 with a series of loans from the RNC to NPF that ultimately amounted to $4 million.[36] By the Spring of 1994, NPF was in serious debt, mostly to the RNC, and the RNC, with critical elections ahead, wanted its money back.[37] RNC and NPF officials turned to, among others, Texas businessman Fred Volcansek to find a way for NPF to obtain money to repay the RNC.[38] Volcansek testified that he and others involved in seeking funds for NPF explicitly decided to explore foreign sources of funding, something that eventually led them to Hong Kong businessman Ambrous Young.[39]

They approached Young and his representatives about securing a bank loan for NPF and repeatedly explained to them that the purpose of the loan was, as talking points Volcansek prepared for RNC Chairman Haley Barbour put it, to "allow us to free up the money previously advanced to the NPF and make it available for the elections."[40] Barbour assured Young's attorney, Benton Becker, that the RNC would stand behind the loan in the case of an NPF default.[41] With this understanding of the loan, Young ultimately agreed to post $2.1 million in collateral for NPF—all derived from his Hong Kong corporation, albeit sent through that corporation's U.S. subsidiary.[42] Upon receipt of the loan, NPF transferred the bulk of its proceeds to the RNC.[43] When NPF subsequently defaulted on the loan, Barbour and the RNC refused to honor their commitment to stand behind it, and Ambrous Young's company ultimately lost almost $800,000.[44]

I cannot reach a conclusion as to whether this convoluted transaction, which, as a factual matter, led to the knowing infusion of foreign source money into the RNC's treasury at the direction of a foreign national, violated the letter of the law. It undoubtedly, however, violated the spirit of the law's prohibition on foreign nationals giving money to American campaigns, and in that sense it was plainly improper.

These episodes, taken collectively, highlight the connection between the illogical legal framework that grew out of the *Buckley* decision and the maddening behavior that resulted from the slow defining of political deviancy down. Simply put, these scandalous activities never would have happened if it were not for the powerful temptation of soft money and the concomitant motivation to find more and more of it to fund the parties' "issue advertising." It was for donations that dwarfed the average American's income

that elected officials and party leaders were willing to sell their time to the opportunists who came to buy—and in the process to compromise their standards and sully some of the nation's most respected institutions.

And, it is worth emphasizing, although the most outrageous incidents uncovered by the Committee may have involved Johnny Chung, Roger Tamraz and the like, the far more prevalent collection of big soft money donations came not from marginal hustlers like them, but from mainstream corporate and union interests that were indisputably interested in affecting the nation's policies and agenda. The amounts of soft money donated during the 1996 cycle are staggering: lawyers and lobbyists, for example, donated nearly $8 million to the Democratic Party and $1.5 million to Republicans; tobacco companies gave nearly $6 million to the Republican Party and almost $1 million to the Democratic Party; labor unions contributed almost $9 million to the Democratic Party and about $150,000 to the Republicans; securities and investment firms gave about $10 million to the Republican Party and about $9 million to the Democrats.[45] In total, the parties raised *$262 million* in soft money during the 1996 campaigns.[46] And, in another blow to *Buckley*'s intellectual framework, it is clear that many, if not most, of those donations came from those seeking, not to engage in protected speech by expressing their ideological affinity with the parties, but rather simply to maintain their access to, and sometimes sway over, particular parties or candidates. How else to explain the fact that so many big givers were so generous with both parties at the same time?[47]

The bottom line is this: were it not for the lure of soft money and the relentless pressure to raise it, our nation's highest officials would have not been placed into the inappropriate situations in which the Committee too often found them. The President and the Vice-President, for example, never would have felt the need even to consider personally phoning supporters for donations, and we likely never would have seen the White House and Capitol Hill conscripted into serving the fundraising goals of the DNC, the RNC, and the two major presidential campaigns.

Unfortunately, all indications are that the soft money-driven misdeeds of 1996 are just the beginning, because in spite of the Committee's investigation and the widespread media disclosures and condemnations, soft money fundraising is not just continuing, it is mushrooming. The recent statistics indicate we are being drawn into an ever-escalating money chase—leaving parties and candidates all the more susceptible to the charge that they are improperly indebting themselves to wealthy contributors. The $262 million in soft money raised by the national parties in the 1996 cycle is 12 times the amount they raised in 1984.[48] In the first half of 1997 alone, the two major parties raised $35 million in soft money, or more than two and one-half times the almost $13 million they raised in the first six months after the last Presidential campaign.[49] We know the lengths to which the parties felt they needed to go to raise money during the 1996 campaigns. This continued exponential growth rate puts us all on notice of what is to come if we do not put a lid on soft-money contributions.

The presidential campaigns and the abuse of public financing

In addition to the many incidents of party fundraising activities that were improper or illegal, a broader systemic problem unique to the presidential campaign system also emerged during the Committee's hearings: the virtual destruction of the spirit and intent of the presidential public financing laws.

Pursuant to the Presidential Election Campaign Fund Act[50] and the Presidential Primary Matching Payment Account Act,[51] the taxpayers spent approximately *$236 million* during the 1996 elections on the presidential campaigns.[52] The purpose of all of this taxpayer support was to level the presidential electoral playing field, to limit spending on the presidential campaigns, to keep presidential candidates from becoming full-time fundraisers and to limit the flow of private money into the presidential campaigns. The Committee's hearings vividly demonstrated that in 1996 the taxpayers did not get what they paid for, that the spirit of the agreements with them was grossly violated by both presidential campaigns, and that it is therefore critical to reexamine and reform the public funding laws before the presidential campaigns of 2000 begin.

Legal Background. The Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act give public subsidies to candidates for the presidency and their parties at three stages of the presidential elections. First, the Treasury matches certain contributions raised by primary candidates who meet statutory eligibility requirements and who agree to limit their primary spending to an amount specified in the statute; eligible primary candidates may receive up to half of their spending limit in Federal matching funds.[53] During the 1996 primary elections, 11 candidates received a total of $58.5 million in matching funds, and they had a spending limit of $37 million.[54]

Second, political parties may receive a specified amount to fund their presidential nominating conventions. In exchange for this money, the parties agree not to spend more on their conventions than they receive in public funds.[55] The Treasury paid $24.7 million for the two major party conventions in 1996.[56]

Third, major party nominees who agree to specified conditions are eligible for full public financing during the general election. Under 26 U.S.C. §9003(b), major party candidates seeking public financing are required to "certify to the Commission, under penalty of perjury" that they and their campaign committees will neither spend more on their campaigns than the amount allotted in public funds, nor accept any contributions to fund any expenditures to further their election.[57] In 1996, $152.7 million went to three nominees for the general election, including approximately $62 million each to President Clinton and Senator Dole (the rest went to minor party candidate Ross Perot, who was eligible for partial public financing for his general election run).[58]

Congress enacted this public financing system for a specific and well-defined purpose: to level the electoral playing field and to remove presidential candidates from the potentially corrupting influence of non-stop fundraising. As the Senate Rules Committee put it in 1974, these laws aim to stop presidential candidates from having "to devote too much time to endless fund raising at the expense

of providing competitive debate of the issues for the electorate," and to eliminate the reliance of presidential candidates on wealthy contributors.[59]

In contrast to its views on the election laws' mandatory spending limits, the Supreme Court in *Buckley* viewed this system of voluntary spending limits in exchange for public financing as perfectly permissible under the First Amendment. As it explained:

> Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forgo private fundraising and accept public funding.[60]

Abuses of the System. Both of 1996's major party candidates accepted public financing and pledged in return to limit their spending to $37 million during the primary season and, during the general election, not to make more than roughly $62 million in expenditures "to further [their] election" or to seek contributions to fund such expenditures.[61] As the Committee's hearings showed (and as detailed in Chapters 32–33 of the Minority Views), the candidates effectively ignored their pledges. Instead of curtailing their fundraising and limiting themselves to spending the amount they agreed to, both major party candidates continued raising and spending massive quantities of money by using the party machines as appendages of their campaigns in what amounted to a back-door effort to evade both the fundraising and spending limits they had pledged to abide by.

The presidential candidates engaged in a seemingly never-ending quest for campaign money throughout the entire election period. Indeed, they were involved in exactly the pattern of behavior Congress aimed to stop when it enacted public financing for the presidential campaigns: the candidates wooed wealthy contributors and appeared over and over at events open only to those who contributed $5,000, $10,000, $50,000 and more.

The abuses on the spending side were just as bad. Primarily by running what they called "issue" ads through their parties, both major party candidates were able to use the money they raised to eviscerate the spending limits they agreed to accept. Although couched as ads discussing "issues," the text of these advertisements, as well as the role the candidates played in producing them, make clear that they aimed to "to further the election" of the presidential candidates—precisely what the public financing laws were supposed to proscribe.

Evidence reviewed by the Committee, for example, showed that the President and numerous other Administration officials were heavily involved in determining the details of the DNC's media campaign. The President and some of his senior advisors had weekly strategy meetings with the November 5 Group—the name used by a group of consultants that included campaign consultant Dick Morris, pollsters Penn and Schoen and others—to discuss campaign strategy. According to Harold Ickes, the Wednesday evening group reviewed "most, if not virtually all" of the DNC's soft money adver-

tising, and members of the group, including the President, sometimes commented on the ads and suggested changes to the text. In fact, as Harold Ickes testified, the ads did not run until the Wednesday night group approved them.[62]

The Dole for President campaign also played a significant role in the RNC's issue ad campaign, particularly during the period after the Dole campaign exhausted its permissible primary season spending but before it received its $62 million in general election funds. As the Minority Views explain in Chapter 33, Dole campaign personnel were involved in the production of RNC issue ads, and Senator Dole himself acknowledged his campaign's role in the party issue ads—and the role the party issue ads played in his campaign.[63]

In short, the Committee's investigation left no doubt that the presidential public financing laws were widely evaded in 1996. And, again, because of the soft money and issue advocacy loopholes, this all appears to be legal, even though, under 2 U.S.C. § 441a(d), the parties are supposed to spend only a limited, specified amount in coordination with their candidates to advance those candidates' campaigns. As explained above, the parties and the campaigns argue that anything that does not use *Buckley's* magic words is not express advocacy, and that anything that is not express advocacy is not "for the purpose of influencing any election for Federal office" and therefore falls outside of the limits imposed by the campaign finance laws, including those established in Section 441a(d) for coordinated expenditures. As a result, despite the fact that the campaign message of these party issue ads was as clear to anyone who views them as it was to the candidates who helped produce them, the parties and candidates argue that it was perfectly permissible for the candidates to be involved in the development and running of those ads, without limit.[64]

However troubling the apparent legality of coordinating unlimited spending on issue ads is in general, it is beyond acceptability in the specific context of the presidential campaigns. If the presidential candidates truly can use the party apparatuses to raise unlimited soft money and then spend it to further their campaigns by running party issue ads whose content they controlled, then the taxpayers threw away $236 million in presidential campaign subsidies in 1996. This is a huge and unacceptable loophole in the presidential campaign laws, and I hope Congress will adopt legislation to close it.

By banning soft money and limiting the sources of funding available for running advertisements using a candidate's likeness or name within 60 days of an election, S. 25, the proposed McCain-Feingold campaign finance reform legislation, would go a long way toward preventing these abuses. But because, as explained above, the Supreme Court has explicitly upheld Congress's ability to impose even greater restrictions on those candidates who accept public financing, we also should consider going beyond S. 25's proposals for publicly-funded presidential candidates.

I therefore have proposed legislation (S. 1666) that would, among other things, more explicitly prohibit presidential candidates who accept public financing from doing what the law long has intended to keep them from doing. My bill would effectuate the original goal

of keeping the presidential candidates from spending too much time fundraising by banning them from raising soft money throughout their campaigns and any money at all after they are nominated, and it would prevent them from using the parties to circumvent spending limits by prohibiting their involvement in any party spending—for issue ads or anything else—that exceeds the amount Section 441a(d) explicitly authorizes presidential candidates and parties to spend together. I will urge my colleagues to support this proposal, so that the taxpayers can be assured that the hundreds of millions of dollars they spend to keep their presidential elections clean actually serve the purpose for which they are given.

The abuse of tax-exempt organizations

An equally troubling phenomenon in the 1996 elections—one that the Committee regrettably failed to adequately investigate or to explore in public hearings—is the improper, and possibly illegal, use of tax-exempt organizations to circumvent campaign finance laws and to carry out campaign-related activity. Investigations conducted by the Minority and additional evidence uncovered by journalists strongly suggest that activities involving a wide array of tax-exempt organizations, sometimes in conjunction with the political parties, violated at least the spirit of both the election laws and the tax code. The public would have greatly benefited from a full and open airing of the stories of these organizations' activities, and I regret that did not happen. The Minority Views extensively recount the troubling activities uncovered during the investigation. I highlight a few here.

Legal Background. The Federal Election Campaign Act ("FECA") limits both the amounts and the sources of funds that may be contributed to candidates and political parties in connection with Federal elections, prohibiting, for example, such contributions from corporations, labor unions or foreign nationals who are not lawful permanent residents of the United States.[65] This law also imposes strict reporting and disclosure mandates on organizations involved in Federal elections, requiring them to provide the public with a detailed accounting of the contributions they receive and the expenditures they make.[66] The purpose of these laws is, among other things, to ensure honest elections by limiting the sources of campaign funds and by mandating that the public be made fully aware of both the identity of those trying to influence its votes and the financial activities of the political parties.

The tax code, for its part, circumscribes the type of political activities in which organizations with tax-exempt status may engage. Groups with Internal Revenue Code Section 501(c)(3) status—which confers not only tax-exempt status but also the added ability to receive tax-deductible contributions—may not intervene in any political campaign on behalf of or in opposition to any candidate.[67] The tax code permits organizations with Section 501(c)(4) status—which qualify for tax-exempt status, but may not receive tax-deductible contributions—to engage in election advocacy as long as such efforts do not make up the group's primary activity (election law restrictions, however, limit these organizations' ability to engage in election advocacy).[68] In addition, the tax code does not per-

mit contributions to political parties or candidates to be tax deductible.

These provisions reflect Congress' judgment that although taxpayers should subsidize the activities of groups working in the public interest by granting them favored tax status, that subsidy should not extend to organizations that focus primarily on political campaign work, unless those organizations are willing to comply with the regulation of the election laws.[69] Unfortunately, the scope of the activities some of these groups engaged in during the 1996 elections went far beyond what Congress intended, and both the tax-exempts themselves and the political parties used these organizations in ways that the election laws and the tax code were enacted to prevent.

Americans for Tax Reform. The RNC, for example, appears to have worked with the 501(c)(4) organization Americans for Tax Reform ("ATR") in a successful effort to circumvent election law restrictions on the party's own activities. As recounted more extensively in Chapter 11 of the Minority Views, documents obtained by the Committee show that the RNC infused ATR with over $4.5 million in the weeks leading up to the 1996 election. The RNC sent that money to ATR in installments provided just in time for ATR to pay its bills for a direct mail and phone bank campaign involving four million calls and 19 million pieces of mail explicitly disputing the Democrats' position on Medicare as it related to the November 5th election. In one case, the RNC's money arrived in ATR's bank account just two hours before ATR paid one of its bills for the direct mail campaign. Although the timing of these transfers alone provides powerful evidence of the RNC's involvement in ATR's partisan advocacy efforts, when taken together with an RNC document turned over to the Committee that refers to ATR's yet-to-be commenced direct mail effort, there can be little doubt that the RNC was directly involved in devising and implementing ATR's multimillion dollar campaign.

This activity is troubling for several reasons. FEC regulations require the RNC to fund issue advocacy efforts like the one ATR engaged in with a specified percentage of Federal, or hard, dollars[70]—money that is more difficult to raise than the soft money the party sent to ATR. Thus, if the RNC in fact did use ATR to carry on these activities on its behalf, then the RNC's funding of these efforts entirely with soft money effectively thwarted FEC rules limiting the party's use of that money.

Moreover, the RNC's complicity in ATR's activities also is completely at odds with the purpose of the election laws' disclosure requirements: to let voters know who it is that is trying to influence their votes, how much those persons and entities have spent and where that money came from. By funneling money through an outside group like ATR, the RNC was effectively able to hide the fact that it was behind phone calls received by four million Americans and letters sent to 19 million potential voters—all aimed at promoting the party's cause. Recipients of material funded by the RNC were left with the impression that a disinterested organization, not the party itself, was behind the activities. In fact, leaving this false impression may have been the very reason for the RNC's generosity toward ATR. An article in the February 9, 1997 edition of *The*

Washington Post quotes then-RNC Chairman Haley Barbour as observing that outside groups like ATR "have more credibility" in pushing a political message than do the parties.[71]

My concern over the RNC-ATR connection is not limited to its election law ramifications; this activity may also have brought ATR out of compliance with the tax code. As a 501(c)(4) organization, ATR may engage in some limited political campaign activities as long as the group's primary purpose is not to intervene in political campaigns on behalf of or in opposition to any candidate for public office.[72] In this case, the extent of its apparent coordination with, and advancement of, the RNC's goals suggests that ATR may have crossed the legal line. Indeed, as the Minority Views explain, an analysis of ATR's bank records reveals that the RNC's donations comprised more than two-thirds of ATR's 1996 income, and activity carried on with the RNC's money formed the lion's share of ATR's pre-election activity. All this means that the taxpayers were involuntarily subsidizing undisclosed partisan political activity in violation of the clear intent of our tax laws, since ATR, as a 501(c)(4) organization, is freed from a portion of an otherwise-existing tax obligation.

American Defense Institute. ATR was not the only tax-exempt group that benefitted from the RNC's fundraising. According to press reports and documents turned over to the Committee, the RNC also steered large amounts of money to the American Defense Institute ("ADI'), a 501(c)(3) organization that runs a voter turnout program for military personnel, who tend to vote Republican.[73] The October 23, 1997 edition of *The Washington Post* reported that in September 1996, ADI returned $600,000 donated to it by the RNC because, according to the group's president, "we didn't want to be controversial and we had funding from other sources."[74] However, as the Post reported, that money was not returned until several days after *the RNC itself* sent checks totaling $530,000 from six donors to ADI.[75] Around that time, RNC Chairman Haley Barbour also apparently solicited $500,000 from the Philip Morris Companies Inc. for ADI.[76] The size of these donations and the fact that the RNC itself took the time to solicit, collect and send these contributions to ADI strongly suggest that the RNC believed that ADI's activities would inure to its partisan benefit. The timing of these transactions, moreover, arguably gives rise to an inference that the RNC and ADI substituted the donors' money for the RNC's to avoid publicizing the fact that the RNC was the source of ADI's funding—that is to avoid disclosure requirements. Moreover, all of those donors could take a tax deduction for their RNC-requested contributions to ADI, thus forcing taxpayers to subsidize donations to a political campaign in violation of the clear intent of our tax law.

Vote Now 96. On the Democratic side, the Committee heard testimony that Vote Now 96, the fundraising arm of the 501(c)(3) get-out-the-vote organization Citizens Vote, Inc., sought and received help from the DNC in raising money for its work, presumably because these organizations were working to raise turnout among groups who tend to vote Democratic. I have already discussed the most prominent example of this activity—then-White House Deputy Chief of Staff Harold Ickes directing Warren Meddoff to Vote

Now 96 and other tax exempts in response to Meddoff's request for advice as to how his associate could contribute to the President's re-election effort and take a tax deduction for part of it.

Information gathered during the Committee's investigation suggests that the DNC directed other donors to this group as well, apparently as a means of avoiding otherwise applicable FECA requirements. For example, the DNC apparently steered to Vote Now 96 a $100,000 contribution from Duvaz Pacific Corporation, a Philippines company. The DNC directed Duvaz Pacific to Vote Now 96 after it learned that the company's head, who attended a DNC fundraiser, could not legally donate to the DNC itself because of her foreign citizenship.[77] On another occasion, a $25,000 contribution from Shu-Lan Liu and Yun-Liang Ren, rejected by the DNC because of the donors' foreign citizenship, subsequently found its way to Vote Now 96.[78] The November 22, 1997 edition of *The Washington Post* further reported that the DNC included in a White House dinner for its top donors Gilbert Chagoury, who reportedly gave $460,000 to Vote Now 96 at the request of a DNC official; Mr. Chagoury's foreign citizenship status prevented him from contributing directly to the DNC.[79] According to the deposition testimony of former DNC fundraiser Mark Thomann, the DNC may have credited fundraisers the same for some donations directed to Vote Now 96 as for contributions solicited for the party,[80] and DNC Finance Director Richard Sullivan testified that DNC Chairman Don Fowler had asked him to raise money for Vote Now 96.[81]

These activities—a political party soliciting money from persons ineligible to give to the party and offering party favors in return—are wrong. Moreover, insofar as the contributors were American taxpayers, they were given deductions that amounted to additional, involuntary subsidies by the rest of the nation's taxpayers, in violation of at least the spirit of our tax laws.

Citizens for Reform. A number of tax-exempt groups—none of which registered with or disclosed their activity to the FEC—directly and substantially intervened in elections by running television advertisements the groups claimed were intended only to discuss issues but that, in fact, clearly were aimed at influencing specific elections. According to a study by the Annenberg Public Policy Center, for example, Citizens for Reform, a 501(c)(4) organization, ran $2 million worth of ads during October and November of 1996 in Congressional districts around the country.[82] In one district, the group ran an ad with the following message:

> Who is Bill Yellowtail? He preaches family values, but he took a swing at his wife. And Yellowtail's explanation? He "only slapped her." But her nose was broken.[83]

Any reasonable person would view this ad as trying to convince voters to reject Yellowtail's candidacy—not as discussing the issue of domestic violence or any other issue. Moreover, published reports and testimony and documents obtained by the Committee suggest that Citizens for Reform became active only shortly before the 1996 campaign, had no history of any interest in domestic violence and did not run ads anywhere else dealing with domestic violence. Indeed, according to the May 5, 1997 edition of the *Los Angeles*

Times, when asked whether Citizens for Reform would attack any Republicans who may have engaged in domestic violence, the group's president responded "it's not up to us to do the job of people who have a liberal ideology."[84] Despite these facts, and the added fact that the overwhelming majority—if not the entirety—of this group's activities appear to have focused on helping to elect Republican candidates, the group never registered with, or disclosed its activities to, the FEC. In addition, it applied for and received 501(c)(4) status, which would be lawful only if it were primarily engaged in non-campaign related activities.

All of these activities by tax-exempt, presumably non-partisan corporations cry out for remedial action by Congress. The McCain-Feingold proposal (S. 25) partially addresses these problems by prohibiting party organizations from soliciting contributions for, or directing them to, tax-exempt entities. I have proposed additional legislation (S. 1666) to further address these abuses. Premised on the same idea as the amendments to the Presidential public financing laws noted above, my bill would make more explicit what the law always has intended: that organizations that wish to receive the public subsidy of tax-exemption must curtail their involvement in campaign-related advocacy. In particular, I am proposing to prohibit such organizations from coordinating any expenditure with parties and candidates and to forbid them to run advertisements or send direct mail identifying a candidate within 60 days of a general election or 30 days of a primary election.

Like the public financing amendments discussed above, I believe these proposals would pass constitutional muster, because the Supreme Court already has upheld similar restrictions on the activities of tax-exempt organizations. As the Court explained in *Regan* v. *Taxation with Representation of Washington* when upholding against First Amendment challenge a provision that prohibits substantial lobbying by 501(c)(3) organizations: "[b]oth tax exemptions and tax-deductibility are a form of subsidy that is administered through the tax system," and by restricting the lobbying activities of 501(c)(3)'s "Congress has merely refused to pay for the lobbying out of public monies."[85]

Vice-President Gore and the Hsi Lai Temple event

I must take issue with the Majority's comments on Vice-President Gore's attendance at the Hsi Lai Temple's April 29, 1996 luncheon in Hacienda Heights, California. The Majority devotes a chapter to the Temple event and implies that the Committee has evidence suggesting that Vice-President Gore was associated with, or should at least have been cognizant of, the wrongdoing that occurred in connection with the Temple event. I agree fully that the evidence before the Committee strongly supports the allegation that Temple officials and the event's organizers, Maria Hsia and John Huang, engaged in activities that violated applicable laws. The Vice-President, however, has stated that he had no knowledge of, and was certainly not involved in, any improprieties that may have occurred in connection with the Temple event. My review of the evidence leaves me without any doubt that that is the truth.

The China plan

Another matter on which I would like to add my comments is the so-called China plan. As the Majority and Minority Views explain, non-public evidence before the Committee revealed that in 1995 officials within the government of the People's Republic of China ("PRC") crafted a plan aimed at improving their influence in American Government. This plan included activities that amounted to legal lobbying and may also have included activities that could have resulted in money going into Congressional races in 1996, although there was no direct evidence that the plan aimed at putting money into the 1996 presidential race.[86] This presented one of the stranger ironies of this investigation. The Committee had evidence of a Chinese Government plan to influence Congressional races, but found little evidence of money connected to the PRC actually entering Congressional campaigns. On the other hand, the Committee had no direct evidence that the China plan aimed at putting money into the presidential race, but then received considerable evidence of contributions to the 1996 presidential campaigns, particularly the Democratic campaign, from people or businesses with close links to the Chinese Government or businesses controlled by the Chinese Government.

The Committee heard testimony, for example, that the Lippo Group, John Huang's former employer and an entity with whose employees and officials Huang retained contact during his tenure at the DNC, has substantial joint business ventures with the Chinese Government.[87] A number of these ventures are with China Resources, a government-owned company the Chinese Government reportedly often uses as a front through which to run espionage operations.[88] In late 1992, China Resources purchased 15 percent of Lippo's Hong Kong Chinese Bank, a share it ultimately increased to 50 percent in mid-1993.[89] Since that time, Lippo and China Resources have engaged in dozens of joint ventures in China.[90] In 1993, Huang apparently arranged for the head of China Resources, Shen Jueren, to meet with Vice-President Gore's Chief of Staff.[91] Moreover, as the Majority reports, non-public evidence presented to the Committee demonstrates a continuing business-intelligence relationship between the Riadys and the PRC intelligence service, although that evidence does not reveal any direct connection between the PRC intelligence service and the Riadys" U.S. political activity.

As the Majority Report also states, the Committee received non-public evidence suggesting that two individuals, Ted Sioeng and Maria Hsia, had direct contact with the government of the PRC and may in fact have undertook actions on behalf of that government, although the information I saw regarding Hsia did not include any direct evidence linking her U.S. political activities during the 1996 elections to the Chinese government. In 1996, Sioeng, his daughter, or his daughter's business were responsible for contributions to the DNC, the National Policy Forum and two California state Republican campaigns. Hsia is a long-time Democratic fundraiser who worked closely with John Huang in raising money for the 1996 Democratic presidential campaign.

The Committee also heard testimony linking Charlie Trie and Ng Lap Seng, Trie's business partner and apparent benefactor, to Wang Jun.[92] Wang is the son of China's former Vice Premier and

the Chairman of two important Chinese Government-owned firms, the China Poly Group and the Chinese International Trade and Investment Corporation ("CITIC").[93] The exact nature of Trie and Ng's relationship with Wang is not clear, but on at least one occasion, Trie sought and received permission to bring Wang to a White House coffee with the President.[94] The Committee also heard testimony that Ng reportedly was a member of the Chinese People's Political Consultative Conference,[95] a group of several thousand delegates that serves as a channel through which political parties and other organized groups can share their views with Chinese government officials.[96]

We know that the people with these contacts with the PRC—John Huang, the Riady family, Charlie Trie, Maria Hsia and Ted Sioeng—were responsible for raising and contributing substantial sums of money to American national political parties and campaigns.

While much of this evidence is circumstantial and therefore does not justify a definite conclusion that the China Plan aimed at, or in fact resulted in, contributions going from or at the direction of the Chinese government into the 1996 American Federal elections, it leaves me suspicious. The evidence before the Committee puts many troubling dots on the board, but ultimately does not connect them in a way that enables us to see a clear picture of what happened. For me, the blurred result is nonetheless very unsettling.

It is important to note that, aside from the seven Members of Congress informed by the FBI that they may have been targets of China's improper efforts to gain influence with Congress, there was absolutely no evidence presented to the Committee—public or non-public—to even suggest that any American elected official or leader of a national political party had any knowledge of the China plan or any contributor's or fundraiser's possible connection to it.

By alleging a China plan so dramatically on the opening day of the hearings, and then suggesting that the plan played a role in many of the activities to be reviewed by the Committee, the Majority created a distraction and established a very difficult standard for public conclusions about the Committee's work, because the existence of a China plan could be shown conclusively only through non-public information, which necessarily could not be shared fully with the public. That remains the case.

Nevertheless, this is an important matter. Intelligence and law-enforcement agencies should continue to monitor and investigate this matter, and if firm evidence arises supporting the claim that the Chinese government or any other foreign government actually did implement a plan to illegally try to influence our nation's policies through illegal campaign contributions, those implicated should be prosecuted, and our relationship with that government should be affected.

In the end, it is most important that we not overlook the real significance to our Committee's investigation of the China plan and of illegal foreign contributions in general. The fact that a foreign government, foreign companies, or foreign individuals concluded that money has become so important in American politics that they could buy their way to access to the top of our government to influence our policies towards them, thereby diminishing our national

strength and independence, is a severe indictment of our campaign finance system and a compelling argument for reform.

The legacy of the investigation: the law's limitations

Much of the Committee's investigation was driven by a singular question: were laws broken? Most every incident the Committee examined was viewed through a legal lens, and this focus led to many bitter, largely partisan disputes over what the facts were and what the law said about the facts, disagreements that live on in the often widely-diverging Majority and Minority views.

In devoting so much time to these fights, we succumbed in some respects to the same trap that the mad hatters did, which was to equate the law with morality and thus lower the standards we use to judge ethical conduct to the legal limit. There is in fact a crucial distinction between them, one that matters not just to students of ancient philosophy but to us as policy-makers and political leaders who are grappling today with how we can repair our badly broken political system.

The truth is that the law, while serving as an expression of our values, cannot compel moral behavior. It can stake out ethical boundaries, point us in the right direction, and punish behavior that is wrong, but its reach is limited. We cannot ever fully write into law what every citizen has a right to expect from their representatives—that those seeking to write the rules for the nation will respect them, rather than search high and low for ways to evade their requirements and eviscerate their intent; and that those who have sworn to abide by the Constitution will honor the trust and responsibilities the Constitution places in their hands, rather than cater to the special interests depositing soft money in their pockets.

For our democracy to function, then, we must rely on a common core of values above and beyond what the law requires, a system of moral checks and balances comparable to the political ones built into the Constitution. These values, and the traditional American behavioral norms we have internalized in concordance with them, have long insulated us from the temptations that are endemic to politics and to which we are all vulnerable. But over the last several years, as the pressure to raise huge amounts of money helped to define political deviancy down deeper and deeper, that moral immune system was severely weakened, leaving the mad hatters at the mercy of their lesser instincts and prone to justify just about any means to reach the end of winning.

The 1996 election cycle provides ample evidence of the threat this vulnerability poses to the legitimacy of our government. While the record the Committee compiled did not show that any U.S. policy—foreign or domestic—was altered by any of the hustlers or opportunists who bought access to some of our top leaders, we cannot deny that the potential existed for this kind of abuse. Nor can we ignore the dangers inherent just in the appearance of this kind of influence peddling and what it communicated to the American people. Consider some of the comments we heard from the unsavory characters who sought to purchase their way into our political system. Johnny Chung gave this blunt assessment: "I see the White House is like a subway: You have to put in coins to open the

gates."[97] Or, as Roger Tamraz said when explaining how his contributions helped him get the access to high officials through the DNC that he was denied by policy makers: "if they kicked me from the door, I will come through the window."[98] What he really meant was buy his way through the window.

Hearing these comments, the average American would have every reason to suspect the worst about their government and the leaders running it and to question just whose interests are being served. And that may in fact be the most mortal consequence of the moral breakdown our politics have suffered—the damage it does to public confidence and trust in the democratic process. Even if we take away the Johnny Chungs and Roger Tamrazes and the other shakedown artists, we are still left with a system that bends over backwards to indulge big soft-money donors and their special interests and thereby suggests to the general public that power will be exercised first and foremost for those who give top dollar.

The Washington Post ran an important five-part series two years ago that documented the deep feelings of mistrust and alienation many Americans feel toward their government and their elected leaders. One of the most striking findings was that the percentage of Americans who say they trust the Federal Government all or most of the time dropped from 76 percent in 1964 down to 25 percent by the beginning of 1996.[99] Since then, a number of other polls have confirmed the Post's conclusions. For instance, a University of Michigan survey after the 1996 elections found that just 32 percent of the public trust in government to "do what is right" most of the time.[100] And a study done by the Roper Center found that when asked whether elected officials have honesty and integrity, nearly three-quarters of the public said no.[101]

The polls we have seen since the campaign finance system broke down completely in 1996 indicate that the scandal has made things even worse, hardening the profound cynicism that already exists. Gallup released the results of a damning survey in October 1997 which found that only 37 percent of Americans believe the best candidate usually wins elections, while 59 percent believe elections are generally for sale. That same survey found that 77 percent of Americans believe that their national leaders are most influenced by pressure from their contributors, while only 17 percent believe we are influenced by what is in the best interests of the country. And just about half of the respondents said they believe the President is willing to change government policies in exchange for donations.[102]

One of the most powerful indicators of the public's lack of confidence is its reaction to campaign finance reform itself. When asked whether they believed that major changes in the campaign finance laws could succeed in reducing the corrupting influence of big money in our politics, nearly 60 percent of Americans said special interests will always find a way to maintain their power in Washington no matter what laws we pass.[103]

That hopelessness is undoubtedly why we have not heard an outcry from the public for major campaign finance reform. Without such a demand, that reform probably will not happen, for although those in power today often complain about the current system, they clearly benefit from it. The first task for reformers in both parties,

therefore, is to raise the level of public trust and confidence to the point where the American people believe that campaign finance reform will actually make a difference so they will in turn demand it from their elected representatives in Washington. In short, the ball is now in Congress's court.

Conclusions and Recommendations

Chairman Thompson wisely observed during the hearings that "if the interpretation is that this is legal and this is proper, then we have no campaign finance system in this country anymore."[104] He was referring to the end run around the public financing laws that both major presidential campaigns successfully executed in 1996, but he might as well have been talking about the whole gamut of abuses both parties committed. The truth is that we have no effective system, just systemic failure.

Unless something is done soon to radically recast our entire campaign finance system, we can count on that failure to continue well into the next century. Based on the excuses the Committee heard in testimony to justify much of the outrageous behavior described above, we can probably expect even more surreal images than money being raised from a Buddhist temple, even more hustlers trying to put their change into the subway turnstile at the White House gate, and even more alienation and apathy from the people we are elected to serve.

Fortunately, there are a number of options for achieving such reform. One course we should pursue is to ask the Supreme Court to reconsider its decision in *Buckley*. We need to put before the Court the demonstrated detrimental impact the unlimited spending they permitted and the narrow definition of "express advocacy" they promulgated have had on our campaign system. We need to convince the Court that spending limits are constitutionally justified because unlimited spending does pose a serious threat of corruption and that the need to avoid that threat is so compelling that spending limits are warranted.

In the meantime, though, those of us in Congress seeking campaign finance reform have two other options. One is to push to amend the Constitution to overturn *Buckley*—an effort I have supported, but that has not yet found sufficient votes in Congress.[105] The other is to continue to forge ahead and enact reforms that will survive constitutional scrutiny under *Buckley* and its progeny. The McCain-Feingold proposal (S. 25) laudably seeks to do this, by, among other things, proposing a ban on soft money and better defining the types of candidate-oriented advertisements that are covered by the election laws. Although the record created by the Committee's hearings recently helped that bill obtain the votes of a majority of the Senate, an anti-reform minority filibustered the bill, and so kept it from passing.[106]

Those of us in favor of comprehensive reform should continue fighting to obtain additional support for that bill. In the meantime, though, we should consider carving out discrete parts of that and other proposals in an attempt to enact at least incremental reform this year. I hope, for example, that we have the courage to take the logical first step of closing the soft-money loophole. Not only would this almost certainly meet Constitutional muster under the *Buckley*

framework, which upholds limits on campaign contributions, it also would have the broad support of the American people. The October Gallup poll I cited above showed that the public overwhelmingly favors clamping down on soft money.[107] At a minimum, we should enact non-controversial reforms, like banning all fundraising in Federal buildings, making clear that foreign soft money donations are illegal, and specifying that the ban on making contributions in the name of another applies to soft money donors. It is hard to imagine that anyone would oppose closing these loopholes.

Another worthy avenue of reform to consider is to better define the scope of permissible activities for those accepting public subsidies like financing for presidential candidates or tax-exemption for outside groups. As explained above, although *Buckley* generally limits Congress' ability to impose mandatory restrictions on the spending and the speech of those involved in the political and campaign arenas, it and other decisions have made clear that Congress may impose such restrictions as a condition for receiving government subsidies, like public financing in the case of the presidential campaigns and tax-exemption in the case of tax-exempt organizations.[108] Congress should use its authority to impose such restrictions to help better ensure that presidential candidates and tax-exempt organizations conform their activities to what they are supposed to be doing to receive those subsidies.

As we pursue this agenda, we would be wise to remember what made the mad hatters mad in the first place. They lost their heads largely because they lost sight of their values. More to the point, they lost sight of our values, the common principles that unite us as Americans and that have served as the foundation of our democracy since its inception—chief among them the ideal of equal access to and participation in our government that the Constitution proclaims and respect for the rule of law that the Constitution demands.

The breakdown in our political values is akin to a much broader problem in our society that I have raised concerns about in recent years—the growing sense that our popular culture has disoriented our common moral compass. This is particularly so because of the increasingly omnipresent and superpowered entertainment industry, where anything seemingly goes, no matter how it affects our country, so long as it increases revenues. In the intense competition for higher television ratings or record sales, many good people working at great and honorable companies have lowered themselves into mainlining extreme violence, sexual promiscuity, and gross vulgarity into our children's minds, and have lowered us all by extension. All the while, they defend their behavior by waving the First Amendment as if it were some kind of Constitutional hall pass, where having the right to speak freely justifies any and all behavior exercised under it, no matter whom it hurts. This is what the Reverend Billy Graham meant when he said—with such moral force—that the people who run the culture often "have confused liberty with license."[109]

In that sense, the similarities between what has happened within our culture and within our polity are striking, and in some respects instructive. Both are plagued by enormous competitive pressures, the powerful temptation of big money, and a reflexive reli-

ance on the right of free speech to defend the unseemly and the corrosive. In Hollywood, the thinking goes, if I can say it or portray it, and people will pay to see it, then I will because I will succeed. In Washington, the analog is, if the law does not clearly prohibit me from doing it, then I must or I will lose. Either way, the resulting behavior often drags down our common standards and weakens our moral safety net.

Our experience with the culture wars tell us that it is unrealistic to expect the political mad hatters to voluntarily change their behavior and lift up their standards. In the case of the degrading daytime television talk shows, for example, it took persistent public pressure—a revolt of the revolted—to shame the producers and sponsors of at least some of these programs and force them to begin to clean up their act. That is why it is imperative to fundamentally change the way our political process works to do whatever we can to quash the temptation to stray from our basic core values in the first place—in other words, to silence the siren's call of cash. Our best chance to achieve that goal is to push for comprehensive, systemic reforms that will not just toughen enforcement of existing law and eliminate the most glaring loopholes but drastically reduce the insatiable demand for big money that begat the mad hatters.

The Committee's investigation started us down that road by showing the American people a deeply disturbing reflection of what has become of our politics, how out of control and out of touch with our values the campaign fundraising mad hatters have become. We have met the enemy, and it is us, which also means that we have it within ourselves to change. Now we must find the will to do so.

JOSEPH LIEBERMAN, U.S.S.,
March 10, 1998.

FOOTNOTES

[1] Harold Ickes, Oct. 8, 1997 Hrg. p. 102.

[2] July 8, 1997 Hrg. p. 54.

[3] *Id* at 53, 55.

[4] In its initial funding resolution, the Governmental Affairs Committee unanimously decided to investigate both illegalities and improprieties in the 1996 elections. The Rules and Administration Committee, which reviews all such resolutions, then sought to confine the Governmental Affairs Committee's mandate to investigating solely illegal activities, but the full Senate wisely reversed that decision. *See* March 11, 1997 Cong. Rec. S2114–15 (statement of Sen. Lieberman in support of Senate vote to authorize investigation into both illegal and improper activities).

[5] I want to underscore the use of the term "appear" in this context. The Committee is neither qualified, nor permitted under the Constitution, to reach any definitive conclusions regarding whether the behavior of any person or entity violated the law; under the Constitution, only courts and juries may definitively determine guilt, and it is Congress' job to make laws, not to determine whether someone broke them. I must also emphasize that the term "illegal" does not necessarily mean "criminal." In many of the cases reviewed by the Committee, the evidence suggests that an individual's actions did not comport with governing legal standards, but does not sufficiently illuminate the individual's state of mind to allow for any meaningful determination of whether that individual should be considered a candidate for criminal sanctions. *See*, *e.g.*, 2 U.S.C. § 437g(d)(1)(A) (criminal sanctions available only upon showing of knowing and willful commission of violation).

[6] The Committee heard testimony, for example, from Yuefang Chu and Xiping Wang that Keshi Zhan, apparently at the request of Charlie Trie and/or Ng Lap Seng, asked Chu and Wang to write checks to two Democratic congressional campaign committees and to the DNC. At the same time, Zhan provided them with funds to cover those checks. July 29, 1997 Hrg. pp. 131–50. If true, these transactions apparently would violate 2 U.S.C. § 441f, which prohibits making contributions in the name of another. Moreover, if Ng Lap Seng, a foreign national, provided the funds and directed the contributions, this transaction might also violate 2 U.S.C. § 441e, which prohibits direct or indirect contributions by foreign nationals. *See* Jerome Campane, July 29, 1997 Hrg. pp. 17–18 (suggesting funds for Chu and Wang contributions may have derived from Ng Lap Seng's Hong Kong company).

[7] The Committee received evidence, for example, that a $250,000 contribution to the DNC in 1996 from Cheong Am America, Inc. was funded with money from the company's foreign parent (*see* Hrg. Exhs. 1038, 1039, 1040 (DNC memorandum regarding return of donation and copies

of checks)), as was a 1992 contribution from Hip Hing Holdings, Inc. to the DNC (*see* Hrg. Exhs. 101, 102 (check and request for reimbursement from abroad)). A 1992 contribution to the RNC from Michael Kojima also appears to have been funded with money transferred to Kojima from foreign nationals for the purpose of making the contribution. *See* Minority Views, Chap. 6. Each of these transactions appears to violate 2 U.S.C. § 441e's prohibition against foreign nationals making political contributions directly or through any other person.

[8] The Committee heard testimony suggesting that John Huang solicited campaign contributions while employed at the Department of Commerce, an apparent violation of the Hatch Act, 5 U.S.C. § 7323(a)(2). *See* Minority Views Chap. 4.

[9] It is because of the importance I attach to personal accountability through the criminal justice system in ensuring respect for, and compliance with, the law that I voted against proposals to immunize witnesses in every case in which the Justice Department informed the Committee that such a grant could compromise an ongoing criminal investigation. *See*, *e.g.,* June 12, 1997 Committee Roll Call Vote (closed session) and Committee Meeting pp. 41–42 (open session); July 23, 1997 Committee Meeting pp. 2–8, 27–30. Governing law authorizes Congress to immunize witnesses even over the Justice Department's objection (*see* 18 U.S.C. § 6005), and I have no doubt that there are some cases in which Congress should exercise that authority. In my view, however, those cases are extremely rare, and they should come about only if Congress determines that the public's need for immediate information on a particular issue (due, for example, to a national crisis that paralyzes our government) overcomes the very strong presumption in favor of preserving the possibility of prosecuting a wrongdoer. Because I did not see any case made for overcoming that presumption during this investigation, I voted in each case to preserve the prosecutors" ability to conduct their investigation. For this reason, I must note my disagreement with any suggestion that the Committee erred in declining to grant immunity to John Huang. *See* Minority Views Chap. 4. Mr. Huang's actions were among the most disturbing examined by the Committee, and he appears to have engaged in a number of activities that skirted a variety of Federal laws. The Committee acted wisely in ultimately deciding not to pursue immunity for Mr. Huang.

[10] *See* Minority Views Chaps. 39–41.

[11] 424 U.S. 1 (1976).

[12] 2 U.S.C. § 441a(a).

[13] *See Buckley*, 424 U.S. at 13.

[14] *Id*. at 19.

[15] *Id*. at 25.

[16] *See, e.g., id*. at 55–59.

[17] *Id*. at 20–21.

[18] *Id*. at 26–29.

[19] *Id*. at 58.

[20] The contribution limits imposed by 2 U.S.C. § 441a(a) apply only to donations made "with respect to any election for Federal office." In a series of rulings beginning in 1978, the FEC read that term to exclude from the law's contribution limits donations to parties that were not made with respect to particular Federal elections, but rather for the purpose of funding more generic activities like voter registration drives and party building activities. For a good discussion of the development and growth of the soft money loophole, see A. Corrado, T. Mann, D. Ortiz, T. Potter, F. Sorauf, "Campaign Finance Reform: A Sourcebook" (Brookings Institution 1997), pp. 167–77. *See also* the hearing testimony of Anthony Corrado, Sept. 25, 1997 Hrg. pp. 3–9.

[21] *See Buckley*, 424 U.S. at 39.

[22] *Id*. at 42–43.

[23] *d*. at 42–43.

[24] *Id*. at 44 n.52.

[25] Jerome Campane, Sept. 18, 1997 Hrg. pp. 184–86.

[26] *Id*. at 187–89.

[27] *Id*. at 180.

[28] *See New York Times*, Feb. 22, 1997.

[29] Richard Sullivan Dep., June 4, 1997 Vol. 1 pp. 127–28. Sullivan testified that when John Huang first approached him about Kanchanalak's request to bring foreign nationals to a White House coffee, he told Huang it would be inappropriate. Nevertheless, when Huang reported that Kanchanalak was "adamant about this" and "has been a big contributor, a big supporter," the DNC relented and allowed her to bring her associates to the June 18, 1996 coffee. Attendees at that coffee reported that the Thai executives then took up the bulk of the coffee's time talking about issues of importance to them. *Id*. at 128–30, 135–36; Clarke Wallace Dep., Aug. 27, 1997 pp. 53–54; Beth Dozoretz Dep., Sept. 2, 1997 pp. 110–11.

[30] A September 13, 1995 memo to Vice-President Gore from his National Security Advisor Leon Fuerth explained the National Security Council's objections to such meetings. Calling Tamraz someone "with a shady and untrustworthy reputation" whose pipeline plan "is commercially questionable at best." Fuerth wrote:

> Tamraz's penchant for making false claims is now impacting on the U.S. Government. Tamraz recently told Turkish Prime Minister Ciller that he has full U.S. Government support for his pipeline plan. This is not true, although it is possible he is taking your expression of interest to Mr. Sassounian and calling it full USG support. Tamraz's line is that he is not looking for support, only that he wants us to raise no objections. He then, however, takes comments that we have no objection and claims them as reflecting USG endorsement. We therefore have to be very careful even in offhand remarks to Mr. Tamraz. He also told Ciller that he will be meeting with President Clinton and you this week. We are checking to see if Tamraz may be part of a larger group meeting with you or the President this week, but as far as we can tell, this is an outright fabrication.

The NSC has advised that senior US Government officials not meet with Mr. Tamraz should he or his associates seek appointments. I concur with that recommendation.

September 17, 1997 Hrg. Exh. 1127.

[31] Tamraz made approximately $300,000 in contributions to the DNC and other Democratic causes between July 1995 and April 1996. Sept. 18, 1997 Hrg. Exhs. 1167, 1168. Between September 1995 and April 1996, Tamraz attended a number of DNC events, including several at the White House. Roger Tamraz, Sept. 18, 1997 Hrg. pp. 16, 19, 22, 27. Fowler acknowledged calling Nancy Soderburg of the National Security Council on Tamraz's behalf. Donald Fowler Dep. May 21, 1997 pp. 229–30. Shelia Heslin, the National Security Council staffer directly responsible for the Caspian Sea oil issues and most familiar with Tamraz, also reported receiving a phone call about Tamraz from Fowler. Shelia Heslin, Sept. 17, 1997 Hrg. pp. 22–24. Fowler could not recall having the conversation with Heslin, but did not dispute that it occurred. Donald Fowler Dep. May 21, 1997 p. 239.

[32] 18 U.S.C. § 607—the statute that has been commonly invoked when reviewing these events—by its terms criminalizes only the actual solicitation or receipt of "any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties . . . ." The statute thus requires an explicit solicitation or receipt *in the Federal building*, and by referencing the election law's definition of contribution, Section 607 further explicitly limits itself to covering only the solicitation or receipt of so-called hard, or Federal, money. In addition, the statute's "official duties" reference limits its geographical application to only certain rooms within the White House; according to the Justice Department's longstanding interpretation of this provision, Section 607 does not apply to either the residence portion of the White House or to so-called mixed-use rooms, such as the Map room, that are used for both private and official functions. *See* 3 Op. O.L.C. 31, 38–44 (1979). The White House coffees do not appear to have violated Section 607, because most apparently took place in "mixed-use" rooms (*see* Jerome Campane, Sept. 18, 1997 Hrg. p. 184 (most coffees occurred in Map and Roosevelt Rooms)), and there is no evidence before the Committee that any solicitation occurred at any coffee that took place in an official use room. In fact, the Committee heard only one allegation that a solicitation occurred at any of the coffees, and attendees of that coffee offered contradictory testimony regarding whether even that solicitation occurred. *See* Karl Jackson, Sept. 16, 1997 Hrg. p. 11 (John Huang solicited financial support at Map Room coffee); Beth Dozoretz, Sept. 16, 1997 Hrg. pp. 118–20 (no solicitation occurred).

[33] Warren Meddoff, Sept. 19, 1997 Hrg. pp. 6–8.

[34] Harold M. Ickes, October 8, 1997 Hrg. pp. 96–102; Harold M. Ickes Dep., June 27, 1997, Vol. 2 pp. 37–58; Warren Meddoff, Sept. 19, 1997 Hrg. pp. 5–17; Hrg. Exh. 929 (Ickes memo to Meddoff).

[35] I want to comment on the Minority Views' suggestion (Chapter 17) that Meddoff was not a credible witness. In my view, Meddoff's credibility is irrelevant to determining the propriety of the transaction under scrutiny, because Ickes and Meddoff agree on all of the facts upon which my assessment of the issue relies: Meddoff told Ickes his associate wanted to donate a significant sum to help the President's campaign, Ickes told Meddoff that the presidential public financing laws prevented him from doing so directly, and Ickes then, in response to Meddoff's further request for ways his associate could give to tax-exempt organizations, sent Meddoff a list of tax-exempt organizations to which Meddoff's associate could donate. *See* Harold M. Ickes, Oct. 8, 1997 Hrg. pp. 96–102; Harold M. Ickes Dep., June 27, 1997 Vol. 2 pp. 37–58; Warren Meddoff, Sept. 19, 1997 Hrg. pp. 5–17. The only relevant difference in these two witnesses' testimony lay in their recollection of what Ickes told Meddoff when he called the transaction off. Ickes recalls that he told Meddoff his memo "was inoperative," while Meddoff testified that Ickes told him to "shred" the memo. Harold M. Ickes Dep., June 27, 1997 Vol. 2 pp. 42–43; Harold M. Ickes, Oct. 8, 1997 Hrg. p. 128; Warren Meddoff, Sept. 19, 1997 Hrg. p. 16. I have no way of knowing which witness had the better recollection as to the specific language used in this particular conversation, and this dispute has no bearing on my comments on the propriety of the transaction.

[36] Haley R. Barbour, July 24, 1997 Hrg. pp. 160–61.

[37] RNC Chairman Haley Barbour testified that the NPF owed $2 million to the RNC by 1994. July 24, 1997 Hrg. p. 166. Fred Volcansek explained at his deposition that the purpose of the NPF obtaining a loan was "to see the loan [from the RNC to the NPF] repaid to meet the fiscal needs of the RNC." Volcansek Dep. July 21, 1997 pp. 40–41.

[38] Fred Volcansek, July 24, 1997 Hrg. pp. 26–28.

[39] Fred Volcansek Dep., July 21, 1997 pp. 49–54, 59.

[40] Fred Volcansek, July 24, 1997 Hrg. pp. 34–36 & Exh. 277 (Volcansek's July 28, 1994 Talking Points for Barbour). *See also* July 24, 1997 Hrg. Exh. 278 (August 15, 1994 Volcansek Proposal for Young) ("In planning for the "94 mid-term election cycle in the Congress, it has been determined that there are 176 highly contested races. The RNC is faced with the need to support substantially over 90 of these races. . . . What the NPF needs from you is a three year loan guarantee in the amount of $3.5 million . . . if there is any default in loan payments by the NPF, [Chairman Barbour] will authorize the guarantee of the RNC and ask for the Republican National Committee's ratification. As Chairman of the RNC and the NPF, he intends to be certain that neither organization defaults on its obligations. . . . Chairman Barbour, Senator Dole and Congressman Gingrich, who are committed to the NPF, will make themselves available to express their support for your participation on this project"); Benton Becker, July 23, 1997 Hrg. pp. 125–26 (agreeing that "there was never any doubt that the effect of the guaranteeing of the loan to the National Policy Forum would be to free up money for the Republican elections in 1994").

[41] *See* Benton Becker, July 23, 1997 Hrg. pp. 66–67 & Hrg. Exh. 285 (August 30, 1994 letter from Barbour to Becker on RNC stationery) ("Because NPF is separate from the Republican Na-

tional Committee, the RNC is not automatically responsible for its debts. Nevertheless, I am committed to making sure NPF raises sufficient funds to cover its operations and to pay off any and all its debts. Moreover, as Chairman of the RNC, in the event NPF defaults on any debt, I will ask the Republican National Committee to authorize me to guarantee and pay off any NPF debts. I am confident the RNC would grant me such authority at its next meeting, provided there is valid, outstanding debt of NPF to a US bank or other lending institution, guaranteed by a US citizen or domestic corporation").

[42] Benton L. Becker, July 23, 1997 Hrg. pp. 45–48.

[43] Haley R. Barbour, July 24, 1997 Hrg. pp. 236–37 (NPF repaid $1.6 million to RNC).

[44] Benton L. Becker Dep., June 3, 1997, pp. 81–87. The RNC and Ambrous Young reached a partial settlement of their dispute, in which the RNC agreed to compensate Young's company ("Young Brothers") for part of the money it lost when NPF defaulted on its loan. After NPF and Young Brothers reached the agreement under which NPF would return $800,000 to Young Brothers, Young Brothers received a check from Signet Bank for $55,460 in interest earned by the certificates of deposit Young Brothers had posted as collateral over the life of the loan. NPF promptly wrote Young Brothers that, in view of this "windfall," the NPF would unilaterally reduce the $800,000 payment it already had agreed to by the amount of interest Young Brothers had received on its own money. Benton Becker Dep., June 3, 1997 pp. 85–86. *See* also Benton Becker, July 23, 1997 Hrg. pp. 52–53.

[45] Common Cause, "The Soft Money Laundromat" (available on Common Cause Web Site, www.commoncause.org).

[46] FEC News Release "FEC Reports Major Increase in Party Activity for 1995–1996" (March 19, 1997).

[47] For example, each of the tobacco companies that gave more than $10,000 in soft money to the Democratic Party (Philip Morris, RJR Nabisco, U.S. Tobacco and the Tobacco Institute) also donated significant amounts to the Republican Party. Revlon Group Inc., M & F Holdings gave $562,250 to the Democratic Party and $140,000 to the Republican Party. Freddie Mac—Federal Home Loan Mortgage gave $265,000 to the Democrats and $250,000 to the Republicans, while Bank America Corp. gave $355,200 to the Republicans and $190,389 to the Democrats. For these and similar examples, see Common Cause, *supra*.

[48] According to the FEC, Democratic national party committees raised $123.9 million in soft money in the 1995–1996 election cycle, up 242 percent from the 1992 cycle, and spent $121.8 million, or 271 percent more than in 1992. Republican national party committees raised $138.2 million in soft dollars in the 1996 cycle, up 178 percent from 1992, and spent $149.7 million, 224 percent more than in 1992. FEC News Release "FEC Reports Major Increase in Party Activity for 1995–1996" (March 19, 1997). Although parties were not required to report soft money contributions and expenditures in the early 1980s, the best available estimates put party soft money at $19.1 million during the 1980 election cycle and $21.6 million in 1984. Corrado, *et al., supra* at p. 173.

[49] FEC News Release "Financial Disclosure Reports of Major Political Parties Show Increases in 'Soft Money' Contributions" (Sept. 22, 1997).

[50] 26 U.S.C. §§ 9001–9013.

[51] 26 U.S.C. §§ 9031–9042.

[52] October 31, 1997 Memorandum from FEC Staff Director John Surina to the Commission Regarding the Status of the Presidential Election Campaign Fund.

[53] 26 U.S.C. §§ 9033–9035.

[54] *See* Surina Memo, *supra*.

[55] 26 U.S.C. § 9008(d).

[56] *See* Surina Memo, *supra*.

[57] Using the law's language, candidates are prohibited from making "qualified campaign expenses" in excess of the statutory limit and also are prohibited from accepting contributions to make any "qualified campaign expenses." 26 U.S.C. § 9002(11) defines the term "qualified campaign expense" as an expense "incurred by the candidate [for President or Vice-President] . . . to further his election" or "incurred . . . by an authorized committee of the candidates . . . to further the election" of those candidates. In addition, presidential candidates must agree not to spend more than $50,000 of their own money in connection with their campaigns. 26 U.S.C. § 9004(d).

[58] *See* Surina Memo, *supra*. It is important to add that the election laws do leave some room for private financing of presidential campaigns. Most importantly, presidential campaign committees still may seek contributions (subject to hard money limits) to help defray the cost of legal and accounting services. *See* 11 C.F.R. § 9003.2(a)(2). In addition, 2 U.S.C. § 441a(d) authorizes political parties to spend a specified amount (2 cents times the voting age population) in coordination with or on behalf of their presidential candidates. The parties are free to raise this money from private sources, subject to the Federal Election Campaign Act's hard money limits.

[59] S. Rep. No. 93–689, p. 6 (1974). *See also Buckley v. Valeo,* 424 U.S. at 96 ("It cannot be gainsaid that public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest").

[60] 424 U.S. 1, 57 n.65.

[61] 26 U.S.C. § 9003(b).

[62] Harold Ickes Dep. June 26, 1997 Vol. 1 pp. 50–51, June 27, 1997 Vol. 2 pp. 35–36.

[63] During a June 1996 interview, Ted Koppel asked Dole how, in light of his dwindling preconvention campaign funds, he expected to fund additional television advertising. Senator Dole's response:

[W]e can, through the Republican National Committee, through what we call the Victory '96 program, run television ads and other advertising. It's called generic. It's not Bob Dole for president. In fact, there's an ad running now, hopefully in Orlando, a 60-second spot about the Bob

Dole story: Who is Bob Dole? What's he all about? Pretty much the same question that Ted Koppel asked me. So we'll do that. . . . It doesn't say "Bob Dole for president." It has my—it talks about the Bob Dole story. It also talks about issues. It never mentions the word that I'm—it never says that I'm running for president, though I hope that it's fairly obvious, since I'm the only one in the picture! (Laughter).

Oct. 22, 1997 Hrg. Exhs. 2336M (Transcript of ABC News interview of Bob Dole (June 6, 1996)), 2405M.

[64] I believe that the argument supporting the legality of the coordination of issue ads between presidential candidates and their parties is weaker than the argument supporting the legality of coordination between other candidates and the parties. The argument supporting the legality of coordination in general is as follows: the Federal Election Campaign Act ("FECA") limits the extent to which individuals and outside groups can "coordinate" their campaign activities with candidates by defining the term "contribution" to include "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents" (2 U.S.C. § 441a(a)(7)(B)(i)). In other words, FECA defines coordinated *expenditures* as *contributions* from the spending person or entity to the candidate, therefore subjecting such expenditures to the law's strict contribution limits. However, because FECA limits the term "expenditure" to "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person *for the purpose of influencing any election for Federal office*" (2 U.S.C. § 431(9)(A)(i)), and because the term "for the purpose of influencing any election for Federal office" has been interpreted as limited to only express advocacy, many argue that the rule circumscribing coordination applies only to coordinated *express advocacy* expenditures. Under this interpretation, parties, outside groups and individuals are free to coordinate *issue advocacy* and other similar activities with candidates, and such coordinated expenditures do not count toward the spending entity's contribution limits. An argument can be made that this very limited definition of coordination should not apply to expenditures made in concert with presidential candidates. That is because what the presidential financing laws prohibit is the making of expenditures beyond the spending limit (or the acceptance of contributions to fund such expenditures) that are "to further the election" of the candidate. In contrast to FECA's definitions of the terms "contribution" and "expenditure," the First Amendment does not mandate a narrow reading of those terms in the presidential financing law, because the presidential limits are voluntarily accepted in return for the public financing available to the presidential campaigns. It therefore is arguable that spending on issue ads made in coordination with the presidential campaigns violates the public financing laws because that spending is "to further the election" of the president, even though those ads may not contain *Buckley*'s magic words.

[65] 2 U.S.C. §§ 441b(a), 441e.

[66] 2 U.S.C. § 434.

[67] 26 U.S.C. § 501(c)(3).

[68] 26 U.S.C. § 501(c)(4); IRS Revenue Ruling 81–95, 1981–1 C.B. 332 (1981). Although the tax code permits organizations with 501(c)(4) status to engage in candidate advocacy, provisions in FECA, such as the prohibition against corporations engaging in express candidate advocacy, generally restrict their ability to do so.

[69] 26 U.S.C. § 527 grants exemption from certain taxes to political organizations engaged in attempting to influence Federal, State or local elections. Organizations involved in Federal election activity that qualify for this status usually have recognized that those activities also bring them under the purview of FECA's requirements.

[70] 11 C.F.R. § 106.5; FEC Advisory Opinion 1995–25 to RNC.

[71] *The Washington Post*, Feb. 9, 1997, p. A1.

[72] 26 C.F.R. § 1.501(c)(4)–1; IRS Revenue Ruling 81–95.

[73] *See* Hrg. Exh. 2400; DFP004244; *The Washington Post,* Oct. 23, 1997, p. A1.

[74] *The Washington Post*, Oct. 23, 1997, p. A1.

[75] *Ibid.*

[76] *Ibid*; Hrg. Exh. 2400.

[77] Mark Thomann Dep., Sept. 23, 1997 pp. 19–61; Oct. 9, 1997 Hrg. Exh. 1409 ($100,000 check from Duvaz Pacific Corp. to Vote Now 96).

[78] Joseph Sandler Dep, Aug. 21, 1997 Vol. 3 pp. 26–30 (noting DNC's return of checks); Harold Ickes Dep. Sept. 22, 1997 Exh. 38 (check to Vote Now 96); *New York Times*, Sept. 20, 1997, p. A1.

[79] *The Washington Post*, Nov. 22, 1997, p. A1.

[80] Mark Thomann Dep., Sept. 23, 1997 p. 68.

[81] Richard Sullivan Dep., Sept. 5, 1997 p. 75.

[82] The Annenberg Center for Public Policy, Sept. 16, 1997, "Issue Advocacy During the 1996 Campaign: A Catalogue," p. 21.

[83] *Id.* at 4.

[84] *Los Angeles Times*, May 5, 1997, p. A1.

[85] 461 U.S. 540, 544, 545 (1983).

[86] *See* Joint Statement of Senator John Glenn and Senator Joseph Lieberman, July 15, 1997 ("the information shown to us strongly suggests the existence of a plan by the Chinese government—containing components that are both legal and illegal—designed to influence U.S. *congressional* elections. . . . [T]here [is not] sufficient information to lead us to conclude that the 1996 presidential election was affected by, or even part of, that plan.") (emphasis in original).

[87] *See* Thomas R. Hampson, July 15, 1997 Hrg. pp. 67–71 (describing Lippo's business ties to Chinese Government).

[88] *See Newsweek*, "A China Connection," Feb. 24, 1997 p. 34; *Sunday Times*, "Chinese Spies Had Open Door to Oval Office," Nov. 10, 1996.

[89] Thomas R. Hampson, July 15, 1997 Hrg. pp. 67–68.

[90] *Id.* at 68–70.
[91] Hrg. Exh. 125 (Oct. 7, 1993 letter from Huang to Jack Quinn).
[92] Jerome Campane, July 29, 1997 Hrg. pp. 11, 21.
[93] *The Washington Post*, March 16, 1997.
[94] Jerome Campane, July 29, 1997 Hrg. pp. 11, 21–22; *New York Times*, Jan. 4, 1997; David Mercer Dep., May 27, 1997, pp. 139–42.
[95] Jerome Campane, July 29, 1997 Hrg. p. 21.
[96] Congressional Research Service Aug. 25, 1997 Memorandum to Sen. Lieberman from Kerry Dumbaugh, Specialist in Asian Affairs.
[97] *Los Angeles Times*, July 27, 1997, p. A1.
[98] Roger Tamraz, Sept. 18, 1997 Hrg. p. 66.
[99] *The Washington Post*, "Reality Check: The Politics of Mistrust," January 28, 1996, p. A1.
[100] *The Gallup Poll*, "Americans' Faith in Government Shaken But Not Shattered by Watergate," June 2, 1997.
[101] *The Polling Report*, Thomas H. Silver, Publisher and Editor, April 21, 1997, p. 1
[102] *The Gallup Poll*, "Americans Not Holding Their Breath on Campaign Finance Reform," October 11, 1997.
[103] *Ibid.*
[104] Oct. 22, 1997 Hrg. p. 16.
[105] The Senate most recently voted on a proposed Constitutional amendment, S.J. Res. 18, on March 18, 1997. The Resolution failed by a vote of 38–61.
[106] On February 24, 1998, the Senate refused "to table" (vote against) McCain-Feingold by a vote of 51 in favor of McCain-Feingold to 48 against, with one Senator who favored McCain-Feingold not voting. Feb. 25, 1998 Cong. Rec. S906. The Senate voted against tabling McCain-Feingold again on February 25, 1998 by a vote of 50–48, with two Senators who favored McCain-Feingold not voting. Feb. 25, 1998 Cong. Rec. S1001. Despite this majority in favor of McCain-Feingold, the bill did not pass because the Senate's cloture rule requires 60 votes to end debate on a measure, and only 51 Senators voted in favor of ending debate on February 26, 1998. Feb. 26, 1998 Cong. Rec. S1045.
[107] *The Gallup Poll*, "Americans Not Holding Their Breath on Campaign Finance Reform," October 11, 1997.
[108] *See Buckley*, 424 U.S. at 57 n.65; *Regan* v. *Taxation with Representation of Washington*, 461 U.S. at 544–45.
[109] "The Hope for America," speech delivered by the Rev. Billy Graham upon acceptance of the Congressional Gold Medal, Washington, D.C., May 3, 1996.

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ADDITIONAL VIEWS BY SENATOR DANIEL K. AKAKA

The Committee's investigation into the 1996 elections was triggered primarily by reports in the news media relating to Asia. Shortly before the election, news organizations reported that donors and fundraisers with ties to the Asia-Pacific region were linked to questionable contributions to the Democratic Party. After the election, the news media reported that U.S. intelligence agencies suspected the Chinese government of attempting to influence the elections.

In light of this, it was understandable—and appropriate—that the Committee devoted a great deal of time and attention to examining certain Asian nationals, Asian Pacific Americans, the so-called China Plan, and related matters. While I did not object to, and in fact supported, investigating these matters, I continue to have serious concerns about the *manner* in which the investigation was conducted. On a number of occasions, in my view, the Majority exhibited insensitivity to the effect of its actions and words on Americans of Asian ancestry.

For example, in its discussion of the China Plan, the Majority Report confuses Chinese business and social connections of certain Asian American donors and fundraisers with the possibility of their being "foreign agents." Seeds of doubt are cast out as to whether these individuals are loyal American citizens. Some of the subjects of the investigation may have violated campaign finance laws and some have been indicted by a federal grand jury. However, I am aware of no conclusive evidence that any of these individuals betrayed the United States. Absent stronger evidence, the Committee should refrain from making such damaging allegations.

The Majority also exhibited insensitivity by blurring the important distinction between Asian nationals and Asian Americans. Let us remember that a congressional investigation is a powerful tool, and, like any tool, it must be used with skill and with care. If a congressional investigation is not conducted in that manner, it becomes a blunt instrument that can inflict serious harm to the reputations of innocent individuals.

I am not just concerned that the Committee might have disparaged specific Asian Americans. I am also concerned about the effect that the allegations and insinuations of disloyalty may have on other Asian Americans—and, indeed, American citizens of other ethnic groups. The history of our country is replete with examples of ethnic groups whose loyalty has been questioned merely because of the national origin or religion of members of those groups.

During the 19th century, many U.S. born Protestants viewed Irish Catholic immigrants as "Papists" who owed a special loyalty to Rome that conflicted with their loyalty to the United States. Many young people may not realize it, but this canard was used as recently as 1960—against then-Senator John F. Kennedy. Some

of his opponents argued that a Catholic should never be elected President, on the grounds that he would be obliged to take orders from the Pope!

During World War II, thousands of Japanese Americans and their foreign-born parents were held in federal internment camps solely on the basis of nationality and on the speculation that they would betray the United States to Japan. Such fears proved to be baseless and many Japanese Americans distinguished themselves in battle. The all-Nisei 100th/442nd combat team is the most decorated unit in U.S. military history.

I strongly condemn all illegal fundraising activities, and I support prosecution of any individual or entity that may be guilty of violating federal campaign finance laws. However, I do not hold all Asian Americans responsible for the alleged actions of a few. With the majority of Americans choosing not to vote, let us not discourage Asian Americans from participating in the development of public policy because they believe the system is against them. Nor should Asian Americans be held to a higher standard than other citizens, and their political contributions should not be suspect. We cannot be guilty of selective harassment of those with Asian surnames because such actions only underscore the Asian American community's fear that they are being held responsible for the alleged crimes of some individuals who happen to be of Asian heritage.

I am also concerned with the Majority's approach to the Special Investigation and its overriding focus on foreign money, which obscures the fact that foreign donors played a minuscule role in Democratic fundraising efforts in the 1996 election cycle. The Democratic National Committee voluntarily returned about 172 contributions out of 2.7 million contributions, which represents .01 percent of the contributions received. Of the 172 returned contributions, fewer than 30 were returned because there was a determination that they were illegal or improper.

All of the confirmed and suspected contributions from foreign sources in the 1996 election cycle totalled a few million dollars, representing a tiny fraction of the hard money and soft money contributions made during that cycle. Soft money contributions alone totalled more than a quarter of a billion dollars, most of it from wealthy individuals and corporations. Well-heeled donors also influenced the electoral process by funding political campaign ads through nonprofit groups, claiming that these were merely "issue advocacy" ads.

While the Majority on this Committee focused on Charlie Trie, Johnny Chung, John Huang, Maria Hsia, Roger Tamraz, and others, the Majority has missed the forest for the trees. These individuals were not the only ones seeking access to decision-makers or influence over the actions of the federal government. Without a doubt, the conclusions of the Special Investigation should not be ignored. Those who have broken laws should be prosecuted and punished.

However, the Majority Report fails to focus on the real problem: campaign finance abuse and the need to reform the way federal elections are funded. Although it may be overshadowed by hyperbole about the so-called China connection, the most disturbing evi-

dence gathered by the Committee details the use and abuse of our current campaign finance laws. The misuse of tax-exempt groups for political advocacy and fundraising; the creation and exploitation of tax-exempt shell organizations; the role of "independent" groups and issue advocacy expenditures; the exchange of access for campaign contributions; and the role of soft money in undermining the entire campaign finance system are some of the practices and loopholes utilized by both parties that are the most troubling instances of improper or illegal practices chronicled during the Special Investigation.

I am pleased that several Republican members of the Committee strongly back real campaign finance reform, including Chairman Thompson. However, as long as Senate Republicans continue to choke off all efforts to revise our campaign finance laws and enact substantive reform, we will fail the American voters.

Finally, I wish to associate myself with the Additional Views of Senator Richard J. Durbin. Senator Durbin's statement echoes the concerns I have expressed throughout the investigation relating to the failure of the Majority to enforce subpoenas issued by the Committee. The lack of enforcement and refusal to comply with Senate-issued subpoenas has set a dangerous precedent. I am hopeful that the serious disregard of Committee subpoenas has not harmed the Senate power to subpoena individuals to appear at hearings or submit requested information.

DANIEL K. AKAKA, *United States Senator.*

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ADDITIONAL VIEWS OF SENATOR RICHARD J. DURBIN

I concur in the Minority Report, its Findings and Recommendations, and the Responses of the Minority to the Majority Report.

In reflecting on the special investigation into the 1996 Federal campaign undertaken by this Committee and its place in history, I offer these observations.

From the outset, I approached my responsibilities as a member of this Committee with the hope that our investigation would be open and bipartisan. I am disappointed that balance and fairness were not achieved, and that our investigation became an inquiry driven more often by partisan politics than objective deliberation.

As the investigation ensued, I hoped that public exposure of just how suspect and tawdry our campaign financing system had become would be a catalyst for change. Regrettably, despite a compelling body of evidence to justify comprehensive reform, the United States Senate, for the second time in six months, recently thwarted reasonable efforts to reform the system. The few Republican Senators who supported reform, including Chairman Thompson and Senators Susan Collins and Arlen Specter of this Committee, deserve special recognition for resisting their leadership's defense of the status quo.

Beyond the substantive issue of campaign finance reform, I am concerned that this investigation has damaged the procedural powers of the Senate in one particular respect. The failure of the Committee to confront the refusal of some entities to respond to the committee's directives to produce documents, appear for depositions, or respond to questions is troubling.

Part VII of the Minority Report describes in detail the increasing difficulties encountered as we attempted, in the face of resistance and obstruction, to gather critical facts necessary to examine the allegations of illegal and improper fundraising practices in the 1996 election campaign.

What is equally distressing is that not only were subpoenas not enforced, the lack of compliance itself became the rationale for the Majority's refusal to issue additional subpoenas sought by the Minority.[1]

Well before the issuance of a subpoena to the AFL–CIO (which the Majority unfairly blames for stimulating widespread refusal of other entities to respond) several Republican-affiliated groups began to openly resist the Committee's subpoenas. *Ultimately, well over 30 organizations of both political persuasions refused to comply with subpoenas issued by the Committee.* Not only did the Committee meet opposition from subpoenaed entities, the Minority faced repeated resistance by the Majority to even discuss our requests

[1] Hearing Transcript, October 8, 1997, p. 67, lines 1-3 "Chairman Thompson: Well, we are not going to issue subpoenas—continue to issue subpoenas when certain people are thwarting the ones that are already out there."

that we institute action to ensure that all Committee subpoenas be obeyed.[2]

No meaningful action to counter these early challenges to the Committee's subpoenas occurred. Such efforts may have prevented the contagious resistance the Committee faced. Failure to act promptly and aggressively may have signaled that if one simply resisted the Senate's request, no consequences would follow.

Had the Committee promptly instituted enforcement action to compel compliance at the first sign of balking, we may have obtained much more of the evidence sought. In addition, had the committee sought a declaratory ruling from the court on objections raised to the breadth and scope of our requests, we may have obtained guidance to settle the discovery disputes, which even now, remain unresolved. Furthermore, had any judicial enforcement processes the Committee might have instituted become protracted, there may have been some justification for seeking an extension of time to continue our probe. But those possibilities, unfortunately, are things about which we can only speculate.

The Majority Report ascribes blame for not enforcing the subpoenas on the cutoff date and what it deems "lengthy and arduous procedures" for contempt. I cannot accept the argument tendered in the Majority's Report that because contempt procedures are time-consuming, future investigations must be free of arbitrary time deadlines in order to accommodate possible noncooperative witnesses.

While the Majority posits that the cutoff in S. Res. 39 was a hindrance, its actions reflected that it had little interest in meaningful enforcement. It failed to aggressively confront the obstructionists, continuing to cite the deadline as a reason for inaction. That argument falters when measured against the fact that (1) the full Senate unanimously approved a specific end point, (2) the Majority continued to delay its approval of Minority requested subpoenas throughout the course of the hearings, (3) the Committee never took advantage of the statutory civil contempt procedures available to address noncompliance with its discovery requests, and thus, there is no evidence as to how much time any such enforcement may have taken; and (4) the Chairman's decision to suspend public hearings fully two months before the December 31 deadline, which gave the impression that the Majority had nothing more to present and that any claimed need for additional time beyond year-end had disappeared.

Instead of continuing to engage in futile negotiations with recalcitrant entities that claimed that the subpoenas were overbroad, the Committee should have mounted an assertive response, such as seeking a declaratory judgment. Federal law provides a remedy that may have satisfied both the Committee's objective of obtaining information and entities' collective desire to test the validity of our requests.[3] Indeed, if there were legitimate concerns about the scope

[2] Hearing Transcript, October 7, 1997, p. 22, lines 8-24; Hearing Transcript, October 7, 1997, p. 31, line 23 to p. 32, line 9; Hearing Transcript, October 8, 1997, p. 65, line 12 to p. 75, line 22

[3] 2 U.S.C. §§ 288b(b) and 288d; 28 U.S.C. § 1365(a); CRS Report No. 86-83A. The Senate may "ask a court to directly order compliance [a] subpoena or order or may merely seek a declaration concerning the validity of the subpoena or order. By first seeking a declaration, [the Senate would give] the party an opportunity to comply before actually [being] ordered to do so by a

and breadth of matters inquired into or challenges to information sought in the subpoenas, the proper forum for evaluating the propriety of the requests is the Federal District Court for the District of Columbia.

Seeking contempt and submitting questions on the propriety of our requests for judicial resolution once attempts to secure voluntarily compliance had broken down would have been, in my estimation, a preferred course of action. To claim that there was inadequate time to present and resolve such matters before the Committee's work period expired is weak. It appears that interest in obtaining the information sought was not paramount.

Instead, like the recalcitrant groups resisting the Committee's requests, the Committee just watched the clock run down. Not only did we end in a stalemate with noncooperative groups and fail to gain the information we sought, we may have discredited the Senate's investigative authority.

In January 28, 1997 floor remarks, Chairman Thompson quoted a passage from the leading Supreme Court case on the power of Congress to investigate as a necessary component of its power to investigate.[4] What the Court went on to explain was that:

> Experience has taught that mere requests for . . . information often are unavailing and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—*with enforcing power* [emphasis supplied] was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, it was treated as inhering in it. There is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised."[5]

In the interest of the Senate as an institution, the Committee should have been more vigilant in safeguarding the integrity of the investigative process and powers of Congress and cognizant of the potential for damaging ramifications of not invoking sanctions.

Our failure to take appropriate enforcement action in the discovery phase of this investigation may have repercussions far more enduring than simply the inability of this Committee to obtain the evidence it sought to fully probe questionable campaign practices in the 1996 Federal election cycle. The damaging precedent we have now established could affect the Senate as an institution, as its Committees continue to exercise their oversight authority and attempt future investigations.

Any future probes of the magnitude of the one we have just concluded must be guided by the lessons of our experience. To uphold

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court." S. Rept. No. 95–170, 95th Cong., 1st Sess. 89 (1977). It is within the discretion of the Senate whether or not to use such a two-step enforcement process. *Id.* at 90. Regardless of whether the Senate seeks enforcement of, or a declaratory judgment concerning a subpoena, the court will first review the subpoena's validity. *Id.* at 41.

[4] *McGrain v. Daugherty,* 273 U.S. 135 (1927)

[5] *McGrain* v. *Daugherty,* 273 U.S. 135, 175 (1927)

the integrity of the Senate's power to investigate, reasonable requests for information within the clear scope of the investigation must be made and deliberate acts of obstruction must be promptly addressed.

Finally, I would associate myself with the Additional Views of Senator Daniel K. Akaka.

At the outset of this investigation, Senator Akaka cautioned this Committee not to judge Asian-Americans based on any wrongdoing by a few. His eloquent plea was heeded by most Members most of the time.

But the Majority Report may well have crossed the line by characterizing some Asian-American donors and fundraisers as possibly "foreign agents." Without convincing evidence, the loyalty of several Asian-Americans is questioned in that report. It is difficult to imagine a more serious and damaging charge against any American.

History will judge whether these charges by the Majority are warranted. In the name of fairness, I hope that this Committee and the U.S. Senate are prepared to make a public apology to those charged with disloyalty should the evidence show otherwise.

RICHARD DURBIN.

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ADDITIONAL VIEWS OF SENATOR ROBERT G. TORRICELLI

While I fully concur with the Minority Report, I am nonetheless writing in order to provide additional emphasis to two areas of the Committee's investigation.

I. Television advertising costs: the root cause of the demand for campaign funds

Over the course of the Committee's investigation, much was made of the so-called thirst for campaign contributions that permeated the political system during the 1996 federal election campaign. The Committee spent countless hours investigating instances of questionable contributions and fundraising practices which were in one way or another caused by this thirst for contributions. I believe, however, that the focus of the Committee was misplaced. Instead of examining the effects of this thirst for contributions, we should also have examined its cause.[1]

If it had done so, the Committee would have learned that the upwardly spiraling cost of television advertising is the driving force behind rising campaign costs and, consequently, the root cause of the fundraising machine that wreaks havoc on our political process. Curtis Gans, Director of the Study of the American Electorate, defined the importance of this issue during his testimony before the Committee. Referring to the cost of television advertising, he stated, "[i]f you want to cut the cost, improve the content, and restore the civility of the political debate, I think this is where you have to start."[2]

During the Committee's sole week of testimony directly on campaign finance reform, witnesses noted the rising costs of television advertising and the detrimental impact it has on our system. Mr. Gans, who opposed the standard set of campaign finance reforms supported by Democrats, nonetheless acknowledged that "we need to look at what is driving the cost of our campaigns up, which is the cost of advertising."[3] Ann McBride, President of Common Cause, similarly stated, "[w]e believe that television is clearly driving up the cost of campaigns and clearly, if you look at what happened in both the Presidential races, and if you look at Senate races and House races around the country, this is increasingly a larger and larger percentage of cost, and if there were a way to do something about television time, we think that this would be a very appropriate remedy."[4]

But we need not take the word of the experts; the statistics alone paint a telling picture. In 1996, candidates and parties spent over $400 million on TV advertising, a 76% increase since 1988.[5] Television advertising now accounts for nearly half of all funds spent in U.S. Senate campaigns and a third of all funds spent for the

[1] Footnotes appear at end of chapter 44.

House of Representatives.[6] In some states where advertising time is particularly costly, the percentages are even higher. In my 1996 Senate campaign, where the average cost of a prime time television advertisement was nearly $50,000, 82 percent of all the money raised went to television advertising. And there is no reason to believe that these numbers will not continue to rise.

But while the problem is clear, the solution remains elusive. Since this investigation began, the Senate has twice considered campaign finance reform legislation, and twice the Republican majority has thwarted those efforts, despite the support of a majority of the Senate. During that time, several proposals were offered that would have addressed the problem of television costs. First, the original McCain-Feingold campaign finance reform legislation included discounted and free television time for candidates who accepted expenditure limits. After that provision was removed from the McCain-Feingold bill, a variety of amendments were proposed, but never voted on, to grant television discounts to candidates. I introduced an amendment that would have granted candidates substantial discounts on air time if the candidate appeared in his own ad. The goal of the amendment was to reduce the cost of air time for candidates while at the same time acting as a negative incentive to running attack ads. Finally, the Federal Communications Commission is examining rulemaking to make free or discounted air time part of broadcasters public service requirement. Despite these efforts, however, to date no reform has been enacted.

Until we address the astronomical cost of television advertising, the system will continue to demand more and more fundraising. And as this pressure increases, the instances of improper and illegal practices will undoubtably rise. By failing to fully examine the impact of the cost of air time on the campaign finance system and recommend appropriate reform legislation, I believe the Committee missed a great opportunity to focus the public debate and create a basis for meaningful reform.

II. AFL–CIO objections to committee subpoenas

The majority attempts to make the AFL–CIO the scapegoat for a variety of problems it encountered during the investigation. Most notably, the majority accuses the AFL–CIO of being "obstructionists" because of the actions it took in objecting to the Committee's subpoenas. I believe the accusation of "obstruction" against the AFL–CIO is unjustified and sounds a dangerous note for the rights of any citizen called before a committee of Congress.

What the majority characterizes as an "obstruction" was in fact the submission of legal objections: legitimate First Amendment challenges to the power of the Committee to inquire into legitimate political activities of a private organization. The AFL–CIO submitted lengthy, fully-reasoned memoranda of law in support of their positions. Furthermore, several similarly situated organizations, aligned with both the Democratic and Republican parties, joined the AFL–CIO in making these objections.

By guaranteeing the freedom of speech and association, the Constitution gives organizations such as the AFL–CIO the right to raise issues of this nature. Indeed, it is exactly this type of action by a majority that the First Amendment was created to guard

against. A review of the memoranda and correspondence submitted by the AFL–CIO to the Committee demonstrates that the AFL–CIO raised these issues in a manner entirely consistent with the rules of this Committee and of the Senate.

I believe that any effort by the majority to deny a private party the right, within the rules, to assert legal objections based on the most basic constitutional principles is both unwise and unlawful. To the extent the majority's actions or its report insinuates such a position, I am obliged to register my firm objection. This Committee cannot—and should not attempt to—set itself above the law.

III. Guam

The majority's zealous pursuit of a foreign money connection had some very unfortunate consequences. One example is the misleading and damaging statements made about political contributions of United States citizens from the territory of Guam. The Majority and many others often treated the people of Guam as if they were non-citizens, for no better reason than geographic proximity to Asian countries. No evidence of truth to the alleged violations or any impropriety was uncovered. The fact is that the people of Guam had every right to participate in the political process and should be praised for doing so. By casting such a wide, careless net of blame, we have chilled political participation among United States citizens in Guam and others throughout our nation. I believe the residents of Guam deserve our profound apology, and our encouragement to remain involved in the political process.

ROBERT G. TORRICELLI.

FOOTNOTES

[1] The Committee held thirty one days of public hearings. Only four of these days were devoted to campaign finance reform. The testimony of these days was informative, however, it was not as comprehensive as needed and the immediate return to other investigative topics limited its usefulness as a catalyst for reform.

[2] Testimony of Curtis Gans, 10/24/97 Hrg., p. 158.

[3] Id. at 157.

[4] Testimony of Ann McBride, 10/24/97 Hrg., p. 58.

[5] Congressional Research Service, *Free and Reduced-rate Television time for Political Candidates*, 7/7/97, p. 5.

[6] Id. at 4.

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