

105TH CONGRESS }  
2d Session

SENATE

{ REPT. 105-167  
Vol. 3

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

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**FINAL REPORT**

OF THE

**COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE**

TOGETHER WITH

**ADDITIONAL AND MINORITY VIEWS**

**Volume 3 of 6**



MARCH 10, 1998.—Ordered to be printed

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ELECTION CAMPAIGNS—VOLUME 3**

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THE CHEYENNE AND ARAPAHO TRIBES: THEIR QUEST FOR THE FORT  
RENO LANDS

INTRODUCTION

The Committee investigated the circumstances surrounding contributions totaling \$107,000 that the Cheyenne and Arapaho Tribes of Oklahoma ("C/A" or "tribes") made to the DNC in 1996. The bulk of the contributions, approximately \$87,000 worth, was made shortly after two C/A representatives attended a June 17, 1996 luncheon at the White House, where they were afforded an opportunity to speak to President Clinton about a long-standing tribal land claim (to the Fort Reno lands in Oklahoma, described below). On March 13, 1997, following media accounts that discussed the stark poverty of the tribes and raised questions about the source of the money used for the contributions, the DNC returned all of the C/A contributions.

The Committee interviewed and deposed witnesses and reviewed documents and other materials in connection with its investigation, but public hearings were never held. The Committee's work was hampered by a lack of access to key witnesses. First, the four most knowledgeable tribal representatives were initially cooperative with the Committee's investigation but later asserted their Fifth Amendment privilege against self-incrimination and would not testify under oath without a grant of immunity. The Committee was thus unable to depose these crucial witnesses, who were: Charles Surveyor, the tribal chairman, Archie Hoffman, the tribal secretary, Tyler Todd, the tribal governmental affairs advisor, and Rick Grellner, a tribal attorney. Although the Committee respected these witnesses' invocation of the privilege, it is doubtful they invoked it in good faith. Their immunity proffer disclosed no discernible basis for a criminal prosecution. Moreover, their assertion appeared to contain a large measure of gamesmanship. Through their attorney, they originally asserted the privilege unconditionally. Then, the assertion was lifted as to the Committee's hearing subpoenas, provided that the witnesses could select who among them would testify and provided they could make a long speech at the start of their testimony. Then, when it was too late for the Committee to call them, they dropped their conditions with respect to the hearing subpoena but not the deposition subpoena.<sup>1</sup>

<sup>1</sup> Early on, the tribal representatives cooperated with the investigation, and they were asked to appear voluntarily for a deposition. They agreed but then at the eleventh hour asserted their Fifth Amendment privilege and declined to testify. *See* Conference—Proposed Depositions, Sept. 15, 1997, pp. 6–7. The Committee then served deposition and hearing subpoenas on Hoffman, Todd, Grellner, and Surveyor, and the witnesses all asserted their Fifth Amendment privilege in response to both the hearing and deposition subpoenas. *See* Letter from Barry Coburn to John H. Cobb, Sept. 16, 1997. (Ex. 1)(asserting privilege for purposes of deposition). The witnesses never withdrew their assertion of the privilege regarding the deposition subpoenas, and only withdrew their privilege with respect to the hearing subpoenas on Oct. 30, 1997, the last day of the Committee's public hearings.

Second, despite repeated attempts, the Committee was unable to secure the voluntary testimony of Michael Turpen, a former attorney general of Oklahoma who was retained by the C/A to help lobby on their behalf. Turpen was a crucial fact witness, a point Committee staff made often to him and his attorney. According to the tribe, Turpen helped solicit their DNC contributions and invited them to attend the June 17, 1996 White House luncheon. In one news account, Archie Hoffman, the tribal secretary, stated, "Turpen said give \$100,000; he said that's the way you gotta work."<sup>2</sup> The Committee repeatedly sought Turpen's cooperation, but he gave very little despite many representations that he would. Like the tribal representatives, Turpen seemed to game the Committee for his own purposes, giving assurances of cooperation outwardly while never really intending to do so.<sup>3</sup>

Much of the tribes' story was presented to the Committee in a series of staff interviews of tribal representatives conducted in August and September 1997.<sup>4</sup> Except where otherwise noted, the information contained in the discussion below was provided by the tribal representatives during those interviews.

Despite the limited cooperation of key witnesses, the Committee gathered enough facts to reach the following conclusion. This chapter in the DNC's 1996 fund-raising efforts is among the most sordid. In brief, 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 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 fleecing stopped only when several unflattering press accounts ran regarding the tribes' plight.

#### BACKGROUND AND THE DECISION TO DONATE TO THE DNC

The C/A have aggressively pursued their claim to the Fort Reno lands for several years.<sup>5</sup> In 1994 and 1995, the tribes contacted the Departments of Interior and Agriculture, seeking assistance in obtaining the land. The tribes made little apparent progress with the agencies, however, and grew frustrated. Their frustration was compounded by the widespread opposition of the entire Oklahoma congressional delegation to the Fort Reno claim.<sup>6</sup> By late 1995, the tribes were ready to try another approach and hired Michael

<sup>2</sup>Sue Schmidt, "Tribes Disappointed After Gifts to DNC," *Washington Post*, March 10, 1997, p. A1.

<sup>3</sup>The Committee's fruitless dealings with Turpen are briefly summarized in Ex. 2. Letter from John H. Cobb to C.S. Lewis, Nov. 7, 1997 (Ex. 2).

<sup>4</sup>Separately, the tribes's attorney gave the Committee a detailed oral proffer on September 15-16, 1997, largely duplicating information that the tribal representatives had provided the Committee during the earlier interviews and also had provided to the press. The Committee did not formally consider an offer of immunity for the four tribal representatives who invoked the Fifth Amendment.

<sup>5</sup>The Fort Reno lands are located near the C/A tribal complex in west Oklahoma. The land is held by the federal government, which operates an agricultural research center there. The land apparently has valuable oil and gas reserves.

<sup>6</sup>Although Democrats and Republicans alike in the Oklahoma delegation expressed opposition for their claim, the tribes took special exception to Senator Don Nickles and Congressman Frank Lucas and ran a series of television ads against them.

Turpen, a former Oklahoma attorney general, to lobby on their behalf. Turpen came to the C/A's attention through Tyler Todd, an advisor to the tribal business committee. Turpen set up meetings in Washington with relevant administration officials regarding the Fort Reno lands, accompanying the C/A to Washington on two different occasions in early 1996. In addition, Turpen wrote a senior White House official, Mack McLarty, in March 1996, seeking his help with the Fort Reno matter.<sup>7</sup>

Throughout this time, Turpen was also a top Oklahoma fundraiser for the Democratic Party and Clinton/Gore '96.<sup>8</sup> In early 1996, he first mentioned that the tribes should get involved in the "process" and make a contribution to the DNC. He told them at least once that in order for the tribes to be noticed, such a contribution should be "six figures." Over the course of several weeks in the spring of 1996, the tribal leaders decided that they should contribute to the DNC as a means of "getting heard" on their land claim.

In May 1996, several tribal representatives, including Surveyor, Todd, Grellner, and perhaps others, met with Turpen in his law office. The tribes informed Turpen that they had decided to contribute \$100,000 to the DNC. Turpen, who was pleased, promptly called Jason McIntosh, an official at Clinton/Gore '96 and an old friend of his. Turpen put McIntosh on the speaker phone with the tribal representatives and explained that the tribe would be contributing \$100,000 to the DNC.<sup>9</sup> Tribal representatives recall Turpen noting that the contribution would make the tribes the largest DNC donor in Oklahoma. During that call, the tribes and Turpen also discussed the Fort Reno land claim with McIntosh.

Turpen and McIntosh also discussed whether the tribes could afford the contribution. McIntosh apparently asked Turpen whether the C/A had sufficient funds to cover the contribution, to which Turpen replied, "Well, my check cleared," meaning his initial \$5,000 retainer payment for representing the C/A.<sup>10</sup> Sometime after the call, McIntosh provided wiring instructions to Turpen so that the tribes could wire their donation directly to the DNC.<sup>11</sup>

Several days later, on June 13, 1996, Turpen called Grellner, telling him words to the effect, "You have decided to give \$100,000 to the DNC. As a result, you will be invited to a lunch with President Clinton at the White House on June 17, 1996." The tribe was ecstatic, although they did not know how exactly their invitation came to pass. Neither Turpen nor McIntosh had mentioned a luncheon or any other meeting with President Clinton previously. Turpen made it clear that two tribal representatives could attend the lunch.

In his deposition, McIntosh indicated that Turpen extended the luncheon invitation to the C/A at his own initiative. Turpen had

<sup>7</sup> Letter from Michael C. Turpen to Mack McLarty, Mar. 18, 1996 (Ex. 3).

<sup>8</sup> The tribal representatives thought Turpen was the Oklahoma Chairman of Clinton/Gore '96. However, Jason McIntosh, a former DNC and Clinton/Gore official who knows Turpen well, was not aware of any official title Turpen held in 1996 with the campaign. McIntosh identified Turpen as a leading Democratic fund-raiser in Oklahoma. Deposition of Jason McIntosh, Oct. 29, 1997, p. 15.

<sup>9</sup> *Id.* at p.22.

<sup>10</sup> The tribe paid Mr. Turpen at least \$10,000 for his lobbying services. Tribal Resolution No. 052296S113, May 22, 1996 (Ex. 4). The tribe produced one bill from Turpen that shows some of this lobbying work on their behalf. Bill from Riggs, Abney, et al. May 2, 1996 (Ex. 5).

<sup>11</sup> McIntosh deposition, p.25.

been invited to the luncheon, which was set up through the DNC and the White House political affairs office. Turpen asked McIntosh if two tribal representatives could be substituted in his place, and McIntosh passed along the request to the DNC and White House, which acceded.<sup>12</sup> McIntosh testified that the tribes's pledge to contribute \$100,000 "possibly . . . helped them a great deal" in receiving an invitation to the June 17 luncheon.<sup>13</sup>

THE JUNE 17, 1996 LUNCHEON AND ENCOURAGEMENT REGARDING THE  
FORT RENO LAND CLAIM

On June 16, 1996, four tribal representatives, Surveyor, Todd, Hoffman, and Grellner, traveled to Washington for the luncheon. They chose Surveyor and Todd to attend the White House event. The next morning (the day of the luncheon), they recall meeting with McIntosh at the DNC headquarters.<sup>14</sup> Shortly after they arrived at the DNC, they remember McIntosh asking them, "Did you bring the check?" They explained that they had not but that they would wire the money as soon as they returned to Oklahoma. McIntosh did not seem upset.<sup>15</sup> McIntosh recalls simply inquiring about whether they had encountered any difficulty in wiring their contribution, since he had provided the wiring instructions earlier.<sup>16</sup>

The C/A did not bring a contribution to the DNC because there had been dissent among the tribal business committee members, the tribal decision-making body, over whether to make the contribution. Surveyor and Todd and others favored making the contribution; but Robert Tabor, the committee treasurer, was not fully sold on the idea. Thus, the C/A came to the DNC on June 17 empty-handed.

Before they left for the luncheon, McIntosh showed the four around the offices and struck up some small talk. Eventually, McIntosh took them to meet Terry McAuliffe. According to the tribes, McIntosh said McAuliffe had raised \$40 million so far, and McIntosh told McAuliffe that the C/A was now the largest donor in Oklahoma.

McAuliffe then took Surveyor and Todd to the White House for the luncheon.<sup>17</sup> The group entered the White House through the East Gate and were taken to a small room, where five or six guests were already waiting. They were eventually joined by other guests, including McAuliffe, President Clinton, and a photographer. The luncheon consisted mainly of small talk, but towards the end of the luncheon, the guests were invited (prompted perhaps by McAuliffe) to speak briefly to President Clinton about whatever was on their minds. Surveyor and Todd have an imprecise recollection of what others said, but remember discussions about retirement benefits, railroads, and a publishing chain. Todd declined to speak, in def-

<sup>12</sup> *Id.* at pp. 28-32.

<sup>13</sup> *Id.* at p. 33.

<sup>14</sup> McIntosh recalls the meeting taking place at Clinton/Gore's headquarters, where McIntosh worked at the time. McIntosh deposition, p. 38.

<sup>15</sup> In one Committee interview, Grellner indicated that McIntosh was in fact upset.

<sup>16</sup> McIntosh deposition, pp. 41-42.

<sup>17</sup> The White House political office prepared a briefing memorandum for the June 17th luncheon that described the event and the participants. Memorandum, Democratic National Committee Presidential Luncheon, June 16, 1996 (Ex. 6). McIntosh helped draft the portion that discussed Surveyor and Todd. McIntosh deposition, p. 36.

erence to Surveyor, the tribe's top elected official. Surveyor was seated to President Clinton's immediate left, and he spoke last and apparently at much greater length than the other guests. He talked first generally about matters of concern to Native Americans, discussing health care funding, education, and the like.

Surveyor then spoke about the Fort Reno lands. He described the situation to President Clinton and noted that since the land was taken by executive order in the 1880s,<sup>18</sup> perhaps President Clinton could arrange the return of the land by a new executive order. President Clinton turned to an aide who was taking down notes and asked, "Do we have anything on Fort Reno?" and the aide replied affirmatively.<sup>19</sup> Without recalling President Clinton's exact words, Surveyor and Todd recount that the President said something like, "We will look into it and see if anything can be done about it, and we'll see what we can do." They did not take this to be a binding promise to return the land, but they were quite heartened by the President's comment.

Surveyor and Todd walked out of the luncheon with McAuliffe and others. McAuliffe told them, "If the President says he'll do something, he'll do it." McAuliffe, in his Committee deposition, could not recall any conversation between President Clinton and Surveyor, and he did not recall speaking with Surveyor or Todd after the luncheon about the Fort Reno lands.<sup>20</sup>

Of interest to the Committee is whether the words of encouragement spoken by President Clinton or McAuliffe might have helped induce the tribes to consummate their DNC contributions. Because the Committee has not received sworn testimony from the tribal representatives, it is difficult to parse what exactly they were told, or how they might have viewed what was said to them. However, the tribes provided the Committee with tapes of two contemporaneous tribal business committee sessions—held on June 20 and July 3, 1996—in which committee members discussed the decision to contribute to the DNC. As the following excerpts from the tapes reveal, it is clear the tribes believed that their discussion with President Clinton was made possible only by contributions and that the discussion with the President would lead to the return of the land:<sup>21</sup>

Todd: Mr. [Surveyor] brought up all of our issues, and the President listened very intently, and the secretary took all of the notes, and he made certain she had everything.

Surveyor: It was mostly on Fort Reno what I was talking about. And at the last, I told him how it was taken and if there was any way they could get it back the same way, then [inaudible]. When I got through talking, he [President

<sup>18</sup>The tribes received \$15 million from the United States in settlement of their land claims. See *Cheyenne-Arapaho Tribes v. United States*, 16 Ind. Cl. Comm. 171 (1965).

<sup>19</sup>The tribes have a standard Fort Reno information packet that they had given to McAuliffe earlier and surmise that McAuliffe's copy ended up with the aide.

<sup>20</sup>Deposition of Terrance McAuliffe, Sept. 18, 1997, p. 29.

<sup>21</sup>The Committee transcribed the tapes and gave transcripts to counsel for the tribes, with the understanding that the tribes would identify the voices on the transcripts and provide the Committee annotated versions of the transcripts. The tribes never provided such annotated versions, however. Thus, the voice identification made above was performed by Committee staff, based on staff's familiarity with the voices of some of the business council meeting attendees. Unidentified voices are denoted "speaker."

Clinton] said, "Well, I think we can help you then." He told the secretary, "Do you have it?" and she said, "Yes."

Speaker: It can be returned by Executive Order?

Surveyor: Yes.<sup>22</sup>

\* \* \* \* \*

Speaker: Are you saying you feel that this donation—

Todd: Well, put it this way—

Speaker [continuing]: Would enhance the transfer of the property from the government to the tribe, Fort Reno?

Todd: I definitely think so.

Speaker: What kind of commitment did you get from the President?

Todd: Well, in the first place, you don't go in and make deals with the President. We go in and talk to him.

Speaker: That's what [inaudible] were saying, too. It's illegal for the President to make deals.

Surveyor: Well, there were no deals made to the Cherokees a few years back. . . . They donated \$150-and-some thousand or \$200-and-some thousand, right around there, and you can see the results. They got everything and are getting everything. That's what it comes down to. I hate to say it's that way, but . . . that's just the way it goes.<sup>23</sup>

Moreover, it is clear from the tapes that the tribal representatives thought there was an admission price—\$50,000 per head—for attendance at the luncheon:

Speaker: Was there a commitment?

Speaker: Tyler [Todd], was there a commitment?

Todd: Was there a commitment on what?

Speaker: From us to the Democratic Party?

Todd: Uh-huh.

Surveyor: I believe there was something of a commitment—again, to meet with the President.

Speaker: It costs \$100,000 to visit the President?

[Pause.]

Speaker: What do you charge, Charles? [Laughter.]<sup>24</sup>

The tribes' belief that DNC contributions would ultimately lead to success regarding the land is corroborated by the testimony of Terry Lenzner, a private investigator who met with the tribes in May 1997.<sup>25</sup> Mr. Lenzner told the Committee that the C/A representatives with whom he met believed they had been promised

<sup>22</sup> Excerpted transcript of Tribal Working Session, June 20, 1996, pp. 38–39 (Ex. 7).

<sup>23</sup> *Id.* at pp. 41–42.

<sup>24</sup> *Id.* at pp. 55–56. Although, as revealed by the tapes, the tribal representatives very clearly believed that their contributions would help them obtain Fort Reno, they took a more diplomatic view publicly. According to the tribal representatives, the contribution caused an uproar in the tribal community, which led Surveyor and Todd to issue a press release on June 28, 1996. The press release characterized the luncheon as an "historic" meeting between Surveyor and President Clinton. The press release recounted that Surveyor told the President about the Fort Reno land claim but rejected the notion that Clinton promised to return the land. News Release of Cheyenne-Arapaho Tribes of Oklahoma, June 28, 1996 (Ex. 8). Despite their public diplomacy, the private, contemporaneous words of the tribal leaders in the tape excerpts portray a different belief altogether. Or as poet Emily Dickinson once observed: "The thought beneath/so slight a film/is more distinctly seen/as laces just reveal the surge/or mists the Appenine."

<sup>25</sup> Mr. Lenzner's involvement with the C/A is discussed more fully below.



favorable action on their land claim in exchange for contributions to the DNC:

Lenzner: They [the tribal representatives] say they had been approached by somebody who had worked in the campaign, whose name I can't recall. They had been promised action on the lands. . . . My recollection is that they were promised favorable action, that they were going to get their lands returned in exchange for a donation.<sup>26</sup>

In fact, Lenzner, whose firm the DNC had retained to investigate foreign money contributions, initially thought the tribal representatives wanted him to investigate the DNC for the failure to consummate a contributions-for-land quid pro quo:

Senator Specter: [Tribal representatives say they were told they would] get their lands returned in exchange for a contribution?

Lenzner: That's my recollection of what they were telling me, and at the time . . . I started wondering whether they were asking me to conduct an investigation of this incident. . . . I thought there might be a problem with them telling me about it in view of the Democratic National Committee work we are currently doing.<sup>27</sup>

Lenzner's conflict of interest concerns passed, however, when the tribes made clear that the target of the investigation in which they might be interested was not the DNC.

#### THE TRIBES DONATE APPROXIMATELY \$107,000 TO THE DNC

##### *The first contribution (\$87,000)*

Immediately after the White House luncheon, the C/A were called with some frequency by Turpen and McIntosh, an effort the C/A viewed as dunning the tribes into making good on their contribution pledge. They remember Turpen making the first call on June 20 and expressing irritation about the tribes not contributing \$100,000 before the luncheon event. Turpen insisted that the tribes pay the DNC immediately. According to tribal representatives, McIntosh then placed several calls starting on June 24, 1996 (usually to Grellner, the tribal attorney), which became increasingly aggressive in tone. In his deposition, McIntosh explained that Turpen had merely asked him to "coordinate" with the C/A and ensure that the contribution came through.<sup>28</sup> McIntosh testified that he had numerous conversations with Grellner about the contribution.<sup>29</sup> However, McIntosh said that the calls were frequently occasioned by Grellner's indications that the money had been transferred, when the money in fact had not.<sup>30</sup>

The C/A business committee met to discuss the contribution on June 20, 1996. Although no formal resolution authorizing the contribution was passed, Surveyor, Todd, Hoffman, and Grellner, having determined that the business committee informally expressed sufficient support, wired a contribution to the DNC on June 26,

<sup>26</sup>Testimony of Terry Lenzner, July 31, 1997, pp. 56–57.

<sup>27</sup>*Id.* at pp. 57–58.

<sup>28</sup>McIntosh deposition, p. 43.

<sup>29</sup>*Id.* at p. 45.

<sup>30</sup>*Id.* at pp. 139–40.

1996 for \$87,671.74.<sup>31</sup> That amount represented all of the money in the C/A's bank account. The money for the contribution was derived from a bingo hall owned by the tribes.<sup>32</sup> Although the hall is 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. The tribes had intended to contribute the full \$100,000 pledged to the DNC, but there was a shortfall in the bank balance.

The tribes played a bit of a shell game internally in order to make the June 26th contribution. The business council treasurer, Robert Tabor, opposed the idea of a contribution and wanted nothing to do with it. To get around Tabor's reluctance, the money was transferred from the tribal account controlled by Tabor and placed into the account of an affiliated entity (a business development corporation) from where it was wired to the DNC.

The tribal business committee met again on July 3, 1996 and passed a resolution formally approving a \$100,000 contribution to the DNC.<sup>33</sup>

*The second contribution (\$20,000)*

Sometime in July, Turpen called the tribe, reminded them that they were "\$13,000 short" on their DNC commitment, and suggested that they help host President Clinton's 50th birthday celebration in August. Turpen said that hosting the party would cost \$20,000, and the tribe agreed to do so. The tribe provided the funds in a cashier's check<sup>34</sup> to someone at Turpen's firm, whom the tribe understood was running the Oklahoma portion of the birthday celebration. As with the earlier \$87,000 contribution, Tabor, the business council treasurer, wanted nothing to do with the contribution, so again the money was transferred from a tribal account to that of the tribal development corporation. The money qualified the C/A as a sponsor of a birthday dinner in Oklahoma City that coincided with, and was linked up by remote television connection to, the main birthday party held at Radio City Music Hall in New York in August 1996.<sup>35</sup>

WHERE DID THE MONEY COME FROM?

At times, the media has described the C/A contributions as coming from a tribal "welfare fund," a description resisted by tribal representatives who do not like the implication that they made large political contributions, which accomplished little, at the expense of more basic tribal needs. The source of the money also raises the issue of the tribes' poverty. Based on its questioning, the Minority appears ready to argue that these obviously impoverished tribes are in fact flush with money.<sup>36</sup>

There are several points worth noting in this regard. First, while the Committee has undertaken no effort to determine the actual poverty level of the C/A, it is fair to say that they are very poor.

<sup>31</sup> Wire transfer, Boatmen's First National Bank of Oklahoma, June 26, 1996 (Ex. 9).

<sup>32</sup> Memorandum from Tyler Todd to Charles Surveyor, April 23, 1997 (Ex. 10).

<sup>33</sup> Tribal Resolution No. 070996S167, July 9, 1997 (and related meeting minutes) (Ex. 11).

<sup>34</sup> Cashier's check, People's National Bank, August 12, 1996 (Ex. 12).

<sup>35</sup> Invitation to Oklahoma Democratic Rally for President Bill Clinton's 50th Birthday (Ex. 13).

<sup>36</sup> See McIntosh deposition, pp. 110–14.

The unemployment rate among tribal members is 62%, and two-thirds of tribal members receive public assistance.<sup>37</sup> The average per capita income is approximately \$6,000 per year.<sup>38</sup> The tribal representatives consider their people's financial condition to be desperate, and indeed, one reason obtaining Fort Reno is important to them is the economic self-sufficiency that judicious development of the land promises. In fact, when the business council was debating the DNC contributions, during a July 1996 meeting, the tribes' poverty was noted frankly:

Speaker: \$100,000, that is not a lot to the people up there playing big politics, but for us it's a lot of money, and that, from what I gather, practically almost bankrupts us. It puts our capital way down there low. . . . Historically, we have a tough time making it, and the bills start coming in—bills, bills, bills.<sup>39</sup>

Second, while 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. When the DNC returned the contribution in March 1997, the tribes took the money and used it for buses to transport the elderly and infirm, a Head Start program, and emergency assistance.

The DNC returned the tribes' contributions on March 13, 1997, expressing concern that the contributions might have "come from their welfare fund."<sup>40</sup> The DNC, moreover, refunded the contribution to dispel the "link in the minds of the Tribe's members that they needed to give this money in order to be heard on an official government matter."<sup>41</sup> Such a link, of course, is exactly what Turpen placed in the minds of the C/A when they were considering whether to contribute. Ironically, the tribes were offended that the DNC returned the money, thinking that the gesture meant their money was not good enough for the Democratic party.

#### OTHER POLITICAL EVENTS ATTENDED BY TRIBAL REPRESENTATIVES

For a brief time in 1996, the C/A's sizeable contributions secured them invitations to several DNC-related events. Those included:

- In August 1996, Surveyor attended a reception at the Vice President's residence. His attendance was arranged by an attorney at Turpen's firm.
- In August 1996, Todd attended a dinner with Vice President Gore at a Washington hotel, an event to thank the sponsors of the "remote" birthday celebrations for President Clinton. Todd sat at the same table with Vice President Gore, who at one point told the

<sup>37</sup> Michael Grunwald, "Modern Promises, Old Betrayal," *The Boston Globe*, Jan. 18, 1998, p. A1.

<sup>38</sup> *Id.*

<sup>39</sup> Transcript of Tribal Working Session, July 3, 1996, p. 43 (Ex. 14).

<sup>40</sup> DNC Press Release: "DNC Returns Cheyenne-Arapaho Tribal Donation," Mar. 13, 1997 (Ex. 15). See also Letter from B.J. Thornberry to Charles Surveyor, Mar. 13, 1997 (enclosing contribution refund) (Ex. 16).

<sup>41</sup> *Id.*

table that if anyone needed anything, they should contact Mitchell Berger, a prominent fund-raiser also seated there.<sup>42</sup>

- In August 1996, Surveyor, Todd, and Grellner attended the Democratic National Convention.

- On October 18, 1996, DNC Chairman Don Fowler visited the tribal complex in Oklahoma.<sup>43</sup>

#### NATHAN LANDOW AND PETER KNIGHT

As November and December 1996 wore on, the C/A grew restless. They had seen no progress regarding Fort Reno and little benefit from their contributions. In fact, the only tangible result of their DNC contributions was more solicitations from various Democratic fund-raisers.<sup>44</sup> A series of contacts would lead them to Nathan Landow, a wealthy Maryland area real estate developer who is a longtime supporter of Vice President Gore and the DNC,<sup>45</sup> and to the law firm where Peter Knight, Landow's friend, practiced. Knight, a former Gore aide, is a prominent political fund-raiser who chaired Clinton/Gore '96.

The path to Landow and Knight went through Michael Copperthite, a Democratic political consultant. In 1996, Copperthite managed the successful campaign of Arkansas Congressman Marion Berry, a former administration official the tribes had met in earlier rounds of Washington lobbying. Copperthite originally contacted Grellner, the tribal attorney, in October 1996 to see if the C/A would consider contributing to Berry's campaign. Although the C/A did not give money, Grellner did contribute \$5,000 personally to the Arkansas Democratic Party. Grellner also solicited advice from Copperthite about the C/A's growing restlessness over Fort Reno, and Copperthite agreed to help the tribes. After the Berry campaign, Copperthite took tribal representatives around Washington, and arranged for them to meet with lobbyists and Capitol Hill staffers to discuss the Fort Reno lands.<sup>46</sup> One of these meetings was with Landow.

<sup>42</sup> Several weeks after the dinner, in October 1996, Tyler Todd did call Berger, telling him about some planned federal budget cuts to an Indian AIDS program. Berger was very responsive, reciting a list of Administration officials he would contact. Many of these officials subsequently called Todd to discuss the funding issue. Funding for the program was later restored. For his part, Berger contacted Todd around December 1996, and asked for a \$25,000 contribution to the inaugural, which the tribes declined. Berger solicited contributions several times, once saying that, "you [C/A] owe us money." For more on Berger, see the section of this report on R. Warren Meddoff.

<sup>43</sup> Don Fowler's Briefing Material for Cheyenne-Arapaho Meeting, Oct. 18, 1996 (Ex. 17).

<sup>44</sup> The fundraisers they mentioned to the Committee were Nathan Landow, Mitchell Berger, and Mary Pat Bonner. Tribal representatives also told Copperthite about solicitations from these individuals. Deposition of Michael Copperthite, Aug. 27, 1997, pp. 29–33. Although Landow could not recall soliciting the tribes, he recalled speaking to Berger and Bonner, both of whom indicated that they had solicited the tribes for contributions. Deposition of Nathan Landow, Sept. 17, 1997, pp. 66–67. Landow said it was "possible" but unlikely that he solicited the tribes himself for political contributions. *Id.* at pp. 57–59.

<sup>45</sup> In late November 1995, Vice President Gore successfully solicited Landow by phone for a \$25,000 DNC contribution. Landow, according to the Vice President's notes, replied, "You'll have it in hand in one hour." DNC Finance Call Sheet, Nov. 27, 1995 (Ex. 18).

<sup>46</sup> Copperthite would figure prominently in the C/A's saga from November 1996 until late 1997, and he spent many hours trying to help them. Early on, Copperthite tried to arrange a fee-splitting agreement with Landow regarding the tribe's land. Copperthite deposition, Sept. 3, 1997, p. 133. Landow rebuffed the idea and, in any event, would part company with the tribes in March 1997, as discussed below.

To the Committee's knowledge, Copperthite has made no other effort to be paid for his work with the tribes, apart from occasionally asking (but not insisting on) reimbursement of his out-of-pocket expenses. Copperthite's methods seem unorthodox, his motivation somewhat inscrutable, but he has worked pro bono for the tribes and appears to have earned their trust. He was

Copperthite first took Surveyor, Grellner, and Hoffman to meet Landow on November 24, 1996, at Landow's offices in Bethesda, Maryland. Copperthite portrayed Landow as someone close to Vice President Gore who might be able to help them with the Fort Reno claim. According to Landow, Copperthite was persistent in asking Landow to meet with C/A representatives, and his persistence finally piqued Landow's interest in the matter.<sup>47</sup>

At the November 24 meeting, the tribal representatives described for Landow their June 17 luncheon with President Clinton, and recounted how the President's words encouraged them to think there would be favorable action on the Fort Reno land. According to the tribes, Landow disputed their account, telling them something to the effect, "That was no meeting. It was an appreciation lunch." Landow denies having any discussion or any knowledge during this time about the tribes' White House luncheon.<sup>48</sup> The tribes then described their land claim. Landow expressed interest preliminarily, and explained his view that the tribes needed to proceed on two different tracks—one, negotiating with the federal government to obtain the land, and two, determining how to develop the land once they had it.<sup>49</sup> Landow viewed his role as that of the developer and thought the tribes needed to find legal representation to help with their claim to Fort Reno.<sup>50</sup>

Landow said he recommended several Washington lawyers and law firms to the tribes at the November 24 meeting, including specifically Peter Knight of the firm Wunder, Diefenderfer, Cannon & Thelen.<sup>51</sup> Landow denied that he marketed Knight's close relationship with Vice President Gore.<sup>52</sup> He does recall saying that Knight and his firm would take the case only if they felt "they could be of assistance."<sup>53</sup>

The tribes recall Landow's characterization of Knight quite differently. They remember Landow explicitly touting Knight's close relationship to Vice President Gore and claiming that Knight's relationship to the Vice President would improve the tribes's likelihood of prevailing on Fort Reno. They also recall Landow saying that Knight would only take the case if "he could deliver." Thus, the tribal representatives were quite pleased when Landow called Rick Grellner the night of the 24th, and told him representatives of Knight's firm wanted to meet them the next day. They related this news to Copperthite.<sup>54</sup> In fact, shortly after the initial meeting with Landow ended, Landow called Grellner at Grellner's hotel, and directed Grellner to describe the Fort Reno claim over the phone to an associate at Knight's law firm, Jody Trapasso. They arranged to meet with Trapasso the next day and discuss the matter further.

The November 25 meeting was held at the Wunder, Diefenderfer offices, attended by Grellner, Surveyor, Landow, and Trapasso.

involved in having a bill introduced in the House of Representatives during the 105th Congress to convey the Fort Reno lands to the tribes.

<sup>47</sup> Landow deposition, pp. 20–21.

<sup>48</sup> *Id.* at p. 32.

<sup>49</sup> *Id.* at p. 25.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at pp. 25–26.

<sup>52</sup> *Id.* at p. 36.

<sup>53</sup> *Id.* at pp. 40–41.

<sup>54</sup> Copperthite deposition, Aug. 27, 1997, p. 46.

Grellner described for Trapasso and Landow various ways the federal government could return the land to the tribes. Without committing, Trapasso indicated that the firm would “take a look at it.” Landow told Surveyor and Grellner that fees would have to be “worked out.” According to the tribes, Landow also solicited them for a contribution to a Gore 2000 Committee. Landow described that such a committee was being set up, and the tribe, without making a firm commitment, indicated they planned to be supportive. In his deposition, Landow did not recall ever soliciting the tribes for a political contribution.<sup>55</sup> Following the initial meetings with Landow and Trapasso, there were a series of calls between Landow and Grellner, in which Landow talked up Knight’s connections to the Vice President and indicated that although Knight had not decided whether he would take the case, it would be a “great opportunity” for the tribes if he did.

The C/A were pleased with this turn of events. They viewed Landow and Knight as people with sufficient ties to the Administration to cause favorable action on the land. As explained by Copperthite, “[the tribes] were pretty ecstatic because they now felt . . . their [DNC] contribution, though it didn’t get them what they initially thought it would, they now were meeting the people who could carry forth and help them get their land back.”<sup>56</sup>

Landow also began sketching out fees, both for himself and Knight or Knight’s firm. According to the tribes, Landow told Grellner that Knight would require a \$100,000 payment up front, plus \$10,000 a month in order to represent them. Landow also described his compensation generally and discussed receiving commissions based on a percentage of the closing price for any future sales of the Fort Reno lands. Landow and Grellner had approximately a half dozen conversations about fees in November and December 1996. During one of these, Landow unsuccessfully solicited a political contribution from the tribes for an entity Landow called the “Tennessee Victory Fund.”

On January 21, 1997, Surveyor and Grellner met with Landow and Copperthite over breakfast at the Willard Hotel in Washington. They again discussed Fort Reno and the nature of compensation to be paid to Landow and Knight. Landow once again, according to the tribes, indicated that Knight’s fee would be \$100,000 up front and \$10,000 per month. According to Copperthite, Surveyor indicated that because the tribal business committee would have to vote out payments to Knight, it might be easier simply to pay one lump sum up front, to which Landow replied, “well, then, make it a quarter of a million dollars so they can get the ball rolling.”<sup>57</sup> They also discussed Landow’s fees. At this meeting (and perhaps in subsequent phone conversations with Grellner), Landow solicited the tribes one more time for a political contribution.

Copperthite has testified that at the close of the meeting, Landow told the tribes they should be ready to sign contracts with Landow and Knight’s firm and have a check in hand to pay Knight’s firm when everyone next met. Landow explained that

<sup>55</sup> Landow deposition, p. 59. The tribes never contributed in response to any solicitations by Landow.

<sup>56</sup> Copperthite deposition, Aug. 27, 1997, p. 40.

<sup>57</sup> *Id.* at p. 44.

Knight was “filling up with clients,” and thus it was urgent to retain Knight soon.<sup>58</sup>

A meeting was held on February 4, 1997, at Knight’s office. The tribes understood that the purpose of the meeting was to execute agreements for Knight and Landow, and for the tribes to make an initial payment to Knight. Landow, Knight, Grellner, Copperthite, and Trapasso all attended. Surveyor was supposed to attend but did not, which became a matter of contention.

Copperthite and Grellner arrived at the offices and waited for approximately 45 minutes while Knight, Landow, and Trapasso met privately. That group then joined Copperthite and Grellner. Grellner apologized for Surveyor’s absence, and informed the group that while the tribes remained very willing to retain Knight, no tribal resolution had yet been passed approving the representation. Grellner also asked for more specifics about Landow and Knight’s compensation.

The fact that the tribes were not ready to consummate a deal with Landow and Knight’s firm incensed Landow. He asked Knight and Trapasso to leave the room and then ripped Grellner and Copperthite for not having Surveyor present, for not having a check to pay to Knight’s firm, and for not being able to sign a deal that day. Grellner and Copperthite both recollect an abusive, profanity-strewn tirade from Landow, one Copperthite described as “Teamster-esque.”<sup>59</sup> Grellner and Copperthite then recount two things happening. First, Landow “dictated” the terms of a contract, which Grellner wrote down, later preparing a draft based on what Landow required. The contract addressed compensation for both Knight’s firm and Landow.<sup>60</sup> The terms dictated by Landow included: \$100,000 up front to Knight’s firm, with \$10,000 monthly payments; and for Landow, 10% of any settlement price for development of the land and 10% of any revenue from gas or oil extraction.

Second, Landow threatened the C/A. He told Grellner and Copperthite that if they failed to reach an agreement as specified by Landow, he would make sure the tribes never obtained the Fort Reno lands. At one point, according to both Copperthite and Grellner, Landow told them something like, “If you don’t do this deal, I will fuck you.”<sup>61</sup>

It should be noted that Landow takes issue with at least some of Copperthite and Grellner’s characterization of his meeting with them on February 4, 1997. Landow concedes that he expressed anger at Copperthite and Grellner because Landow thought the purpose of the meeting was to reduce to writing agreements involving Landow, the tribes, and the Wunder, Diefenderfer firm regarding Fort Reno.<sup>62</sup> Landow also concedes that he “suggested” terms and conditions for an agreement between him and the tribes,<sup>63</sup> but he denies threatening them.<sup>64</sup>

<sup>58</sup>*Id.* at p. 45.

<sup>59</sup>*Id.* at p. 57.

<sup>60</sup>*Id.* at pp. 54–61.

<sup>61</sup>*Id.* at p. 61.

<sup>62</sup>Landow deposition, pp. 79–80, 88.

<sup>63</sup>*Id.* at pp. 84–85.

<sup>64</sup>*Id.* at p. 88.

Whatever impression Landow thought he left, Grellner sent him on February 14, 1997 a proposed "Consulting Services Agreement" to be signed by the tribes, Landow, and Knight.<sup>65</sup> The draft agreement reflected Grellner's understanding of what Landow dictated during the February 4 meeting. It provided that Knight and Wunder, Diefenderfer would represent the tribes in pursuing the Fort Reno lands and that the firm would be paid \$100,000 in advance and \$10,000 per month for its services. It also granted Landow a "contingency" fee of 10% of the settlement price on any real estate development on the property, and a 10% "net working interest" in any oil and gas production developed.<sup>66</sup> Several days later, Landow sent Surveyor a revised agreement that contained essentially identical compensation terms but modified other terms of the agreement. Landow indicated the tribes would need to contract separately with Knight's firm.<sup>67</sup>

Landow disclaimed having any role in negotiating the terms of a representation agreement between Wunder, Diefenderfer and the tribes.<sup>68</sup> However, Landow had several discussions in early 1997 with two attorneys at Knight's firm, Ken Levine and Jody Trapasso, about the firm representing the tribes, and he admits being "made aware" of the fee arrangement under negotiation.<sup>69</sup> Landow and Levine also sent each other copies of the proposed agreements they sent the tribes in response to the February 14, 1997 draft.<sup>70</sup>

Curiously, Knight told the Committee that by the February 4, 1997 meeting, he had decided *not* to represent the tribes and assumed Trapasso had relayed that decision to Landow.<sup>71</sup> Knight, however, noted that other firm attorneys (Trapasso and Levine) were continuing to discuss the possibility of representing the tribes. Moreover, as late as March 4, 1997, Levine was still indicating that Knight would be involved in the firm's representation.<sup>72</sup>

Landow did not speak with the tribes again after sending his March 4 proposal. The *Washington Post* ran an unflattering story on March 10, 1997 about Landow's dealings with the tribes,<sup>73</sup> a development that ended the proposed consulting arrangement. The tribal representatives told the Committee that while they were serious about the terms of the proposed Wunder, Diefenderfer representation, Surveyor would never have agreed to the consulting terms proposed by Landow, which Surveyor considered excessive.<sup>74</sup>

<sup>65</sup> Consulting Services Agreement, undated (Ex. 19).

<sup>66</sup> *Id.* The press has reported that Fort Reno sits atop oil and gas reserves worth millions of dollars. Don Van Natta, "Where Tribes Saw Promise, Democrats Saw Pledge," *The New York Times*, Aug. 12, 1997, p. A1.

<sup>67</sup> Letter from Nathan Landow to Charles Surveyor, March 4, 1997 (with enclosed "Cheyenne Arapaho-Landow Consulting Agreement") (Ex. 20).

<sup>68</sup> Landow deposition, pp. 52-53.

<sup>69</sup> *Id.* at pp. 54, 78, 96.

<sup>70</sup> *Id.* at pp. 111-12.

<sup>71</sup> Deposition of Peter Knight, Sept. 17, 1997, p. 171.

<sup>72</sup> Letter from Kenneth Levine to Charles Surveyor, Mar. 4, 1997 (Ex. 21).

<sup>73</sup> Not long after negative press stories broke, Landow wrote an apology to Knight. Letter from Nathan Landow to Peter and Gail Knight, Mar. 21, 1997 (Ex. 22).

<sup>74</sup> As a postscript, the C/A business committee secretary, Archie Hoffman, noted during an early visit to Landow's office that Landow possessed a Sioux war bonnet containing golden eagle feathers, an apparent violation of federal laws prohibiting such possession. Hoffman reported Landow to the U.S. Fish and Wildlife Service, which commenced an investigation. See Richard Tapscott, "Maryland Developer to Donate Indian Headdress to Museum," *Washington Post*, Dec. 3, 1997, p. C3.



## CODY SHEARER

Several weeks after completing their dealings with Landow and Knight, the C/A encountered another figure whose interest in them they would come to regret. In the spring of 1997, an acquaintance of Tyler Todd's, Al Cilella, offered to put the C/A in touch with someone in Washington named Cody Shearer, whom Cilella said could help them. Through Cilella, several tribal representatives—Todd, Hoffman, Surveyor, Grellner, and Bob Musgrove—first met Shearer on May 8, 1997.

In his Committee deposition, Shearer describes himself as a freelance journalist. He has also touted himself in a Website as having been “involved in a series of backchannel operations for President Clinton,” including brokering the peace in Bosnia and opening negotiations between Syria and Israel.<sup>75</sup> Nevertheless, Shearer says that it was only his journalistic interest, not an interest in helping the Clinton administration, that drew him to meet with the tribes. Cilella, an occasional source of news tips for Shearer, simply informed him that the C/A had an interesting story, and according to Shearer, all Shearer did was follow up.<sup>76</sup>

The initial May 8, 1997 meeting took place at lunch in a Capitol Hill restaurant. Although Shearer testified that his journalistic interest quickly abated when he sized up the tribal representatives at lunch, he nevertheless invited them to his house later that day.<sup>77</sup> Shearer recounted politely hearing the tribes out and being anxious to shoo them from his house. In contrast, the tribes recall Shearer bragging about his ties to the Clinton administration<sup>78</sup> and indicating that he could take the tribes's plight “to the top,” meaning President Clinton. According to the tribes, Shearer played them a videotape greeting to Shearer's parents from President Clinton and the First Lady. According to the tribes, Shearer also said that he would mention the Fort Reno matter directly to President Clinton or the First Lady over the upcoming Memorial Day weekend. Shearer recalls making no such offer.<sup>79</sup>

The tribes related their anger about Senator Nickles's opposition to Fort Reno reverting to the C/A, so Shearer suggested that the tribe contact an investigator acquaintance of his, Terry Lenzner of the Investigative Group International (IGI). Shearer recommended that the tribes retain IGI to try and locate unfavorable information on Senator Nickles to use as possible leverage in the future.

Shearer arranged a meeting the next day, May 8, 1997, at IGI. Lenzner and a colleague attended. The tribes stated their suspicions that Senator Nickles' opposition to giving Fort Reno to the C/A might involve oil and gas interests.<sup>80</sup> Lenzner offered to inves-

<sup>75</sup> Webpage for Institute for International Mediation and Conflict Resolution, undated (Ex. 23). After posting these claims on the Web for 18 months, Shearer has edited them out in a revised webpage. He indicated the claims were false in his Committee deposition. Deposition of Cody Shearer, Sept. 16, 1997, pp. 61–64.

<sup>76</sup> Shearer deposition, pp. 11–13.

<sup>77</sup> *Id.* at pp. 16–17.

<sup>78</sup> Shearer's brother in law is Strobe Talbott, the Undersecretary of State; his brother is Derek Shearer, the U.S. Ambassador to Finland; Shearer's sister, Brooke, is a political appointee at the Interior Department. *Id.* at pp. 8–9.

<sup>79</sup> *Id.* at pp. 31–32, p. 73.

<sup>80</sup> The tribes have never offered any proof of this, and the Committee has seen none whatsoever.

tigate Nickles, his wife, and family businesses, and a proposed investigative work plan was sent to the tribes.<sup>81</sup>

Both Majority and Minority Members observed what an outrageous proposal this was. When Lenzner attempted to liken the proposed investigation to campaign-related “opposition research” (itself a troubling manifestation of modern politics), Members had this to say:

Senator Specter: [Senator Nickles] was not a candidate here. You were doing this in order to have some effect on his attitude about the return of the Indian land . . . to find information on Senator Nickles which, to put it mildly, would try to pressure him or persuade him to change his position.<sup>82</sup>

\* \* \* \* \*

Senator Lieberman: [Lenzner’s proposal] seems to be . . . an attempt to investigate the personal lives of Members of Congress as a way to affect their votes here, and that is really an outrageous intrusion into the system.<sup>83</sup>

Ultimately, the tribes decided not to hire Lenzner. As with Landow, the tribes’ dealings with Lenzner ended when unflattering media stories appeared<sup>84</sup> regarding the Shearer/Lenzner involvement.

In interviews with Committee staff, tribal representatives have related their misgivings about Shearer, their suspicion of his motives, and their belief that he was trying to silence them while he made vague efforts to “help.” Shearer has denied most of this, but nevertheless there are parts of his story that the Committee finds suspicious. First, Shearer testified that he had almost no contact with any tribal representatives after May 9, 1997. He testified that he had no personal meetings with them after that time and that he had only three phone conversations with them, all of which were brief and related only to media stories.<sup>85</sup> Tribal representatives, however, have told to Committee staff that Shearer had frequent contact with them after May 1997, especially with Tyler Todd, and discussed the substance of their land claims.

Second, Shearer told the Committee that he never told the tribes he would, and never in fact did, speak with anyone in the Clinton administration or the DNC regarding the tribes’ land claims.<sup>86</sup> Shearer further recounted that he has never told the tribes that he would assist them in any way, including helping them obtain drug and alcohol treatment facilities.<sup>87</sup> However, Shearer’s version of events varies sharply from what the Committee has learned from the tribes’ attorney and another witness. In a discussion with Committee staff, Grellner indicated that Shearer told Todd, as recently

<sup>81</sup> Letter from Terry Lenzner to Richard Grellner, May 12, 1997 (Ex. 24). In addition to having been hired by the DNC (see above), Lenzner was also retained by the Presidential Legal Expense Trust (“PLET”) to investigate the source of Charlie Trie’s PLET contributions. See section of the report regarding PLET.

<sup>82</sup> Hearing Transcript, July 31, 1997, p. 62.

<sup>83</sup> *Id.* at p. 76.

<sup>84</sup> See Michael Isikoff, “The Dark Side of the Money Trail,” *Newsweek*, Aug. 4, 1997, p. 6.

<sup>85</sup> Shearer deposition, pp. 53–54.

<sup>86</sup> *Id.* at pp. 60–64.

<sup>87</sup> *Id.* at pp. 54, 74.

as late August 1997, that if the tribes would “cooperate”—meaning protect the Administration during the Committee’s investigation—Shearer would help arrange for the tribes to receive a drug and alcohol rehabilitation facility at the tribal complex in Oklahoma.<sup>88</sup>

Grellner and other tribal representatives have apparently related similar information to Copperthite. In his Committee deposition, Copperthite testified: “Rick Grellner . . . told me that Mr. Shearer had called last week and said that if the tribe remained silent through their [Committee] testimony or depositions because there was an article about them being deposed in an Oklahoma paper, they would get an alcohol and drug rehabilitation center.”<sup>89</sup>

Finally, Shearer testified that he had one brief conversation with Peter Knight about the tribes in which while discussing an unrelated topic, he inquired simply whether Knight had an opinion about the tribes.<sup>90</sup> Knight’s version of the conversation differs: “[Mr. Shearer] came in and told me basically that the Indians were out to get the Vice President and me. And he said that he told them, ‘That would be a dumb thing if you’re interested in getting your land back.’”<sup>91</sup>

#### CONCLUSION

It is difficult to imagine a more cynical political exploitation than that visited upon the tribes by the collection of Democratic fundraisers and operatives they encountered in 1996 and 1997. In contrast to wealthy tribes with successful gambling enterprises—whose access to the highest reaches of the administration is vividly demonstrated in the Hudson casino story—the C/A were fleeced, unsuccessfully re-fleeced, and then abandoned. They 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. The administration and its hangers-on pursued donations from these poor and vulnerable tribes without shame or, apparently, remorse.

<sup>88</sup> Interviews of Richard Grellner, Sept. 2 & 10, 1997.

<sup>89</sup> Copperthite deposition, Sept. 3, 1997, p. 192.

<sup>90</sup> Shearer deposition, pp. 29–31.

<sup>91</sup> Knight deposition, p. 178.

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Offset Folios 60 to 115 Insert here



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#### THE OFFER OF R. WARREN MEDDOFF

Two weeks prior to the November 5, 1996 election, the President attended a DNC fundraiser in Florida. At that fundraiser, as the President walked along the rope line meeting and greeting people, R. Warren Meddoff thrust a business card in his hand. The President continued walking and read the words written on the back of the card: I have an associate that is interested in donating \$5 million to your campaign.<sup>1</sup> The President then returned to Meddoff, and asked for another card to give to his staff.

The President gave this second card to Harold Ickes, Deputy Chief of Staff of the White House, and asked him to call Meddoff about the potential contribution, which Ickes did within two days. Ickes' calls to Meddoff from the White House and Air Force One regarding contributions continued from October 24, 1996 to October 31, 1996. Then, on October 31, 1996, only five days prior to the election, Ickes directed the White House to fax instructions to Meddoff steering donations to the DNC and several nonprofit groups favorable to the President. Later the same day, Ickes called Meddoff and told him to "shred" the fax. All of this was done without the knowledge of the background of R. Warren Meddoff or the actual donor.

From October 1996 until July 17, 1997, R. Warren Meddoff was the Director of Government Affairs for Bukkehave, Inc. ("Bukkehave") of Fort Lauderdale, Florida.<sup>2</sup> Bukkehave is a wholly owned U.S. subsidiary of a Danish corporation, Bukkehave, Limited.<sup>3</sup> Prior to his employment with Bukkehave, Meddoff was a self-employed consultant in the areas of real estate, investment development and brokerage, and in financial matters with several foreign governments.<sup>4</sup>

Meddoff also had a business relationship with William Morgan, a Texas businessman,<sup>5</sup> dealing in pre-World War II German governmental gold-backed bearer bonds.<sup>6</sup> Morgan indicated to Meddoff in early October 1996 that he would soon be closing a business transaction involving the sale of bearer bonds from which he would receive approximately \$300 million in revenues.<sup>7</sup> Morgan told Meddoff that since they "previously had made commitments to both presidential campaigns," he would honor that obligation and donate

<sup>1</sup> Testimony of R. Warren Meddoff, September 19, 1997, p. 7.

<sup>2</sup> Deposition of R. Warren Meddoff, August 19, 1997, p. 6; *see also* Meddoff testimony, p. 4. According to Meddoff, Bukkehave "supplies vehicles and spare parts primarily to governments, the United Nations, and charitable organizations operating in the third world." *Id.*

<sup>3</sup> Meddoff deposition, p. 6. Meddoff testified in his deposition that the owners of Bukkehave, Limited were represented to him as Hans Christian Bukkehave and Christian Haar, both Danish nationals. *Id.*

<sup>4</sup> Meddoff testimony, p. 4.

<sup>5</sup> Meddoff deposition, p. 11. Although Meddoff had a business relationship with Morgan, they have never personally met. *Id.* at p. 13.

<sup>6</sup> Meddoff testimony, p. 5.

<sup>7</sup> Meddoff deposition, p. 14.



\$5 million to each campaign.<sup>8</sup> Morgan subsequently called Meddoff on October 22, 1996 to inform him that the transaction was proceeding and asked him to notify the appropriate individuals that he would be prepared to make the donations by the end of that month.<sup>9</sup> Meddoff previously had been invited by Mitchell Berger<sup>10</sup> to attend a fund-raising dinner for the President on October 22, 1996 at the Biltmore Hotel in Coral Gables, Florida.<sup>11</sup> Meddoff attended the fund-raiser to speak to the President on behalf of a client of Bukkehave, Inc. to gain support for permitting humanitarian flights to Cuba, which had been hit by a hurricane.<sup>12</sup>

Although Meddoff attended the fund-raiser primarily to speak to the President about those flights, he had talked earlier that day to Morgan about informing the “presidential campaigns” of Morgan’s intent to make a large contribution to each.<sup>13</sup> Morgan and Meddoff discussed the possibility that Meddoff would be unable to speak directly to the President at the fund-raiser that evening. They concluded that Meddoff should write the offer of a donation on the back of a business card and hand it to the President.<sup>14</sup>

At the fundraiser that evening, Meddoff approached the President and said, “Mr. President, this is for you,” and handed the President his business card.<sup>15</sup> The back of the business card read, I have an associate that is interested in donating \$5 million to your campaign.<sup>16</sup> As the President walked away, he glanced down and read the card, then returned to Meddoff and asked for another card to give his staff. The President promised that someone from his staff would be in touch.<sup>17</sup> According to Meddoff, the President also briefly discussed the situation in Cuba and told him that humani-

<sup>8</sup>*Id.* See DNC memorandum from Penny (no last name listed) to Bonnie (no last name listed) regarding \$1,000,000 contribution, July 29, 1996 (Ex. 1) (noting that Penny had “received a call from Meddoff who relayed that Morgan wanted to contribute in excess of \$1 million to the Democratic campaign.”) This memorandum also notes that “Leon Panetta was apprised of the plan [to contribute] over a year ago. Meddoff convinced Morgan to contribute the money through himself and Mitchell [Berger] because Mitchell ‘is a real nice guy.’ Meddoff said Morgan is not looking for any appointments, favors, etc. However, he would like some kind of tax benefits, if possible.” See also Letter to Senator Robert Dole from R. Warren Meddoff, Feb. 22, 1995 (Ex. 2). This letter states that Meddoff and his client want to make a donation to the Republican Party. Meddoff followed up on his letter with a phone call to Senator Dole’s office. A member of Senator Dole’s staff informed Meddoff that when the funds were available to please call back and he would be instructed on how to make a proper donation to the Republican party. Meddoff deposition, p. 22.

<sup>9</sup>*Id.* at pp. 14–15.

<sup>10</sup>According to Meddoff, Mitchell Berger was “in charge of fund-raising for the Democratic Party in the State of Florida.” *Id.* at p. 22. Meddoff previously mentioned to Berger’s law partner, Manuel Kushner, that he would be making a large donation once a gold bond transaction closed and that it could go through Berger so he would get credit for such a large donation. *Id.* at p. 24; see also *supra* note 8.

<sup>11</sup>Meddoff deposition, p. 22.

<sup>12</sup>Bukkehave paid \$1,500 for Meddoff to attend the dinner. Meddoff deposition, p. 22. According to Meddoff, the Administration’s policy did not permit direct flights from the U.S. to Cuba. Bukkehave’s client, Catholic Relief Services, had materials warehoused in Miami to assist the victims of the hurricane but was not allowed to deliver the materials because of this policy. *Id.* at p. 23. The morning of the fund-raiser, Meddoff faxed a letter to the White House expressing his intention to speak to the President on this policy. *Id.* at p. 25. See also Letter from R. Warren Meddoff to President Clinton regarding Cuban humanitarian relief, October 22, 1997 (Ex. 3).

<sup>13</sup>Meddoff deposition, p. 14. It is illegal to give contributions to a Presidential federal election campaign that has agreed to limit its spending in return for receiving public financing. There is a \$1,000 individual contribution limit to presidential primary candidates. 2 U.S.C. § 4412(a)(6). There is also a prohibition on additional funding to presidential candidates in the general election. 26 U.S.C. § 9003(b)(2) and 9012(b).

<sup>14</sup>Meddoff deposition, p. 28.

<sup>15</sup>*Id.* at pp. 28–29.

<sup>16</sup>Meddoff testimony, p. 7.

<sup>17</sup>Meddoff deposition, p. 29.

tarian flights to Cuba could resume.<sup>18</sup> The entire conversation lasted less than five minutes.<sup>19</sup>

On October 23, 1996, the day after the fund-raiser, Meddoff contacted Morgan to inform him that he had spoken directly to the President and relayed his message regarding the contribution.<sup>20</sup> Harold Ickes left a message for Meddoff on Bukkehave's answering machine on Saturday, October 24, 1996.<sup>21</sup> Because Ickes left the message on a Saturday, Meddoff did not receive the message until that Monday, October 26, 1996.<sup>22</sup> Ickes was not in the office when Meddoff returned his call on Monday, October 26, 1996. Instead he was informed him that Ickes needed to speak to Meddoff and would get back to him.<sup>23</sup>

Later that same day, Ickes called Meddoff and informed him that the President had given him Meddoff's business card.<sup>24</sup> They discussed Morgan's proposed contribution. Meddoff indicated that he did not expect the funds to become available until at least November 1, 1996.<sup>25</sup> Meddoff also told Ickes that Morgan was looking for a "tax-favorable way" to make the donation and was assured by Ickes that this could be worked out.<sup>26</sup> Meddoff further testified that Ickes told him "that there were methods of making tax-favorable contributions."<sup>27</sup> According to Ickes, he informed Meddoff that because this was a general election, contributions to the President's campaign were restricted by the FECA, but that there were other ways of making contributions to assist the President's re-election.<sup>28</sup> Meddoff also recalls discussing with Ickes that the initial donation would be in the amount of \$5 million, but that Morgan anticipated being able to make a total contribution in excess of \$50 million over a period of time.<sup>29</sup>

Meddoff testified that during his conversation with Ickes, he was acting "strictly in [the] capacity of forwarding on messages and very much so just being an individual in the middle that was trying to facilitate Mr. Morgan's wishes to make a contribution and Mr. Ickes' desire to get a contribution."<sup>30</sup> According to Meddoff, both Ickes and Morgan asked him if he would continue in his capacity as intermediary.<sup>31</sup> Morgan refused to be interviewed by the

<sup>18</sup> Meddoff testimony, p. 8.

<sup>19</sup> Meddoff deposition, p. 29.

<sup>20</sup> *Id.* at p. 30.

<sup>21</sup> Meddoff testimony, pp. 8-9. Ickes testified that he ordinarily would have asked someone at the DNC to follow-up on Meddoff's offer. However, given the shortness of the time and the fact that the President had approached him directly about it, he pursued the offer himself. Deposition of Harold Ickes, June 27, 1997, p. 40.

<sup>22</sup> Telephone message from Harold Ickes produced by R. Warren Meddoff, October 26, 1996 (Ex. 4).

<sup>23</sup> Meddoff testimony, p. 9.

<sup>24</sup> Meddoff deposition, p. 38. Ickes testified that President Clinton related the facts Meddoff testified to and asked him to call Meddoff. Deposition of Harold Ickes, June 27, 1997, p. 38.

<sup>25</sup> Meddoff deposition, p. 38. Meddoff did not recall whether Ickes asked about how Morgan would be able to make such a large contribution. *Id.* at p. 39. Ickes testified, however, that he "tried to find out a little bit about it. It was very vague, that he—that Morgan has come into or had substantial funds, wanted to make contributions, would prefer that some of those contributions go to organizations that would be basically tax-exempt." Deposition of Harold Ickes, June 27, 1997, p. 40.

<sup>26</sup> Meddoff deposition, p. 39.

<sup>27</sup> Meddoff testimony, p. 10.

<sup>28</sup> Deposition of Harold Ickes, June 27, 1997, p. 39.

<sup>29</sup> Meddoff deposition, p. 44. See Ickes' handwritten notes taken during his telephone conversation with Meddoff in which he wrote "\$55 million and \$5 million," these notes confirm Meddoff's testimony regarding the telephone conversation. October 30, 1996 (Ex. 5).

<sup>30</sup> Meddoff deposition, p. 43.

<sup>31</sup> Meddoff deposition, pp. 43-44.

Committee,<sup>32</sup> but he has been quoted in newspapers to say that he was strictly non-political and all he was doing was some tax planning.<sup>33</sup>

Ickes testified that after he hung up with Meddoff, he called Eric Berman, who was the head of research at the DNC.<sup>34</sup> Ickes relayed his conversation with Meddoff to Berman and asked him to personally run a check on Meddoff and Morgan.<sup>35</sup>

Ickes testified that he recalled receiving from Eric Berman “either directly before or directly after the election, a very slim packet of material about Morgan and company, and just misplaced it.”<sup>36</sup> He further testified that because of press inquiries he sent an additional memo on November 19, 1996 to Berman requesting replacement for the information he lost.<sup>37</sup> The Committee finds this explanation incredible because the Meddoff incident did not come into the public eye until February 1997.<sup>38</sup>

Ickes contacted Meddoff on October 29, 1996 and asked whether \$1.5 million could be disbursed within the next 24 hours because the campaign had an immediate need for money.<sup>39</sup> When Meddoff told him that it was not possible to have the money the next day, and that Morgan and he had not received any instructions as to how to structure the donations and transfer the funds. Ickes then asked whether it could be available in the next 48 hours.<sup>40</sup> After discussing this request with Morgan, Meddoff relayed to Ickes that there was a possibility that the money could be disbursed within that time, but that he needed the information regarding where the funds should be sent.<sup>41</sup> Ickes told him that he would fax the instructions.<sup>42</sup> Ickes also told Meddoff that he would receive information on nonprofit organizations that were friendly to the President’s campaign but inquired into whether Morgan would also be willing to make a contribution to the DNC that would not be tax deductible.<sup>43</sup> Meddoff replied that he would talk to Morgan about it, but thought that Morgan probably would be willing to make such a contribution.<sup>44</sup> Meddoff subsequently contacted Morgan who was amenable to making a small donation that would not be tax deductible.<sup>45</sup>

<sup>32</sup> Morgan was not subpoenaed by the Committee because he did not have firsthand knowledge of the conversations that occurred between Meddoff and Ickes.

<sup>33</sup> Robert Nolin, “Businessman Regrets Contribution Offer,” *Sun-Sentinel* (Ft. Lauderdale), September 28, 1997, p. 3.

<sup>34</sup> Deposition of Harold Ickes, June 27, 1997, p. 40. This immediate call to the DNC contradicts his testimony that he did not have time to refer the matter to the DNC. *See supra* note 21.

<sup>35</sup> *Id.* Ickes told Berman to “get his ass in gear himself, not to pawn this off on anybody.” *Id.*

<sup>36</sup> *Id.* at pp. 54–56.

<sup>37</sup> While Ickes never spoke to Meddoff after his October 31, 1996 telephone conversation about shredding the fax (see below), apparently his interest in Meddoff and Morgan continued. *See* Memorandum from Harold Ickes to Eric Berman regarding William R. Morgan and R. Warren Meddoff, November 19, 1996 (Ex. 6). Berman in response provided a fax with biographies on November 25, 1996. *See* fax from Eric Berman, Dan Fee and Rick Hess to Harold Ickes and Jessica Fitzgerald regarding Meddoff, Morgan, Vaduz and Bukkehave, November 25, 1996 (Ex. 7). Deposition of Harold Ickes, June 27, 1997, pp. 54–56.

<sup>38</sup> Michael Isikoff, “The White House Shell Game,” *Newsweek*, February 10, 1997, p. 34.

<sup>39</sup> Meddoff deposition, p. 41.

<sup>40</sup> Meddoff testimony, p. 12.

<sup>41</sup> Meddoff deposition, p. 41. Morgan told Meddoff that he was having difficulty in closing the transaction but that he would “try to put together the funds.” *Id.* at p. 43. He instructed Meddoff to have Ickes tell him to which groups the money should be sent. *Id.*

<sup>42</sup> *Id.* at p. 41.

<sup>43</sup> Meddoff deposition, p. 50 and Testimony of Harold Ickes, October 8, 1997, p. 100.

<sup>44</sup> Meddoff deposition, p. 50.

<sup>45</sup> *Id.* at pp. 52–53.

Ickes testified that after speaking to Meddoff, he believes that he called Minyon Moore, then political director of the DNC, to ask if she knew any “legitimate organizations” that could use last-minute money.<sup>46</sup> She suggested the nonprofit group National Coalition of Black Voter Participation. In addition to the organization Moore recommended, Ickes himself selected Vote Now 96, an organization to which the DNC had in the past directed money.<sup>47</sup> Ickes was familiar with Hugh Westbrook and Gary Baron, individuals involved with Vote Now 96, a voter registration organization. He testified that “they were always out trolling for money.”<sup>48</sup> Ickes further testified that he may have called Gary Baron directly and told him there may be some money forthcoming, but made no promises.<sup>49</sup> Ickes also selected a group called Defeat 209 because he knew Pat Ewing, the Executive Director, and the President had spoken out against California’s Proposition 209, a ballot initiative to ban preferential treatment on the basis of race, gender and other immutable characteristics.<sup>50</sup>

Ickes then called Karen Hancox, the Deputy Director of Political Affairs at the White House, from Air Force One. He dictated to her a list of these nonprofit organizations, as well as their bank account and contact information, for her to send to Meddoff, so that Morgan could immediately wire his donations to them.<sup>51</sup> Hancox typed this information into a memorandum to Meddoff from Ickes, and directed one of her staff to fax the memorandum to Meddoff.<sup>52</sup> This memorandum was faxed from the White House to Meddoff on October 31, 1996 at approximately 9:42 a.m.<sup>53</sup> Ickes’ instruction to and use of White House staff and equipment to send a fax providing information to send donations to the DNC and nonprofit organizations is a potential violation of the law.<sup>54</sup>

After having the fax sent, Ickes called Meddoff later the same day and informed him that DNC Finance Director Richard Sullivan would contact him.<sup>55</sup> Approximately 30 minutes after Meddoff received the faxed memorandum, he received a telephone message that Sullivan had called.<sup>56</sup> Meddoff and Sullivan spoke several times on October 31, 1996, during which Sullivan expressed his concern regarding Ickes’ handling of the matter.<sup>57</sup> In fact, Sullivan commented to Meddoff that “that’s not the way that they did things at the DNC.”<sup>58</sup> Meddoff testified that he talked to Sullivan at least four or five times that day.<sup>59</sup>

<sup>46</sup> Deposition of Harold Ickes, June 27, 1997, p. 52.

<sup>47</sup> See the section of the report on the Teamsters.

<sup>48</sup> Deposition of Harold Ickes, June 27, 1997, p. 53.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at p. 52.

<sup>51</sup> Deposition of Karen Hancox, June 9, 1997, p. 149. See also Memorandum from Harold Ickes to R. Warren Meddoff regarding donations, October 31, 1996, p.1 (Ex. 8).

<sup>52</sup> Hancox deposition, p. 149.

<sup>53</sup> Ex. 8 at p.1.

<sup>54</sup> 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.

<sup>55</sup> Meddoff deposition, p. 47.

<sup>56</sup> *Id.* at pp. 47–48.

<sup>57</sup> *Id.* at p. 55.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at p. 56. Sullivan testified that he called Meddoff “probably four” times. Deposition of Richard Sullivan, September 5, 1997, p. 48.

Upon receiving the memorandum faxed from the White House, Meddoff immediately faxed a copy to Morgan and contacted him regarding the information “within ten minutes of the receipt of this fax.”<sup>60</sup> Morgan instructed him to “proceed forward to see what they wanted.”<sup>61</sup> After reviewing the memorandum, however, Morgan told Meddoff that the organizations were “unacceptable.”<sup>62</sup> By this time, however, Meddoff was no longer dealing with Ickes but with Sullivan.

During the same day he received Ickes’ fax, Meddoff also called Don Fowler, Chairman of the DNC, at the suggestion of Sullivan.<sup>63</sup> Meddoff testified that he talked to Fowler three to five times.<sup>64</sup> Meddoff testified that both Sullivan and Fowler were “concerned about who Morgan was, where the funds were coming from; that they wanted to slow down.”<sup>65</sup> Sullivan testified that when he talked to Fowler about his conversations with Meddoff, “Mr. Fowler said, this situation makes me nervous, let’s put this on hold and see if we can find out something about Mr. Meddoff and/or Mr. Morgan.”<sup>66</sup>

Meddoff informed Sullivan that Morgan wanted a letter “expressing appreciation for contributions to these efforts.”<sup>67</sup> He received a letter by facsimile the same day around 12:56 p.m. from Don Fowler.<sup>68</sup> Fowler’s letter reads, “Please accept my deep appreciation for the substantial financial support you have offered to the Democratic Party. Your support will help advance President Clinton’s agenda for the American people as we enter the 21st Century. We look forward to working with you in the future.”<sup>69</sup> Meddoff marked up this letter to add references to the President and to note that Morgan was the individual making the contribution, and sent it back by facsimile to Fowler.<sup>70</sup> Although Fowler told Meddoff that he would send out the revised letter, he never did. In fact, the DNC “went silent” and did not return Meddoff’s telephone calls inquiring into the status of the letter and the contribution.<sup>71</sup> Sullivan was instructed by Fowler not to pursue the matter any more.<sup>72</sup>

According to Meddoff, Ickes called him sometime on the afternoon of October 31, 1996 to explain that the fax was sent in error and requested that he “shred” it.<sup>73</sup> Ickes testified before the Committee that he did not tell Meddoff to “shred the fax,” but may have told Meddoff that the fax was “inoperative.”<sup>74</sup> Meddoff testified that he immediately called Morgan because he was “rather amazed at a request to shred a document from somebody in the

<sup>60</sup> Meddoff deposition, p. 54.

<sup>61</sup> Meddoff deposition, p. 55.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at p. 56.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Deposition of Richard Sullivan, September 5, 1997, p. 51.

<sup>67</sup> *Id.* at p. 49.

<sup>68</sup> Letter from Don Fowler to R. Warren Meddoff, October 31, 1996, p. 1 (Ex. 9).

<sup>69</sup> *Id.* at p. 2.

<sup>70</sup> Meddoff deposition, p. 60. See Letter from Donald L. Fowler to R. Warren Meddoff with handwritten notes, October 31, 1996 (Ex. 10).

<sup>71</sup> Meddoff deposition, p. 61.

<sup>72</sup> Deposition of Richard Sullivan, September 5, 1997, p. 71.

<sup>73</sup> Meddoff testimony, p. 16.

<sup>74</sup> Deposition of Harold Ickes, June 27, 1997, p. 42; *see also* Ickes testimony, p. 187 (testifying that Ickes did “not recall that I said shred it. I am confident that I did not. I don’t use that kind of language.”).

White House.”<sup>75</sup> After the conversation that afternoon, Meddoff had no further contact with Ickes.<sup>76</sup> Also, no one from the DNC returned Meddoff’s calls.

The next time Meddoff heard anything about making contributions to the Democratic Party was the next month, November 1996, when Mitchell Berger, the fundraiser who had invited Meddoff to the dinner at which he met the President, “approached him.”<sup>77</sup> Berger informed him that the DNC was not looking for large single donations but smaller donations. He told Meddoff that all future donations should go through him after the “foul-up” with Ickes.<sup>78</sup> Meddoff testified that Berger contacted him on “numerous occasions” after that discussion for contributions.<sup>79</sup> In December 1996, Berger requested that Meddoff donate \$500 to the campaign of Florida Lieutenant Governor Buddy MacKay. The money was donated by Bukkehave, and Meddoff subsequently attended a private meeting with the Lieutenant Governor at Berger’s office.<sup>80</sup>

Berger and Meddoff also met in December 1996 to “discuss donations, support of the administration, and the agenda of the Vice President.”<sup>81</sup> At that time Berger suggested getting together for breakfast with Bukkehave’s Chief Executive Officer, Christian Haar, to discuss how Bukkehave could make donations to support the Democratic Party. In a December 23, 1996 memorandum sent by facsimile prior to the breakfast meeting, Meddoff indicated to Berger that he wanted to discuss arranging a meeting or photo-op with the President and Vice President when he and Haar were to be in Washington, D.C., from January 27 through 29, 1997.<sup>82</sup> During the meeting between Berger, Meddoff and Haar, Meddoff and Haar made clear that Bukkehave wanted to communicate its concerns to the Administration through the Vice President<sup>83</sup> regarding the United Nations and its procurement policies concerning U.S.-manufactured goods. Berger requested that they put their concerns in a letter, which he would forward to the appropriate individual.<sup>84</sup>

Immediately after their meeting, Meddoff forwarded a letter to Berger listing Bukkehave’s concerns.<sup>85</sup> Berger forwarded this letter to Leon Fuerth, Vice President Gore’s National Security Advisor.<sup>86</sup> As a result of this correspondence, and Berger’s help, Meddoff was able to arrange a meeting in Washington with Fuerth on January 14, 1997.<sup>87</sup> Because Fuerth could not attend the meeting, he instead sent John Norris of the Vice President’s staff.<sup>88</sup> During this meeting at the Old Executive Office Building, Norris and Meddoff discussed the UN’s procurement policies.<sup>89</sup>

Three days after the meeting with Norris, Berger contacted Meddoff to request that he send a \$25,000 contribution to the Pres-

<sup>75</sup> Meddoff deposition, p. 58.

<sup>76</sup> *Id.* at p. 62.

<sup>77</sup> *Id.* at p. 63.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at pp. 63–64.

<sup>80</sup> *Id.* at p. 64.

<sup>81</sup> *Id.* at p. 68.

<sup>82</sup> Memorandum from R. Warren Meddoff to Mitchell Berger, December 23, 1996 (Ex. 11).

<sup>83</sup> Meddoff deposition, p. 72.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* Letter from R. Warren Meddoff to Mitchell Berger regarding restrictive UN purchase practices, December 26, 1996 (Ex. 12).

<sup>86</sup> Letter from Mitchell Berger to Leon Fuerth, December 30, 1996 (Ex. 13).

<sup>87</sup> Meddoff deposition, p. 75.

<sup>88</sup> John Norris’ calendar for January 14, 1997 (Ex. 14).

<sup>89</sup> Meddoff deposition, p. 74.

idential Inaugural Committee by overnight mail to Mary Pat Bonner, a consultant who was helping coordinate the event.<sup>90</sup> Berger indicated that if the donation was made, Meddoff and Haar could attend a private dinner with the President and Vice President during the week following the inauguration, when they were scheduled to be in Washington.<sup>91</sup>

Because Meddoff and Haar felt uncomfortable about being asked to send such a large amount by overnight mail on the basis of one telephone call, arrangements were made to meet Bonner for lunch on January 28, 1997 to present the contribution in person.<sup>92</sup> Berger telephoned Meddoff the day before the scheduled lunch to tell him that the DNC/Inaugural Committee could not accept the contribution because Haar was not a U.S. citizen, and “they had great concerns over accepting funds from a non-U.S.-based company.”<sup>93</sup> Despite this conversation, Meddoff and Haar went to their scheduled meeting with Bonner.<sup>94</sup> When Bonner did not appear, Meddoff telephoned her office and spoke to Bonner and Berger. When Meddoff told Berger that it was “not right to have people in Washington standing by and then at the last moment you deciding that you are not going to accept the contribution,” Berger told him “[t]hat’s just the way it is. It’s tough luck.”<sup>95</sup> Meddoff reminded Berger of the information he had from his dealings with Ickes, to which Berger replied for him to “take your best shot and let it out.”<sup>96</sup> Shortly thereafter, Meddoff spoke with *Newsweek* regarding his contacts with the President and Ickes and provided its reporters with a copy of the October 31, 1996 memorandum from Harold Ickes.<sup>97</sup>

Neither Ickes nor the White House produced the original memorandum to the Committee. Rather, Ickes and the White House each produced a copy of the fax that Ickes had received from *Newsweek*, which had received it from Meddoff.<sup>98</sup> Ickes testified in his deposition that he never saw the original of the memorandum.<sup>99</sup> The Committee also has never seen the original.<sup>100</sup>

This incident illustrates the misuse of nonprofit entities by presidential campaigns and by donors seeking tax advantages. Morgan through Meddoff, told Ickes he was interested in aiding the President’s re-election in a tax favorable way. Ickes then attempted to steer Morgan through Meddoff to nonprofit organizations that supported the President’s re-election efforts. Ickes’ conduct was an attempt to circumvent both the federal general election contribution prohibition and spending limits imposed upon campaigns receiving public financing.

<sup>90</sup> *Id.* at pp. 67–76.

<sup>91</sup> Meddoff testimony, p. 20.

<sup>92</sup> Meddoff deposition, p. 65.

<sup>93</sup> *Id.* at p. 66; Meddoff testimony, p. 23.

<sup>94</sup> Meddoff deposition, p. 78.

<sup>95</sup> *Id.* at p. 81.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at pp. 82–83.

<sup>98</sup> Ex. 8 (This memorandum, which Ickes produced to the Committee, contains a tag line at the top of each page indicating that *Newsweek* had sent the memorandum by facsimile to Ickes).

<sup>99</sup> Deposition of Harold Ickes, September 22, 1997, p. 232.

<sup>100</sup> The destruction of a document to conceal a criminal violation may constitute obstruction of justice. Similarly, destroying a document that is responsive to this Committee’s subpoena may violate 18 U.S.C. § 1505 (obstruction of proceedings before departments, agencies, and committees).

If Vote Now '96, The National Coalition of Black Voter Participation or Defeat 209 had communication with Clinton/Gore campaign officials about the steering of donors to these entities, any contributions received under those circumstances would result in illegal in-kind contributions to the campaign. 11 C.F.R. § 109.1(c).<sup>101</sup> The Committee was not able to determine whether these organizations knew that Ickes was referring donors to them for the purpose of advancing the President's re-election. Further investigation is warranted. The Committee believes 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 a candidate's election, and whether such contributions to nonprofit entities should continue to be tax deductible.

Additionally, resolution of whether Ickes told Meddoff to shred the fax requires reconciling contradictory testimony from two witnesses. Nonetheless, there is no doubt that Ickes sent Meddoff a fax using official government resources, nor that the White House did not produce the original fax. If Ickes did instruct Meddoff to shred the fax, that conduct may constitute obstruction of justice. 18 U.S.C. § 1505. Finally, the Meddoff incident is indicative of the extent to which the White House involved itself in raising money.

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<sup>101</sup> Vote Now '96 and The National Coalition of Black Voter Participation are 501(c)(3) entities, donations made to these organizations are tax deductible. Defeat 209 is a 501(c)(4) entity. Donations made to a 501(c)(4) entity are not tax deductible.



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Offset Folios 157 Insert here



WHITE HOUSE, DNC AND CLINTON-GORE CAMPAIGN FUNDRAISING  
EFFORTS INVOLVING THE INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS

INTRODUCTION

Labor unions and their political action committees spent more than \$119 million during the 1996 election cycle on political contributions to federal candidates, on political and issue advertising, and on other arguably campaign-related activities.<sup>1</sup> As part of its investigation, the Committee examined several allegations related to efforts by the White House, the DNC and the Clinton-Gore Campaign to raise political contributions from labor unions and to encourage labor expenditures favoring Democratic candidates. Such allegations included charges that the White House, the DNC, and/or the Clinton-Gore campaign undertook a range of potentially improper or illegal efforts to “cultivate” labor union officials and to encourage labor contributions. These alleged efforts included:

- misusing federal property and resources;
- participating in illegal “contribution swap” schemes involving the International Brotherhood of Teamsters (“IBT” or “Teamsters”);
- promising Administration assistance on specific policy matters as part of an effort to encourage political contributions; and
- granting extraordinary access to Administration policy makers.

In investigating allegations in these areas, the Committee issued document subpoenas to the AFL-CIO and the Teamsters’ union, and to several “tax-exempt” entities, including the National Council of Senior Citizens, Citizen Action, and Vote Now ’96. The Committee also sought relevant documents from the DNC, the Clinton-Gore campaign, the White House, and various individuals with potentially relevant information. The Committee conducted fifteen depositions and dozens of interviews relating to these allegations. On October 9, 1997, the Committee conducted a hearing to examine one facet of the Teamsters/DNC contribution swap schemes.

The Committee’s investigative efforts were substantially limited by four factors. First, as described in detail elsewhere in this report, many of the entities subpoenaed refused to produce relevant documents to the Committee, citing a range of purported “First Amendment” objections to the Committee’s requests.<sup>2</sup> Among the more significant non-compliant entities were the following:

- AFL-CIO—Refused to produce documents reflecting dealings with the White House, DNC and Clinton-Gore campaign.

<sup>1</sup> Jennifer Shecter, “Political Union: The Marriage of Labor & Spending,” *Center for Responsive Politics Report*, 1997

<sup>2</sup> See the section of this report on discussing subpoena compliance issues.

Refused 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.

- Teamsters—Refused to produce documents reflecting dealings with the White House, the DNC, or the Clinton-Gore campaign.
- National Council of Senior Citizens—Refused to produce documents relevant to the contribution swap allegations.
- Citizen Action—Refused to produce documents relating to the contribution swap schemes or any other campaign-related activities.<sup>3</sup>

Second, certain individuals asserted their Fifth Amendment right against self-incrimination and refused to testify. Among the persons invoking the Fifth Amendment were certain individuals associated with the Teamsters contribution swap schemes, including William Hamilton, formerly the Teamsters' Government Affairs Director.<sup>4</sup>

Third, certain witnesses questioned by the Committee provided inaccurate or misleading testimony regarding the matters under investigation. Such testimony is addressed later in this section.

Fourth, following consultation with the U.S. Attorney's Office for the Southern District of New York, the Committee agreed to limit the scope of its investigation in order to reduce the possibility of interfering with ongoing criminal prosecutions.<sup>5</sup> This limitation most significantly affected the Committee's investigation of certain aspects of the "contribution swap" schemes.

*Fundraising efforts by the White House, DNC, and Clinton-Gore campaign involving the Teamsters*

Through the 1980, 1984 and 1988 campaigns, the Teamsters supported Republican candidates for the Presidency of the United States.<sup>6</sup> In 1991, however, Ronald Carey was elected President of the IBT and the union's political leanings changed. Carey shifted IBT support to Democratic Party candidates and causes, and allocated significant resources to support Governor Clinton's 1992 campaign for the Presidency. A document produced to the Committee by the White House described this Teamsters' support as follows:

The Teamsters played an enormous role in the '92 campaign. They spent upwards of \$2.4 million in contributions to [Democratic] state coordinated campaigns, the DNC, the Clinton campaign, DCCC/DSCC and congressional candidates. They successfully educated and mobilized several hundred thousand of their members for the election and in

<sup>3</sup>As discussed more fully in another section of this report, the investigation's December 31, 1997 deadline precluded enforcement of the subpoenas issued to these entities.

<sup>4</sup>Richard Trumka, Secretary Treasurer of the AFL-CIO, refused to comply with a deposition subpoena issued by the Committee and later reportedly asserted his Fifth Amendment rights before the U.S. Attorney for the Southern District of New York.

<sup>5</sup>At the request of the U.S. Attorney's Office, the Committee agreed that it would not subpoena or otherwise pursue testimony from several individuals, including Martin Davis, Jere Nash, Michael Ansara, Nathaniel Charny, Steven Protrulis, and Rochelle Davis.

<sup>6</sup>White House Document titled "Teamster Notes" (Ex. 1).

many cases, local leaders and staff all across the country worked full time on the campaign.<sup>7</sup>

Following the 1992 campaign, however, the Teamsters' support for Democratic political campaigns tapered off. The DNC analyzed these circumstances as follows:

The Teamsters did not contribute anything to the DNC in 1993 or 1994, due largely to internal union politics. President Ron Carey is up for reelection in 1996 and is being strongly challenged by Jimmy Hoffa, Jr. It will not be any easier for them to contribute this cycle, but there is a new political director (Bill Hamilton), and we ought to find ways for them to contribute without the money going to the DNC (state parties, NCEC, etc).<sup>8</sup>

In early 1995, the White House determined that it would attempt to renew the Teamsters' interest in Democratic campaigns. Documents produced by the White House demonstrate the nature of this effort. In January or February, 1995, Harold Ickes considered several specific recommendations for encouraging interest by unions in President Clinton's and the DNC's upcoming 1996 campaigns.<sup>9</sup> These recommendations included inviting labor leaders to meet with the President and other Administration policy makers, and discussing Administration assistance on certain specific policy initiatives.

Early in 1995, Ickes reviewed a document titled "Teamster Notes" (produced to the Committee by the White House) containing the following analysis of the Teamster's political activities:

In the early days of the Administration, [the Teamsters] worked to mobilize hundreds of thousands of Teamster families to contact members of Congress in support of the President's economic plan (they sent 150,000 post cards to Arlen Specter alone.) When they are plugged in and energized they can be a huge asset. Over the past two years their enthusiasm has died down. They have been almost invisible at the DNC and other party committees. . . . With our proclamations on striker replacement . . . and our NLRB appointments (very important to Carey) *we are in a good position to rekindle the Teamster leadership's enthusiasm for the Administration*, but they have some parochial issues that we need to work on.<sup>10</sup>

Ickes highlighted language in the document indicating that Bill Hamilton would be the "new director of government relations" for the IBT, and that "*He [Hamilton] will control the DRIVE (Teamster pac) purse strings.*"<sup>11</sup>

<sup>7</sup>*Id.*

<sup>8</sup>Memorandum from Jim Thompson to Senator Dodd and Chairman Fowler, February 13, 1997 (Ex. 2).

<sup>9</sup>See Deposition of Harold Ickes, September 22, 1997, pp. 197-218. Ickes' duties as Deputy Chief of Staff included service as the White House "point person" for organized labor, and the White House "point person" for the Clinton-Gore Campaign and the DNC. Testimony of Harold Ickes, October 8, 1997, pp. 8-9, 160.

<sup>10</sup>Ex. 1 (emphasis added by Ickes).

<sup>11</sup>*Id.* (emphasis added by Ickes). See generally Ickes deposition, September 22, 1997, pp. 121-132.

Later in the document (under the heading “Recommendations”), Ickes underlined portions of the following text:

*It is in our best interest to develop a better relationship with Carey. . . . Carey is not a schmoozer—he wants results on issues he cares about. The Diamond Walnut strike and the organizing effort at Pony Express are two of Carey’s biggest problems. We should assist in any way possible.*<sup>12</sup>

In the months following his review of that document, Ickes met on three occasions with Bill Hamilton and other union representatives to discuss the Diamond Walnut Strike, the Pony Express matter, and other issues important to the Teamsters.<sup>13</sup> One such meeting was held in late March 1996, and included Hamilton, Ickes, Deputy Transportation Secretary Mort Downey, Labor Undersecretary Tom Glynn, Steve Silberman from Cabinet Affairs at the White House, and Steve Rosenthal, then Assistant Secretary of Labor for Policy.<sup>14</sup>

As set forth in a contemporaneous memorandum prepared by Hamilton, the “Outcomes” of the meeting included commitments by the Administration to take steps that could benefit the Teamsters on the Diamond Walnut strike, the Pony Express matter, and other issues. The memo states, in part:

Diamond Walnut—Ickes said he met face-to-face with USTR Mickey Kantor last week and that Kantor agreed to use his discretionary authority to try to convince the CEO of that company that they should settle the dispute.<sup>15</sup>

Jennifer O’Connor, Ickes’ aide at the White House, testified that Ickes asked her to follow up with Mr. Kantor to see if Kantor had contacted the Diamond Walnut company. O’Connor telephoned Kantor’s office and determined that Kantor had indeed made contact with Diamond Walnut.<sup>16</sup> O’Connor confirmed that the purpose of Kantor’s contact with Diamond Walnut was an attempt to assist the Teamsters.<sup>17</sup> (By contrast, Ickes testified in his deposition that he was not aware of any steps ever taken by the Administration relating to the Diamond Walnut strike.<sup>18</sup>)

Other “Outcomes” listed in the Hamilton memo included Administration actions relating to Pony Express, to “regulatory changes in the administration of Section 13(c) of the transit act,” to “NAFTA Trade Adjustment Assistance,” and to “Amtrak labor protections.”<sup>19</sup> On the Pony Express matter, the Labor Department agreed “to move expeditiously” on certain investigations, and the White House agreed “to try to set up a meeting for [Teamster officials] with the Fed[eral Reserve Board].” With respect to the other matters, Deputy Transportation Secretary Downey agreed to assist with potential regulatory changes “as a way to head off unwanted restrictions on labor protections . . .;” Labor Undersecretary Glynn

<sup>12</sup> Ex. 1 (emphasis added by Ickes).

<sup>13</sup> Internal Teamster Memorandum drafted by Bill Hamilton, March 27, 1995 (Ex. 3).

<sup>14</sup> *Id.* Rosenthal later became the PAC Director for the AFL–CIO.

<sup>15</sup> *Id.*

<sup>16</sup> Deposition of Jennifer O’Connor, October 6, 1997, pp. 179–181.

<sup>17</sup> *Id.*

<sup>18</sup> Ickes deposition, September 22, 1997, p. 141.

<sup>19</sup> Ex. 3.



agreed “to see what could be done through the regulatory process to see that the trade adjustment assistance program is extended to drivers and other transportation workers;” Ickes agreed to look into a proposal potentially affecting freight railroad workers, and “agreed to ask [White House Chief of Staff Leon] Panetta about bringing in the railroad CEO’s to lean on them.”<sup>20</sup>

The Administration’s efforts on these issues appear to have succeeded in rekindling the Teamsters’ enthusiasm for Democratic campaigns. Beginning in late 1995, the Teamsters launched a significant effort to assist Democratic Senate candidate Ron Wyden defeat Republican Gordon Smith in a special election to fill the seat vacated by Senator Packwood in Oregon.<sup>21</sup>

This close relationship between the White House and the Teamsters continued throughout 1996. As Hamilton noted in a March 14, 1996 memo regarding a possible Teamster endorsement of President Clinton’s campaign:

It’s also a fact that we ask for and get, on almost a daily basis, help from the Clinton Administration for one thing or another. In the absence of a better candidate, it doesn’t make sense to complicate our ability to continue doing so.<sup>22</sup>

Similarly, in the text of what is titled “Political Action Speech to Local Union Leadership,” Hamilton wrote:

*But let’s understand each other. We need Bill Clinton and Bill Clinton needs us.*

Every day we get help in small ways from Bill Clinton—he makes a phone call, he uses the veto threat, he makes an appointment. In the last few months:

—Stopped the NAFTA border crossings.

—Told his negotiators to open up Japanese airports to UPS planes, competitively disadvantaged to FedEx there. (We asked him to do it.)

—Killed a provision that Dole wrote into the budget bill to make it easy for newspapers to contract out our work.

—Guaranteed a veto on Davis-Bacon repeal.

—His NLRB has changed the rules to make it easier to get hearings and decisions toward single-cit [sic] unit determination.

—He stood up against cuts in OSHA, job training.

<sup>20</sup> *Id.*

<sup>21</sup> The Teamsters planned to support the Wyden campaign through direct mailings, get-out-the-vote (GOTV) and voter registration efforts, distribution of yard signs and bumper stickers, operation of phone banks, and DRIVE (PAC) contributions. In addition, the Teamsters assigned two staff members to work full-time supporting the campaign. Bill Hamilton wanted “to make [the Oregon] campaign an unprecedented coordinated Teamster effort” to “[e]lect a Democrat to fill the vacant Packwood Senate seat.” Internal Teamsters Memorandum from Bill Hamilton to Al Panek, re: Oregon, October 19, 1995 (Ex. 4). The IBT also intended to run several “issue advertisements” on the radio critical of Gordon Smith. According to Bill Hamilton, these ads were “independent expenditure[s] aimed at influencing the . . . election.” Internal Teamsters Memorandum from Bill Hamilton to David Frulla, re: Oregon, January 2, 1996 (Ex. 5).

<sup>22</sup> Internal Teamster Memorandum drafted by Bill Hamilton re: Ron Carey’s comments at AFL-CIO meeting, March 14, 1996 (Ex. 6).

—He promised to veto the TEAM Act and FLSA changes.<sup>23</sup>

In an effort to further strengthen the relationship with the Teamsters, Carey and Hamilton were strongly encouraged by White House and DNC personnel to attend White House “coffees” and other events. At one such event, Hamilton met with the Vice President and discussed an issue arising under the North American Free Trade Agreement (“NAFTA”):

The White House has called several times to try to invite you [Ron Carey] to breakfast with the President, and we’ve begged off. . . . At a similar breakfast with the V-P last week I broached the issue of the [American Trucking Association’s] attempt to bring Mexican truckers into the U.S. as owner-operators on “business” visas. As a result, we’re following up with his staff and the State Department to head it off.<sup>24</sup>

Hamilton and the Teamsters were ultimately successful in obtaining Administration assistance on the NAFTA cross-border trucking issue.<sup>25</sup> Indeed, the Administration delayed implementation of a previously planned executive action by more than one year. A December 19, 1996 internal Teamster memorandum from Hamilton to Carey indicates that the delay was tied both to the U.S. Presidential election and to Carey’s internal bid for the Teamster presidency:

Yesterday was the one-year anniversary of the delay in the implementation of the NAFTA border cross truckings. Originally as of December 18, 1995, Mexican trucks and drivers were to be allowed to go anywhere with [sic] the state of their entry. . . . *The bottom line: now that their election and your [Ron Carey’s] election is over, they are near a decision to go forward and open the border. . . . We might be able to wangle a further delay of 60 to 90 days on pure political grounds—that doing it now undercuts your new election mandate.*<sup>26</sup>

The Administration’s efforts to assist the Teamsters on all of the matters described above suggest a potentially serious problem. The documentary record indicates that Ickes and other Administration officials provided assistance to the Teamsters on specific policy matters with the intention of enticing the Teamsters to participate in Democratic campaigns and causes. Federal law prohibits any government official from “promising . . . special consideration” in connection with a government policy or program in return for “. . .

<sup>23</sup> Internal Teamster Document titled Political Action Speech to Local Union Leadership (Ex. 7) (emphasis in original).

<sup>24</sup> Internal Teamster Memorandum from Bill Hamilton to Ron Carey, April 29, 1996 (Ex. 8).

<sup>25</sup> On December 4, 1995, Secretary of Transportation Federico Pena unequivocally stated “we’re ready for December 18th”, the original date set for Mexican trucks to gain free access to U.S. highways in the border states. See Transcript, speech given by Secretary Pena at a joint press conference with his Mexican counterpart on December 4, 1995 (Ex. 9). The anticipated action did not occur in 1995, or in 1996 for that matter. See Internal Teamster Memorandum from Bill Hamilton to Ron Carey, December 19, 1996 (Ex. 10). See also “Truckers, Supplier Press Clinton to Open Border,” *Journal of Commerce*, December 19, 1996 (Reporting that DOT action was motivated by a desire to encourage Teamsters support for Democratic campaigns).

<sup>26</sup> Ex. 10 (emphasis in original).

support of or opposition to any candidate or political party. . . .” 18 U.S.C. § 600. That provision has been interpreted to outlaw efforts to “entice” future political support by promising government assistance.<sup>27</sup> In addition, 5 U.S.C. § 7323 prohibits a federal employee from “. . . us[ing] his official authority or influence for the purpose of interfering with or affecting the result of an election.” Further, these facts demonstrate a number of potential violations of 3 C.F.R. 100.735–4, requiring that executive branch employees “shall avoid any action . . . which might result in, or create the appearance of . . . [g]iving preferential treatment to any person; [or] . . . [m]aking a Government decision outside official channels.” The Committee recommends further investigation of these matters.

*The Teamsters “Contribution Swap” schemes*

Despite the efforts of the White House and the DNC to “court” the Teamsters during 1995 and early 1996, by Spring 1996 the Teamsters’ leadership was “somewhat distracted” by the internal race for the Teamsters’ Presidency.<sup>28</sup> As a result, the Teamsters’ union was not participating in federal electoral politics at the same extraordinary level as it had in the 1992 campaign.<sup>29</sup> In May or early June 1996, a plan for a “contribution-swap scheme” between the Teamsters and the DNC was conceived. It was relatively simple: the DNC agreed to find a \$100,000 donor for Ron Carey’s campaign for reelection as Teamster president; in exchange, the Teamsters’ PAC director, Bill Hamilton, would steer approximately \$1 million to state Democratic parties.<sup>30</sup>

Involved in the initial discussions of the scheme were Martin Davis, a principal of an organization named “The November Group” (that simultaneously served as a consultant for both Carey and the DNC), and Terry McAuliffe, a former Clinton-Gore Campaign Finance Chairman who was engaged in special projects for the DNC during the summer months of 1996.<sup>31</sup> Martin Davis described the initial conversations regarding the proposed scheme as follows:

In the spring and summer of 1996, I informed individuals, including a former official of the Clinton-Gore ’96 Re-election Committee and the Democratic National Committee, that I wanted to help the DNC with fundraising from labor groups including the Teamsters. I told them that I wanted to raise more money from the Teamsters than they originally anticipated. I also asked them if they could help Mr. Carey by having the DNC raised [sic] \$100,000 for the Carey campaign.

The people I was dealing with agreed to try to find a contributor for the Carey campaign. Mr. [Jere] Nash [a Carey campaign consultant] and the Teamsters Director of Government Affairs [Mr. Bill Hamilton] knew of my efforts to leverage the planned Teamster contributions to Demo-

<sup>27</sup> Memorandum Opinion for the Assistant Attorney General, Criminal Division, February 25, 1980.

<sup>28</sup> Deposition of David Dunphy, October 28, 1997, pp. 42–43.

<sup>29</sup> *Id.*

<sup>30</sup> *United States of America v. Martin Davis*, U.S. District Court, Southern District of New York, Criminal Information 97 Cr., pp. 12–13. (Ex. 11).

<sup>31</sup> *Id.*; Deposition of Terrence McAuliffe, September 18, 1997, pp. 9–10.

cratic party organizations in order to obtain contributions to the Carey campaign.<sup>32</sup>

Soon after the initial discussions, Laura Hartigan, the Finance Director for the Clinton-Gore campaign, and Richard Sullivan, the DNC's Finance Director, became involved. Sullivan's initial involvement occurred in May or June 1996. Sullivan had one or more conversations with Hartigan and Davis and discussed the possibility that certain DNC contributors might qualify to give to Carey's campaign.<sup>33</sup> Sullivan has described his understanding of the proposed arrangement with Martin Davis as follows:

Martin Davis . . . told me that he was working with . . . Laura [Hartigan] to raise money from many of the labor unions. . . . He stated that . . . he would be working with Laura on this through the course of the- that he wanted to be helpful to the Democratic cause and that he would be working with Laura through the course of the next couple of months on various unions, and that—but that it would—it would be a personal favor to him if we could help him raise some money for Ron Carey's election.<sup>34</sup>

On or about June 12, 1996, Hartigan wrote a memorandum to Martin Davis, requesting Teamster PAC donations to specific state Democratic parties. Less than one week later, on June 17, Davis attended a small White House luncheon with the President and eight other guests.<sup>35</sup> According to a White House document discussing the background of the events guests, Davis was "extremely active in supporting the campaign."<sup>36</sup> McAuliffe and Hartigan also attended the luncheon.<sup>37</sup>

Shortly following the White House luncheon, the Teamsters responded to Hartigan's June 12, request for Teamster funds. On June 21, Bill Hamilton instructed that DRIVE contribution checks be issued to state Democratic parties in amounts which corresponded with those requested by Hartigan.<sup>38</sup> On or about June 24 and 25, \$236,000 was transferred from Teamster DRIVE funds to the specified state Democratic parties.<sup>39</sup>

Referring to Hartigan's June 12, memorandum, Davis has stated:

In June 1996 I forwarded to the Teamsters a fax from the DNC requesting that the Teamsters make contribu-

<sup>32</sup> Martin Davis Guilty Plea allocution, U.S. District Court, Southern District of New York, September 18, 1997, pp. 25–26. (Ex. 12).

<sup>33</sup> Deposition of Richard Sullivan, September 5, 1997, pp. 80–88, 94.

Q: Was it your understanding that Laura Hartigan was suggesting that you help Ron Carey?

A: Um, yeah, it could be interpreted that way.

<sup>34</sup> *Id.* at pp. 85–86.

<sup>35</sup> This is the same luncheon attended by representatives of the Cheyenne and Arapaho tribes which is discussed in another section of the report.

<sup>36</sup> DNC Briefing Memorandum for June 17, 1996 DNC Presidential Luncheon, June 16, 1996 (Ex. 13).

<sup>37</sup> The Committee has interviewed several attendees at the luncheon. According to those attendees, guests were permitted during and after the luncheon to speak with the President regarding matters concerning them. None of the guests interviewed was either privy to, or has a clear recollection of any conversations between Martin Davis and the President. Because the Committee has not been able to speak with Davis, it cannot be determined whether Davis ever discussed Teamster fundraising or Carey's campaign with the President.

<sup>38</sup> Memorandum from Bill Hamilton to Greg Mullenholz, June 21, 1996 (Ex. 14).

<sup>39</sup> Ex. 11, p. 20.

tions to certain state Democratic parties totaling more than \$200,000. Within the next few weeks, I was informed by either the Clinton-Gore Committee or the DNC that they identified a donor who was willing to give \$100,000 to the Carey campaign through Teamsters for a Corruption Free Union [a Ron Carey campaign committee].<sup>40</sup>

In late June/early July 1996, the DNC took steps to locate a donor for Carey's campaign. Sullivan assigned responsibility for DNC fundraising in the Northern California region to DNC employee Mark Thomann. In connection with that new assignment, Sullivan instructed Thomann to follow-up on outstanding contribution commitments made by attendees of a June 9, 1996 DNC "Presidential Dinner" fundraiser at the San Francisco home of Senator Diane Feinstein and her husband, Richard Blum.<sup>41</sup> Among the outstanding contribution commitments was one for \$100,000 made by Judith Vazquez.<sup>42</sup>

Vazquez's \$100,000 commitment was problematic. Vazquez is a Philippine national—she is not an American citizen and does not hold a green card.<sup>43</sup> Thus, Vazquez could not legally contribute to the DNC. Nevertheless, Vazquez was invited to, and attended the June 9 fundraiser.<sup>44</sup>

Either contemporaneous with, or following the event, Vazquez or her friend and banker, Shirley Nelson, was informed that the \$100,000 Vazquez contribution should not be directed to the DNC.<sup>45</sup> Instead, they were told to direct the donation to Vote Now '96, a tax-exempt "Get Out the Vote" organization that focused on traditionally Democratic constituencies.<sup>46</sup>

When Thomann initially received his instruction to follow-up on the Vazquez contribution, he was given a DNC commitment sheet that identified Vote Now '96 as the intended recipient of the \$100,000 contribution. Shortly thereafter, Thomann received a telephone call from Richard Sullivan regarding Vazquez's contribution. In that telephone call, Sullivan told Thomann that there was to be "a change of direction," and that the contribution should be made

<sup>40</sup> Ex. 12, p. 26.

<sup>41</sup> Deposition of Mark Thomann, pp. 20–21.

<sup>42</sup> The DNC's Invitation List describes Vazquez as "the richest female entrepreneur in the Philippines." DNC Briefing Memo for DNC Presidential Dinner, June 8, 1996 (Ex. 15). Vazquez's lawyers understood the dinner to carry a \$100,000/plate price tag. Transcribed Interview of Twila Foster (Vazquez's attorney), October 20, 1997, p. 10; Transcribed Interview of Noah Novogrodsky (Vazquez's attorney), October 13, 1997, p. 24. Vazquez made the \$100,000 commitment because she wanted to meet the President, and wanted to support his campaign. Novogrodsky Interview, p. 12; Deposition of Mark Thomann, September 23, 1997, p. 60.

<sup>43</sup> Deposition of Mark Thomann, pp. 29–30. The American subsidiary of Vazquez' company had no U.S. earnings and was also ineligible to contribute to the DNC. Testimony of Mark Thomann, October 9, 1997, pp. 9–10.

<sup>44</sup> Richard Blum submitted a Statement to the Committee asserting that he met with Vazquez prior to the fundraiser, realized she was a foreign citizen and invited her to attend the fundraising event simply as a "guest." Statement of Richard C. Blum (Ex. 16). Vazquez informed Committee staff in a telephone interview that she *did not* meet with Blum prior to the fundraiser.

<sup>45</sup> Documents obtained by the Committee suggest that Blum directed that Vazquez's \$100,000 commitment should be channeled instead to Vote Now '96. See Novogrodsky notes from "7/30 conversation with Shirley Nelson" (Shirley "acknowledged that Vote Now '96 was the brainchild of 'Diane's [Senator Feinstein's] husband'") (Ex. 17). By contrast, Thomann testified that he believed that Marvin Rosen, the DNC's Finance Chairman, suggested that Vazquez's donation be directed to Vote Now '96. Thomann deposition, pp. 28–29. Shirley Nelson corroborated Thomann's version of events in a telephone interview with Committee staff.

<sup>46</sup> *Id.*

to Carey's campaign committee, "Teamsters for a Corruption Free Union."<sup>47</sup>

Richard Sullivan called me and asked whether or not Judith was going to make a contribution to Vote '96 and my response in the initial part of the conversation was "I'm checking it out with counsel," the legalities out with counsel. Then he apprised me of a change in direction and he brought up the possibility of Judith making a contribution to the Teamsters for a Corruption Free Union.

My first reaction was laughter, based on the fact that I couldn't quite grasp Teamsters for a Corruption Free Union. I had no idea what it was. He did tell me that it was the Ron Carey campaign, and I asked what the legalities were and he gave me the parameters of the contribution, whether or not she was capable of making a contribution, what the parameters would be. He told me that it needed to be an individual and that individual could not have employees, and therefore asked whether or not Pacific Duvas, the American subsidiary [owned by Ms. Vazquez], had employees and if that was a potential source of a contribution.<sup>48</sup>

After speaking with Sullivan, Thomann contacted Vazquez, and requested that she redirect a portion of her \$100,000 contribution to Teamsters for a Corruption Free Union.<sup>49</sup> Vazquez agreed to do so, and wrote to her banker, Shirley Nelson, with the following instructions:

I received a call from Mr. Mark Thomann, Finance Director of the Democratic National Committee with a request that our donation from DUVAZ Pacific Corporation be distributed as follows:

1. Fifty Thousand Dollars (\$50,000) to the Teamsters for a Corruption Free Union; and
2. Fifty Thousand Dollars (\$50,000) to Vote 1996.

These amounts are to be transferred immediately to the accounts of the parties concerned and are to be drawn from DUVAZ Pacific Corporation, CA# [account number].

<sup>50</sup>At this point in time—July 12, 1996—it appeared that the DNC had succeeded in directing funds to Carey's campaign. The DNC, in fact, had control over precisely how and where the contribution from Judith Vazquez (a Philippine National) would be utilized, instructing her to whom she should write the checks.<sup>51</sup> Shortly after Vazquez's letter was sent, however, Vazquez's attorneys learned of her intentions to donate to the Carey campaign and intervened to stop the donation.<sup>52</sup>

<sup>47</sup>Thomann testimony, pp. 72–73.

<sup>48</sup>Thomann deposition, p. 38. Thomann provided consistent testimony during the October 9, 1997 hearing. Thomann testimony, pp. 14–15.

<sup>49</sup>Thomann testimony, pp. 19–20.

<sup>50</sup>Letter from Judith Vazquez to Summit Bank, July 12, 1996 (Ex. 18).

<sup>51</sup>Thomann testimony, p. 20.

<sup>52</sup>Novogrodsky Interview, p. 34. Vazquez had retained attorneys at the firm of Jackson, Tufts, Cole & Black in San Francisco on a corporate law issue in June 1996. Part of the attorneys' work for Vazquez included an analysis, beginning in early June, of the legality of the donations

When Vazquez's counsel received a copy of her July 12, 1996 letter, they acted immediately.<sup>53</sup> They determined that Vazquez could not legally donate to Teamsters for a Corruption Free Union:

There were two very quick phone calls, and immediately, I concluded that Teamsters for a Corruption-Free Union could not receive a gift because they weren't a charity, and I told Mark Thomann that, . . . and I tried to put the brakes on this donation going because the directions in the July 12th letter seemed to suggest that this was a final outcome, and I had discovered that would be illegal.<sup>54</sup>

Vazquez's lawyers succeeded in stopping the donation to Teamsters for a Corruption Free Union.

Q: Is it your understanding that your law firm's legal advice was the reason that the \$50,000 donation to Teamsters for a Corruption-Free Union was not made?

A: Yes. We gave advice that she should not make it, and that advice was followed.<sup>55</sup>

After Thomann was informed by Vazquez's attorneys that the requested donation would be illegal, Thomann became uncomfortable:

And after we had determined that the Teamsters for a Corruption Free Union was not a possible source of—for a contribution, I was frankly very distraught and upset that I was put in this situation. . . .<sup>56</sup>

Thomann contacted Vazquez over the following days and discussed the situation. Their communications, and communications among Vazquez and her attorneys, resulted in two letters. First, on July 22, 1996, Vazquez wrote to her banker, asking that the \$100,000 in requested contributions be held temporarily "until everything is straightened out."<sup>57</sup> Then, on July 25, 1996, Vazquez wrote again to her bank, instructing that:

[A]s per the recommendation of the Finance Director of the Democratic Party, Mark Thomann, Duvaz Pacific Corporation [Vazquez's company] is donating the amount of US \$100,000.00 to "VOTE '96."<sup>58</sup>

that had been requested by the DNC. Foster Interview, pp. 7–9. By late June/early July, the lawyers had concluded that their client could only give to a charitable organization of some sort:

I made it clear to Mark Thomann that the only way we could think of to have our client give a donation would be to a charity . . . I told him very clearly and plainly that it was our legal conclusion that she couldn't give to things that were not 501(c)(3) organizations.

Novogrodsky Interview, p. 41.

<sup>53</sup>*Id.* at p. 83.

<sup>54</sup>*Id.* at p. 34.

<sup>55</sup>*Id.* at p. 70.

<sup>56</sup>Thomann deposition, p. 47. Thomann provided consistent testimony during the October 9, 1997 hearing. See Thomann testimony, pp. 21–22.

<sup>57</sup>Letter from Judith Vasquez to Summit Bank, July 22, 1996 (Ex. 19).

<sup>58</sup>Letter from Judith Vasquez to Summit Bank, July 25, 1996 (Ex. 20). Allegations have been made that Vote Now '96 may have been used as a conduit to channel money to Carey's campaign. Although Vote Now '96 did in fact frequently provide grants to Project Vote and other GOTV organizations involved in various aspects of the contribution swap schemes, the Committee's investigation has not documented any link between Vote Now '96 and the Carey campaign. The Committee has not, however, examined financial or accounting records for Vote Now '96 and Project Vote.

At this time, Thomann became so uncomfortable with the situation that he decided to recuse himself entirely from the matter. Thomann testified:

Well, the most important thing is that I was in constant contact with Judith Vazquez' local counsel and Shirley Nelson, as well as Richard [Sullivan] to a certain degree, in regards to this Teamsters for a Corruption Free Union contribution. I asked that—after determining that it was not an appropriate contribution for her to be making, I had asked that I be left out of the collection of this contribution. . . .<sup>59</sup>

I had tremendous trepidation in regards to sending a contribution to a campaign—a labor campaign. I didn't know anything about it and I just felt that it was not appropriate.<sup>60</sup>

Thereafter, on July 31, 1996, Vazquez made a \$100,000 donation to Vote Now '96,<sup>61</sup> despite concerns raised by Vazquez's counsel about the DNC directing funds to a purportedly nonpartisan tax exempt organization.<sup>62</sup>

After the Vazquez donation to Carey's campaign failed to materialize, Martin Davis resumed his discussions with Richard Sullivan and others regarding the contribution swap scheme:

I continued to communicate with these officials [of the DNC and/or Clinton-Gore Campaign] in an effort to find a person willing to contribute \$100,000 to the Carey campaign. In order to insure that the DNC fulfilled its commitment to raise a hundred thousand dollars, I asked Mr. Nash to make sure that the Teamsters Director of Government Affairs would direct any DNC or Clinton-Gore request for funds through me.<sup>63</sup>

Richard Sullivan was also discussing this matter internally with DNC officials:

I was sitting down with Marvin Rosen in which we were talking about fundraising matters and how much money we could raise over the next couple of months. It had been represented to us by Don Fowler and B.J. Thornberry that there were 10 to 12 unions that still had substantial contributions to make; that there were four to five other unions, Teamsters possibly being one that were still considering doing up to a million dollars for election, some form, some way.

<sup>59</sup>Thomann testimony, p. 22. During this time, Thomann was also receiving significant pressure from Nathaniel Charney, a lawyer who represented Carey's campaign. Thomann had determined that Vazquez did, in fact, have employees and thus could not, as an individual, contribute to Carey's campaign. Thomann testified that he used that rationale as "my way out" with Charney, but that Charney replied by asking if Vazquez's husband could contribute to Carey's campaign. Thomann testimony, pp. 24–25.

<sup>60</sup>Thomann deposition, p. 48. Thomann provided consistent testimony during the October 9, 1997 hearing. Thomann testimony, pp. 20–21.

<sup>61</sup>Summit Bank Cashier's Check made payable to Vote Now '96 from Duvaz Pacific Corporation, July 31, 1996 (Ex. 21).

<sup>62</sup>Novogrodsky Interview, p. 79. Vazquez's lawyer testified: "I knew that a tight nexus between a DNC official suggesting that our client give money to a 501(c)(3) would jeopardize the purpose of the 501(c)(3)." *Id.*

<sup>63</sup>Ex. 12 at pp. 26–27.



And I at this particular time, I reminded Marvin that I had this person, Martin Davis, calling me in regards to unions, and that he was asking us to raise money for the Carey for president campaign or whatever, Carey campaign, and that he was representing that it would be helpful to his raising money from unions if we helped him raise some money for Carey.<sup>64</sup>

On or about August 10, 1996, Laura Hartigan of the Clinton-Gore campaign, with the assistance of Sullivan, prepared a memorandum to Davis requesting approximately \$1 million in "State Party Federal and Non-Federal Contributions."<sup>65</sup> The memorandum was very specific in identifying particular recipients, and the sums to be contributed. When Davis received that memorandum, he forwarded it to Hamilton with the following message:

Bill: I'm forwarding this to you from Richard Sullivan. I'll let you know when they [the DNC] have fulfilled their commitment.<sup>66</sup>

At that time, Davis took steps to ensure that none of the Teamster contributions requested by Hartigan would be made until the DNC "had fulfilled its commitment" by obtaining a donor for the Carey campaign.<sup>67</sup>

Because Hamilton, Davis and Nash have not been available for questioning by this Committee, and because several critical documents were withheld until after depositions on the matters at issue had occurred, the Committee has not been able to reach a conclusion as to what, if any, further efforts were made in August, September, or October 1996 by Sullivan, or others at Sullivan's direction, to solicit funds for Carey's campaign.<sup>68</sup> The following is a summary of the evidence obtained by the Committee on this topic:

- During the Committee's deposition of Sullivan on September 5, 1997, he was questioned regarding several of his handwritten notes made during the summer of 1996 that refer to "Teamsters" or "Carey" and list additional names of DNC donors. In each instance, Sullivan could not recall any contacts by the DNC with any of the listed individuals or any other persons to solicit funds for Carey's campaign.<sup>69</sup>
- Evidence obtained by the Committee indicates that further contributions *were made* by the Teamsters to state Democratic parties following August 10, 1996. For example, records show that the Teamster's PAC contributed \$68,000 to the New York State Democratic Party on October 16, 1996. The amount re-

<sup>64</sup> Sullivan deposition, September 5, 1997, p. 181. Sullivan testified that Rosen told him it was not a good idea to pursue the contribution swap scheme, and that neither Sullivan nor anyone else ever did "anything specific" to raise money for Carey. *Id.* at 95.

<sup>65</sup> Memorandum from Richard Sullivan to Martin Davis, August 10, 1996 (Ex. 22).

<sup>66</sup> November Group fax memo from Martin Davis to Bill Hamilton, August 11, 1996 (Ex. 23). See also Ex. 12 at p. 27.

<sup>67</sup> Ex. 12 at pp. 26-27; Jere Nash Guilty Plea allocution, September 18, 1997 p. 24 (Ex. 24).

<sup>68</sup> For instance, unanswered questions include the meaning of the following phrases in Richard Sullivan's notes: "Teamsters give money to other unions," "4-5 other unions . . . \$1 Million." Sullivan handwritten notes (Exs. 25 & 26).

<sup>69</sup> The Committee received information that a DNC donor named Alida Messinger may have been contacted by the DNC or McAuliffe and asked to contribute, either directly or through an intermediary, to Carey's campaign. The Committee contacted Messinger's attorney, to determine whether any such contact had occurred. Although Messinger's attorney initially promised to provide that information to the Committee, he refused to cooperate after consulting with his client.

requested for the New York State Democratic Party in the August 10, 1996 memorandum from Sullivan to Hamilton was \$69,900. Several other state Democratic parties received DRIVE contributions at or near the amounts requested in that memorandum.

- On November 7, 1997, the DNC produced to the Committee an October 14, 1996 internal DNC memorandum regarding "Special Labor Money." The memorandum details union contributions apparently to various State Democratic political organizations totaling \$990,000, including \$185,000 specifically from the Teamsters Union.<sup>70</sup>

Although the Committee has not identified a further prospective donor solicited by Sullivan for the Carey campaign, it is clear that further efforts were made after August 1996 by Terry McAuliffe to explore possible contribution swap schemes. Specifically, in late September or early October 1996, McAuliffe discussed with Davis the possibility of a contribution swap between the Teamsters and "Unity '96." "Unity '96" was a joint fundraising effort among the DNC, the Democratic Senatorial Campaign Committee ("DSCC") and the Democratic Congressional Campaign Committee ("DCCC"). Davis testified:

In early October 1996, a Clinton-Gore official [Terry McAuliffe] asked if I would attempt to raise \$500,000 from the Teamsters for an entity that was a joint fundraising effort of the Democratic National Committee, the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee. It was understood between us that he and others would try to identify a person who would contribute a hundred thousand dollars to the Carey campaign.<sup>71</sup>

Thereafter, McAuliffe raised this proposal on at least two occasions with persons involved in Unity '96. First, while making fundraising telephone calls from DCCC offices, McAuliffe spoke with Matthew Angle, the DCCC Executive Director. Angle testified:

[H]e [McAuliffe] brought up or asked did we know anybody that could or would write a check to Ron Carey and that if we could help Carey, then we would perhaps get contributions back to the DCCC.<sup>72</sup>

Second, the proposal was raised during one or more Unity Fund meetings attended by representatives of the DNC, DSCC, and DCCC. Rita Lewis, a DSCC employee, testified:

Terry [McAuliffe] said that if we were—if we could find a donor for Ron Carey's election [the Teamsters would] be more apt to give to Unity '96.<sup>73</sup>

<sup>70</sup> DNC Memorandum to File Re: "Special Labor Money." October 14, 1996 (Ex. 27). After receiving this memorandum, the Committee contacted the DNC and requested an opportunity to interview the DNC employee from whose files the memorandum originated. The DNC failed to make that individual available for an interview.

<sup>71</sup> Ex. 12 at p. 27. Ex. 24 at p. 24. "Davis told me that the Clinton-Gore representative had asked Davis to obtain a contribution from the Teamsters to the Democratic Senate Campaign Committee also in exchange for a donation to the Carey campaign."

<sup>72</sup> Deposition of Matthew Angle, October 28, 1997, pp. 44–45.

<sup>73</sup> Deposition of Rita Lewis, October 27, 1997, p. 16.

Following the Unity '96 meeting(s), Lewis reported McAuliffe's comments to the Chairman of the DSCC, Senator Robert Kerrey:

Q: After you heard those comments, did you inform anybody outside of the meeting that topic had been raised?

A: I brought it up with Senator Bob Kerrey.

\* \* \* \* \*

Q: In what context did you talk to Senator Kerrey about this?

A: At that point he was spending a lot of time at the Senate Campaign Committee, and we were raising money, and we were discussing the Teamsters because they were angry at the Democratic Senators and, thus, were not contributing to our campaigns. And there seemed to be an effort that they were trying to get other labor unions to not give to our campaigns.<sup>74</sup>

Senator Kerrey, in turn, telephoned a long-time Democratic donor, Bernard Rapoport, and discussed the contribution swap proposal. Rapoport testified that Senator Kerrey asked him for his opinion of the swap scheme:

Q: . . . In approximately September or October of 1996, did you receive a call from Senator Bob Kerrey of Nebraska, informing you of a potential contribution swap whereby he, or somebody else, would try to find someone to contribute to Ron Carey's campaign and, in exchange, the teamsters would contribute a larger sum to the DNC, or some entity like that?

\* \* \* \* \*

A: I received a call from Senator Kerrey, and he says, "I want your opinion on something," and he explained to me about this—contributing to Teamsters, and the Democratic Committee would benefit, and he said, "What do you think?" I said, "I don't like it." He says, "I don't either." That ended the conversation.<sup>75</sup>

After talking with Senator Kerry, Rapoport called Hamilton to express his concerns:

Q: . . . Did you understand the contribution swap that Senator Kerrey told you about to be illegal?

A: I don't—I'm—I'm not a lawyer so I would not—I—I didn't think it would smell good, but I don't know anything about the legality. . . .

Q: . . . After your phone call with Senator Kerrey, did you then call Bill Hamilton?

A: I think I could have talked to him afterwards. I think I did.

Q: And what do you recall about the substance of that conversation?

A: I think I—I said, "Bill, I got a call from—from Kerrey," and I guess I—I told him what transpired in that

<sup>74</sup>*Id.* at pp. 18–19.

<sup>75</sup>Deposition of Bernard Rapoport, October 20, 1997, pp. 34–35.

conversation, and then I told him what I thought, and Bill said, "Okay." That was it.<sup>76</sup>

In a recent newspaper account, Michael Tucker, spokesman for Senator Kerrey and the DSCC, was quoted as stating that the Teamster contribution swap scheme "would have been illegal, and that was part of the reason for not acting—for dismissing it."<sup>77</sup> The Committee has found no evidence that Senator Kerrey contacted any other DNC donors regarding any contribution swap proposal.<sup>78</sup>

In sum, the Committee concludes that Terry McAuliffe and/or other officials of the DNC participated in efforts to engage in a contribution swap scheme with Martin Davis and Carey's campaign. Such efforts included soliciting an illegal contribution for Carey's Campaign from Judith Vasquez, a Philippine National. Thereafter, McAuliffe and perhaps others took further steps to attempt to bring illegal contributions to Ron Carey's campaign. The Committee recommends further investigation of these matters.

In the September 18, 1997 Criminal Informations, the U.S. Attorney for Southern District of New York alleged that, after the Unity '96 contribution swap scheme did not proceed, the Teamsters turned to various other political organizations, namely the National Council of Senior Citizens ("NCSC"), Citizen Action, Project Vote, and the AFL-CIO in its search for contributions to Carey's campaign. At the request of the U.S. Attorney's Office, the Committee agreed not to probe further certain elements of the NCSC, Citizen Action, and Project Vote/AFL-CIO contribution swap schemes in order to avoid possible prejudice to the ongoing Criminal investigations.

#### MISLEADING AND INACCURATE TESTIMONY

In investigating fundraising efforts involving the Teamsters, the Committee was hindered by witnesses who provided less than candid testimony. Some examples follow:

##### *Richard Sullivan*

Sullivan was questioned about the proposed contribution swap between the DNC and the Teamsters during his September 5, 1997 deposition, which occurred more than two weeks before the Committee deposed Mark Thomann, and also before the U.S. Attorney's Office for the Southern District of New York filed Criminal Informations publicly describing the contribution swap schemes. Sullivan told the Committee that neither he nor any other DNC employee ever solicited money for Carey's campaign.

Q: Did anyone at the DNC, to your knowledge, solicit money for Ron Carey?

<sup>76</sup> *Id.* at pp. 43–44, 50.

<sup>77</sup> *Washington Times*, October 22, 1997, p. A3.

<sup>78</sup> In an October 23, 1996 memo to Carey, Hamilton wrote: "As you know, I have stopped all contributions to the Democratic Senate Campaign Committee because of the disappointing performance of Senate Democratic leaders, especially Democratic Leader Tom Daschle, on the FedEx vote two weeks ago just before they adjourned. I was asked as recently as yesterday by Sen. Kerrey, chairman of the DSCC, to reconsider. He asked for \$500,000; I said no." Internal Teamsters Memorandum from Bill Hamilton to Ron Carey, October 23, 1996 (Ex. 28).

A: Um, no one, to my knowledge, solicited money for Ron Carey at the—no one, to my knowledge solicited contributions for Ron Carey.<sup>79</sup>

Sullivan also denied ever doing anything “specific” to help raise money for Ron Carey:

Q: . . . [D]id you do anything specific to try to raise money for Ron Carey?

A: Um, did I do anything—I did—I did not, um, um—I don’t believe that I did anything specific to try to raise money for Ron Carey.<sup>80</sup>

Q: Did you ask anyone else at the DNC to try to raise money for Ron Carey?

A: I did not ask anybody to try to raise money for Ron Carey.<sup>81</sup>

Following Sullivan’s deposition, the Committee obtained testimony and documents indicating that Sullivan had not been truthful. As Thomann testified, and as the contemporaneous documentation confirms, Sullivan instructed Thomann in early July 1996 to ask Judith Vazquez to contribute to Carey’s campaign.<sup>82</sup> Thomann did so; Vazquez agreed to make the donation and, on July 12, 1996, Vazquez instructed her bank to wire \$50,000 to Carey’s campaign committee, Teamsters for a Corruption-Free Union.<sup>83</sup> Had Vazquez’s lawyers not then intervened, \$50,000 would have ended up in Ron Carey’s campaign coffers.

#### *Harold Ickes*

As discussed previously, documents produced by the White House and other evidence suggest that Harold Ickes assisted the Teamsters Union with the Diamond Walnut strike and other matters in order to encourage Carey and the Teamsters Union to provide more financial assistance to Democratic candidates and the DNC. When asked at his September 20, 1997 deposition what the Administration did regarding the Diamond Walnut strike, Ickes responded: “Nothing that I know of.”<sup>84</sup>

In fact, after consultations with the Teamsters Union, Ickes asked Mickey Kantor, then the United States Trade Representative, to contact the management of the Diamond Walnut Company to attempt to persuade them to change their position vis-a-vis the Teamsters. According to an internal Teamsters memorandum:

Ickes said he met face-to-face with USTR Mickey Kantor last week and that Kantor agreed to use his discretionary

<sup>79</sup> Sullivan deposition, September 5, 1997, p. 89.

<sup>80</sup> *Id.* at p. 95.

<sup>81</sup> Sullivan deposition, September 5, 1997, p. 95.

<sup>82</sup> Thomann deposition, p. 38, Ex. 18. Although Sullivan did admit that he told Thomann that “there may come the opportunity for us to want to raise some money for Ron Carey,” he failed to disclose that the Vazquez solicitation had in fact been made. Sullivan deposition, September 5, 1997, pp. 119–20. Notably, Thomann felt so ill at ease about soliciting Vazquez that he informed Sullivan in late July 1996 that he was recusing himself from the matter. Thomann testimony, pp. 22, 24–25. Sullivan did not mention anything about Thomann’s recusal during his deposition.

<sup>83</sup> Thomann testified that Sullivan called him in August 1997 (prior to Sullivan’s deposition) and asked Thomann “not to talk to the press” about the Teamster matter. Thomann deposition, p. 52.

<sup>84</sup> Ickes deposition September 22, 1997, p. 141.

authority to try to convince the CEO of that company that they should settle the dispute.<sup>85</sup>

In addition, the Committee determined that Ickes asked his aide, Jennifer O'Connor, to confirm that Kantor had indeed spoken with Diamond Walnut management. O'Connor confirmed that Kantor had done so.

Q: . . . Did Mr. Ickes ever ask you to assist the Teamsters in any way with the Diamond Walnut strike?

A: Yes.

Q: Tell me what this request was? . . .

A: He asked me to make some inquiries of the U.S. Trade Representative's Office. . . .

Q: What inquiries were you to make at the U.S. Trade Representative's Office?

A: I was supposed to find out if the U.S. Trade Representative had spoken to the Diamond Walnut Company head.

Q: Was the U.S. Trade Representative at the time Mr. Kantor?

A: Yes.

Q: Was it your understanding that Mr. Kantor was to have spoken with the Diamond Walnut head?

A: Yes. . . .

Q: Did you have any understanding at the time as to why Mr. Kantor was to speak to the head of Diamond Walnut?

A: I guess my assumption was that somebody somewhere felt that Mr. Kantor could be persuasive with Diamond Walnut. . . .

Q: What did you learn from the U.S. Trade Representative's Office?

A: That Mr. Kantor had spoken with the person in question at Diamond Walnut.<sup>86</sup>

#### *Terry McAuliffe*

Terry McAuliffe, former DNC and Clinton-Gore '96 National Finance Chairman, was deposed twice by the Committee. On the first occasion, June 6, 1997, McAuliffe testified that "he didn't do anything with the Teamsters."<sup>87</sup> On the second occasion, September 18, 1997, when presented with specific evidence of certain of his dealings with Martin Davis, McAuliffe remembered a meeting he had in which Davis said that he wanted to help raise money for the DNC from the Teamsters union. McAuliffe testified, however, that after this meeting, he passed Davis off to Hartigan and didn't deal with him again on this issue. McAuliffe further stated: "I would tell you, to my knowledge, no one ever did anything. I know I never talked to anybody, I never talked to any donors. . . ." <sup>88</sup> "All I know is when the first story or when the first stories on the Teamsters came out, I didn't have a clue about any of this." <sup>89</sup>

<sup>85</sup> Ex. 3.

<sup>86</sup> Jennifer O'Connor deposition, pp. 179-181.

<sup>87</sup> McAuliffe deposition, June 6, 1997, p. 168.

<sup>88</sup> McAuliffe deposition, September 18, 1997, at pp. 90-91.

<sup>89</sup> *Id.* at p. 78.

After McAuliffe's September 18, 1997 deposition, the guilty pleas of Martin Davis and Jere Nash became public. In his plea allocution, Martin Davis testified as follows:

In early October 1996, a Clinton-Gore official [Terry McAuliffe] asked if I would attempt to raise \$500,000 from the Teamsters for an entity that was a joint fundraising effort of the Democratic National Committee, the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee. It was understood between us that he and others would try to identify a person who would contribute a hundred thousand dollars to the Carey campaign.<sup>90</sup>

Jere Nash, in his guilty plea allocution, also refers to McAuliffe's efforts on behalf of the Carey campaign: "Davis told me that the Clinton-Gore representative [McAuliffe] had asked Davis to obtain a contribution from the Teamsters to the Democratic Senate Campaign Committee also in exchange for a donation to the Carey campaign."<sup>91</sup>

Also after McAuliffe's September 18 deposition, the Committee deposed Rita Lewis from the DSCC and Matthew Angle from the DCCC. Lewis testified that McAuliffe addressed fundraising for the Carey campaign at a Unity '96 organizational meeting. She said that McAuliffe "described if we were to find money for Ron Carey's election, that the Teamsters would be more likely to give to Unity '96."<sup>92</sup>

Angle testified that McAuliffe had a conversation with him sometime in the fall of 1996 in which "[McAuliffe] brought up or asked did [the DCCC] know of anybody that could or would write a check to Ron Carey." He mentioned that assistance to Carey might facilitate "contributions back to the DCCC."<sup>93</sup>

After reviewing the testimony of Davis, Nash, Lewis and Angle, the Committee requested that McAuliffe appear for a further deposition. McAuliffe, through his counsel, declined to appear, explaining that he could ". . . add little if anything to the record the Committee has already developed on this issue. . . ."

#### CONCLUSION

Significant hurdles impeded the Committee's ability to investigate thoroughly many of matters addressed herein. Notwithstanding these hurdles, the Committee has obtained evidence sufficient to demonstrate a problematic course of conduct, and to cite certain specific illegal or improper campaign practices involving the White House, the Clinton/Gore campaign, the DNC and the Teamsters.

The Supreme Court, in *United States Civil Service Commission et al. v. National Association of Letter Carriers, AFL-CIO, et al.*, 413 U.S. 548, 564-65 (1973), opined:

It seems fundamental in the first place that employees in the Executive Branch of the Government, or those working for any of its agencies, should administer the law in

<sup>90</sup> Ex. 12 at p. 27.

<sup>91</sup> Ex. 24 at p. 24.

<sup>92</sup> Lewis deposition, p. 15.

<sup>93</sup> Angle deposition, pp. 44-45.

accordance with the will of Congress, rather than in accordance with their own will or the will of a political party. They are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof.

It is not only important that the Government and its employees in fact avoid practicing political justice but it is also critical that they appear to the public to be avoiding it if confidence in the system of representative Government is not to be eroded to a disastrous extent.

Here, the activities of the White House and DNC not only appear to contravene the fundamental notion that our Nation's citizens are entitled to equal treatment under the laws, but also raise questions as to the applicability of certain Federal criminal statutes. Specifically, did Ickes and other Administration officials provide special treatment or policy assistance to Teamster officials in order to entice the Teamsters Union to support Democratic campaigns? Further, did McAuliffe and/or DNC officials seek donors other than Vazquez as part of a contribution swap scheme with the Ron Carey campaign?

In sum, substantial further inquiry into each of these matters is warranted. The Committee concludes that investigation by the Department of Justice is required to determine the following:

- Whether Harold Ickes or other Administration personnel violated 18 U.S.C. § 607, 5 U.S.C. § 7323 or any other provision of law in connection with the Diamond Walnut matter, the Pony Express matter, the cross-border trucking issue and other measures taken by the White House on behalf of the Teamsters;
- Whether Administration officials violated federal election laws by using the prerogatives of the White House to entice labor union officials to make political contributions and to participate in Democratic campaigns;
- Whether McAuliffe or DNC officials violated federal law by attempting to engage in contribution swap schemes with officials of Ron Carey's Campaign.



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## COMPLIANCE BY NONPROFIT GROUPS WITH COMMITTEE SUBPOENAS

### I. INTRODUCTION

During the course of the Special Investigation, the Committee on Governmental Affairs ("Committee") issued 427 subpoenas requiring the production of documents and/or the personal appearance of an individual for deposition or hearing testimony. The Committee directed a substantial number of these subpoenas to nonprofit organizations that were active participants in the 1996 elections.<sup>1</sup>

At the outset of the investigation, press reports described the increased use of so-called issue advocacy campaigns by nonprofit organizations. These press accounts raised questions about whether those groups were truly nonpartisan and independent from political parties and candidates, as required by federal law.<sup>2</sup> Because of allegations surrounding the activity of nonprofit groups in the 1996 election—particularly relating to the use of issue advocacy campaigns—the Committee decided to investigate the role of nonprofit organizations in the elections.

In order to further that investigation, the Committee subpoenaed thirty-two entities as well as the Republican National Committee ("RNC"), the Democratic National Committee ("DNC"), and the Dole for President ("DFP") and Clinton/Gore '96 campaigns. The Committee also subpoenaed for deposition testimony numerous individuals associated with these nonprofit organizations. In addition, the Committee issued subpoenas to banking institutions, seeking the financial records of several of the nonprofit groups.

Because the bulk of the allegations of illegal and improper conduct during the 1996 elections involved the national political parties and presidential candidates, the Committee served the DNC and the RNC with subpoenas *duces tecum* on April 10, 1997. On the same day, the Committee also served DFP and Clinton/Gore '96 with subpoenas demanding the production of documents.<sup>3</sup>

<sup>1</sup> The Committee uses the phrase "nonprofit group" as a short-hand method of describing those entities organized for a noncommercial purpose that directly participate in the electoral process through contributions to candidates, the expenditure of funds on the behalf of candidates, or the expenditure of funds to educate the public on issues of public policy. These nonprofit groups are entities that are organized under either §§ 501(c) or 527 of the federal tax code. 26 U.S.C. §§ 501(c), 527 (1997).

Entities organized under these sections of the tax code receive preferential tax status so that their income is either totally or partially exempt from federal taxation. In order to qualify for this preferential tax status, these organizations must abide by specified limitations on their political activity. The degree of restriction on political activity varies widely.

<sup>2</sup> E.g., Glenn F. Bunting et al., "Nonprofits Behind Attack Ads Prompt Senate Probe," *L.A. Times*, May 5, 1997, p. A1; Fred Wertheimer, "Investigate the G.O.P., Too," *N.Y. Times*, Feb. 18, 1997, p. A19. Elizabeth Drew's book, *Whatever It Takes*, examined in great detail the increased activity of nonprofit groups in the electoral process. Drew explored issue advocacy campaigns and the possibility that those campaigns were coordinated with the national parties and presidential candidates. See Elizabeth Drew, *Whatever It Takes* (1997).

<sup>3</sup> The compliance of the DNC and Clinton/Gore '96 campaign is not discussed in this section of the Committee's report but receives full consideration in other portions of the report. See below for discussion of compliance with Committee subpoenas by the DNC and Clinton-Gore '96 campaign.

In addition to the candidate and party committees, the Committee investigated several nonprofit organizations that were supportive of the Republican agenda during the 1996 elections. By either developing policy or sponsoring issue advocacy campaigns, these groups advocated policy positions generally associated with the Republican Party. Accordingly, on April 9, 1997, the Committee issued subpoenas demanding the production of certain documents to the National Policy Forum ("NPF"), Americans for Tax Reform ("ATR"), Triad Management Services, Inc. ("Triad"), the Coalition for Our Children's Future, Inc. ("CCF"), Citizens for the Republic Education Fund, Inc. ("CREF"), and Citizens for Reform, Inc. ("CR").<sup>4</sup>

The AFL-CIO (hereinafter referred to as "the AFL-CIO" or "the Federation") was another group that was very active during the 1996 election cycle. Press accounts linked 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. In addition, the Federation sponsored a massive, \$35 million dollar issue advocacy campaign overtly designed to return control of Congress to the Democratic Party.<sup>5</sup> Because of allegations of illegality and impropriety surrounding these activities, the Committee unanimously issued a subpoena *duces tecum* to the AFL-CIO on May 23, 1997.

The Committee issued additional document subpoenas to a host of nonprofit groups on July 30, 1997. These nonprofit organizations, which spanned the ideological spectrum, were allegedly involved in a variety of questionable campaign practices during the 1996 elections. Press reports suggested that some of these groups might have violated their tax status and committed election law infractions. The subpoenaed groups included Citizen Action, Citizen Vote, Inc. ("Vote Now '96"), the National Education Association ("NEA"), the International Brotherhood of Teamsters ("IBT"), the National Council of Senior Citizens ("NCSC"), the Sierra Club, the Campaign to Defeat 209, the Democratic Leadership Council, Inc. ("DLC"), EMILY's List, the National Committee for an Effective Congress ("NCEC"), the Association of Trial Lawyers of America ("ATLA"), Americans United for Separation of Church and State ("Americans United"), the American Defense Institute ("ADI"), the American Defense Foundation ("ADF"), the National Right to Life Committee, Inc. ("NRLC"), Citizens for a Sound Economy ("CSE"), the Christian Coalition, Inc., the Better American Foundation, Inc. ("BAF"), the American Cause, the Republican Exchange Satellite Network ("RESN"), The Coalition: Americans Working for Real Change ("Coalition"), Women for Tax Reform ("WTR"), the Heritage Foundation, and Citizens Against Government Waste.

The Committee encountered substantial resistance to these subpoenas. Entirely apart from the ten individuals who fled the coun-

<sup>4</sup>Triad is a for-profit organization. However, Triad managed issue advocacy campaigns sponsored by CR and CREF and, thus, enjoyed a unique relationship to the nonprofit organizations. Because many of the compliance questions that arose during the investigation of CR and CREF relate to the Minority staff's efforts to obtain information about CR and CREF from Triad, the Committee is treating Triad as a nonprofit organization for the purposes of this discussion.

<sup>5</sup>The Annenberg Public Policy Center, in its report on issue advocacy campaigns in the 1996 elections, dubbed the AFL-CIO "the-800 pound gorilla of issue advocacy advertisers during the 1996 campaign." Paul Taylor, Introduction to Deborah Beck, et al., *Issue Advocacy Advertising During the 1996 Campaign* 3 (Annenberg Public Policy Center 1997).

try or the thirty-five witnesses who invoked their Fifth Amendment right against self-incrimination, a large number of individuals who had been subpoenaed for depositions simply refused to appear or declined to answer substantive questions. A still larger number of nonprofit organizations, led in particular by the AFL-CIO, refused in whole or in part to produce documents pursuant to lawfully issued subpoenas *duces tecum*.

Compliance comprises several elements: 1) the timeliness of production, 2) the thoroughness of production, and 3) good faith—evidencing a genuine desire to cooperate with the Committee. Clearly, compliance is a relative term. With some notable exceptions, most of the entities failed to comply with the Committee's subpoenas.<sup>6</sup> Some of these nonprofit groups refused to produce any documents provided documents specifically requested by Committee staff, while a few produced only publicly available material.<sup>7</sup>

Many of the nonprofit groups claimed that the Committee's subpoenas sought information beyond the scope of its legitimate investigative authority. Several nonprofit groups alleged that the Committee's subpoenas violated constitutional guarantees, including the First Amendment right to freedom of expression and association.<sup>8</sup> Some of the organizations baldly asserted that they could not be investigated since they did not engage in illegal or improper behavior during the 1996 federal elections.<sup>9</sup>

In addition, some of the nonprofit groups—most notably the AFL-CIO, the IBT, and the Christian Coalition—refused to produce witnesses pursuant to deposition subpoenas, or to allow the Committee to interview persons affiliated with those groups.<sup>10</sup> Several of the organizations produced witnesses for depositions but, on advice of counsel, those witnesses declined to answer substantive questions.<sup>11</sup>

<sup>6</sup>The Committee notes that the NPF initially resisted the Committee's efforts to learn the identities of donors to the group. See Order of Chairman Fred Thompson, July 3, 1997 (Ex. 1). The NPF also objected to efforts by the Committee to investigate activities occurring prior to the 1996 federal election cycle. *Id.* One NPF witness, Michael Baroody, refused to answer questions during a deposition on the grounds that the questions sought information beyond the scope of the Committee's legitimate authority. *Id.* After Chairman Thompson issued an order overruling these objections, NPF fully complied by producing witnesses for depositions and answering each and every question put to them. See below for discussion of the NPF's compliance with Committee subpoenas.

<sup>7</sup>For almost three months, the AFL-CIO repeatedly refused to produce any documents to the Committee as required by the subpoena. Eventually, the Federation produced only 4,145 pages of material, all of which had been made publicly available. Letter from Robert M. Weinberg and Robert F. Muse, Counsel for AFL-CIO, to Michael J. Madigan, Chief Counsel, and Alan I. Baron, Minority Chief Counsel, Aug. 20, 1997 (Ex. 3).

<sup>8</sup>ATLA, the Christian Coalition, Citizen Action, Citizens Against Government Waste, the IBT, NCSC and the NRLC submitted joint objections to the Committee's subpoenas, arguing that those subpoenas exceeded the Committee's authority and infringed on the First Amendment rights of the members of the various organizations. See Letter from ATLA, Christian Coalition, Citizen Action, Citizens Against Government Waste, the IBT, NCSC and the NRLC to Michael J. Madigan, Chief Counsel, and Alan I. Baron, Minority Chief Counsel, Sept. 3, 1997 (Ex. 4).

<sup>9</sup>For example, Counsel for ATR objected to the Committee's subpoena on the grounds that ATR had no documents relating to "illegal or improper activities" in connection with the 1996 elections. See, e.g., Letter from Thomas E. Wilson, ATR Counsel, to Madigan J. Madigan, Chief Counsel, June 11, 1997 (Ex. 5).

<sup>10</sup>Following the lead of the AFL-CIO, many of these nonprofit groups jointly refused to comply with the Committee's subpoenas. Neil A. Lewis, "Nonprofit Groups to Defy Subpoenas in Senate Inquiry," *N.Y. Times*, Sept. 4, 1997, p. A16.

<sup>11</sup>For example, on advice of counsel, witnesses affiliated with Triad, CR and CREF refused to answer substantive questions during their depositions. *E.g.*, Deposition of Carolyn Malenick, Sept. 16, 1997, pp. 5-29; Deposition of Lyn Nofziger, Sept. 16, 1997, pp. 6-22; Deposition of Carlos A. Rodriguez, Sept. 17, 1997, pp. 5-23.

In Senate Resolution 39, which authorized the Special Investigation, the full Senate imposed a deadline of December 31, 1997 on the investigation. As a result of this deadline, the Committee found it virtually impossible to enforce its subpoenas. Enforcing a contempt of Congress citation is a time consuming and lengthy process.<sup>12</sup> As a result, the December 31, 1997 deadline severely hampered the Committee's ability to threaten and conduct enforcement proceedings.

In the pages that follow, the Committee discusses the organized resistance to its subpoenas by some of the nonprofit groups and the impact that this resistance had on other nonprofit organizations that had previously been cooperating with the Special Investigation.<sup>13</sup> The Committee then outlines the prevailing legal and constitutional standards governing congressional subpoena power.<sup>14</sup> The Committee closes with an analysis of the contempt procedures and discusses the manner in which the December 31, 1997 deadline rendered those compliance procedures useless to the Committee.<sup>15</sup>

As the following discussion makes clear, this record of noncompliance presents a troubling precedent. The Committee shares the grave concerns expressed by Senator Joseph Lieberman, "[t]he message is: if you ignore a congressional subpoena, you're immune. That's an awful precedent."<sup>16</sup>

## II. DISCUSSION

### A. Subpoena Compliance by Nonprofit Groups

#### (1) Contagious noncompliance

The Special Investigation encountered more than sporadic resistance in its effort to learn about illegal and improper activities by nonprofit groups in the 1996 election. In fact, noncompliance was contagious. By the close of the Committee's investigation, most of the nonprofit groups had publicly declared their intent to defy subpoenas.<sup>17</sup> Quite a few groups that had theretofore complied with subpoenas ceased cooperating with the Committee after several prominent organizations publicly defied the Committee with impunity.

This pattern of noncompliance had its genesis in the obstructionist tactics of the AFL-CIO. Indeed, until the AFL-CIO publicly announced its intention—on August 20, 1997—to withhold virtually all of the documents and witnesses requested by the Committee, most of the nonprofit groups were cooperative. After the AFL-CIO took the lead in defying the Committee's subpoenas, compliance by nonprofit groups declined precipitously.

For instance, before the AFL-CIO openly refused to comply with document and deposition subpoenas on August 20, 1997, Triad, CR and CREF produced virtually all documents requested by the Com-

<sup>12</sup> See below for detailed analysis of contempt procedures.

<sup>13</sup> See below for discussion of resistance to Committee subpoenas.

<sup>14</sup> See below for discussion of legal standards governing congressional subpoena power.

<sup>15</sup> See below for discussion of December 31, 1997 deadline and its impact on Committee's investigation.

<sup>16</sup> Guy Gugliotta, "Congressional Investigations: More Partisan and Less Powerful," *Wash. Post*, Nov. 20, 1997, p. A23.

<sup>17</sup> Neil A. Lewis, "Nonprofit Groups to Defy Subpoenas in Senate Inquiry," *N.Y. Times*, Sept. 4, 1997, p. A16 (stating that 26 nonprofit groups subpoenaed by the Committee would not comply with requests for documents and witnesses).



mittee. Triad, CR and CREF also produced four witnesses for depositions and scheduled several additional witnesses requested by the Minority staff. Following the AFL-CIO's letter informing the Committee that it would not cooperate, Counsel for Triad, CR and CREF instructed their clients to appear for depositions but not to answer substantive questions.<sup>18</sup>

*(2) The AFL-CIO's strategy of obstruction*

Therefore, in order to understand why the Committee encountered enormous opposition to its subpoenas, it is first necessary to understand the circumstances of the AFL-CIO's noncompliance. On May 23, 1997, the Committee subpoenaed the AFL-CIO, demanding the production of all responsive documents by June 15, 1997. The subpoena listed forty-eight specifications, of which Nos. 14 through 48 sought information directly related to the Federation's electoral and political action efforts during the 1996 election cycle.

Counsel for the AFL-CIO responded to the subpoena on June 5, 1997, and immediately objected to the production of documents, arguing that the subpoena exceeded the Committee's mandate and abridged the Federation's First Amendment rights of free speech and association.<sup>19</sup> The Committee staff met with the Federation's Counsel on June 19, 1997, and attempted to accommodate their concerns by asking the attorneys to identify the specific specifications to which they objected. Consistent with the Committee's policy of working with subpoenaed entities to encourage maximum compliance, the Committee offered to narrow the scope of the subpoena in return for the Federation commencing a rolling production schedule.

On July 11, 1997, a full month after the initial return date, the AFL-CIO informed the Committee that it would not articulate specific objections to the scope of the subpoena and declined to begin a rolling production of documents.<sup>20</sup> In response, the Committee again offered to limit the documents initially requested in order to facilitate compliance. The Committee asked that the Federation produce the requested documents by July 30, 1997, and warned that the failure to agree on a proposed production schedule would require the Committee to institute contempt proceedings.<sup>21</sup>

Throughout most of August, the AFL-CIO refused to cooperate and declined repeated efforts by the Committee to establish even a modest production schedule. On August 15, 1997, the Committee summarized the stalemate as follows:

This is not a complex situation. Nearly three months have passed since the subpoena was issued and yet you have not produced a single page of material to the Committee. We have made every effort to facilitate compliance by you, including by repeatedly offering to negotiate a reduction in the breadth of the AFL-CIO subpoena, and by

<sup>18</sup> *E.g.*, Malenick deposition, pp. 5-29; Nofziger deposition, pp. 6-22; Rodriguez deposition, pp. 5-23.

<sup>19</sup> Letter from Robert M. Weinberg and Robert F. Muse, AFL-CIO Counsel, to Michael J. Madigan, Chief Counsel, and Alan I. Baron, Minority Chief Counsel, June 5, 1997 (Ex. 6).

<sup>20</sup> Letter from Robert M. Weinberg and Robert F. Muse, AFL-CIO Counsel, to Philip Perry and James A. Brown, Majority Counsel, July 11, 1997 (Ex. 7).

<sup>21</sup> Letter from Philip Perry and James A. Brown, Majority Counsel, to Robert M. Weinberg, AFL-CIO Counsel, July 17, 1997 (Ex. 8).

indicating a narrow range of high priority documentation for an initial segment of a rolling production process. At no point have you cooperated in this process.<sup>22</sup>

On August 20, 1997, the AFL-CIO produced three boxes of documents totaling 4,145 pages, which its counsel acknowledged were “materials already in the public domain—e.g., public disclosure forms filed with the Federal Election Commission, publicly filed tax documents, Department of Labor disclosure forms, press releases, television advertisements, and leaflets and handbills.”<sup>23</sup> This production obviously included none of the highly relevant documents sought by the Committee.

At the same time, the AFL-CIO submitted its first brief to the Committee, which set forth constitutional and legal objections to the subpoena. In the brief, the Federation cited First Amendment free speech and associational rights and argued that the Committee’s subpoena exceeded the scope of its enabling resolution.<sup>24</sup>

The Committee responded to those objections on August 25, 1997, stating that

. . . our review to date has demonstrated that such objections lack significant legal support. It is also clear from the character of such objections that the AFL-CIO has chosen, without consulting the Committee, to construe the subpoena in as overbroad a manner as possible in order to attempt to justify its continuing delays in compliance.<sup>25</sup>

In the same letter, the Committee significantly narrowed the scope of the subpoena to encourage voluntary compliance so the Committee could proceed expeditiously with its investigation. It did so by amending eleven specifications and unilaterally agreeing not to enforce seventeen others.<sup>26</sup>

After reviewing the AFL-CIO’s objections, Chairman Thompson issued an order on September 3, 1997, that instructed the AFL-CIO to produce the requested documents.<sup>27</sup> The order limited the production of documents as set forth in the Committee’s August 25, 1997 letter, and indicated that the Committee would not enforce any other specifications in the subpoena.<sup>28</sup>

The AFL-CIO refused to comply with the Chairman’s order. Instead, the AFL-CIO’s Counsel submitted a second letter brief reasserting the constitutional and other arguments set forth in their August 20, 1997 letter.<sup>29</sup> The Committee never sought to compel compliance by the AFL-CIO. Because of the likelihood that a con-

<sup>22</sup> Letter from Michael J. Madigan, Chief Counsel, and Philip Perry, Majority Counsel, to Robert M. Weinberg and Robert F. Muse, Counsel for AFL-CIO, Aug. 15, 1997 (Ex. 9).

<sup>23</sup> Ex. 3.

<sup>24</sup> *In the Matter of: A Subpoena to the AFL-CIO, Memorandum of Points and Authorities in Support of AFL-CIO’s Objections to Subpoena Duces Tecum*, Aug. 20, 1997 (Ex. 10).

<sup>25</sup> Letter from Michael J. Madigan, Chief Counsel, to Robert M. Weinberg and Robert F. Muse, Counsel for AFL-CIO, Aug. 25, 1997 (Ex. 11).

<sup>26</sup> *Id.*

<sup>27</sup> AFL-CIO Production Order, Sept. 3, 1997 (Ex. 12).

<sup>28</sup> *Id.*

<sup>29</sup> Letter from Robert M. Weinberg and Robert F. Muse, Counsel for AFL-CIO, to Chairman Fred Thompson and Senator John Glenn, Sept. 8, 1997 (Ex. 13). In addition to the document subpoena noted above, the Committee also issued five subpoenas requiring deposition testimony from individuals affiliated with the AFL-CIO. With the exception of Geoffrey Garin, a pollster that worked with the AFL-CIO, those witnesses refused to appear. All five of those individuals, including two consultants retained by the AFL-CIO, were represented by Counsel for the AFL-CIO.

tempt citation against the Federation would meet a prolonged filibuster on the floor of the Senate, the Committee concluded that it was simply not viable to pursue contempt with only a few months until the expiration of the December 31, 1997 deadline.

The Committee concludes that the AFL-CIO not only failed to comply with subpoenas, but that it deliberately adopted an obstructionist strategy designed to thwart production of responsive and relevant documents. The Committee believes that the Federation intentionally adopted this strategy in the cynical hope of escaping scrutiny, knowing that the Committee was operating under a December 31, 1997 deadline that rendered calls for contempt an empty threat.

*(3) The AFL-CIO encouraged noncompliance by other non-profit groups*

The AFL-CIO's obstructionist tactics hampered the Committee's ability to draw any kind of reasonable conclusions about the Federation's activities in the 1996 election cycle. Even more damaging to the Committee's efforts, however, was the encouragement of unwarranted defiance that the AFL-CIO provided other subpoenaed entities.

The Federation openly encouraged other nonprofit groups to resist the Committee's subpoenas. For example, on August 20, 1997, the NEA's Counsel contacted the Committee and stated that he had received a copy of the AFL-CIO memorandum in opposition to the Committee's subpoena.<sup>30</sup> He added that "[t]he arguments that the AFL-CIO makes with regard to the invasion of constitutional rights, exceeding the Committee's mandate, and overbreadth largely are applicable to the NEA subpoena."<sup>31</sup> The Committee notes that the NEA's letter, which was received via facsimile, arrived at the Committee's offices before the AFL-CIO's memorandum in opposition. Following the lead of the AFL-CIO, the NEA did not produce a single document to the Committee.

The NEA is not the only nonprofit group that took guidance from the AFL-CIO. On September 3, 1997, the same day that the Federation was ordered to comply with the Committee's subpoena or face a contempt citation, a diverse coalition of nonprofit groups filed joint objections to the Committee's subpoenas.<sup>32</sup> The groups, which represented the entire political spectrum, complained that the Committee's subpoenas (1) exceeded the Committee's delegated authority, (2) demanded documents the confidentiality of which were protected by federal law, (3) were overbroad, burdensome and oppressive, and (4) violated the First Amendment rights of the subjected organizations and their members.<sup>33</sup>

The merits of these objections will be addressed in greater detail below but, after a careful review of the authorities and arguments offered by the groups, the Committee finds the objections to without merit.<sup>34</sup>

<sup>30</sup> Ex. 2, p.2.

<sup>31</sup> *Id.*

<sup>32</sup> Ex. 4.

<sup>33</sup> *Id.*

<sup>34</sup> See below for discussion of congressional subpoena power and its constitutional and legal limitations.

Like the NEA, several of the groups that submitted joint objections to the Committee on September 3, 1997 conceded in late August that the AFL-CIO had shared its legal brief with the organizations. For example, on August 21, 1997—the day after the AFL-CIO submitted its formal objections to the Committee—the IBT’s Counsel advised the Committee that she had received a copy of the Memorandum of Points and Authorities in Support of AFL-CIO’s Objections to Document Subpoena, and that “we agree with the AFL-CIO’s legal analysis.”<sup>35</sup> On the same day, Citizen Action’s Counsel wrote to the Committee that her client “agree[d] with many of the objections raised by the AFL-CIO in its opposition”<sup>36</sup>.

The impact of the AFL-CIO’s obstructionist tactics cannot be overstated. The NCSC, which has a long-standing affiliation with the AFL-CIO, initially agreed to comply with the Committee’s subpoena. In fact, on August 13, 1997, the NCSC’s Counsel contacted Committee staff and asked that the return date be extended until mid-September because key organization officials were on vacation and unable to respond to the subpoena.<sup>37</sup> Committee staff met with NCSC’s Counsel on August 14, 1997, at which time the NCSC agreed to comply with eleven specifications by September 7, 1997. However, on August 20, 1997—the same day that the AFL-CIO filed its legal brief in opposition to the Committee’s subpoena—the NCSC’s Counsel stated that “on closer examination of the subpoena, we see further First and Fourth Amendment problems, together with what appears to be a demand for records far in excess of the Committee’s jurisdiction.”<sup>38</sup>

As this correspondence indicates, the AFL-CIO actively encouraged other nonprofit organizations—even groups that had already agreed to cooperate with the Committee—to defy subpoenas. A cursory comparison of the letter from these groups and the brief submitted by the Federation on August 20, 1997 indicates that the organizations supported their joint objections with the same arguments raised by the AFL-CIO.<sup>39</sup> Furthermore, the AFL-CIO’s defiance of the Committee’s deposition subpoenas encouraged other groups, who did not want their employees or officers testifying before the Committee, to follow suit.

## *B. Congressional subpoena power and its limitations*

### *(1) The nonprofits’ objections to the Committee’s subpoenas*

As explained above, many of the nonprofit groups justified their noncompliance by arguing that the Committee’s subpoenas sought documents beyond the scope of its mandate and/or that the subpoenas impinged on various constitutional rights. In particular, the AFL-CIO—and the groups that followed its lead—claimed that the Committee’s subpoenas violated First Amendment rights to free-

<sup>35</sup> Letter from Leslie Berger Kiernan, Counsel for IBT, to Michael J. Madigan, Chief Counsel, and Alan I. Baron, Minority Chief Counsel, Aug. 21, 1997, p. 2 (Ex. 14).

<sup>36</sup> Letter from Lyn Utrecht, Counsel for Citizen Action, to Michael J. Madigan, Chief Counsel, and Alan I. Baron, Minority Chief Counsel, Aug. 21, 1997, p.1 (Ex. 15).

<sup>37</sup> Letter from Robert Mozer, Counsel for NCSC, to Michael J. Madigan, Chief Counsel, and Alan I. Baron, Minority Chief Counsel, Aug. 13, 1997 (Ex. 16).

<sup>38</sup> Letter from Robert J. Mozer, Counsel for NCSC, to Michael J. Madigan, Chief Counsel, and Alan I. Baron, Minority Chief Counsel, Aug. 20, 1997 (Ex. 17).

<sup>39</sup> Ex. 4.

dom of speech and association.<sup>40</sup> ATLA also suggested that the subpoenas violated the Fourth Amendment's protection against unreasonable searches and seizures.<sup>41</sup> After a careful review of the materials submitted by the various nonprofit groups, the Committee concludes that—with a rare exception—these objections were baseless.

The Committee will first address the objections that were raised as to the Committee's legislative authority. A congressional committee's authority to issue and enforce a subpoena is derived from its enabling resolution. In this case, the Committee derived its authority from Senate Resolution 39 and Senate Report 105–7.

It is well established that such a resolution and the accompanying report shall be interpreted first by reference to the language of the resolution, and then, by resorting to the legislative history.<sup>42</sup> Both Senate Resolution 39 and Senate Report 105–7 clearly demonstrate that the Committee possessed the authority to conduct a broad-scale inquiry into the 1996 election campaign, and that the full Senate approved the scope of the Special Investigation.

The Majority Leader originally proposed a version of Senate Resolution 39 which would have allocated \$3 million for “conducting an investigation of illegal activities in connection with [the] 1996 Federal election campaigns.” As envisioned by the original resolution, the Committee on Rules and Administration would have conducted the investigation.<sup>43</sup>

The Committee on Governmental Affairs subsequently approved an amendment that greatly increased the investigation's budget, granted jurisdiction to the Committee on Governmental Affairs, and expanded the investigation's scope to include “illegal or improper activities in connection with 1996 Federal election campaigns.”<sup>44</sup> Majority Leader Lott subsequently agreed to the Committee's amendment and offered the amendment on the Senate floor.<sup>45</sup>

As set forth in Senate Report 105–7, the Committee's authority extended to an investigation relating, but not limited to, the following activities:

- The independence of presidential campaigns from the political activities pursued for their behalf by outside individuals or groups;
- the misuse of charitable and tax-exempt organizations in connection with political or fundraising 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;

<sup>40</sup> Ex. 10; see also Ex. 4.

<sup>41</sup> Letter from Roger S. Ballentine, ATLA Counsel, to Michael J. Madigan, Chief Counsel, and Alan I. Baron, Minority Chief Counsel, Aug. 14, 1997 (Ex. 18).

<sup>42</sup> See, e.g., *Wilkinson v. United States*, 365 U.S. 399, 408–409 (1961); *Barenblatt v. United States*, 360 U.S. 109, 117 (1959); *Watkins v. United States*, 354 U.S. 178, 209–15 (1957). See also *United States v. Rumely*, 345 U.S. 41, 43 (1953) (holding that “the problem [of interpreting a congressional resolution] is much the same as that which confronts the Court when called upon to construe a statute”).

<sup>43</sup> *Congressional Record*, Mar. 11, 1997, p. S2096.

<sup>44</sup> Senate Report 105–7, p. 3 (emphasis added).

<sup>45</sup> See above for introduction discussing Committee's mandate.

the effect of independent expenditures (whether by corporations, labor unions, or otherwise) upon our current campaign finance system, and the question as to whether such expenditures are truly independent; and

contributions to and expenditures by entities for the benefit or in the interest of public officials.<sup>46</sup>

The scope of the Committee's proposed inquiry was "a testament to the patent need for a through and wide-ranging investigation into the role of big money in federal elections, both presidential and congressional."<sup>47</sup> In fact, the Minority members of the Committee stated that "[w]e agree wholeheartedly with the description of the scope of the investigation as set forth by the majority report."<sup>48</sup> The Senate ultimately enacted the Committee's amendment to Resolution 39, as offered by the Majority Leader.

Thus, while much of the nonprofit activity under investigation by the Committee would clearly be illegal, the language of Senate Resolution 39 included more than simply illegal conduct. It allowed the Committee to examine practices that might be legal yet improper or unethical. In addition to the text of Senate Resolution 39, a thorough reading of the legislative history—including the ensuing floor debate—clearly shows that the subpoenas issued to the various nonprofit groups did not exceed the scope of the Committee's mandate.

For example, Subpoena No. 72, which was issued to Triad, required the production of the following types of documents:

- (1) Documents referring or relating to the founding of the organization, its structure, management, and tax status;
- (2) Bank records for all Triad accounts;
- (3) Documents used for fundraising, marketing, polling as well as information concerning advertising and other voter education activity, including phone banks and direct mail;
- (4) Documents relating to any communications by Triad and an agent of any political committee as well as any donations or contributions to or from a national party committee; and
- (5) Documents relating to any donations to nonprofit organizations related to Triad.<sup>49</sup>

This subpoena only requires the production of documents that relate or refer to the group's voter education and election activities.

Similarly, Subpoena No. 95, which the Committee issued to the AFL-CIO, sought only the production of documents directly related to the Federation's voter education, electoral and political activities. Subpoena No. 95 required the AFL-CIO to produce the following types of documents:

- (1) All documents relating to the organizational structure, management, annual reports, annual financial statements, board minutes involving federal elections, campaigns or candidates, as well as employee manuals or handbooks relating to political activity;

<sup>46</sup> Senate Report 105-7, p. 3.

<sup>47</sup> *Id.* at pp. 2-3.

<sup>48</sup> *Id.* at pp. 5-6.

<sup>49</sup> With the exception of requiring the production of documents involving persons specifically associated with each group, the language of this subpoena is identical to the language used in the other subpoenas that were issued on April 9, 1997. These subpoenas included those served on the NPF, CR, CREF, ATR and CCF.

- (2) All documents relating to contributions to any federal political committee or candidate;
- (3) All documents related to the AFL-CIO's political action committee as well as voter education efforts, including precinct targeting efforts;
- (4) All documents relating to political or voter education advertising, including polling and other support materials;
- (5) All documents that relate or refer to any federal election, candidate or campaign;
- (6) All documents relating to other political action committees working with the AFL-CIO; and
- (7) All documents relating to grass roots political organizing by the AFL-CIO.<sup>50</sup>

Finally, the language of the last group of subpoenas, which the Committee issued to nonprofit organizations on July 30, 1997, is also well within the broad legislative mandate of Senate Resolution 39. For example, Subpoena 296, which was issued to the National Right to Life Committee, requires the production of the following types of documents:

- (1) Documents referring or relating to the founding of the organization, its structure, management, and tax status;
- (2) All financial statements and annual reports;
- (3) Documents used for fundraising, marketing, polling as well as information concerning advertising and other voter education activity, including phone banks and direct mail;
- (4) Documents relating to any communications by the National Right to Life Committee and an agent of any political committee as well as any donations or contributions to or from a national party committee; and
- (5) Documents relating to any donations from the National Right to Life to any federal candidate, political committee or campaign.<sup>51</sup>

As these three examples illustrate, the Committee's subpoenas sought only information related to the voter education, political and electoral activities of the various nonprofit groups.

It was argued that the Committee's subpoenas were invalid because the term "improper" in Senate Resolution 39 was impermissibly vague. It is specious to argue that the term "improper" is vague and undefined by Senate Resolution 39 and the accompanying Report. "Improper" as a functional matter can be defined from several sources, including the Committee's authorizing resolution and statements of Chairman Thompson and other members of the Committee. Consequently, the Committee rejects all of the objections as to scope that were raised by the nonprofit groups during the investigation.

Most of the nonprofit groups also objected to Committee subpoenas on constitutional grounds. For the most part, the Committee finds those objections unpersuasive. While the power of Congress

<sup>50</sup> The AFL-CIO subpoena is the only subpoena containing this exact language.

<sup>51</sup> With the exception of requiring the production of documents involving persons specifically associated with each group, the language of this subpoena is identical to the language used in the other subpoenas that were issued on July 30, 1997. These subpoenas include the bulk of the nonprofit groups under investigation. See above for listing of entities subpoenaed on July 30, 1997.

to investigate is broad, “its range and scope” is not unlimited.<sup>52</sup> The “scope of the [Committee’s] power of inquiry . . . is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.”<sup>53</sup> This power is extremely broad so long as the Committee pursues a legitimate legislative interest.

The cases relied upon by the nonprofit groups to justify their noncompliance are inapposite, since they involved attempts by state legislatures to obtain the membership lists of private, volunteer organizations.<sup>54</sup> None of those cases are applicable to Congress. Moreover, it is clear from reading the specifications contained in the various subpoenas that the Committee never sought donor information or membership lists. In fact, Chairman Thompson specifically refused to order nonprofit groups to produce membership or donor information except with respect to foreign members and donors.<sup>55</sup>

The other cases cited by the nonprofit groups to support noncompliance are equally distinguishable because they concern the investigative authority of regulatory bodies.<sup>56</sup> Because the Senate’s investigative authority is vested in the Constitution itself, these cases are inapposite.

Notwithstanding the limitations in the Bill of Rights, the Supreme Court has generally acknowledged the broad subpoena authority of Congress. For example, in *Packwood v. Senate Select Committee on Ethics*,<sup>57</sup> the Supreme Court ruled that a subpoena seeking a senator’s personal diaries was not overly broad and did not violate either his First or Fourth Amendment rights. The Supreme Court also rejected a First Amendment objection to a Senate subpoena in *Eastland v. United States Servicemen’s Fund*.<sup>58</sup>

As a result, the Committee concludes that only three valid objections could be raised by the nonprofit groups. First, the Committee recognized the assertion of an individual’s Fifth Amendment right against self-incrimination. Second, the Committee did not *challenge* assertions of the attorney-client and work-product privileges.<sup>59</sup> Third, the Committee recognized the First Amendment rights of the nonprofit groups to maintain the secrecy of their domestic members and donors. Therefore, the Committee believes that the remaining objections as to scope and constitutionality were baseless and frivolous.

<sup>52</sup> *Barenblatt*, 360 U.S. at 112 (quotation omitted).

<sup>53</sup> *Id.* at 111.

<sup>54</sup> *E.g.*, *Gibson v. Florida Legis. Investig. Comm.*, 372 U.S. 539 (1963); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

<sup>55</sup> Ex. 1.

<sup>56</sup> *E.g.*, *FTC v. American Tobacco Co.*, 264 U.S. 298 (1924) (addressing whether an adjudicatory agency has the legal authority to subpoena documents related to a price-fixing investigation); *Hearst v. Black*, 87 F.2d 68 (1936) (involving a Federal Communication Commission subpoena of all telegraphs made over a certain time period).

<sup>57</sup> 510 U.S. 1319 (1994).

<sup>58</sup> 421 U.S. 491 (1975).

<sup>59</sup> The Senate has never officially recognized these common law privileges, see *Journey v. MacCracken*, 294 U.S. 125, 146 (1935), but the Committee did not elect to challenge their assertion during the Special Investigation.



### *C. Enforcement of Committee subpoenas*

#### *(1) Contempt procedures and the December 31, 1997 deadline*

A contempt citation is the only mechanism available to the United States Senate for enforcing a subpoena against a party in noncompliance. As outlined in the preceding pages, many of the nonprofit groups were, at best, in “partial compliance” with the Committee’s document and deposition subpoenas.<sup>60</sup> Partial compliance and outright noncompliance obstructed the Committee’s efforts to investigate allegations of improper or illegal campaign finance abuses during the 1996 federal election cycle.

Although the Committee attempted to secure full compliance with its subpoenas, these efforts were severely hampered by the full Senate’s imposition of a December 31, 1997 deadline for the Special Investigation. As is explained in the succeeding pages, the contempt process is very time consuming. Thus, the deadline substantially reduced the Committee’s leverage and weakened its ability to threaten contempt proceedings as a means of forcing compliance.

#### *(2) Classifications of contempt*

The ability to issue contempt citations is an inherent power of both chambers of Congress.<sup>61</sup> There are three types of contempt proceedings—inherent, statutory criminal and statutory civil contempt.<sup>62</sup> Civil contempt is available to the Senate only.<sup>63</sup> Criminal contempt citations are “after the fact” punishments for failure to comply, whereas the civil citation compels cooperation with the subpoena in order to obtain the information requested. The Senate has used the civil citation six times since its inception in 1978, and the criminal citation has not been used by the Senate since the creation of the civil contempt procedures.

The “inherent contempt” power has not been used by the House or Senate in over sixty years. It is a cumbersome procedure that requires the Senate’s Sergeant-at-Arms to physically bring the recalcitrant party before the Senate. There, the party is tried. Conviction by the Senate can result in confinement in the Capitol Jail until compliance or the expiration of a specified time period.<sup>64</sup>

The “statutory criminal contempt” procedure is set forth in 2 U.S.C. §§ 192 and 194, which state that a party under subpoena who refuses to testify or produce documents, or who appears before the Committee and refuses to respond to questions, is subject to a criminal contempt citation from the Senate. The citation must be approved by the Senate to issue. Once passed by the Senate, the President Pro Tempore must certify the criminal contempt citation and then submit it for prosecution to the United States Attorney

<sup>60</sup> See above for discussion of noncompliance with Committee subpoenas by nonprofit groups.  
<sup>61</sup> See *Anderson v. Dunn*, 19 U.S. (6 Wheat) 204 (1821). See also Jay R. Shampansky, *Congress’ Contempt Power*, CRS Report No. 86-83A, Feb. 28, 1986.

<sup>62</sup> See *Gropi v. Leslie*, 404 U.S. 496 (1972); 2 U.S.C. §§ 192 & 194; 2 U.S.C. § 288d; 28 U.S.C. § 1365.

<sup>63</sup> See 2 U.S.C. § 288d; 28 U.S.C. § 1365.

<sup>64</sup> The time period can be either the end of the current session of Congress or the life of the Committee. See Morton Rosenberg, *Investigative Oversight: An Introduction to the Law, Practice and Procedures of Congressional Inquiry*, Apr. 7, 1995, p. 14.

for the District of Columbia.<sup>65</sup> Upon submission to the United States Attorney, it becomes the “duty” of the United States Attorney to “bring the matter to a grand jury for action.”<sup>66</sup>

Criminal contempt requires a “willful” violation of the Senate subpoena.<sup>67</sup> This form of contempt is punitive and not compulsory. Therefore, if the Senate—and ultimately the court—holds a recalcitrant party in criminal contempt, that party cannot purge the contempt penalty by producing the subpoenaed information.<sup>68</sup>

The “statutory civil contempt” procedure is available only to the Senate pursuant to 2 U.S.C. § 288d(a). The committee issuing the subpoena, when faced with noncompliance, must file a report to the full Senate.<sup>69</sup> This report must outline the procedure followed to issue the subpoena; the extent to which the party has complied with the subpoena; any objections raised by the subpoenaed party; and supply the reasons the committee is pursuing civil enforcement, rather than certifying a criminal action for contempt of Congress or initiating a contempt proceeding directly before the Senate.<sup>70</sup>

The civil contempt citation and its accompanying report constitute a Senate Resolution, which is a privileged motion. A privileged motion means that the resolution goes to the Senate floor immediately and is not subject to amendments.<sup>71</sup> Once the resolution reaches the Senate floor, however, it is subject to the rules of the chamber, including filibuster. The Senate, after considering the report, may adopt a resolution directing the Senate Legal Counsel to initiate civil contempt proceedings against the recalcitrant party.<sup>72</sup>

After adoption of the resolution, Senate Legal Counsel submits an application to the United States District Court for the District of Columbia. The civil action, filed in the committee’s name, will request either declaratory relief or an order compelling compliance with the subpoena. In the district court, the recalcitrant party can make motions and interpose objections. If the district court rejects those objections, the court issues an order requiring compliance with the Senate subpoena.

If the party still refuses to comply, the court may try the person in summary proceedings for contempt of court by applying for an order to show cause why the party should not be held in contempt for failure to comply with the court’s order. If the court overrules the party’s objections to the contempt order, it will impose sanctions in order to compel the recalcitrant party to comply with the subpoena.<sup>73</sup> The contempt order can be purged by the recalcitrant

<sup>65</sup> 2 U.S.C. § 194. If Congress is not in session, the citation can be approved by the “presiding officer.” *Id.*

<sup>66</sup> *Id.*; see also Todd D. Peterson, *Prosecuting Executive Branch Officials for Contempt of Congress*, 66 *N.Y.U.L. Rev.* 563 (1991); “Prosecution of Contempt of Congress,” Subcommittee on Administrative Law and Governmental Relations, House Comm. on the Judiciary, 98th Cong., 1st Sess. 21–35 (1983) (citing testimony of Stanley Brand). It is unclear whether the United States Attorney retains discretion under the statute to decline prosecution of the recalcitrant party.

<sup>67</sup> 2 U.S.C. § 192.

<sup>68</sup> 2 U.S.C. § 192. The recalcitrant party can be found guilty of a misdemeanor, which is punishable by a fine up to \$1,000 and imprisonment for one year. *Id.*

<sup>69</sup> *Id.* § 288d. In order to be reported out of Committee, the report must be approved by a majority of members voting and present. *Id.* § 288d(c)(1).

<sup>70</sup> *Id.* § 288d(c)(2).

<sup>71</sup> *Id.* § 288j(a)(1).

<sup>72</sup> *Id.* § 288d(a).

<sup>73</sup> The judicial contempt power supplements, but does not supplant, the Senate’s contempt power. See *id.* § 288d(g).

party. Even if the Senate prevails in the district court, the recalcitrant party may still exercise its right to appeal.<sup>74</sup>

The entire process can take as long as three months.<sup>75</sup> If the recalcitrant party appeals from the district court, the process can extend for years.

### (3) *Summary*

The contempt procedures are the only vehicles by which a Senate committee can ensure compliance with duly issued subpoenas. In order for a Senate committee to conduct a thorough and complete investigation against parties who are willing to withstand public pressure to cooperate, a committee must be able to force the recalcitrant parties to comply with lawful Senate process. Due to the lengthy and arduous procedures for civil and criminal contempt, it is essential that future Senate investigations be free of arbitrary time deadlines. Such deadlines encourage stalling, gamesmanship and outright resistance to committee authority. In fact, the conduct of the nonprofit and other groups illustrates how the Senate imposed deadline of December 31, 1997 impeded the Special Investigation.

## III. CONCLUSION

Senate Resolution 39 granted the Committee explicit authority to examine the numerous press accounts of illegal and improper conduct by nonprofit groups in connection with the 1996 federal election cycle. In order to fulfill its responsibilities, the Committee issued subpoenas to those nonprofit groups that were most active during the 1996 elections. Those subpoenas did not exceed the Committee's mandate or its constitutional authority to investigate matters relevant to the Senate's consideration of reforms to the federal campaign finance system. Despite the exercise of lawful process, most of the nonprofit groups did not comply with Committee requests for documents and deposition testimony.

Most troubling to the Committee, however, is the manner in which its investigation was obstructed. Prior to the AFL-CIO's open defiance of the Committee, most of the nonprofit groups displayed a general willingness to cooperate with the investigation. Most of the organizations readily produced documents and scheduled witnesses for depositions. Once the AFL-CIO refused to comply with the Committee's subpoenas by raising specious and unsupported legal objections, the other nonprofit groups had no reason—other than public spiritedness—to cooperate. In other words, after the AFL-CIO thwarted the Committee's investigation with impunity, the remaining nonprofit groups did not fear the Committee's threats of contempt.

Had the Committee been able to pursue contempt proceedings against the AFL-CIO, or even credibly threaten contempt proceedings, the Committee might have avoided the obstructionist tactics

<sup>74</sup> 28 U.S.C. § 1291.

<sup>75</sup> For example, during the controversy over the Senate Ethics Committee's attempts to secure former Oregon Senator Bob Packwood's diaries, the Committee's civil contempt order and report issued on October 20th; the full Senate considered the civil contempt citation on November 1st and 2nd; the Senate's filed its application to the district court on December 16th; and, the district court issued its order requiring production of the diaries on January 7th of the following year.

of the AFL–CIO and others. Those threats lacked credibility, however, because the nonprofit groups understood that the Committee could not obtain a contempt of Congress citation from a federal district court before the expiration of the December 31, 1997 deadline. Moreover, even if the Committee could have obtained such a citation, the right of the organizations to appeal a finding of contempt guaranteed that the Committee could not effectively utilize the contempt procedures.

Therefore, the Committee concludes that the Senate’s imposition of an arbitrary deadline dramatically impeded the course of the Special Investigation. As is discussed in more detail in other sections of the report, absent the necessary evidence, the Committee was unable to draw any meaningful conclusions about the activities of nonprofit groups during the 1996 elections.

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## ROLE OF NONPROFIT GROUPS IN THE 1996 ELECTIONS

The 1996 election witnessed an unprecedented level of political activity by nonprofit groups.<sup>1</sup> The Annenberg Public Policy Center at the University of Pennsylvania estimates that, during the 1996 election cycle, nonprofit groups spent between 55 and 70 million dollars on political advocacy campaigns.<sup>2</sup> These figures include so-called “independent expenditure”<sup>3</sup> and “issue advocacy” campaigns,<sup>4</sup> and constitute roughly one-seventh of the 400 million dollars expended on political advertising during the 1996 elections by parties, candidates and others.<sup>5</sup> This amount does not measure all of the political advocacy and work of nonprofits, however. Get-out-the-vote (“GOTV”) efforts and other types of in-kind contributions by nonprofits supplemented paid media campaigns.

During and after the 1996 election, there were numerous press reports about the activities of nonprofit groups. These press accounts raised questions about whether the organizations were truly nonpartisan and independent from political parties and candidates as required by federal law.<sup>6</sup> Because of allegations surrounding the political activities of nonprofit groups—particularly relating to the use of issue advocacy campaigns—one of the priorities of the Committee was to investigate the role of nonprofit organizations in the elections.

Senate Resolution 39, which authorized the Special Investigation, specifically expanded the scope of the inquiry to include not only illegal activities but improper conduct as well.<sup>7</sup> As a result, the

<sup>1</sup>Paul Taylor, *Introduction* to Deborah Beck, et al., *Issue Advocacy Advertising During the 1996 Campaign 3* (Annenberg Public Policy Center 1997). The Committee uses the phrase “nonprofit group” as a short-hand method of describing those entities organized for a noncommercial purpose that directly participate in the electoral process through contributions to candidates, the expenditure of funds on behalf of candidates, or the expenditure of funds to educate the public on issues of public policy. These nonprofit groups are entities that are organized under either § 501(c) or § 527 of the federal tax code. 26 U.S.C. §§ 501(c), 527 (1997).

<sup>2</sup>Taylor, *supra* note 1, p. 3. The Annenberg Report calculated that the national political parties spent roughly \$80 million on issue advocacy and independent expenditure campaigns. This figure represents a substantial portion of the \$135 to \$150 million spent by nonprofit groups. *Id.*

<sup>3</sup>“Independent expenditure” campaigns are communications that expressly advocate the election or defeat of a clearly identified federal candidate. These expenditures must be disclosed by the sponsoring group but are not subject to contribution or expenditure limits. In order to qualify as an independent expenditure, the communication cannot be made in coordination with the candidate. 2 U.S.C. § 441a(a)(7)(B).

<sup>4</sup>“Issue advocacy” campaigns are communications designed to promote a set of ideas or public policies. Issue advocacy is distinguished from “express advocacy” in that the communications do not advocate the election or defeat of a clearly identified federal candidate. *Buckley v. Valeo*, 424 U.S. 1, 43–44 (1976) (narrowly construing Federal Election Campaign Act of 1974 as applying only to “expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office”).

<sup>5</sup>Taylor, *supra* note 1, p. 3.

<sup>6</sup>*See, e.g.*, Glenn F. Bunting et al., “Nonprofits Behind Attack Ads Prompt Senate Probe,” *Los Angeles Times*, May 5, 1997, p. A1; Fred Wertheimer, “Investigate the G.O.P., Too,” *New York Times*, Feb. 18, 1997, p. A19; Elizabeth Drew, *Whatever It Takes* (1997).

<sup>7</sup>Senate Report 105–7, p. 3.

Committee intended to examine the following activities involving nonprofit organizations:

- The independence of presidential campaigns from the political activities pursued for their behalf by outside individuals or groups;
- the misuse of charitable and tax-exempt organizations in connection with political or fundraising 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 otherwise) upon our current campaign finance system, and the question as to whether such expenditures are truly independent; and
- contributions to and expenditures by entities for the benefit or in the interest of public officials.<sup>8</sup>

In order to further this goal, the Committee subpoenaed thirty-two nonprofit organizations in addition to the Republican National Committee ("RNC"), the Democratic National Committee ("DNC"), and the presidential campaigns of Senator Robert Dole and President Bill Clinton. The Committee also subpoenaed numerous persons associated with these entities for deposition testimony. Lastly, the Committee subpoenaed several banking institutions, seeking the financial records of some of the nonprofit groups.<sup>9</sup>

The Committee issued these subpoenas to investigate several specific allegations involving illegal or improper conduct by nonprofit groups during the 1996 federal elections. First, the Committee sought evidence that some political action committees ("PACs") participated in schemes to evade the contribution limits set by federal election law.<sup>10</sup> Second, the Committee wanted to determine whether expenditures by nonprofit groups for issue advocacy campaigns were coordinated with federal candidates and/or party committees in such a manner that those expenditures became illegal in-kind contributions to the candidates or parties. Third, the Committee intended to explore the increased use of issue advocacy campaigns by nonprofit groups during the 1996 elections. Specifically, the Committee hoped to examine the distinction between issue and express advocacy—a distinction which in practical terms appeared to be meaningless in the 1996 elections. Fourth, the Committee sought evidence about the illegal use of nonpartisan, tax-exempt groups by political parties and candidates for partisan purposes.<sup>11</sup>

<sup>8</sup>*Id.*

<sup>9</sup>See below for listing of nonprofit groups that were subpoenaed by the Committee.

<sup>10</sup>PACs, which are classified under § 527 of the tax code, may receive income that is exempt from federal taxation if that income is spent "influencing or attempting to influence" the election of candidates to federal, state, or local office. 26 U.S.C. § 527(c)(3), (e)(2). Unlike nonprofit groups organized under § 501(c) of the tax code, there are no partisan limitations on the political activities of PACs. Indeed, PACs may contribute directly to political candidates. However, because PACs may engage in partisan political advocacy—as distinct from the nonpartisan advocacy of groups organized under § 501(c)—their activities are subject to regulation under the Federal Election Campaign Act of 1971 ("FECA").

<sup>11</sup>Entities organized under § 501(c) of the tax code receive preferential tax status so that their income is either totally or partially exempt from federal taxation. In order to qualify for this preferential tax status, these organizations must abide by specified limitations on their political activity. The degree of restriction on political activity varies widely.

Groups organized under § 501(c) may not contribute to political candidates or parties but they may participate in the political process. Groups organized for charitable, religious or educational

As described in great detail in the portion of the report dealing with compliance, the Committee encountered substantial resistance to its subpoenas.<sup>12</sup> A substantial majority of the nonprofit organizations, led by the AFL–CIO, refused in whole or in part to produce documents or witnesses pursuant to lawfully issued subpoenas. Relying on dubious arguments about the constitutionality and scope of the Committee’s subpoenas, many of these groups pursued a tactical strategy designed to impede the Special Investigation. Knowing that the Senate had imposed a December 31, 1997 deadline on the Special Investigation—a deadline that rendered useless the lengthy contempt procedures available to the Committee—the nonprofit groups stalled, delayed and ultimately refused to cooperate with the Committee.

Because of the deadline, the Committee had no ability to force the nonprofit groups to provide the documents and testimony necessary to a full understanding of their conduct. As a result of these tactics—particularly those of the AFL–CIO—the Committee obtained only a smattering of relevant documents and a handful of useful depositions.

With only a portion of the material evidence before the Committee, it was unable to draw any reasonable conclusions about the conduct of most of the nonprofit groups. In fact, the Committee believes that it would be irresponsible to draw inferences about serious allegations of illegality and impropriety on such a limited amount of evidence. Consequently, the Committee cannot confirm or deny most of the allegations of illegal or improper conduct relating to the political activities of nonprofit groups in the 1996 elections.

In their zeal to find a moral equivalent to the proven misconduct of the DNC and the Clinton/Gore ’96 campaign, the Minority has repeatedly disclosed to the press—in violation of the Committee’s Confidentiality Protocol—documents and deposition testimony that they contend prove violations of election and tax laws by the RNC, Republican candidates and sympathetic nonprofit groups. The Committee finds such conclusions irresponsible given the limited available evidence and the lack of public hearings.

Instead of sitting in judgment on an incomplete record, the Committee will lay out some of the evidence that has been uncovered during the course of the Special Investigation.

As noted above, the Committee sought to thoroughly examine allegations that some nonprofit groups illegally coordinated issue ad-

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purposes are generally classified under § 501(c)(3). Contributions to groups organized under § 501(c)(3) are not only exempt from federal tax, but the donor may deduct the contribution as well. 26 U.S.C. § 170(a), (c)(2). In return for this extremely favorable tax treatment, these nonprofits may “not participate in, or intervene in . . . any political campaigns on behalf of (or in opposition to) any candidate for public office.” *Id.* § 501(c)(3). Moreover, a § 501(c)(3) may not sponsor issue advocacy campaigns. In short, these groups may not engage in political advocacy of any kind and must limit their activities to purely educational functions.

Groups classified under § 501(c)(4) are generally considered social welfare organizations. *Id.* § 501(c)(4). While the income of groups organized under §§ 501(c)(3) and (c)(4) is exempt from federal taxation, donations to a § 501(c)(4) are not deductible to the contributor. A group organized under § 501(c)(4), however, may engage in political advocacy so long as the advocacy is of a nonpartisan nature. *Id.* As a result, a § 501(c)(4) may sponsor issue advocacy campaigns.

Labor unions are nonprofit groups organized under § 501(c)(5) and mutual not-profit business organizations, such as the Chamber of Commerce, are classified under § 501(c)(6). These groups may engage in nonpartisan political advocacy only. *Id.* § 501(c)(5),(6). Both types of groups can sponsor issue advocacy campaigns.

<sup>12</sup>See below for discussion of noncompliance with Committee subpoenas by nonprofit groups.

vocacy expenditures with federal candidates and party committees, thereby providing unreported and unlimited in-kind contributions to those candidates and committees. FECA § 431(9)(A) defines the term “expenditure” as anything of value “made by any person *for the purpose of influencing any election* for Federal office[.]”<sup>13</sup> Section 441a(a)(7)(B)(1) states that “expenditures” that are 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, *shall be considered to be a contribution to such candidate*[.]”<sup>14</sup> As contributions, coordinated expenditures are subject to FECA’s limitations as to amount and source. Consequently, when a nonprofit expends funds for communications designed to influence a federal election, and the expenditure is made at the request of the candidate or the candidate’s agent or is based upon information obtained from the candidate or the candidate’s agent, the expenditure must be treated as an in-kind contribution to the candidate for the purposes of disclosure requirements and contribution limits.

In addition to FECA and FEC regulations applying to nonprofit groups generally, there are several regulations that specifically apply to political communications by labor organizations. For example, FEC regulations allow registration and voting communications “provided that . . . [t]he preparation and distribution or registration and get-out-the-vote communications shall not be coordinated with any candidate(s) or political party.”<sup>15</sup> Labor organizations may also prepare and distribute the voting records of Members of Congress “provided that . . . [t]he decision on content and the distribution of voting records shall not be coordinated with any candidate, group of candidates or political party.”<sup>16</sup> FEC regulations also allow labor organizations to prepare and distribute voter guides so long as the unions do not contact “or in any way act in cooperation, coordination, or consultation with or at the request or suggestion of the candidates, the candidates’ committees or agents.”<sup>17</sup>

FEC regulations define coordination as:

any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is—

Based on information about the candidates plans, projects, or needs provided to the expending person by the candidate, or by the candidates agents, with a view toward having an expenditure made; or

Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of authorized committee, or who is, or has been, receiving any

<sup>13</sup> 2 U.S.C. § 431(9)(A)(1).

<sup>14</sup> *Id.* § 441a(a)(7)(B)(1).

<sup>15</sup> 11 C.F.R. § 114.4.

<sup>16</sup> *Id.* In addition to these regulations, the FEC has issued at least one advisory opinion holding that coordination is a consideration in determining whether general public communications critical of Members of Congress’ voting records are subject to the contribution limitations and prohibitions of the FECA. FEC Advisory Opinion 1985–14.

<sup>17</sup> 11 C.F.R. § 114.4.

form of compensation or reimbursement from the candidate, the candidate's committee or agent.<sup>18</sup> Using these regulations as a guidepost, the Committee found some evidence that the AFL-CIO coordinated issue advocacy campaigns with the DNC and the Clinton/Gore '96 campaign.

The Annenberg Report dubbed the AFL-CIO "the-800 pound gorilla of issue advocacy advertisers during the 1996 campaign."<sup>19</sup> Following the 1994 election in which Republicans wrested control of both houses of Congress for the first time in forty years, the AFL-CIO and its affiliated unions set about reinvigorating the political operation of organized labor. One of the principal manifestations of this reorganization was a series of paid media campaigns, or issue ad campaigns, designed to boost the political influence of organized labor. The AFL-CIO and its affiliated unions developed and funded three separate and distinct programs: "Stand Up for America's Working Families," "Project '95," and "Labor '96." All three programs were ostensibly efforts to convince Congress to support the AFL-CIO's political and legislative agenda and to educate voters about the voting records of their federal elected officials.

Evidence obtained by the Committee indicates, however, that all three programs were conceived, designed and implemented to defeat Republican Members of Congress during the 1996 federal elections. Specifically, the AFL-CIO sponsored a paid media campaign that repeatedly targeted incumbent Republicans. The Federation's issue advertisements constituted an unrelenting barrage of television and radio ads, beginning in April 1995, that did not cease until the close of the 1996 elections.

The AFL-CIO and its affiliate unions provided the campaigns of the challengers in those districts direct contributions through COPE. The AFL-CIO also committed 102 political staff workers to organize union members in those races, and sponsored both direct mail campaigns and get-out-the-vote drives in those targeted districts.<sup>20</sup> In fact, the day after the 1996 election, AFL-CIO President John Sweeney claimed credit for reducing the Republican majority in the House of Representatives.<sup>21</sup>

The first of these issue ad campaigns was called "Stand Up for America's Working Families," which began airing commercials attacking Republican legislative proposals on April 7, 1995.<sup>22</sup> There can be little doubt about the partisan tone of the issue ads sponsored by the AFL-CIO.<sup>23</sup> For example, on June 26, 1995, the AFL-CIO released an issue ad entitled "Sparkler", which attacked Republican budget proposals. The text and video of the ad were as follows:

<sup>18</sup>*Id.* § 109.1(b)(4)(I)(A),(B).

<sup>19</sup>Taylor, *supra* note 1, p. 3.

<sup>20</sup>"Hotline Turnout Study," *Hotline*, Nov. 1, 1996, p. \*21 (quoting AFL-CIO Spokesperson Deborah Dion).

<sup>21</sup>"Statement of John Sweeney, President, AFL-CIO, on Election '96" AFL-CIO Press Release, Nov. 6, 1996 (Ex. 1).

<sup>22</sup>"AFL-CIO Campaign for America's Working Families," AFL-CIO Press Release, Apr. 7, 1995 (Ex. 2).

<sup>23</sup>Thomas Donahue, who served as President of the Federation during most of 1995, described the program as "the AFL-CIO's national effort to expose . . . Republican votes against workers and their families, and in favor of their rich friends. It's our campaign to let the American people know the truth about what the Republicans are doing in Washington, and what else they have planned." "AFL-CIO President Tom Donohue, Stand Up News Conference," AFL-CIO Press Release, Aug. 21, 1995, p.1 (Ex. 3).

Video	Audio
Kids at a Fourth of July parade .....	America. Where children can go as far as their dreams will take them . . . If we keep their opportunities bright and alive . . .
Kids on front steps, holding sparklers. Light fades until all we see is the sparklers and the light of the sparklers on their faces..	But every time the Republican Congress cuts jobs, cuts education, cuts college loans, Medicare or health and safety to pay for tax cuts for the rich, they undercut the promise of America . . . And a dream dies.
Sparklers start to go out until they are all extinguished..	Ask Congress to make America the land of opportunity again . . . To keep the American dream alive . . . To stand up for America's working families. <sup>24</sup>
One sparkler lights. Kids laughing and waving sparklers.	

Subsequent issue ads singled out Republican Members of Congress by name for criticism and urged the audience to contact their representatives directly. For example, the AFL–CIO released an issue ad for the Labor Day congressional recess in 1995, which criticized Republican proposals reforming the Occupational Health and Safety Act (“OSHA”). The commercials were titled by the name of the Member of Congress that was targeted. In one such ad, entitled “Grain-Dickey,” the text was as follows:

Video	Audio
Stills of Patrick Hayes .....	(Slow, Moving Track) (Ron Hayes voice:) Our son Patrick was a good kid. A real hard worker
Slow push in on silo. ....	Two years ago, Patrick was crushed to death in the feed mill where he worked.
Rescue shots. ....	The company thought they could get away with breaking the law. Patrick was just 19 years old when he died.
Ron and Dot Hayes, sitting together. Soft lighting.	Now, the Republicans in Congress are cutting health and safety . . .
Close up on Ron Hayes .....	Protections I know can save lives. If they succeed, more people will die.
Worker and family shots .....	(Voice over)
Call Rep. Dickey 1-800-765-4440 .....	Tell Republican Congressman Jay Dickey to stop cutting health and safety . . .
Disclaimer .....	So other families don't lose their loved ones. <sup>25</sup>

During a press conference discussing the OSHA issue ad, a reporter asked Tom Donohue how the AFL–CIO selected the thirty-six congressional districts in which it ran these ads. He responded that the districts were selected because “the bulk of them are [represented by] first-term, freshmen Republicans who . . . may be defeatable.”<sup>26</sup> Donohue’s remarks suggest that these Republican Members of Congress were targeted because the AFL–CIO thought they were vulnerable in the 1996 federal election.<sup>27</sup>

The Stand Up for America’s Working Families campaign was later joined by “Project ’95,” which was an issue ad campaign spon-

<sup>24</sup> “AFL–CIO TV:30, ‘Sparkler,’” AFL–CIO Press Release, June 26, 1995, p. 1 (Ex. 4).

<sup>25</sup> AFL–CIO Press Release, Aug. 1995 (Ex. 5).

<sup>26</sup> Ex. 3, p. 3.

<sup>27</sup> Donahue later told reporters that the AFL–CIO would be targeting congressional “districts that are designated marginal or critical to us.” Press Conference of Thomas Donohue, President of AFL–CIO, Sept. 21, 1995, p. 3 (Ex. 6).

sored by the American Federation of State, County & Municipal Employees ("AFSCME"). Project '95 grew out of the internal struggle over control of the AFL-CIO. For only the second time in Federation history, an incumbent leader, Tom Donahue, was being challenged by an insurgent, John Sweeney.

As part of the campaign to unseat Donahue, AFSCME President McEntee—an ally of Sweeney—created Project '95. Press accounts described Project '95 as "grassroots organizing against 14 targeted GOP Members [of Congress] that, union leaders hope, will materialize into electoral victory next year."<sup>28</sup> The Committee found evidence that AFSCME designed Project '95—purportedly an issue advocacy campaign—in order to defeat Republican Members of Congress, including many of the same representatives whose districts had been bombarded with AFL-CIO advertisements as part of the Stand Up for America's Working Families campaign. Press accounts explained that Project '95 was

[f]unded by independent unions and other citizen groups and headed by 1990 [Democratic] Rhode Island House candidate Scott Wolf, the project has provided "issues education efforts" and full-time local coordinators in selected Republican-held [congressional] districts . . .

Already, Wolf said, the '95 Project is in place in 14 House districts "and we will be expanding our coverage in the near future." He identified a quartet of potentially vulnerable GOP Members elected last year—"Reps. Phil English (Pa), John Ensign (Nev), Frank Riggs (Calif), and Jim Longley (Maine)—as early targets."<sup>29</sup>

The aggressive use of partisan attack ads disguised as issue advocacy—similar to Project '95—became a centerpiece of John Sweeney's successful challenge to Donohue. The partisan motives for the issue ad campaigns were widely known. Deputy White House Chief of Staff Harold Ickes testified that Project '95 was "a very, very substantial campaign . . . that McEntee was basically heading up for Sweeney to take back the Congress [for the Democratic Party]."<sup>30</sup>

Sweeney's proposals, however, went further than those put forth by McEntee and AFSCME. Sweeney proposed a new political training institute designed not only to train workers, campaign managers and prospective political candidates, but also to organize other union members to participate in key congressional races in 1996. Therefore, Project '95 can be understood as a dress rehearsal for Labor '96, the massive issue ad campaign sponsored by the AFL-CIO during the 1996 election cycle.

Labor '96 cost the AFL-CIO \$35 million. Of that figure, the paid media campaign cost \$25 million, with the balance funding direct mail advertising and organizational activities. The AFL-CIO financed the issue ad campaign with a \$.15 per member, per month assessment.<sup>31</sup>

<sup>28</sup> Tim Curran, "Labor's Political Rebirth?," *Roll Call*, Nov. 6, 1995, p. 1.

<sup>29</sup> *Id.*

<sup>30</sup> Deposition of Harold Ickes, June 27, 1997, p. 92.

<sup>31</sup> Beck et al., *supra* note 1, pp. 10–12.

Labor '96 sponsored issue ads that were clearly designed to influence the outcome of the election. For example, Labor '96 aired a number of issue ads that attacked by name Republican Members of Congress, while simultaneously depicting an ominous looking image of House Speaker Newt Gingrich and Senate Majority Leader Bob Dole. One of those ads, which aired in the Washington state congressional districts of Republican Congressmen Rick White and Randy Tate, stated as follows:

Video	Audio
Congressmen Rick White .....	On November 20th, our Congressmen voted with Newt Gingrich and against working families.
(Picture of Newt Gingrich)	
Federal budget vote .....	They voted to cut Medicare, education, and college loans, all to give huge tax breaks to the big corporations and the rich.
(Picture of elderly man) Cut Medicare	
(Picture of graduate) Cut Education	
Congressmen Rick White and Randy Tate voted tax breaks for the rich (picture of Wall Street, limousine doors opening).	
Picture of Clinton vetoing bill in Oval Office	. . . But President Clinton said no. He stood up for working families and sent the Gingrich budget back to Congress.
. . .	
Dole and Gingrich pictured behind podium together..	
Congressmen Rick White and Randy Tate .....	Now it's up to us. We need to get involved and speak out. Let's tell Congressmen White and Tate, this time, don't vote for the wealthy special interests.
(American Flag)	
(Man at the mail box, woman on the phone)	
(Picture of Capitol)	
(Picture of family) 1-800-765-4440	This time vote for America's working families.
Paid for by the Men and Women of the AFL-CIO. <sup>32</sup>	

As this ad illustrates, Project '96 was a partisan campaign designed to influence federal elections and return political control of Congress back to the Democratic Party.

Since these expenditures were apparently "made for the purpose of influencing a[] federal election"—as that phrase is used in FECA § 431(9)(A)(1)—the question of coordination becomes central to any determination of impropriety against the AFL-CIO, the DNC, the Clinton/Gore '96 campaign and Democratic Members of Congress. Within weeks of John Sweeney assuming the AFL-CIO presidency in October 1995, the Federation stepped up the coordination of its political efforts with the DNC, the White House and Democratic Members of Congress.

For example, on November 15, 1995, the senior leadership of the AFL-CIO, including Sweeney, Richard Trumka and Linda Chavez, met in the Oval Office with Vice President Gore, Harold Ickes, Chief of Staff Leon Panetta, Deputy Chief of Staff Erskine Bowles, Jennifer O'Connor, Ickes' assistant for labor matters, and David Strauss, the Vice President's Chief of Staff. Ickes' handwritten notes indicate that the possible purpose of the meeting was to dis-

<sup>32</sup> AFL-CIO Video Tape, "Randy Tate/Rick White".



cuss the AFL-CIO's political contributions and strategy during the 1996 federal election campaign.<sup>33</sup>

Beginning on December 1, 1995, the AFL-CIO launched television and radio issue advertisements opposing budget proposals put forth by Republican congressional leaders. The issue ads targeted twenty Republican congressional districts. As part of this effort, the AFL-CIO also funded a direct mail campaign in fifty-five districts represented by Republican Members of Congress.<sup>34</sup>

Ickes met for a second time with senior leaders of the AFL-CIO on December 5, 1995. That afternoon, Sweeney and McEntee met with Ickes at the White House. Documents obtained by the Committee show that the AFL-CIO's leadership provided the White House and Clinton-Gore '96 campaigns a sneak preview of the Federation's political plans for 1996. Ickes' handwritten notes of the meeting state that the Federation was targeting fifty-five congressional districts, that AFSCME "freed up" \$10.5 million for the upcoming political campaign to "move 75 people into [the] field for '96," and that Sweeney "will propose . . . that all unions do this."<sup>35</sup>

According to Ickes' sworn deposition testimony, his notes "refer[] to the fact that organized labor was going to make a very strong effort to try to take back the House . . . to make it Democratic."<sup>36</sup> He stated that his notes "referred to the internal campaign of the AFL-CIO mounted in 1996, which was reportedly about \$35 million to focus on taking back the House of Representatives."<sup>37</sup> Ickes testified that the campaign "focused on swing districts to try to ensure that Democrats could take back the House in '96."<sup>38</sup> Ickes added that AFL-CIO Political Director Steve Rosenthal wanted "to let the White House know the key points [of the AFL-CIO's political action efforts in 1996] and the amount of resources that labor was devoting to trying to take back the House."<sup>39</sup>

Two days later, on or about December 7, 1995, Ickes presided over a critical third meeting at the White House with officials of the AFL-CIO and representatives of various affiliated unions. Media consultants for both the AFL-CIO, the DNC and the Clinton-Gore '96 campaign, including the President's chief media consultant Dick Morris, also attended this meeting with Ickes. According to the deposition testimony of Morris, the meeting was held in the Roosevelt Room of the White House.<sup>40</sup> Morris testified about that meeting as follows:

The second meeting was one that was set up by Mr. Ickes in the Roosevelt Room of the White House, which was a meeting he arranged, conceptualized, and chaired. And at that meeting, there were six or seven representatives of labor there, and on the campaign—on the Clinton-Gore side, present were Ickes, Sosnik, Stephanopolous,

<sup>33</sup> Handwritten Notes of Harold Ickes, Nov. 15, 1995 (Ex. 7).

<sup>34</sup> Mike Hall, "Workers Building Support for Budget Veto," *AFL-CIO News*, Dec. 1, 1995 (Ex. 8).

<sup>35</sup> Handwritten Notes of Harold Ickes, Dec. 5, 1995 (Ex. 9).

<sup>36</sup> Deposition of Harold Ickes, Sept. 22, 1997, p. 168.

<sup>37</sup> *Id.* at pp. 176–77.

<sup>38</sup> *Id.* at p. 177.

<sup>39</sup> *Id.* at p. 185.

<sup>40</sup> Deposition of Richard Samuel Morris, Aug. 20, 1997, p. 216.

myself, and I believe—and some of the consultants. I can't be quite clear on who I think probably—some—either Penn or Schoen or Knapp. I don't believe Squier was there. And at the meeting—and from labor, they had somebody from the teachers, somebody from the municipal—from the AFSCME, somebody from the AFL. And they may have had Vic Fingerhut there, who was their media creator. I'm not sure about that.

And they showed us the ads that they either had run or were—either had run or were thinking of running. I was never quite clear what it was. And we showed them ads that we had already run, *and they suggested to us that there be coordination of the advertising—this was issue oriented ads about the budget . . . And their suggestion was that in States where we were advertising they not, and in States where they weren't, we do.*<sup>41</sup>

When asked who from organized labor spoke at the meeting, Morris testified that

[t]here were five or six [people] who spoke. The teachers union person—each of the union people—the teachers union, the AFSCME, the AFL, and there may have been one or two other unions—spoke in turn about what their media plans were that they were planning to advertise in states of Republican senators, they were going to spend \$1 million over the course of the next year on doing it, here are the ads they had already run, here were the ads that they were about to run. It was a full briefing of us by them on their media plans.<sup>42</sup>

Morris also testified that Ickes was favorably disposed to the idea of coordination with the AFL–CIO. Morris said that, during the course of that meeting, Ickes “was basically urging us, me, to coordinate with a [labor-run media] campaign that I thought was counterproductive to our campaign and would have rather not been on the air.”<sup>43</sup>

Ickes' version of the meeting conflicts somewhat with the recollection of Morris:

Q: Do you recall if . . . they actually showed their media ads?

A: It was during the budget fight. I think AFL–CIO was running—in fact, I'm pretty sure they were running some ads during the budget fight and they may well have shown us some of those ads.

\* \* \* \* \*

Q: Do you recall why the labor representatives were showing you their ads?

A: Yeah. They would come over from time to time, just the way Steve Rosenthal would tell me what labor was doing.

<sup>41</sup>*Id.* at p. 216–17 (emphasis added).

<sup>42</sup>*Id.* at p. 222.

<sup>43</sup>*Id.* at p. 220.

Q: Were there other occasions where they came over and showed you [their] ads?

A: Very, very seldom. I vaguely remember this. I don't recall—there may have been another meeting like this, but I don't recall it specifically. But I have some vague recollection of them coming over because I think they put—they ran ads in certain areas.

\* \* \* \* \*

Q: During these meetings, did anyone from labor ever suggest that they divide up the media area such as states or congressional districts with the DNC or the Clinton-Gore campaign?

A: With respect to the budget fight?

Q: Yes, specifically.

A: They may—a lot of things were suggested in meetings like that and it could well have been that there was some suggestions. But my—I think that these ads were up and running and that the AFL-CIO just wanted to show us what they were running.<sup>44</sup>

White House Political Director, Doug Sosnik, also attended the meeting in the Roosevelt Room on December 7, 1995. In his deposition, Sosnik recalled being present but could not remember any details.<sup>45</sup> Sosnik testified, however, that he discussed AFL-CIO advertisements with Harold Ickes on at least one other occasion. Sosnik testified that he told

Harold [Ickes]—when the AFL-CIO said that they were going to run ads, I said to Harold—and this was prior to them running the ads, and this was prior to the DNC running ads—I said how are we supposed to—what are the rules of the road here, in terms of what is appropriate or not appropriate in working with labor?

\* \* \* \* \*

The decision that I made following these discussions [with White House and/or DNC counsel] was not to discuss with labor either the content or the placement of their ads prior to them doing it, and the same in our world, which was not to discuss with them any ads that the campaign was to—were going to put out, either in substance or where they were going to go.<sup>46</sup>

Despite Sosnik's testimony, both Ickes and Morris testified that organized labor and the DNC previewed each other's ads. In addition, Morris' testimony that Ickes and the labor representatives openly discussed coordinating their respective campaigns is the most direct evidence that Labor '96 was nothing more than a coordinated expenditure—and therefore an in-kind contribution—to the DNC and Clinton-Gore reelection campaigns.

Shortly after the coordination meeting in the Roosevelt Room, the AFL-CIO launched Labor '96, its issue advocacy campaign that

<sup>44</sup> Deposition of Harold Ickes, Sept. 22, 1997, pp. 191–93.

<sup>45</sup> Deposition of Douglas Brian Sosnik, Sept. 12, 1997, pp. 141–46.

<sup>46</sup> *Id.* at pp. 148–49.

aired through the presidential and congressional elections. On January 16, 1996, the AFL-CIO announced “a scornful \$1 million radio and television campaign” protesting the federal government shutdown, and targeting twenty-seven unspecified congressional districts.<sup>47</sup>

Documents obtained from the White House further illustrate how the Clinton-Gore '96 campaign coordinated with organized labor, particularly the AFL-CIO, to obtain the maximum electoral benefit from their issue advocacy efforts. On February 14, 1996, Jennifer O'Connor—Ickes' principal aide for labor issues—wrote him a draft memorandum about organized labor's anticipated role in the 1996 election campaign. O'Connor proposed “[c]ommunications/message sessions,” which involved “[b]ring[ing] in unions to discuss message with [White House Communications Director] Don Baer, [Clinton-Gore '96 Communications Director] Ann Lewis and others.”<sup>48</sup> Her memorandum to Ickes also called for “mailings/union talking points,” and “GOTV” activities.<sup>49</sup>

One week later, the AFL-CIO's ruling executive council formally approved Labor '96 (a.k.a. “Project '96”). At a special convention, one month later, the affiliated unions of the AFL-CIO voted to endorse President Clinton for re-election, and to fund Labor '96 with \$35,000,000. A Federation press release announced that Labor '96 intended to inform voters “how Republican leaders of Congress are trying to destroy Medicare, Medicaid, education and college loans . . . and how they tried to destroy workplace health and safety protections, wage standards and environmental protections[.]”<sup>50</sup>

On March 30, 1996, Steve Rosenthal met with DNC Chairman Don Fowler at Federation headquarters to discuss “funding issues outside of the Coordinated Campaign structure,” including “the amount of financial support that w[ould] be directed from the various [unnamed] organizations[.]”<sup>51</sup> Rosenthal and Fowler also discussed “which states should receive support from these organizations in order to maximize our effort.”<sup>52</sup>

Labor '96 was not simply a paid media issue advocacy campaign. During the second week of July, the AFL-CIO conducted a candidate seminar for fifty Democratic congressional candidates at which Geoffrey Garin and other labor pollsters presented their research and consulting services.<sup>53</sup> In addition, the Committee has documentary evidence and deposition testimony indicating that the AFL-CIO also may have shared the results of internal polling data and other information with officials of the White House, the DNC and/or Clinton-Gore '96. Garin testified that “after the disaster [of

<sup>47</sup> “27 Members of Congress Who Voted to Cut Medicare, Medicaid, Education, College Loans to Fund Tax Cut for Rich Now Face Public Outrage, Media Blitz,” AFL-CIO Press Release, Jan. 16, 1996 (Ex. 10).

<sup>48</sup> Draft Memorandum from Jennifer O'Connor to Harold Ickes, Feb. 14, 1996 (Ex. 11).

<sup>49</sup> *Id.*

<sup>50</sup> “AFL-CIO Special Convention Endorses Clinton for Re-election, Votes Funds for Massive National Education and Action Program,” AFL-CIO Press Release, Mar. 25, 1996 (Ex. 12).

<sup>51</sup> Memorandum from Alejandra Y. Castillo to Don Fowler, Mar. 29, 1996 (Ex. 13). The Committee did not have the opportunity to question Chairman Fowler about this meeting with Rosenthal because the DNC did not produce this document until one week after Chairman Thompson announced the suspension of hearings.

<sup>52</sup> *Id.*

<sup>53</sup> Mary Jacoby, “Labor Works Around Edges of Election Law,” *Chicago Tribune*, July 27, 1996, p. 1.

the 1994 elections] occurred and they decided to change pollsters at the White House,” he provided several briefings to President Clinton’s key political aides, including Harold Ickes.<sup>54</sup> Garin also indicated that the AFL–CIO shared with White House, DNC and Clinton-Gore ’96 officials the results of the 1995 polling data that prompted the Federation to overhaul its political operation. Garin said that the AFL–CIO shared the polling data in order “to strengthen the quality of political education and political action within the labor movement.”<sup>55</sup>

David Strauss, a key aide to Vice President Gore, also testified in his deposition that Garin briefed the Vice President and other White House officials during the fall of 1995 on “a whole range of issues . . . concerning the mood of the country and how people were responding to the President.”<sup>56</sup> At about the same time that the AFL–CIO created “Stand-Up for America’s Working Families,” Garin and a Democratic pollster conducted a major research project entitled “The Situation Facing America’s Working Families.” Garin testified that he presented the results of that paper to White House economic advisors in early 1995.<sup>57</sup> It is unknown whether that research was shared with the President’s political aides as well.

On July 13, 1996, Steve Rosenthal met again with Ickes in the White House. Ickes’ handwritten notes of the meeting indicate that they discussed Labor ’96 in great detail. For example, Ickes’ notes show that Rosenthal said that the AFL–CIO was going to commit “102 staff” in “76 CDS [congressional districts],” “500 guys in 30 districts,” spend “\$20.5 [million] for radio [advertisements],” and “devote 2000–2500 [staff and union activists] full-time during [the] last 6 weeks [of the campaign].”<sup>58</sup>

The Committee also obtained documents that suggest that Steve Rosenthal and other senior leaders of the AFL–CIO knew, or should have known, of the statutes and regulations prohibiting coordination of campaign expenditures between the Federation, the DNC, White House, and Clinton-Gore ’96 campaign. For example, an AFL–CIO press release announcing the hiring of Rosenthal noted that he previously served as the deputy political director of the DNC, where he supervised the party’s nationwide 1992 coordinated campaign.<sup>59</sup> Prior to that, Rosenthal served as political director of the Communications Workers of America (“CWA”) and on several state and local political campaigns.<sup>60</sup>

There is additional evidence that the leadership of the AFL–CIO knew about restrictions on coordinated political activity. Documents produced by the DNC show that Rosenthal and possibly Garin attended and participated in a conference, entitled “Win In ’96: A Coordinated Campaign Meeting.” The DNC sponsored the conference in June of 1996 in Washington and presented the legal framework for coordinated campaigns. DNC General Counsel Joseph Sandler and Deputy General Counsel Neil Reiff devoted an

<sup>54</sup> Deposition of Geoffrey Garin, Sept. 5, 1997, p. 37.

<sup>55</sup> *Id.* at p. 29.

<sup>56</sup> Deposition of David M. Strauss, Aug. 14, 1997, p. 71.

<sup>57</sup> Garin deposition, pp. 40–41.

<sup>58</sup> Handwritten Notes of Harold Ickes, July 13, 1996 (Ex. 14).

<sup>59</sup> “AFL–CIO President Announces More Key Staff Changes,” AFL–CIO Press Release, Nov. 16, 1995 (Ex. 15).

<sup>60</sup> *Id.*

entire section of the briefing materials to “working with . . . labor unions.”<sup>61</sup>

A handbook distributed by Sandler and Reiff states that “unions can distribute voter registration information, as long as [such] activity is not coordinated with any particular party or candidate, [and] no activity can be targeted toward [a] particular party or candidate.”<sup>62</sup> The DNC lawyers advised the AFL–CIO that voter guides could “say anything short of express advocacy *if* there is no contact whatsoever with any campaign or party . . . [and] no coordination as to [the] distribution or content with any campaign or party committee.”<sup>63</sup> Finally, the handbook states that union-sponsored GOTV drives “must not include express advocacy, cannot be targeted to supporters of a candidate or to members of a particular party, [and] cannot be coordinated with [a] candidate or party.”<sup>64</sup>

Therefore, there is a substantial body of evidence suggesting that the AFL–CIO violated FEC regulations regarding coordination of public communications by labor organizations and candidates for federal office. There is also evidence that the AFL–CIO coordinated expenditures for its Labor ’96 issue advocacy campaign with officials from the White House, DNC and Clinton-Gore ’96 campaign. If so, the AFL–CIO may have provided illegal in-kind contributions to Democratic candidates for federal office, including President Clinton and Vice President Gore.

As explained in the compliance section of this report, the Committee subpoenaed several nonprofit groups that are generally supportive of the Republican agenda. Despite limited evidence, the Committee found that some of these organizations sponsored issue ads that were clearly designed to influence the outcome of federal elections.

One of the organizations that the Committee subpoenaed was Triad Management Services, Inc (“Triad”). Triad, which was the subject of several press reports, is a for-profit political consulting firm that advises conservative donors as to which PACs, candidates and special projects (i.e., tax-exempt organizations) are most likely to advance the conservative principles of the donors.<sup>65</sup> Triad does not work for individual candidates or PACs. Carolyn Malenick, the President and founder of Triad, started the company in 1995 after serving as the Finance Director of the Oliver North for Senate campaign.<sup>66</sup>

In return for a set fee, Triad provides its conservative clients due diligence and research on political candidates, PACs, and tax-exempt organizations. Triad then recommends to its clients where to make donations. Triad earns management fees from two nonprofit organizations, Citizens for Reform (“CR”) and Citizens for the Republic Education Fund (“CREF”), that were also subpoenaed by the Committee.<sup>67</sup> In return for the management fees, Triad solicited donations to CR and CREF from its conservative clients in order to

<sup>61</sup> “Win in ’96: A Coordinated Campaign Meeting,” DNC Handbook, June 6–9, 1996, pp. 15–18 (Ex. 16).

<sup>62</sup> *Id.* at p. 16.

<sup>63</sup> *Id.* at p. 16 (emphasis in original).

<sup>64</sup> *Id.* at p. 17.

<sup>65</sup> Deposition of Meredith O’Rourke, pp. 107–108.

<sup>66</sup> Deposition of Anna Lee Malenick Evans, August 19, 1997, at pp. 8, 23–24.

<sup>67</sup> *Id.* at p. 26; O’Rourke deposition at p. 40.

fund an issue advocacy campaign that was critical of Democratic congressional candidates.<sup>68</sup> In the Fall of 1996, Triad raised several million dollars and also managed the issue advocacy campaigns.<sup>69</sup>

Under the guidance of Triad, CR and the CREF funded several million dollars of issue ads in the weeks preceding the 1996 elections.<sup>70</sup> Like the issue ad campaign sponsored by the AFL-CIO, these commercials mentioned the name and depicted the image of federal candidates. Many of the advertisements sponsored by CR and CREF, under Triad's direction, can be fairly labeled as "attack ads" that focused on the voting records and even personal backgrounds of Democratic candidates.

For example, during the hearings, the Committee viewed an issue ad sponsored by CR that informed voters that Bill Yellowtail, the Democratic candidate for a Montana congressional seat, had been arrested for spousal abuse.<sup>71</sup> Also like the Labor '96 campaign, many of the CREF's issue ads focused attention on the candidate rather than exclusively on issues. For example, the CREF aired an issue ad attacking Winston Bryant, the Democratic candidate for Senate in Arkansas. In the ad, the announcer stated as follows:

Senate candidate Winston Bryant's budget as Attorney General increased 71%. Bryant has taken taxpayer funded junkets to the Virgin Islands, Alaska and Arizona. And spent about \$100,000 on new furniture. Unfortunately, as the state's top law enforcement official, he's never opposed the parole of any convicted criminal, even rapists and murderers. And almost 4,000 Arkansas prisoners have been sent back to prison for crimes committed while they were out on parole. Winston Bryant: government waste, political junkets, soft on crime. Call Winston Bryant and tell him to give the money back.<sup>72</sup>

Since the issue ads were intended "to influence the outcome of a[] federal election"—within the meaning of FECA § 431(9)(A)—the question of illegality turns on whether those issue ads were coordinated with federal candidates or the candidate's agents.<sup>73</sup> The Committee has no evidence of coordination between Triad and any of the national party committees. In fact, there is some suggestion that Carolyn Malenick created Triad because of dissatisfaction with the Republican Congressional Campaign Committee ("RCCC") and that the RCCC viewed Triad as a competitor for conservative Republican donors.

Triad gathered crucial information about individual Republican candidates before selecting the topics and media markets for issue ads. Triad's political consultant, Carlos Rodriguez, performed what Triad called "political audits" on over 250 Republican congressional campaigns. These audits allowed Rodriguez to evaluate the

<sup>68</sup> Evans deposition at p. 28; O'Rourke deposition at p. 140.

<sup>69</sup> Evans deposition at p. 63; O'Rourke deposition at pp. 140–150.

<sup>70</sup> Evans deposition at pp. 138, 146.

<sup>71</sup> Testimony of Lawrence Noble, Sept. 25, 1997, p. 71.

<sup>72</sup> Beck et al., *supra* note 1, p. 23.

<sup>73</sup> 11 U.S.C. § 441a(a)(7)(B)(1).

strengths and weaknesses of each campaign and to make recommendations of assistance to Malenick.<sup>74</sup>

For example, a typical audit memorandum indicated the campaign's proposed budget, cash on hand, and current debt. The memoranda also provided the latest polling data and highlighted the key issues in the campaign. The memoranda also set forth an extensive narrative discussion of each campaign's good and bad points. Rodriguez would then close with a discussion of the candidate's crucial needs and issue a recommendation to Malenick.<sup>75</sup>

Rodriguez audited the campaign of John Thune, a Republican congressional candidate on September 25, 1996. Though Rodriguez did not meet with Thune personally, he did visit with the campaign manager, Dan Nelson. Rodriguez noted in his audit memorandum that the Thune campaign possessed "[g]ood consulting. Good polling. Good media. In a state where strategy and media dictates the outcome of an election, this campaign is well staffed and poised to win in November."<sup>76</sup> Under the "Action" item, Rodriguez indicated that he and Malenick should "[c]ontinue communication with Dan Nelson and John Thune."<sup>77</sup> In the way of assistance, Rodriguez suggested to Malenick that, "[i]f there is anything we can do to help [the campaign] it would probably be in the area of 501(c)4 education with regards to the liberal tendencies of his opponent."<sup>78</sup> There is no evidence, however, to support a finding that Triad coordinated issue advocacy expenditures with the Thune campaign, or that the Thune campaign had any knowledge of or participation with Triad in its activities.

Under FECA and FEC regulations, the expenditure must be shown to have been made at the request of the candidate or the candidate's agent, or based on information obtained from the candidate.<sup>79</sup> Communication in the abstract is not equivalent to coordination. The Committee found no evidence that Congressman Thune or anyone from his campaign staff directed the substance or location of issue advocacy expenditures made by CR and CREF. In fact, the Committee has found no evidence that Congressman Thune or his campaign even knew about these issue ads before they were aired. Therefore, there is no basis to conclude that Triad illegally or improperly coordinated issue advocacy expenditures with the Thune campaign.

Another example illustrates the point more clearly. During a visit with the campaign of Rick Hill, a Republican congressional candidate in Montana, Rodriguez learned that the Democrat candidate, Bill Yellowtail, had been involved in a spousal abuse incident. During the audit, Rodriguez also learned that Hill did not intend to raise the issue in the campaign. In his audit memorandum following the visit, Rodriguez described one of the Hill campaign's needs as "3rd Party to 'expose' Yellowtail" for wife-beating.<sup>80</sup> Triad followed Rodriguez's advice and, in the last weeks of the 1996 cam-

<sup>74</sup> See, e.g., Randy Tate Audit Memorandum, Oct. 3, 1996 (Ex. 17).

<sup>75</sup> E.g., Rick White Political Audit Memorandum, Oct. 3, 1996 (Ex. 18).

<sup>76</sup> John Thune Political Audit Memorandum, Sept. 25, 1997, p. 2 (Ex. 19).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> 2 U.S.C. § 441a(a)(7)(B)(1); see also 11 C.F.R. § 109.1(b)(4)(I)(A),(B).

<sup>80</sup> Rick Hill Political Audit Memorandum, Sept. 24, 1996, p. 2 (Ex. 20).



paign, CR funded several hundred thousand dollars worth of issue ads that focused on Yellowtail's arrest for spousal abuse.

At first blush, this evidence suggests that CR, acting through Triad, selected the substance and location of issue ads at the request of a congressional candidate. The Committee, however, found evidence that indicates that the Hill campaign did not ask Triad to air these ads. Shortly after the CR issue ads began running in Montana, the Rick Hill campaign contacted Triad to protest the negative advertising and demanded that the ads cease immediately. On October 25, 1996, the Hill campaign's lawyer, Tom Hopwood, wrote to Mark Braden, the attorney for CR, decrying CR's "unwanted intrusion into this congressional campaign."<sup>81</sup> Hopwood noted that Rick Hill "was not consulted about these ads, had no knowledge of their existence and most assuredly disapproves of their content."<sup>82</sup> He added that "this type of overtly negative campaigning simply does not work in Montana. . . . Simply put, Montanans do not need or want the type of campaigning embodied in your client's ads."<sup>83</sup>

In light of the contemporaneous letter from the Hill campaign and the inability to depose Carolyn Malenick or Carlos Rodriguez, the Committee cannot conclude that CR funded the Yellowtail issue ad at the request of Congressman Hill or his campaign. As a result, there is no basis to conclude that Triad illegally or improperly coordinated issue ad expenditures with the Hill campaign.

In the case of Congressman Vince Snowbarger, a Republican from Kansas, there is evidence of contact between his campaign staff and Rodriguez. However, the Committee has not found any documents or testimony to support a finding of coordination. Rodriguez met with Snowbarger's campaign staff in June of 1996 and provided the staff a detailed fundraising strategy. In the action item of his audit memorandum, Rodriguez stated that he would "continue to monitor the campaign, working closely with [the campaign] to find out what progress they are making both in fundraising and voter contact."<sup>84</sup> In September of 1996, Snowbarger's campaign staff visited with Triad in Washington to discuss the progress of the campaign. In the last weeks before the election, CR spent roughly \$300,000 on issue ads and phone banks in Snowbarger's district.

Even though there was regular communication between Triad and the campaign, the Committee has found no evidence suggesting that CR selected media markets or the substance of the issue ads at the request of Representative Snowbarger's campaign or based on information obtained from the campaign. The Committee cannot determine what information CFR used to create the issue ads that aired in Representative Snowbarger's district. Absent some evidence of direction and control, the Committee is left only with evidence of communication between Snowbarger's campaign and Triad. Communication alone is clearly not sufficient to infer illegal or improper coordination of expenditures. There is no evi-

<sup>81</sup> Letter from Tom K. Hopwood, Counsel for the Rick Hill for Congress Committee, to E. Mark Braden, Counsel for CR, Oct. 25, 1997 (Ex. 21).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Vince Snowbarger Political Audit Memorandum, June 15, 1996 (Ex. 22).

dence that the Snowbarger campaign had any role in CFR's advertisements.

In the case of Senator Sam Brownback of Kansas, the Committee obtained testimony that Senator Brownback met with Carolyn Malenick and her clients during the 1996 Republican National Convention.<sup>85</sup> As described by Meredith O'Rourke in her deposition to the Committee, the meeting was arranged so that Senator Brownback could thank Triad clients who had contributed to his campaign.<sup>86</sup> O'Rourke also testified that, on two occasions, she helped Senator Brownback call potential contributors from the RCCC.<sup>87</sup>

The Committee found no evidence to suggest that the Brownback campaign acted in any way illegally or improperly in its dealings with Triad. It is entirely appropriate for Senator Brownback to meet with campaign contributors to thank them for a donation. The Committee has no evidence suggesting that any of those contributions was given illegally or improperly. In addition, the Committee finds no impropriety in Meredith O'Rourke helping Senator Brownback telephone potential donors. While it would be an illegal in-kind donation from a corporation for O'Rourke to assist Senator Brownback as part of her job responsibilities at Triad, the preliminary evidence indicates that O'Rourke performed this service in a voluntary capacity and on her own time. Mark Braden, Triad's Counsel, has indicated that Triad's employment records show that O'Rourke was not compensated by Triad for the service she rendered Senator Brownback.<sup>88</sup> Like any other citizen, O'Rourke is free to volunteer time to political candidates of her choosing.

The Committee also discovered evidence that Triad was particularly sensitive at the time to coordination problems. Shortly before the election, Triad discovered that several sub-vendors had not observed the proper distance between the nonprofit groups and individual campaigns. On October 24, 1996, Carlos Rodriguez circulated a confidential memorandum to all vendors and subvendors hired by CR and CREF, reminding them of the strict requirements of issue advocacy campaigns.<sup>89</sup>

Rodriguez advised the vendors that Triad had recently learned that "at least one mail piece submitted for legal clearance is a version of a voter contact piece that has been used in at least one Republican campaign for a House seat. Even worse, the piece used by that campaign was paid for by the Republican party."<sup>90</sup> Rodriguez reminded Triad vendors that, "[u]nder no circumstances is Citizens for Reform or Citizens for the Republic Education Fund to act or even create the appearance of acting as an agent of, or in cooperation with any political party, candidate or campaign."<sup>91</sup> He then warned the vendors not to use materials generated by candidate or party committees, stating as follows:

<sup>85</sup> Deposition of Meredith O'Rourke, Sept. 3, 1997, p. 119.

<sup>86</sup> *Id.* at pp. 119-20.

<sup>87</sup> *Id.* at pp. 94-96.

<sup>88</sup> Ruth Marcus, "The Secret of a Senator's Success?" *Washington Post*, Dec. 12, 1997, p. A1.

<sup>89</sup> Memorandum from Carlos Rodriguez to All CR and CREF Vendors/Subcontractors, Oct. 24, 1996, p. 1 (Ex. 23).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

If you have received clearance on any educational material (direct mail, TV, radio) that is not your original work product created solely for the educational effort on behalf of our two committees, you must do the following immediately:

1. STOP production/distribution of that work product.
2. Contact me.

\* \* \* \* \*

Violation of this rule may result in serious legal action against [CR, CREF] and you. *These are issue advertisements, not party or candidate ads.*

I know that this is new to most of you, *so please bear with us and be extra careful as we try to meet the letter and spirit of the rules* that apply to these types of educational efforts.<sup>92</sup>

The Committee considers this memorandum to be a highly probative contemporaneous statement of Triad's intent with respect to coordination of issue advocacy campaigns. It clearly demonstrates that Triad was sensitive to coordination concerns and that it took every effort to ensure that its vendors observed the requirements for issue advocacy.

Carolyn Malenick reiterated her concern about coordination in a November 6, 1996 memorandum to Dick Dresner and Joanne Banks, who were media consultants hired by Triad to create issue ads for CR and CREF.<sup>93</sup> In the memorandum, Malenick chastised Dresner, Wicker & Associates for not observing instructions regarding coordination with individual campaigns. She stated as follows:

It has come to my attention that from Wednesday of last week, the sub-contractors chosen by Dresner, Wicker and Associates, Inc. chose additional subcontractors to perform the duties for the 501(c)4 projects managed by TRIAD Management Services, Inc.

When planning meetings took place between the principals of both parties, vendors were discussed at great length. *It was made clear, in the final discussion on Tuesday, October 15th, that the vendors could have no contact with campaigns and that all vendors were to be known.* The vendors of Dresner, Wickers & Assoc, Inc. having subcontracted additional vendors without TRIAD's knowledge, has created both legal and political problems that could have been avoided, had this requirement been met.

. . . Both Citizens for Reform and Citizens for the Republic Education Fund, managed by TRIAD, plan to hold Dresner, Wickers and Associates responsible for any fallout incurred over the coming months, with vendors chosen by Dresner, Wickers and Associates.<sup>94</sup>

As this memorandum makes clear, Malenick and Triad attempted to ensure that vendors hired to create issue ads did not coordinate—or even have contact—with individual campaigns.

<sup>92</sup>*Id.* at pp. 1–2 (emphasis added & omitted).

<sup>93</sup>Memorandum from Carolyn Malenick to Dick Dresner and Joanne Banks, Nov. 6, 1997 (Ex. 24).

<sup>94</sup>*Id.* (emphasis added).

Consequently, there is substantial evidence militating against a finding of coordination between Triad and federal candidates. Without a complete factual record, the Committee simply cannot conclude that there is evidence sufficient to infer that CR and CREF—acting through Triad—illegally coordinated issue advocacy expenditures with individual candidates or their campaigns.

The same can be said of the RNC and the nonprofit groups that have been linked to it in numerous press reports. The Committee's investigation found evidence that 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. Standing alone, there is nothing illegal or improper about the RNC donating money to like-minded nonprofit groups.

Despite evidence of substantial contributions to nonprofit groups by or through the RNC, the Committee has found no evidence that the RNC directed or controlled the expenditure of those funds. Absent such direction and control or other evidence that the RNC coordinated the expenditure of those funds, the Committee cannot conclude that the RNC misused the various nonprofit groups that it supported.

Documents obtained by the Committee indicate that the RNC considered nonprofit groups an integral part of the conservative coalition. For example, an April 23, 1996 memorandum to RNC Chairman Haley Barbour from RNC Political Director Curt Anderson, explained that the RNC “no longer treat[s] coalition planning as if it is an ancillary activity, or a quaint way of getting well meaning but ignorant people involved. . . . We teach that campaigns must include both a thematic and tactical approach to including the combined efforts of every coalition group that they can conceivably appeal to.”<sup>95</sup> Anderson explained that “[a]t virtually all of our field meetings we have put together day long meetings [sic] in which we bring the decision makers from the biggest coalition groups. We generally spend an hour with each of them comparing notes on races. . . .”<sup>96</sup> Anderson further advised Barbour that, “[w]hile it has always been true that our coalition groups need direction on how they can best effect [sic] the outcome of elections, many of the larger groups are becoming increasingly sophisticated in their approach and they employ competent professionals who know how to make things happen.”<sup>97</sup>

In an earlier memorandum to Chairman Barbour on the same subject, Anderson indicated that—in response to a request from Barbour—he had collected a list of nonprofit groups that would be most supportive of the Republican agenda.<sup>98</sup> Anderson included the NRLC, the Christian Coalition, ATR and Citizens for a Sound Economy as possible members of this coalition group.<sup>99</sup> The senior leadership of the RNC considered approximately thirty nonprofit

<sup>95</sup> Memorandum from Curt Anderson, RNC Political Director, to Haley Barbour, RNC Chairman, Apr. 23, 1996, pp. 1–2 (Ex. 25).

<sup>96</sup> *Id.* at p. 2.

<sup>97</sup> *Id.* at p. 3.

<sup>98</sup> Memorandum from Curt Anderson, RNC Political Director, to Haley Barbour, RNC Chairman, Mar. 4, 1996 (Ex. 26).

<sup>99</sup> *Id.*

groups for membership in this coalition,<sup>100</sup> but Anderson envisioned that the coalition would be limited to groups “that actually have troops in the field that they can motivate, activate, and deliver, or groups that have a track record of expending significant resources to do the same.”<sup>101</sup>

RNC documents indicate, however, that the RNC clearly appreciated the difference between the permissible and impermissible activities of PACs and nonprofit groups. In a manual on nonprofit groups and coalition building prepared by the National Republican Senatorial Committee (“NRSC”), each of the organizations is listed and described. The NRSC manual divides the groups into two categories, “those who endorse candidates and those who do not.”<sup>102</sup> The manual states that, as a PAC, the NRLC can endorse candidates and directly advocate the election or defeat of a candidate, while correctly noting that Citizens for a Sound Economy, the Christian Coalition and ATR cannot endorse candidates as groups organized under § 501(c)(4) of the tax code.<sup>103</sup>

The Committee obtained documents showing that the RNC, NRSC and RCCC followed the coalition building strategy outlined in the Anderson memoranda by contributing large sums of money to coalition members, including ATR, the NRLC, and the CCF. The documents indicate that, on October 4, 1996, the RNC donated \$2 million to ATR from its Republican National State Elections Committee Corporate Operating account.<sup>104</sup> The RNC donated an additional \$1 million to ATR on October 17, 1996.<sup>105</sup> ATR received another \$1 million contribution from the RNC on October 25, 1996,<sup>106</sup> and received \$600,000 more from the same account on October 31, 1996.<sup>107</sup> In addition to the \$4.6 million donated to ATR, the RNC contributed \$650,000 to the NRLC in the last weeks before the 1996 election.

In addition to direct contributions from the RNC to nonprofit groups, the senior leadership of the RNC helped to raise funds for many of the coalition’s nonprofit organizations. An October 17, 1996 memorandum from Joanne Coe to Haley Barbour, Curt Anderson and Sanford McCallister indicates that the RNC solicited contributions to several nonprofit groups and routed those donations from the donor to the organizations.<sup>108</sup> In the memorandum, Coe stated that she sent two \$100,000 checks to ATR and NRLC from Carl Lindner, a wealthy businessman and a major donor to the RNC. She also indicated that senior RNC officials had raised \$950,000 for the American Defense Institute (“ADI”), a pro-defense group organized under § 501(c)(3) of the tax code.

Although there is evidence that the RNC donated large sums of money to several sympathetic nonprofit groups and even solicited additional funds for those groups from the RNC’s largest donors, there is no evidence that anyone at the RNC ever directed or con-

<sup>100</sup> RNC Chart of Nonprofit Groups (Ex. 27).

<sup>101</sup> Ex. 26 at p. 1.

<sup>102</sup> NRSC Coalition Building Manual, Chapter XII, p. 21 (Ex. 28).

<sup>103</sup> *Id.*

<sup>104</sup> Republican Nat’l St. Elections Comm. Corp. Operating Check No. 8501 (Ex. 29).

<sup>105</sup> Republican Nat’l St. Elections Comm. Corp. Operating Check No. 8576 (Ex. 30).

<sup>106</sup> Republican Nat’l St. Elections Comm. Corp. Operating Check No. 8633 (Ex. 31).

<sup>107</sup> Republican Nat’l St. Elections Comm. Corp. Operating Check No. 8673 (Ex. 32).

<sup>108</sup> Memorandum from Joanne Coe, to Haley Barbour, RNC Chairman, et al., Oct. 17, 1996 (Ex. 33).

trolled the expenditure of these funds. Based upon the evidence obtained by the Committee, the Committee finds nothing illegal about the RNC financially supporting like-minded nonprofit groups. In addition, the Committee possesses no evidence of illegalities by the organizations that received these contributions, such as ATR and ADI. Indeed, the Committee obtained the entirety of its information on this subject because prior to the AFL-CIO's intentional noncompliance with valid Committee subpoenas, these organizations complied with the Committee's subpoenas.

In a related area, there can be little doubt that the RNC's issue ads were intended to influence the outcome of a federal election within the meaning of FECA § 431(9)(A)(1). One of those issue ads, entitled "The Story," was nothing more than a biography of Bob Dole. The Story states as follows:

Audio of Bob 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.

Audio of Bob 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.

Audio of Elizabeth 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.

Voice of Bob Dole: It all comes down to values. What you believe in. What you sacrifice for. And what you stand for.<sup>109</sup>

Like The Story, another RNC issue ad entitled "Stripes" focused on personality traits rather than public issues. The text of the RNC ad is as follows:

Voice Over: Bill Clinton, he's really something. He's now trying to avoid a sexual harassment lawsuit claiming he is on active military duty. Active duty? Newspapers report that Mr. Clinton claims as commander in chief he is covered under the Soldiers and Sailors Relief Act of 1940, which grants automatic delays in lawsuits against military personnel until their active duty is over. Active duty? Bill Clinton, he's really something.

Accompanying Visual: Clinton golfing, duck hunting, and, clad in a safety helmet, enjoying a bike ride with Hillary. In the background, someone whistles a vaguely mar-

<sup>109</sup> Script of RNC's "The Story" Commercial, May 29, 1996 (Ex. 34).

tial tune. The ad closes with a “Blues Brothers” photo of Clinton in dark glasses and a dark suit, and smiling.<sup>110</sup>

A detailed analysis is unnecessary. A document produced by the RNC indicates that even the RNC’s Political Director did not think The Story qualified as issue advocacy. In a May 22, 1996 memorandum to Haley Barbour, Curt Anderson stated that “[w]e 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.”<sup>111</sup>

Under the language of FECA, however, the RNC’s issue ad campaign would only be illegal if it was produced at the request of Senator Dole or coordinated with the Dole campaign.<sup>112</sup> 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 RNC’s issue ad campaign commenced well after—almost eight months—the beginning of the DNC’s issue ad campaign. In addition, the RNC spent almost \$20 million less than the DNC on this effort. Finally, there is no evidence that Senator Dole micro-managed the RNC’s issue ads in the same fashion that President Clinton controlled the DNC’s campaign. Whereas the evidence indicates that the President “directed and controlled” the DNC’s issue ads—including drafting and editing scripts—there is no evidence that Bob Dole personally had any role in the RNC’s ad campaign.<sup>113</sup>

There is some indication, however, that the RNC may have had some communication with the Dole campaign to some extent on the campaign. Documents produced by the RNC suggest that Scott Reed may have provided input regarding the amount of expenditures for issue ads for party-building purposes. Haley Barbour, the RNC Chairman, wrote a memorandum to Curt Anderson, the RNC’s Political Director, on June 5, 1996 concerning Barbour’s rejection of a request by the RNC staff for \$800,000 to underwrite costs of RNC Unity Events.<sup>114</sup> In the memorandum, Barbour advises Anderson that he

will reach out to Scott Reed to ask him whether the Dole campaign would want us to 1) reduce other spending, such as the 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

<sup>110</sup>“GOP Ad on Clinton’s Claim in Sexual Harassment Suit,” AP File, PM Cycle, May 25, 1996 (Ex. 35).

<sup>111</sup>Memorandum from Curt Anderson, RNC Political Director, to Haley Barbour, RNC Chairman, May 22, 1996, p. 2 (emphasis added) (Ex. 36).

<sup>112</sup>2 U.S.C. §§ 431(9)(A)(1), 441a(a)(7)(B)(1).

<sup>113</sup>Senator Dole did know contemporaneously that the RNC intended to sponsor the issue ad campaign on his behalf. “Remarks of GOP Presidential Candidate Senator Bob Dole,” *Federal News Service*, June 6, 1996 (Ex. 37).

<sup>114</sup>Memorandum from Haley Barbour, RNC Chairman to Curt Anderson, RNC Political Director, June 5, 1996 (Ex. 38). The FEC allows political parties to spend a mix of soft and hard money on television issue advocacy. FEC Advisory Op. 1995–25, Fed. Election Camp. Fin. Guide (CCH) ¶ 6162 at 12,109 (August 24, 1995).

for expenditure [sic]; 3) not spend the sum requested for Unity Events; or 4) consider some other alternative.<sup>115</sup>

As explained in the compliance section of the report, the Committee was never able to secure the deposition testimony of Curt Anderson, Joanne Coe, or Don Sipple.<sup>116</sup> In addition, the Committee attempted unsuccessfully to obtain the testimony of Scott Reed on these topics after he was deposed originally in connection with the National Policy Forum ("NPF"). As a result, the Committee obtained no evidence that the RNC's issue ads were aired at the request or suggestion of the Dole campaign staff. Similarly, the Committee cannot determine on this limited factual record whether the substance of the ads or the markets in which they aired were selected based on information obtained from the Dole campaign staff. As a result, the Committee cannot draw any meaningful conclusions about the allegations that the RNC coordinated its issue advocacy expenditures with the Dole campaign.

At the outset of the investigation, there were also several press accounts that cited documents obtained from the Minority staff and alleged that Triad participated in illegal schemes to funnel contributions to candidates from donors that had already contributed the maximum allowed by law to those candidates. For instance, several stories focused on the in-laws of Senator Sam Brownback.<sup>117</sup> The press reports noted that FEC records indicate that, after John and Ruth Stauffer had donated the maximum allowed by law to Senator Brownback, they donated \$37,500 to eight PACs. Within days of those contributions, the eight PACs contributed \$36,000 to Senator Brownback's campaign.<sup>118</sup>

Carolyn Malenick and most of the principal witnesses with knowledge of Triad's activities refused to answer substantive questions under oath during scheduled depositions.<sup>119</sup> The Committee did not interview or depose the Stauffers or any of the persons associated with the eight PACs. There is no evidence that Senator Brownback had any knowledge of or involvement with these activities.

In another example, the press reported that Robert Riley, Jr., donated \$1,000 to the 1996 primary campaign of his father, Robert Riley, Sr., a successful Republican congressional candidate in the third district of Alabama. After consulting and hiring Triad, Robert Riley, Jr., donated \$1,000 each to five conservative leaning PACs in May of 1996. Several days after the donations, four of the five PACs donated a total of \$3,500 to Representative Riley's campaign.<sup>120</sup>

The Committee obtained an interview with Robert Riley, Jr. He stated that his contributions to the Triad-recommended PACs were not given with the guarantee or understanding that the PACs

<sup>115</sup> *Id.*

<sup>116</sup> Barbour was deposed, and testified before the Committee at public hearings, but was not questioned about this memorandum.

<sup>117</sup> James Kuhnhehn, "Inquiry Sought into Donations by Brownback In-laws," *Kansas City Star*, May 2, 1997, p. A6.

<sup>118</sup> *Id.*

<sup>119</sup> *E.g.*, Deposition of Carolyn Malenick, Sept. 16, 1997, pp. 5-29; Deposition of Lyn Nofziger, Sept. 16, 1997, pp. 6-22; Deposition of Carlos A. Rodriguez, Sept. 17, 1997, pp. 5-23.

<sup>120</sup> Kuhnhehn, "Inquiry Sought into Donations by Brownback In-laws," *Kansas City Star*, at p. A6. The four PACs were the Free Congress PAC, the American Free Enterprise PAC, the Citizens Allied for Free Enterprise PAC, and the Faith, Family and Freedom PAC. *Id.*



would return the contributions to his father's campaign.<sup>121</sup> Riley stated that Malenick was very emphatic that she could not promise that Triad or its PAC coalition would help his father. Malenick convinced Riley that contributing to conservative PACs would be the best way to assist the Republican cause generally and thereby ensure a Republican majority in Congress.<sup>122</sup>

Riley vigorously denied that his contributions to the PACs were an effort to illegally funnel money to his father's campaign in order evade the individual contribution limits of federal law. Riley asserted that his purpose in supporting the conservative PACs was to advance, in general, the conservative agenda through the overall support of sympathetic candidates. His purpose in consulting with Carolyn Malenick was to identify which PACs would best achieve these goals, relying on the research and advice of Triad.<sup>123</sup> The Committee found no testimony or documents to contradict Riley's account of his contributions.<sup>124</sup>

Even though the timing and amount of the contributions in these examples suggest that the PACs served as conduits that allowed the donors to evade the \$1,000 contribution limit, there is no evidence that the PACs or donors understood that their donations would be passed back to a particular candidate. In fact, in the case of Robert Riley, Jr., Riley emphatically denied that there was ever such an agreement between himself and the four PACs who later donated to his father's campaign. The circumstantial evidence cited in the press reports about Representative Riley and Senator Brownback is simply insufficient to draw an inference of illegality, and there is no evidence to suggest the campaigns had any knowledge of these activities.

Relying solely on a suspicious pattern of donations is unpersuasive by itself, because the pattern is far too common to support a finding of wrongdoing. For example, on June 29, 1996, Marilyn Williams of West Bloomfield, Michigan contributed \$1,000—the maximum allowed by law—to the primary campaign of Sandy Freedman. Freedman was seeking the Democratic nomination for Florida's eleventh congressional district. On August 2, 1996, Williamson donated \$3,000 to Emily's List, a PAC that exclusively supports female Democratic candidates. Eleven days later, on August 13, 1996, Emily's List donated \$3,000 to Sandy Freedman's campaign.<sup>125</sup>

Similarly, on June 3, 1996, Barry Shier of Las Vegas, Nevada contributed \$1,000 each to the primary and general election campaigns of Robert G. Torricelli, the Democratic candidate for Senate in New Jersey. Shier is an executive with Mirage Resorts, Inc., in Atlantic City, New Jersey. On June 4, 1996, the day after Shier's

<sup>121</sup> Memorandum of Interview of Robert R. Riley, Jr., Sept. 16, 1997, p. 2.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> In fact, Riley provided the Committee with copies of affidavits from Billie Joe Johnson, Jr., his father's campaign manager, and Donna Rose Suggs, his father's campaign treasurer, which corroborated his account of the contributions. Affidavit of Billie Joe Johnson, Jr. (Ex. 39); see also Affidavit of Donna Rose Suggs (Ex. 40). The affidavits were prepared in connection with an FEC complaint, MUR 4633, filed against Robert Riley, Jr. by James Anderson of Montgomery, Alabama.

In the affidavits, Johnson and Suggs state that they received PAC checks from Triad but that they had no discussions with Triad indicating that donations from Robert Riley, Jr., would be funneled through the PACs back to his father's campaign. *Id.*

<sup>125</sup> Federal Election Commission Records for Emily's List and Marilyn Williamson (Ex. 41).

donations, the Torricelli primary and general election campaigns each received \$1,000 donations from the Mirage Resorts, Inc., Political Action Committee, a.k.a., Golden Nugget PAC. Perhaps coincidentally, Shier donated \$2,000 to the Golden Nugget PAC two days later on June 6, 1996.<sup>126</sup>

On June 30, 1995, Don Tyson of Springdale, Arkansas donated \$1,000 to the primary campaign of Tom Harkin, the Democratic candidate for Senate in Iowa. Tyson is the Chairman of Tyson, Inc., a food processing company that is one of the largest wholesale distributors of chicken in the country. On July 18, 1995, several weeks after Tyson contributed to the Harkin campaign, he donated an additional \$1,000 to the National Broiler Council Political Action Committee. Nine days later, on July 27, 1997, the PAC contributed \$1,000 to the Harkin campaign.<sup>127</sup>

On September 28, 1995, Charlotte Lowder of Montgomery, Alabama contributed \$1,000—the maximum allowed by law—to the primary campaign of Roger Hugh Bedford, the Democratic candidate for Senate in Alabama. Several months later, on December 15, 1995, she donated another \$1,000 to the Colonial Bancgroup Inc. Federal Political Action Committee (“Colonial Fed PAC”). Only four days later, on December 19, 1995, the Colonial Fed PAC contributed \$1,000 to the Roger Hugh Bedford for U.S. Senate primary campaign.<sup>128</sup>

As with Triad, the Committee cannot conclude that Emily’s List, the Golden Nugget PAC, the National Broilers PAC, and the Colonial Fed PAC participated in schemes designed to evade the individual contribution limits established by federal law. Likewise, the Committee does not believe that there is evidence sufficient to conclude that the federal candidates who received donations from these PACs were party to a conspiracy designed to evade the individual contribution limits.

The Committee gathered documents that—at least initially—suggest that some national labor unions participated in conspiracies to evade contribution limits. Under federal election law, multi-candidate PACs can donate a maximum of \$5,000 per election, per candidate committee.<sup>129</sup> One way of circumventing this limit is to create several different PACs that are controlled by a common entity or source. In order to prevent such a scheme, FECA contains “affiliation” rules that impose a single limit on “all contributions made by political committees *established or financed or maintained or controlled* by any corporation, labor organization, or any other person.”<sup>130</sup>

FEC regulations identify a number of circumstantial factors probative of affiliation between PACs, including (1) common or overlapping membership, (2) common or overlapping officers or employees, (3) the direct provision of funds or goods on an on-going basis from one PAC to another, (4) an active or significant role by one PAC in the formation of the other and, perhaps most importantly,

<sup>126</sup> Federal Election Commission Records for Barry Shier and the Golden Nugget PAC (Ex. 42).

<sup>127</sup> Federal Election Commission Records for Don Tyson and the National Broiler Council PAC (Ex. 43).

<sup>128</sup> Federal Election Commission Records for Charlotte Lowder and the Colonial Fed PAC (Ex. 44).

<sup>129</sup> 2 U.S.C. § 441a(a)(2)(A).

<sup>130</sup> *Id.* § 441a(a)(5) (emphasis added).

(5) similar patterns of contributions.<sup>131</sup> Using these factors as a guidepost, the Committee found circumstantial evidence that the National Council of Senior Citizens (“NCSC”), a § 501(c)(4) organized ostensibly to lobby on behalf of America’s elderly,<sup>132</sup> was affiliated with the AFL–CIO during the 1996 elections in a manner that allowed the latter to circumvent the \$5,000 contribution limit for PACs.

This scenario is illustrated by the campaign of Thomas Fricano, the Democratic congressional candidate for the twenty-seventh district of New York. Fricano is a former executive of the United Auto Workers (“UAW”). The Committee on Political Education (“COPE”), the AFL–CIO’s PAC, contributed \$5,000 to Fricano’s primary campaign on June 19, 1996, the maximum allowed by law. The NCSC’s PAC followed COPE’s lead with an additional \$5,000 donation to Fricano’s primary campaign on September 5, 1996.<sup>133</sup>

On its face, there is nothing suspicious about two PACs donating the maximum contribution to the same political candidate. In this case, however, the evidence suggests that the NCSC is affiliated with the AFL–CIO so that both PACs’ contributions are limited in the aggregate to \$5,000 per candidate, per election.<sup>134</sup> There is evidence that national labor unions helped create the NCSC. Virtually the entire NCSC Board of Directors and local directors are officials of AFL–CIO affiliated unions.<sup>135</sup>

The most significant evidence of affiliation, however, lies in the donation and contribution patterns. The NCSC’s PAC received only seven donations from individuals in 1996, and these were all from employees or officers of the NCSC. The remainder of the funds donated to the NCSC’s PAC derived from COPE and the PACs of AFL–CIO affiliated unions, almost all of which had already donated to COPE itself. As a result, 96% of the funds flowing into the NCSC’s PAC in 1996 derived from union sources. In addition, all of the candidates that received contributions from the NCSC’s PAC were similarly supported by COPE.<sup>136</sup>

This pattern of donations to the NCSC PAC and of contributions by the PAC to AFL–CIO supported candidates suggests—at least circumstantially—that the NCSC acted in concert with the AFL–CIO during the 1996 election cycle. If the NCSC was affiliated with COPE, as the evidence suggests, then the AFL–CIO could use the NCSC as a conduit to evade the \$5,000 contribution limit set by federal law. Indeed, the Fricano campaign discussed above illustrates how affiliated PACs can potentially funnel additional donations to candidates after one PAC has donated the maximum of \$5,000.

<sup>131</sup> 11 C.F.R. § 110.3.

<sup>132</sup> The NCSC receives the bulk of its annual revenue from the federal government. In fiscal year 1996, the NCSC received \$34 million in grants from the Department of Labor as part of its Senior Community Service Employment Program. In contrast, the NCSC’s lobbying budget for 1996 totaled only \$4.4 million. The Lobbying Disclosure Act of 1995 prohibits lobbying activities by groups, organized under § 501(c)(4), that receive federal funding. Therefore, the NCSC divided its functions between a § 501(c)(4) and a PAC in order to spend only nonfederal funds on political activity.

<sup>133</sup> Federal Election Comm’n Records for COPE and the NCSC PAC (Ex. 45).

<sup>134</sup> 2 U.S.C. § 441a(a)(2)(A), (5).

<sup>135</sup> For example, Eugene Glover, the NCSC’s President, is the former Secretary-Treasurer of the International Association of Machinists. Steve Protulis, the NCSC’s Executive Director, is the former National Coordinator of Support Groups for COPE.

<sup>136</sup> Ex. 45.

While evidence of this affiliation scheme is compelling, the Committee believes that it would be inappropriate to conclude that the AFL-CIO and the NCSC acted illegally, even though both the AFL-CIO and the NCSC refused to comply with Committee subpoenas requesting documents. The AFL-CIO defied deposition subpoenas and thereby prevented the Committee from gaining sworn testimony from persons involved in these contributions. As a result, the Committee does not possess the full documentary record about these contributions.

In summary, because many of the nonprofit groups refused to cooperate with the Committee and the Committee had no effective means to compel compliance, it does not possess a sufficient factual record to make findings about allegations of illegal and improper conduct by nonprofit groups during the 1996 elections. As a result, the Committee does not believe that it can draw sustainable conclusions on the many serious allegations regarding nonprofit activity that arose out of the 1996 elections.

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Offset Folios 568 to 739 Insert here

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Offset Folios 740 to Insert here



#### ALLEGATIONS RELATING TO THE NATIONAL POLICY FORUM

The National Policy Forum ("NPF") was founded in 1993 as a "grassroots" think tank to develop a policy agenda through a series of "town meetings," *i.e.* policy forums, throughout the nation. The NPF was formed by Haley Barbour, then the recently elected Chairman of the Republican National Committee ("RNC"), and others, and started with \$100,000 in RNC "seed money." The NPF was structured as a nonprofit corporation under Section 501(c)(4) of the Internal Revenue Code.<sup>1</sup>

The Committee's investigation of the NPF covered a wide range of allegations. The lion's share of these allegations related to a "loan guarantee" transaction involving the NPF and a Florida Corporation named Young Brothers Development (USA), Inc. ("YBD (USA)"), the subsidiary of a Hong Kong entity, Young Brothers Development, Ltd. ("YBD (Hong Kong)"). Such allegations included claims that:

- (1) the NPF was utilized to launder or illegally "funnel" money from the Hong Kong entity into the RNC to assist the RNC in the 1994 federal election cycle;
- (2) the NPF received money from the Hong Kong entity in exchange for government favors or business considerations and;
- (3) the NPF misused its non-profit tax status in some fashion.

In pursuing the allegations, the Committee subpoenaed documents from many sources, deposed fourteen individuals and conducted several interviews. In the course of these efforts, several of the subpoenaed parties objected to certain of the Committee's inquiries, citing the Committee's limited jurisdiction to the 1996 election cycle. On July 3, 1997, Chairman Thompson issued an Order clarifying these parties' obligations. The Order provided that information predating November 1994 (the beginning of the 1996 election cycle) must be provided if it sheds light on efforts by the NPF to raise foreign funds during the 1996 election cycle, but that "it is not appropriate for the Committee to inquire into matters that relate only to the 1994 federal election campaigns."<sup>2</sup> Following issuance of the Order, although preserving their objections, the NPF and NPF witnesses fully complied.<sup>3</sup>

None of the witnesses associated with the NPF or the Young Brothers companies invoked their Fifth Amendment rights or fled the country to avoid testifying before the Committee. In contrast to numerous Democratic donors, fundraisers and administration officials, persons associated with the NPF and the Young Brothers appeared voluntarily for Committee depositions. Indeed, Ambrous

<sup>1</sup> See 26 U.S.C. § 501(c)(4)(1997).

<sup>2</sup> See Order of Chairman Fred Thompson, July 3, 1997 (Ex. 1).

<sup>3</sup> See Catalog of NPF Document Production (Ex. 2).



Young, the Director of YBD (Hong Kong), voluntarily traveled from Hong Kong to London to be deposed by the Committee. Former RNC Chairman Haley Barbour voluntarily testified at length before the Committee.

#### FORMATION AND FINANCING OF THE NATIONAL POLICY FORUM

The NPF was created in the spring of 1993 as a “participatory policy institute . . . in which average citizens, community leaders, people away from Washington, legislators, local officials, state officials, as well as Federal officials had an opportunity to participate in the issues that face our government.”<sup>4</sup> The NPF was initially envisioned as a wing or subsidiary of the RNC. That initial plan was rejected, however, in favor of the creation of a separate, distinct and independent policy institute under Section 501(c)(4) of the Internal Revenue Code.<sup>5</sup> According to the NPF’s first president, Mr. Michael Baroody, “[t]he National Policy Forum was to be a Republican Center for the exchange of ideas. As I used to say routinely at the start of our forums, that was decidedly and intentionally not the same as a center for the Republican exchange of ideas—meaning NPF was to be open to all and set out to hear from all, regardless of party.”<sup>6</sup>

At its formation, the NPF received a \$100,000 loan from the RNC. As NPF fundraising efforts failed to satisfy NPF expenses, the NPF received additional loans from the RNC. The NPF leadership discussed a range of fundraising options, including the possibility of soliciting money from foreign sources (which would be legal for a non-profit corporation.)<sup>7</sup> By the end of 1993, the NPF had a debt to the RNC in the amount of \$260,000. By mid-1994, that amount had grown to approximately \$2 million.<sup>8</sup>

The NPF debt threatened to grow larger through 1994 as the pace of NPF forums increased.<sup>9</sup> During the summer and fall of 1994, the NPF was competing with Congressional campaigns for contributions from prospective donors. Expecting a fundraising shortfall during that period, NPF attorneys negotiated and obtained a \$2.1 million loan from Signet Bank to refinance part of its preexisting debt to the RNC and to provide the NPF with operating funds.

<sup>4</sup>See Deposition of Haley Barbour, July 19, 1997, p. 19–20.

<sup>5</sup>The NPF had a separate board of directors, separate management, separate employees, separate operations and separate offices from the RNC. The RNC and NPF had separate accounting systems, and did not commingle funds. In short, the two organizations were two separate legal entities. See Barbour testimony, p. 117:

Senator Glenn has said the NPF was an arm or subsidiary of the RNC. That is not correct. Indeed, I had originally considered establishing the policy institute as a part of the RNC. Over time and before it was founded, however, I came to the conclusion that the policy institute should be separate from the RNC for a variety of reasons.

<sup>6</sup>See Testimony of Michael Baroody, July 23, 1997, p. 190. The nature of the relationship between the NPF and the RNC was not material in assessing the legality of the matters at issue. Because the NPF undertook no campaign-related activities, its actions were not subject to federal campaign restrictions, no matter what link it had to the RNC.

<sup>7</sup>See generally Baroody testimony, pp. 202–05.

<sup>8</sup>See Baroody testimony, p. 206.

<sup>9</sup>Between 1993 and 1996, the NPF held over 80 public conferences and issues fora involving thousands of people throughout the nation and published two books reflecting its findings. The NPF had 14 “policy councils” involved in these efforts with over 1500 members. See generally Deposition of Kenneth Hill, July 11, 1997, pp. 46–48. The NPF’s document production to the Committee demonstrated an enormous breadth of activity undertaken in its public fora and conferences.

By 1996, the NPF's continuing fundraising shortfalls led to a crisis. In early 1996, the NPF negotiated to defer one of its payments on the Signet Bank loan. By June 1996, the NPF indicated to Signet that it would default on the \$1.5 million remaining due on the loan. Signet Bank exercised its right to take collateral posted by YBD (USA) to cover the default. Following its default on the Signet Bank loan, the NPF also defaulted on approximately \$2.5 million in outstanding debt to the RNC.

In January 1997, the NPF's operations ceased. On February 21, 1997, the IRS issued a letter ruling disapproving the NPF's 1993 application for 501(c)(4) status. Although the dispute regarding NPF's tax status had no actual tax implications—the NPF never earned any profit or conferred any tax deductions on its donors—the IRS's decision has been appealed.<sup>10</sup> The appeal is pending.

#### THE RNC'S RELATIONSHIP WITH THE YOUNG BROTHERS COMPANIES

The relationship among the RNC and Young Brothers Development (USA) began in 1991. At that time, Young was a U.S. citizen and served as Director of a Hong Kong corporation, YBD (Hong Kong).<sup>11</sup>

In 1991, Alex Courtelis was a commercial real estate developer doing business in Florida. Courtelis also served as an official of the RNC's "Team 100" program.<sup>12</sup> In 1991, Courtelis and Young began to discuss a potential shopping center deal in Southern Florida. In structuring the potential deal, YBD (USA), a Florida corporation and a subsidiary of YBD (Hong Kong), was formed. By October of 1991, negotiations for the real estate purchase were progressing. Courtelis asked Young to consider contributing \$100,000 to the RNC to become an RNC "Team 100" member.<sup>13</sup>

Team 100 members were provided with several benefits, including invitations to certain Team 100 events each year. Although then a U.S. citizen, Young spent a considerable amount of time abroad. Young's sons, all U.S. citizens, spent substantially more

<sup>10</sup>There has been significant controversy regarding the IRS's February 21, 1997 ruling. During the Committee's hearings, the IRS's disapproval of the NPF's application was sharply contrasted with the IRS's approval of tax-exempt status for the Democratic Leadership Council. Although this comparison raised certain issues regarding partisanship at the IRS, the discussion of the NPF's tax status was not material to the legality of the NPF loan guarantee transaction. In short, because the NPF never engaged in any election-related activities of any kind, it was never subject to federal election law, regardless of whether it did or did not qualify for tax-exempt status.

<sup>11</sup>Ambrous Young was born in the People's Republic of China, emigrated to Taipei, Taiwan when he was 14 years old, and was granted U.S. citizenship in 1970. Young's wife, four sons and daughter are all U.S. citizens. Young, a Hong Kong resident, gave up his U.S. citizenship at the end of 1993. Benton Becker, counsel to YBD (USA), was asked why Young gave up his U.S. citizenship:

Senator Durbin. Do you know why he renounced his U.S. citizenship?

Mr. Becker. Well, I've asked him that question, and every time I ask him that question he always says, "That's not the right word, Benton. I didn't renounce anything. I still feel strongly about the United States." He said that he simply decided that he wanted to create a single citizenship in the Republic of China and in Hong Kong, and he just doesn't come to the U.S., doesn't have any real reason to come to the U.S., and his children have all graduated from colleges in the U.S. He used to spend a lot of time here visiting his children when they were studying. That's the only explanation that's ever been given to me.

See Becker testimony, July 23, 1997, pp. 135–36. Although the Committee obtained certain tangential evidence suggesting that Young's decision may have been influenced by prospective tax implications, the Committee has received nothing conclusive on that issue.

<sup>12</sup>Becker testimony, p. 40.

<sup>13</sup>*Id.* at 42.

time in the U.S. Young and Courtelis determined that the Team 100 membership would be in the name of YBD (USA) so that Young's sons could attend the Team 100 events.<sup>14</sup> The funds for YBD (USA)'s Team 100 donations were provided, in the form of a loan, from YBD (Hong Kong) to YBD (USA).<sup>15</sup>

In Spring 1992, after the YBD (USA)'s \$100,000 in Team 100 contributions had been made, the shopping center deal involving YBD (USA) and Courtelis fell through.<sup>16</sup> Thereafter, YBD (USA) continued to pursue several U.S. real estate opportunities but apparently did not generate sufficient funds to repay immediately YBD (Hong Kong) for its \$100,000 loan.<sup>17</sup>

If the RNC had reason to know that the funds for the YBD (USA) Team 100 contributions were derived from a foreign source rather than the U.S. earnings of a domestic corporation, acceptance of this donation would have been illegal. According to Richard Richards, then the President of YBD (USA):

To the best of my knowledge no officer or employee of the RNC or anyone associated with the RNC other than Mr. Courtelis knew at the time that the Young Brothers USA contributions to the RNC arose out of Young Brothers Hong Kong money.<sup>18</sup>

The RNC did not obtain financial or other information indicating that YBD (USA) had insufficient income in the U.S. to make a legal donation. Rather, it appears that Courtelis and the RNC relied upon the representations of the YBD (USA) counsel, Benton Becker, that the donations were proper.<sup>19</sup>

The RNC has informed the Committee that it returned contributions to YBD (USA) in May 1997 when it obtained information indicating their possible foreign origin.

<sup>14</sup> *Id.*

<sup>15</sup> See Becker testimony, p. 174; Becker testimony, p. 43.

<sup>16</sup> Becker believed when the Team 100 contributions were made that YBD (USA) would generate U.S. earnings sufficient to cover the contributions. See Becker testimony, p. 172: "The actual Team 100 commitment and payment occurs [in late 1991] while the [YBD (USA)] shopping center deal is still viable."

<sup>17</sup> Richards, Becker and Young have all testified that it was their intention that YBD (USA) would engage in substantial business in the United States. Although several potential ventures were explored—including various commercial real estate opportunities and an investment in a software company—none came to fruition. Although the Committee understands that YBD (USA) did have income from property management activities and certain interest income during its lifetime, the Committee has insufficient information to determine whether this income was sufficient to account for any substantial portion of the Team 100 donations.

<sup>18</sup> See Affidavit of Richard Richards, Esq. (Ex. 3) The affidavit was created under the following circumstances:

Mr. Richards: . . . [I]t was probably a couple of weeks ago. The attorneys that represent The Republican National Committee asked if they could see me, and they flew out to Ogden, Utah, where I live and presented me with an affidavit that they had previously prepared consistent with some telephone conversations I had with them. We went over the affidavit. There were some things that I felt were not accurate. We made the changes. I signed the affidavit and it appears here today. . . .

Mr. Madigan (Majority Counsel): . . . [D]oes it [the affidavit] accurately reflect the facts as you know them?

Mr. Richards: I think so. I don't know of anything that is not true.

Testimony of Richard Richards, July 25, 1997, pp. 91–92.

<sup>19</sup> Courtelis (now deceased) dealt with Becker on behalf of the RNC. Courtelis was not an attorney, but apparently knew that Mr. Young and his family were U.S. citizens. Becker performed a legal analysis of the transaction, and prepared a memorandum advising that the transaction be legally structured such that a loan would be made from YBD (Hong Kong) to YBD (USA) which YBD (USA) would repay with its U.S. earnings. See Memorandum from Benton Becker to File, October 11, 1991 (Ex. 4).

## SOLICITATION OF THE YBD (USA) LOAN GUARANTEE TO THE NPF

In the spring of 1994, an NPF fundraiser named Fred Volcansek met with Dan Denning, the NPF's Chief Financial Officer, and Donald Fierce, an RNC official.<sup>20</sup> The three discussed the faltering fundraising efforts of the NPF, and the NPF's outstanding debt to the RNC.<sup>21</sup> It was agreed that Volcansek would work to find an entity willing to provide a loan or a loan guarantee to the NPF.<sup>22</sup>

In the summer of 1994, Fred Volcansek contacted his friend Richard Richards, a former RNC chairman with a law practice in Washington, D.C. 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. The NPF also recognized that the competition for funds could present the NPF with a significant cash flow problem in the coming months. Richards had introduced Volcansek to Ambrose Young and knew of Richards' relationship with Young. Volcansek asked Richards if Young or the Young companies might agree to provide a loan guarantee the NPF.<sup>23</sup>

In early August 1994, Ambrous Young, along with his son, Steven Young, and Richards, met over dinner in Washington with Barbour, Volcansek and Denning. Barbour knew that YBD (USA) was already a Team 100 member.<sup>24</sup>

At the dinner, Barbour requested that Young consider whether YBD (USA) would provide a loan guarantee to the NPF. Young agreed to consider it, and asked for information on the NPF and the proposed loan guarantee.<sup>25</sup> Mr. Barbour responded in writing on August 30, 1994, and explained that, by obtaining a bank loan guaranteed by YBD (USA), the NPF:

. . . would not need to raise funds during the fall's political season when competition for contributions is especially keen, and most potential donors are focused on elections and not public policy.<sup>26</sup>

<sup>20</sup> Volcansek testimony, July 24, 1997, pp. 10–11, 27.

<sup>21</sup> Volcansek testimony, p. 28.

<sup>22</sup> Volcansek testimony, p. 30. *Note:* Mr. Volcansek's testimony regarding this meeting differs somewhat from that of Mr. Denning. Mr. Volcansek, an "international businessman," believed that he had been asked to assist with seeking a loan guarantee due to his foreign expertise. See Volcansek testimony, p. 57. Mr. Denning recalls no conversation relating to foreign sources of funds. See Deposition of Daniel B. Denning, June 30, 1997, p. 74–75.

<sup>23</sup> Volcansek testimony, p. 12.

<sup>24</sup> It is not clear when Barbour learned that Ambrous Young was no longer a citizen. See Barbour testimony, p. 231–32. Ambrous Young's son, Steve Young, was a U.S. citizen. See Deposition of Richard Richards, June 10, 1997, p. 86. Barbour believed that the name "Young Brothers" in YBD (USA) referred to Steve Young and his brothers, all of whom are U.S. citizens. Barbour testimony, pp. 208–09.

<sup>25</sup> Young deposition, p. 35.

<sup>26</sup> See Letter from Haley Barbour to Ambrous Young, with attachment, August 30, 1994 (Ex. 5). Ambrous Young prepared a letter in reply dated September 9, 1994 expressing reservations regarding the loan guarantee proposal. Letter to Haley Barbour from Ambrous Young, Sept. 9, 1994. (Ex. 6). Although the letter was to be delivered to Barbour by Young's son, Barbour does not recall receiving the letter, and no such letter appears in the RNC or NPF files. The Minority has theorized that one sentence in Young's September 9, 1994 letter suggests that Mr. Barbour was actually soliciting funds from Young for use in the 1994 elections:

. . . [W]e are willing to consider the support of the \$2.1 million which is the amount you have expressed to me is urgently needed and directly related to the November election.

Haley Barbour stated that the above-quoted sentence from Young's letter refers to Barbour's earlier statement that the NPF would have significant trouble raising funds in the months pre-

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Young asked Becker to act as counsel to negotiate the terms of the potential loan guarantee from YBD (USA) to the NPF. Young asked Becker to make all efforts to obtain security in the event of an NPF default.<sup>27</sup>

Young and Becker both testified that they understood that the loan guarantee sought by Barbour was for the NPF, and understood the NPF to be a separate entity from the RNC:

*Ambrous Young Deposition Testimony*

Q: What did you understand, as a general matter, was the use for which this money was sought?

A: All I understood the Forum, the National Policy Forum needs money. . . .<sup>28</sup>

*Benton Becker Deposition Testimony*

He [Ambrous Young] also informed me that he was told by Mr. Barbour that the National Policy Forum was not part of the Republican National Committee, that it, the National Policy Forum, was not within the auspices of the Federal election laws, since it, as an organization, was not involved with Federal elections, that it was a think tank. . . .<sup>29</sup>

It was also clear that the Florida corporation, YBD (USA), would be the loan guarantor:

No one ever considered the Hong Kong entity as being the loan guarantor. From day one, the consideration, it is my understanding, had always been the U.S. corporation. . . .<sup>30</sup>

In negotiating the terms of the loan guarantee, Becker asked the RNC General Counsel, David Norcross, whether the RNC would formally agree to repay any loss by YBD (USA) if the NPF defaulted.<sup>31</sup> Norcross told Becker that the RNC could not do so.<sup>32</sup> Becker nevertheless continued to request some form of commitment from the RNC. Ultimately, Barbour responded with a letter committing to raise the issue with the RNC Budget Committee and

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ceding the November elections, not that the NPF loan guarantee would somehow be used in the elections.

Whether or not Barbour received Young's September 9, 1994 letter is not material to the Committee's assessment of the transaction.

<sup>27</sup> Young deposition, p. 37.

<sup>28</sup> *Id.* Young also testified:

[N]obody explained to me how the money should be utilized and this and that, nor mentioned to me about election of the congressional system. . . .

Young deposition at 29.

<sup>29</sup> Becker deposition, pp. 31–32.

Volcansek also explained to Young that, as an individual without U.S. citizenship, Young could not have any role in the federal elections:

Many times I had the opportunity to explain to Mr. Young that he could not participate in our political process. I explained to Mr. Young that it was impossible for him to participate in the process of elections and to directly contribute in any way to the Republican National Committee or to any individual campaign. (Volcansek testimony, p. 81).

<sup>30</sup> See Becker testimony, p. 124.

<sup>31</sup> Becker deposition, pp. 38–39.

<sup>32</sup> Becker deposition, pp. 39.

seek its approval in the event that the NPF defaulted on an outstanding debt to “a domestic corporation.”<sup>33</sup>

To evaluate Barbour’s “commitment,” Young and Becker consulted with Young’s long-time friend, Richard Richards. Richards informed Young and Becker that he believed that the RNC Chairman would have power to compel the RNC Budget Committee to cover any NPF default.<sup>34</sup> Richards, Becker and Young recognized that Barbour’s “commitment” was not a judicially enforceable obligation.<sup>35</sup>

Following such consultations, Becker, along with attorneys for the NPF and Signet Bank, the lender, analyzed the proposed loan guarantee transaction. Mr. Volcansek described such efforts as follows:

[N]umerous nationally prominent campaign finance lawyers reviewed this transaction and deemed it perfectly legal, ethical, and proper in all respects. This was a transaction that was conducted in the full light of day with the most extensive legal review that I have ever seen for a transaction of comparable value.<sup>36</sup>

On September 19, 1994, Barbour wrote to Ambrous Young, thanking Young for YBD (USA)’s agreement to make the loan and describing Barbour’s dealings with Young’s son, Steve:

. . . I was heartened by Steve’s telling me that at the end of the year consideration would be given to doing even more. The Young family and your company are exceptionally generous, and I am genuinely grateful for the confidence you are showing in me.<sup>37</sup>

On October 13, 1994, the loan guarantee documents were signed. The transaction was structured as follows: Signet Bank loaned \$2.1 million to the NPF. The loan was collateralized by \$2.1 million in CD’s posted by YBD (USA). As NPF made its quarterly loan payments to Signet Bank, Signet Bank would release the CD’s to YBD (USA). In the meantime, YBD (USA) earned market-rate interest on the CD’s.<sup>38</sup> YBD (USA) received the funds to purchase the \$2.1 million in CD’s to be posted as collateral for NPF’s loan in the form of a loan from its parent, YBD (Hong Kong).

When the NPF received the \$2.1 million in loan proceeds on October 13, 1994, it wrote to Signet Bank indicating that \$1.6 million of the proceeds would be used to retire a portion of the NPF’s debt to the RNC’s non-federal Republican National State Election Com-

<sup>33</sup> See Letter from Haley Barbour to Benton Becker, August 30, 1994, p. 1 (Ex. 7); See also Becker deposition, pp. 39–40; Barbour deposition, pp. 72–74.

<sup>34</sup> See Richards testimony, p. 78–79.

<sup>35</sup> See Becker deposition, p. 39.

<sup>36</sup> See Volcansek testimony, pp. 14–15. See also Memorandum from Benton Becker to Ambrous Young, dated September 23, 1994 (Ex. 8):

These procedures outlined in this memo are calculated to accomplish the following goals:

1. To insure that no arguable violation of U.S. law could result to YBD or its principals. . . . [p. 1]

With this in mind, as you have instructed, all considerations have been made to assure that no claim and no violation of law could result from YBD (USA) serving as a loan guarantor. [p. 3]

<sup>37</sup> See Letter from Haley Barbour to Ambrous Young, September 19, 1994 (Ex. 9).

<sup>38</sup> Testimony of Benton Becker, July 23, 1997, p. 47.

mittee (“RNSEC”) account.<sup>39</sup> On October 20, 1994, \$1.6 million of the outstanding debt of \$2.4 million was repaid to the RNSEC account.<sup>40</sup> The remaining \$500,000 was applied to NPF expenses. NPF’s \$1.6 million repayment reduced its debt to the RNSEC account to approximately \$800,000.<sup>41</sup>

#### ALLEGATIONS REGARDING THE 1994 ELECTIONS

Although matters relating to the 1994 elections are not within this Committee’s investigative mandate, certain charges relating to such elections were raised during Committee hearings. The Minority has alleged that the \$1.6 million debt repayment by the NPF to the RNC was used by the RNC to fund critical campaign activities in Congressional districts across the country. Specifically, the Minority contends that the flow of funds evidences a plan to funnel foreign money into the 1994 elections, i.e. from YBD (Hong Kong) to YBD (USA) to Signet Bank to collateralize a loan to the NPF, a portion of which was utilized to repay a legitimate pre-existing debt to the RNC. Barbour offered two reasons why that allegation was “wrong in fact, and . . . wrong in effect.”<sup>42</sup> First, all the funds were loaned from and repaid to the RNSEC “non-federal” account. Such funds cannot be used on behalf of any candidate in a federal election.<sup>43</sup> There is no evidence that these funds found their way to any federal “hard money” accounts, or that the RNSEC funds were used in coordination with any congressional candidate.

Second, there was no shortage of funds in the RNSEC account: The RNC’s RNSEC account had more than \$3 million available for use as of October 19, 1996—before it received the \$1.6 million NPF repayment.<sup>44</sup> Shortly following the NPF repayment, the RNC transferred \$500,000 from the RNSEC account to its building fund, which was utilized for the physical operations of the RNC, and transferred \$1.6 million in repayment of an outstanding RNC loan from Signet Bank.<sup>45</sup> In addition, the funds available for use from the RNSEC account, including funds available via a line of credit, never dipped below \$5 million between October 20, 1994 and the election.<sup>46</sup> In sum, there is no evidence that the \$1.6 million repaid by the NPF to the RNSEC account was used for any electoral or campaign activity and thus had any impact in any 1994 Republican congressional victories.<sup>47</sup> Moreover, there is no evidence that the

<sup>39</sup> See Letter from NPF Comptroller Steven Walker to Kevin Killoren of Signet Bank, October 13, 1994, (Ex. 10).

<sup>40</sup> See Deposition of Haley Barbour, pp. 85–86.

<sup>41</sup> See Deposition of John Bolton, July 15, 1997, p. 46.

<sup>42</sup> See Barbour testimony, pp. 254–55.

<sup>43</sup> See Barbour testimony, p. 254.

<sup>44</sup> See Chart, Republican National Committee, Non-Federal Funds Available October, 1994—November, 1994 (Ex. 11).

<sup>45</sup> See Barbour testimony, pp. 127, 252.

<sup>46</sup> See Ex. 11.

<sup>47</sup> See Barbour Testimony, pp. 127, 235–37.

Allegations have also been made that a seven day delay in debt repayment by the NPF to the RNSEC account (from October 13 until October 20, 1994) evidences a conspiratorial intent to delay public disclosure of such repayment. The Committee has not received an explanation of this delay from any person responsible for it, but Barbour suggested a possible rationale:

I never talked to Steve Walker [the NPF Controller] about it, but if he had asked me, if he would have asked me, I would have told them wait and make the payment, the repayment, actually, on October 20th or thereafter, because when you are raising money like we do, almost not exclusively, but very heavily from small donors, you don’t want the newspaper saying the RNC got a \$1.5 million contribution or a \$2.5 million contribution because then your small donors say, well, they don’t need more money. You

YBD loan guarantee transaction, which was legal and authorized under federal election laws, was related to or affected the 1996 election campaigns.

DEALINGS BETWEEN BARBOUR AND YOUNG: JANUARY 1995—JUNE 1996

Following the 1994 elections, Young and Barbour communicated on several occasions. In early 1995, Young made a trip to the United States for medical treatment. During that trip, Barbour arranged for Young to meet briefly with Speaker Gingrich and Senator Dole in their Congressional offices. Although discussions at such meetings included the possible fate of Hong Kong following the British departure and the Taiwanese-Chinese relationship, there was no discussion relating to any legislation, government program or government contract of any kind.<sup>48</sup>

In August 1995, Barbour paid a visit to Young in Hong Kong and asked if YBD (USA) would relinquish the CD's held by Signet Bank, effectively "forgiving" NPF's obligation to repay YBD (USA). Young agreed to consider the matter.<sup>49</sup>

In late 1995, Barbour planned a trip to Beijing, including a meeting with the Chinese Foreign Minister. Barbour invited Young to accompany him. Young agreed.<sup>50</sup> In early 1996, Barbour met with the foreign minister while Young and others attended this ceremonial meeting.<sup>51</sup> Mr. Young described the encounter as follows:

Q: Can you describe the type of reception given by the Chinese Government to Haley Barbour on that trip?

A: The reception, I would say—I will give a rate: I would say third class or lower.

Q: Do you know why that type of reception was given to Haley Barbour?

A: Much later I was puzzled why they do that, because, as a party Chairman for China they always want to win friendship from the United States, and later I raised the

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know, that chills-the small donors drive our party. Our average contribution at the RNC was \$45.

Barbour testimony, p. 190.

<sup>48</sup> Neither Young nor any of his companies ever did business or sought any business with the United States Government. See Young deposition, p. 83; Volcansek testimony, p. 77; Barbour testimony, pp. 196, 198.

<sup>49</sup> The Minority has argued that one portion of Young's testimony regarding his August 1995 conversations with Barbour should be read to indicate that Young explained to Barbour that forgiveness was impossible because YBD (Hong Kong), the actual source of funds for the loan guarantee, was undergoing a government audit. Barbour, however, recalls no such explanation, and recalls that Young agreed to consider his request for forgiveness. Barbour's recollection on this point is supported by that of Young's lawyer, Richard Richards. Richards wrote:

Shortly after the loan was made, you [Barbour] journeyed to Hong Kong, and approached Mr. Young for the first time about the question of forgiveness of the loan. Mr. Young called me and told me of the discussion and informed me that he wanted to be as helpful to you as he could and he would take the request for forgiveness under advisement.

See Letter from Richard Richards to Haley Barbour, September 17, 1996 (Ex. 12). In any event, Barbour's knowledge or lack thereof regarding YBD (Hong Kong's role in the transaction was immaterial—as discussed elsewhere herein, the loan guarantee transaction was legal whether or not the funds originated in Hong Kong.

<sup>50</sup> Young testified that he agreed to go on the trip as a gesture of "friendship" to Barbour. Mr. and Mrs. Young, Mr. and Mrs. Barbour, and Mr. and Mrs. Richard Richards all participated in the trip, which apparently included sightseeing in and outside Beijing. See Ex. 3. Mr. Young and Mr. Barbour both testified that they neither discussed nor did any business of any kind while on the trip to China, or at any other time. See Young deposition, pp. 83, 85–86; see Barbour deposition, p. 106.

<sup>51</sup> See Ex. 3; Becker testimony, p. 49; see Young deposition, pp. 84–85.



question through my personal friends who did ask the questions and they come back to me and said that during that particular moment the Chinese government are in favor of the winning of President Clinton, i.e. the Democrats, so they tried not to offend the Democrats, so therefore they lowered down Mr. Barbour. That's the answer I got.<sup>52</sup>

Although there was apparently no discussion relating to forgiveness of the loan guarantee during the trip to China, the topic arose again in 1996.

By 1996, it was clear that the NPF's disappointing fundraising efforts would not support its operating expenses. The NPF had taken a series of loans from the RNC, but the RNC was becoming increasingly reluctant to extend credit.<sup>53</sup> The NPF missed its January 1996 loan repayment to Signet Bank, and asked Signet (the lending bank) and YBD (USA) (the loan guarantor) for permission to defer the payment.<sup>54</sup> Both agreed.

In or about May 1996, Barbour had a conversation with Richard Richards regarding the loan guarantee. During that conversation, Barbour understood Richards to agree that YBD would not object if NPF defaulted on the \$1.5 million in funds remaining due on the loan and Signet Bank took the YBD (USA) CD's.<sup>55</sup> By contrast, Richards has described that conversation as follows:

I did not say, because I did not have the authority to say, "Go ahead and default and we will do nothing." In essence that would be our way of forgiving the loan. I think I did say I doubted Mr. Young would sue you in the event of default, but Mr. Young did not say that, and did not give me authorization to say we wouldn't sue and therefore, go ahead and default and we'll simply walk away.<sup>56</sup>

By June 1996, NPF had informed Signet Bank that it intended to make no further payments and would default on the loan. Later that summer, Signet accelerated the loan and took \$1.5 million in YBD (USA) CD's.<sup>57</sup>

#### DISPUTE AND SETTLEMENT

In July 1996, after learning of the default, Richards and Becker wrote to Barbour and asked him to obtain authorization from the RNC Budget Committee for the RNC to repay the NPF's debt to YBD (USA). In August, 1996, at the Republican Convention, Barbour sent the President of the NPF, John Bolton, to present the issue to the Budget Committee. Bolton made a presentation, but the Committee tabled the matter.<sup>58</sup>

When Richards and Becker learned that the RNC Budget Committee would not cover the NPF default, they became very angry. Although Richards and Becker recognized that the RNC did not

<sup>52</sup> Young deposition, p. 84.

<sup>53</sup> Becker testimony, p. 46.

<sup>54</sup> Becker deposition, pp. 55-57.

<sup>55</sup> See generally Barbour testimony, pp. 147, 149-151.

<sup>56</sup> See Ex. 12.

<sup>57</sup> See generally Becker testimony, p. 50.

<sup>58</sup> See Bolton deposition, July 15, 1997, p. 82.

have a legally cognizable obligation to cover the NPF default, they decided, in service to their client, YBD (USA), to attempt to pressure to the RNC to cover the loss.<sup>59</sup>

On September 17, 1996, Richards wrote to Barbour threatening to sue him and laying out a purported factual record of the transaction.<sup>60</sup> Included in the letter were claims that Barbour had offered to arrange “business opportunities” in China in return for loan forgiveness, and that the loan guarantee was originally made in order to funnel money to sixty targeted House seats. Richards has since recanted several of those statements:

*Mr. Richards’ Testimony:*

Q: Is there anything in this letter that you feel requires some level of clarification to be properly understood?

A: Yes. The tone—the reference in the letter to business is grossly misleading, because we didn’t go there to get business. We didn’t discuss business. But Ambrous’s ability to pay the loan depended upon him getting business. And so I know the tone of the letter kind of says we all went there for a business purpose, and that isn’t quite accurate. And I attribute that to writing the letter when I was grossly irritated.<sup>61</sup>

*Mr. Richards’ Affidavit:*

At the time I wrote this letter, the repayment of collateral was very much at issue and I was concerned that my client, Mr. Young, would suffer as a result of an NPF default. Accordingly, in the letter, *I made several serious statements which, upon reflection, were made as negotiating tools and were not accurate*. In particular, I stated that if Mr. Young could get some business opportunities it may justify the contribution of a portion of the loan collateral. I know of no business activities Mr. Barbour was ever asked to undertake or did undertake on behalf of Mr. Young, his sons, or any of the Young Brothers entities either in the United States or abroad. In addition, in my September 17, 1996 letter, I stated that the repayment of the loan made certain funds available to the RNC during the 1994 federal election cycle, the funds merely repaid the RNC for its earlier loans to NPF, and *I now understand that these funds could not and were not used to directly benefit congressional candidates*.<sup>62</sup>

The statements in Mr. Richards’ September 17, 1996 letter have also been contradicted by the testimony of Young and Barbour:

*Testimony of Ambrous Young:*

Q: Did you or any Young Brothers business benefit financially as a result of your trip with Haley Barbour to China?

<sup>59</sup> See e.g. Memorandum from Becker to Young and Richards, September 16, 1996 (Ex. 13).

<sup>60</sup> See Ex. 12.

<sup>61</sup> Richards deposition, June 19, 1997, p. 112.

<sup>62</sup> See Ex. 3 (emphasis supplied); see *supra* n. 20 (discussing origin of Mr. Richards’ affidavit.)

A: No.

\* \* \* \* \*

Q: So Haley Barbour never suggested any business?

A: Never at all, nor we approached him or him approached us. . . . I have never had any business in mind.<sup>63</sup>

*Testimony of Haley Barbour:*

Q: Did Mr. Young articulate any point of view that you can recall that specifically would have helped Young Brothers Development either in this country or in China or Hong Kong, anywhere—or Taiwan?

A: He never said anything to me or in front of me about his company's business or businesses or his companies' businesses or business, ever.<sup>64</sup>

After receiving Richards' September 17, 1996 letter, Barbour decided that the best course of action was no response.<sup>65</sup> Richards followed with an October 16, 1996 letter containing the following statement:

I believe it is significant that Bob Dole and the Republican Party are now challenging contributions made to the Clinton campaign by Indonesian citizens through an American contact. Obviously there are some differences between that situation and ours; however, I think we stand the same risk of some very adverse publicity if the loan were forgiven. . . .<sup>66</sup>

Richards has since testified as follows regarding the meaning of his reference to "differences" between the Clinton campaign and the YBD loan guarantee:

Ambrous Young's money did not go to a political campaign, where I believe that the money, the Indonesian money went to the Presidential campaign and to the Democratic party for campaign purposes. Ours went to a think tank. Ours went to the Forum.<sup>67</sup>

Following the 1996 elections, Becker and the NPF negotiated a settlement.<sup>68</sup> The NPF repaid (with RNC funds) approximately half of the \$1.5 million lost by YBD (USA).<sup>69</sup>

<sup>63</sup> Young deposition, pp. 83–86.

<sup>64</sup> Barbour testimony, pp. 197–198.

<sup>65</sup> See *id.* p. 146. Barbour testified "Now, that's what I took the letter to be, a negotiating tool to try to put pressure on me. That's why I didn't respond. And it's also why I didn't give it credibility."

<sup>66</sup> See Letter from Richards to Barbour, October 16, 1996 (Ex. 14).

<sup>67</sup> Richards deposition, June 19, 1997, p. 114.

<sup>68</sup> The NPF agreed to pay \$800,000 in settlement of the dispute but then reduced that amount by \$50,000—the interest accrued to date by the YBD (USA) certificates of deposit. Becker testimony, pp. 52–53.

<sup>69</sup> Becker testimony, pp. 52–53. The Committee also investigated allegations of two other allegedly foreign donations to the NPF. First, the Committee reviewed a \$25,000 donation on August 2, 1996 from the Pacific Cultural Foundation, a non-profit think-tank located in Taiwan. The NPF was one of several U.S. organizations that received funds from the Pacific Cultural Foundation. Second, the Committee reviewed a \$50,000 donation from Panda Industries on or about July 18, 1995. Panda Industries and related entities are the subject of further examination in the section on Ted Sioeng of the Committee's Report. Under present law, such donations are legal.

Mr. Becker has informed that Committee that, although YBD (USA) admittedly has no legal right to return of the \$800,000, it continues to request that the RNC reimburse it for its losses.

#### ALLEGATIONS RELATING TO THE TESTIMONY OF HALEY BARBOUR

As the Committee's investigation progressed, the Minority's focus shifted from the mechanics of the loan guarantee transaction to allegations that Haley Barbour had given false testimony. The Minority's allegations regarding Barbour's testimony relate principally to one set of statements: During the hearing and his deposition, Barbour testified that he did not have credible information until the Spring of 1997 that the funds for the CD's collateralizing the NPF loan from Signet Bank were obtained by YBD (USA) via a loan from its parent, YBD (Hong Kong).<sup>70</sup>

To be clear, neither Barbour nor any other person questioned during this investigation denied that the funds for the NPF loan guarantee originated in Hong Kong—that fact was never in dispute. Rather, Barbour stated that he did not have credible information on that topic until he reviewed NPF files retrieved from storage in Spring 1997. Moreover, whether or not Barbour personally knew prior to 1997 that the funds for the guarantee originated in Hong Kong is not material to the Committee's assessment of the loan guarantee transaction. As noted above, the NPF was a non-profit corporation and it was free to accept donations from foreign sources.

The Minority has theorized that there were certain occasions prior to Spring 1997 when, contrary to his testimony, Barbour was informed that the funds for the NPF guarantee originated in Hong Kong.

First, the Minority cites a conversation sometime prior to October 1994 among Barbour, Fred Volcansek (then engaged in NPF fundraising), Dan Denning (the NPF Chief Financial Officer) and Dan Fierce (an RNC official). Volcansek testified that, during that conversation, he told the group that the loan guarantee money would originate in Hong Kong.<sup>71</sup> When questioned regarding this conversation Barbour responded:

Fred may be right and I may not have heard it because it was not relevant. That issue is a totally irrelevant issue. It was then and it is now, but I do not recall his saying that in that meeting or any other meeting. . . .<sup>72</sup>

Denning, who also attended the meeting, testified that he recalled no such conversation with Volcansek or anyone else.<sup>73</sup> Indeed, Volcansek himself testified that:

[A]s I tried to point out to Mr. Baron a moment ago, that wasn't an issue. I mean, the significance of it being a foreign transaction, because of our viewpoint on the whole matter, the fact that I mentioned it and brought it up in the overall context of a long and lengthy meeting about a

<sup>70</sup> Barbour deposition, pp. 130–131.

<sup>71</sup> Volcansek deposition, p. 108–109.

<sup>72</sup> Barbour testimony, p. 141.

<sup>73</sup> See Denning deposition, p. 222.

lot of things, I'm not surprised that Mr. Denning didn't focus on what I said.<sup>74</sup>

The second instance in which, according to the Minority, Barbour learned that YBD (Hong Kong) was lending the funds to YBD (USA) for the loan guarantee was an alleged conversation at an August 1994 dinner in Washington. The dinner was attended by Ambrous Young, Steve Young, Barbour and Denning.<sup>75</sup> The Minority argues that Young told Barbour during that dinner that the funds for the loan guarantee would come from YBD (Hong Kong). In support of that proposition, however, the Minority has only cited a single question and answer from Ambrous Young's deposition:

Q: Can you describe in general what you recall was the discussion at the dinner?

A: The discussion basically was Mr. Haley Barbour requested me to consider for the loan of \$3.5 million and assured me of the safe return of the loan, but as a result of that, I could not commit, nor have the power to commit, but requested him to give us more information so that we can present it to YBD (Hong Kong) Board of Directors for further consideration.<sup>76</sup>

However, in his answer, Young *said nothing* to indicate that funds from the YBD (USA) CD's came from Hong Kong. Even if Young had stated that he needed to take the issue to the Board of YBD (Hong Kong), such a statement does not necessarily indicate that the actual funds for the loan guarantee were originating in Hong Kong rather than from the U.S. subsidiary. This interpretation of Young's testimony parallels other evidence obtained by the Committee, including the following statement by Barbour:

I remember Mr. Young saying that he having a favorable but non-committal response, not that he would have to go back to his board . . .<sup>77</sup>

This interpretation is also supported by Barbour's August 30, 1994 letter to Young's attorney, Benton Becker (written shortly after the dinner):

It is my understanding one of your clients—a domestic corporation—is considering guaranteeing a . . . bank loan to the National Policy Forum (NPF).<sup>78</sup>

In addition, Denning, an NPF official also attending the dinner that night, did not recall any discussion that the funds for the loan guarantee come from a Hong Kong corporation.<sup>79</sup>

Next, the Minority cited a 1995 conversation between Young and Barbour, during Barbour's visit to Young's yacht in Hong Kong. During that visit, Barbour and Young had a discussion regarding the possibility that the NPF might default on the Signet Bank loan. Barbour asked Young whether YBD (USA) would "forgive"

<sup>74</sup> Volcansek testimony, pp. 48–49.

<sup>75</sup> See generally Denning deposition, p. 153.

<sup>76</sup> Young deposition, p. 35.

<sup>77</sup> Barbour testimony, p. 142.

<sup>78</sup> See Letter from Haley Barbour to Ambrous Young dated October 10, 1994 faxed to Benton Becker on October 11, 1994 (Ex. 15).

<sup>79</sup> See generally Denning deposition, pp. 153–159.

any such default. Young testified regarding that exchange as follows:

Q: What was your response to Mr. Barbour's proposition that the loan be forgiven, as we have discussed?

A: I said no in the manner of an apology. I explained to him that we have difficulties to do that, because the YBD (USA) money, which was guaranteed under the form of a certificate, deposit certificate, for the Forum loan, was a loan from YBD Hong Kong, and YBD Hong Kong we are facing a government audit every year. Without justification to the directors, or to the board, who approved such loan could face government punishment, so therefore I explain this cannot be done.<sup>80</sup>

It is clear from Young's testimony that he recalls discussing the issue of forgiveness with Barbour. It is also clear why Young ultimately did not regard forgiveness as a viable option. It is not clear, however, that Young explained his reasons for rejecting forgiveness during the 1995 conversation with Barbour.<sup>81</sup> Indeed, when Young's attorney, Richard Richards, memorialized the 1995 conversation in his September 1996 letter to Barbour, Richards made no mention of the YBD (Hong Kong) government audit and, contrary to Young's testimony, indicated that Young was actually considering forgiving the NPF obligation:

Shortly after the loan was made, you [Barbour] journeyed to Hong Kong and approached Mr. Young for the first time about the question of forgiveness of the loan. Mr. Young called me and told me of the discussion and informed me that he wanted to be as helpful to you as he could and he would take the request of forgiveness under advisement.<sup>82</sup>

Further, other portions of Young's own testimony also raise questions regarding the content of his communications to Barbour in August 1995. For example, Young testified that he and Barbour were "concentrating on the subject of forgiving the loan [to NPF]" and *did not* make "any special point" of the fact that the funds for the loan guarantee had originated in Hong Kong.<sup>83</sup> In addition, Young testified that, as the conversation with Barbour progressed on the issue of forgiveness, "I think he [Barbour] misunderstood me . . ." and that Barbour mistakenly believed that Young had agreed to provide NPF with yet further funds in order to pay off the Signet Bank loan.<sup>84</sup> In sum, there is significant reason for uncertainty regarding the content of Young's and Barbour's 1995 conversation.

<sup>80</sup> Young deposition, pp. 57–58.

<sup>81</sup> When read the portion of Young's testimony relating to a government audit of YBD (Hong Kong), Barbour replied:

I do not recall him saying, and I did not understand him to say, anything like that.

Barbour deposition, p. 120.

<sup>82</sup> See Ex. 12. Although there are significant questions regarding the accuracy of many portions of Richards' letter (including Richards' own admissions that the letter was written as a bargaining tool), Young testified generally that this portion of the letter was accurate. See Young deposition, p. 86–87.

<sup>83</sup> See Young deposition, p. 58.

<sup>84</sup> See Young deposition, p. 59.

Finally, the Minority cites certain alleged communications between Richard Richards and Barbour as possibly providing Barbour with knowledge prior to 1997 that YBD (USA) was lent the funds for the CD's by its Hong Kong parent. Specifically, the Minority has focused upon an alleged 1994 telephone call between Richards and Barbour (which Richards mentioned for the first time during his hearing testimony), and statements in Richards' September 17, 1996 letter.<sup>85</sup> In both, Richards states that the funds for the NPF guarantee would be transferred (via a loan) to YBD (USA) from YBD (Hong Kong). The following, however, was Richards' sworn deposition testimony on June 19, 1997:

Q: On the third page, first paragraph begins, "With this in mind, as you have instructed, all considerations have been made to assure that no claim and no violation of law could result from YBD (USA) serving as a loan guarantor."

Now, that paragraph goes on to discuss a loan from YBD (Hong Kong) to YBD (USA). Mr. Richards, do you know if that loan transaction was, in fact, performed? . . .

A: Yes it was. It was the source of the funds in the American bank.

Q: Were the details of that loan transaction ever communicated to Mr. Barbour?

\* \* \* \* \*

A: No. It was all done between attorneys.<sup>86</sup>

Indeed, several other aspects of Richards' testimony before this Committee have been inconsistent or self-contradictory. (In fact, Richards contradicted himself on several issues during his public testimony.<sup>87</sup>) Also, Richards has *admitted* that he wrote correspondence to Barbour containing purposely inaccurate statements regarding his dealings with Barbour on this transaction:

At the time I wrote this letter, the repayment of collateral was very much at issue and I was concerned that my client, Mr. Young, would suffer as a result of an NPF default. Accordingly, in the letter, I made several statements which, upon reflection, were made as negotiating tools and were not accurate.<sup>88</sup>

As noted above, the only contemporaneous writings by Barbour that might be probative of his knowledge on this issue are his letters of August 30, 1994 and October 10, 1994. In both, Barbour states that YBD (USA)—a "domestic corporation"—is guaranteeing the loan. This, of course, suggests that Barbour understood YBD (USA), not YBD (Hong Kong), to be the source of funds for the NPF loan guarantee.

<sup>85</sup> Barbour testified that he did not regard the September 17, 1996 letter as credible when he received it. See Barbour deposition 145–46; see also Bolton deposition, July 15, 1997, pp. 138–40.

<sup>86</sup> Richards deposition, June 19, 1997, p. 106.

<sup>87</sup> For instance, when questioned during the hearings by the Minority, Richards stated that language in his September 17, 1996 letter to Barbour was accurate. When questioned by the Majority, Richards confirmed that his affidavit contradicting that letter was actually accurate. See *generally* Richards testimony, p. 91–92.

<sup>88</sup> Ex. 3.

Barbour summarized his response to questions regarding the accuracy of his testimony in the following exchange with Senator Lieberman:

Senator Lieberman: . . . So I am puzzled, with all respect and affection, which I have for you, that you never—that you did not know that this money was going to come. My God, you went to Hong Kong to see Mr. Young, and I am just surprised that you did not know at any point in this, and again, it is legal, that the money was going to come from Hong Kong to YBD (USA).

Mr. Barbour: Senator, I appreciate the statement of affection, which you know is mutual . . . and the fact of the matter is . . . it would be easier to say, hey, I knew all along, it was legal, it didn't make any difference. The problem with that is I didn't. . . . It was irrelevant, the whole time. Maybe that is why it just never caught my attention if different people in fact really did bring it up, but the fact of the matter is, it was legal either way, version A, version B. It happens that version A is what I truly remember and what I got to tell you is the truth, and I knew that Mr. Young was the head of the family, and I knew that the family lived in Hong Kong, and the boys, the sons, the Young Brothers, I assumed, were all Americans, that their mama was an American, and it didn't—you know—this is somebody that had been giving to the RNC.

So I just had to tell you like I remember it, and like I said, it would be easier to tell it another way, but it is the truth.<sup>89</sup>

#### DISCUSSION

##### *The NPF loan guarantee transaction did not violate existing law*

Four sets of attorneys reviewed the NPF loan guarantee transaction before it was consummated: Mark Braden, a nationally recognized election law expert represented the NPF; Shea and Gardner, a prominent Washington firm, represented Signet Bank; Benton Becker, a former U.S. Attorney and counsel to President Ford, represented YBD (USA); and David Norcross, the General Counsel of the RNC, represented the RNC in its role as NPF's creditor. Documents and testimony obtained by the Committee indicate that all of these counsel concluded that the transaction was legal in all respects.<sup>90</sup> Indeed, the testimony is undisputed that the transaction was carefully structured to clear all legal hurdles:

To the point of the matter, Senator, is nobody was hiding anything or concealing anything. It was a commercial transaction, and it didn't matter that the money was coming from a foreign corporation to its subsidiary in the U.S.<sup>91</sup>

<sup>89</sup> Barbour testimony, pp. 208–09.

<sup>90</sup> As noted above, there is no dispute that the NPF was legally able to receive foreign contributions or assistance.

<sup>91</sup> See Becker testimony, p. 164.



[W]hat would be the motive for Mr. Young to enter into such a nefarious plot? There would be no motive. . . . nothing to gain by that.<sup>92</sup>

In sum, the Committee has found no evidence of any plan involving the NPF to inject foreign funds into the 1994 or any other federal election.<sup>93</sup> Rather, the Committee finds that the NPF loan guarantee was a legitimate commercial transaction intended to facilitate funding for the NPF's continuing operations. The transaction was thus in all respects legal and proper.

*There is no evidence that the loan guarantee transaction involved an illegal or improper "quid pro quo" arrangement*

The loan guarantee transaction did not involve an illegal or improper "quid pro quo" arrangement. Neither YBD (USA) nor YBD (Hong Kong) ever had any dealings with the U.S. Government. YBD (USA) counsel Benton Becker testified as followed:

Senator Collins: Have Mr. Young, Mr. Ambrous Young, or YBD (USA) or YBD (Hong Kong) to your knowledge ever asked Haley Barbour for assistance in obtaining contracts or business or assistance of some sort from the United States Government?

Mr. Becker: I have asked that question several times several ways of my clients, and they have answered those questions—that question under oath, and I'll repeat their answer. The answer is unequivocally no.

\* \* \* \* \*

There was no special favor, no quid pro quo, no under-the-table understanding or deal.<sup>94</sup>

*The NPF was not subject to federal election law restrictions on foreign contributions*

Evidence obtained by the Committee demonstrated that the NPF did not engage in any campaign related activities in either 1994 or 1996. Thus, it was not subject to restrictions on foreign funding.

*The NPF did not misuse its tax status*

Although the NPF's application for 501(c)(4) tax exempt status was not approved, the NPF's tax status was never relevant. The

<sup>92</sup>See Becker testimony, p. 165–166. Recognizing that the transaction was subject to such exacting legal review, some have attempted to adopt an alternative legal theory unsupported by the facts of the transaction. Proponents of this theory argue that the Committee should ignore all the efforts undertaken to ensure that the arrangements were legal and instead focus on certain alleged communications among Barbour and Young preceding the transaction. They argue that Barbour may have violated federal election law (in particular 2 U.S.C. § 441e) when he solicited a loan guarantee for the NPF from Young. Specifically, they argue that Barbour illegally solicited a foreign contribution from Young "for the purpose of influencing a federal election" by suggesting that the contribution to the NPF would help the Republican Party's prospects for the upcoming 1994 elections. This theory is infirm in several important respects, including that it mischaracterizes the evidence obtained by the Committee. Contrary to the theoretical assertions, Young testified that neither Barbour nor others associated with the NPF or RNC ever informed him that the NPF loan guarantee would assist Republican candidates in the 1994 election. Young deposition, p. 29–30. Likewise, Volcansek (the NPF fundraiser) explained to Mr. Young that, as an individual without U.S. citizenship, Young could not have any role in the federal elections. Volcansek testimony, p. 81.

<sup>93</sup>The opposite is true—the NPF was a significant drain on RNC resources, ultimately defaulting on \$2.5 million in RNC loans.

<sup>94</sup>Testimony of Benton Becker, July 23, 1997, pp. 117–118, 120.

NPF was a non-profit corporation that never had any income. Thus, the NPF could never have incurred any tax liability. Moreover, because the NPF was organized as a 501(c)(4) rather than a 501(c)(3) entity, no donor ever received any tax deduction for a contribution to the NPF.

*The evidence does not support a conclusion that barbour misled this committee*

There is insufficient credible evidence to conclude that Barbour misled this Committee:

- Mr. Volcansek's testimony was contradicted.
- Mr. Richard's testimony is inconsistent and self-contradictory.
- Mr. Young's testimony was far from clear.
- Moreover, contemporaneous documents support Mr. Barbour's recollection.<sup>95</sup>

The Committee concludes that twisting Barbour's remarks to make a charge of illegal activity is wrong and unfair. Although the elaborate chain of evidence is subject to being confused or deliberately misrepresented, the Committee's conclusion is that the facts cannot be twisted to support a charge that Barbour's testimony was anything less than truthful.

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<sup>95</sup>See *supra*.

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## WHITE HOUSE DOCUMENT PRODUCTION

### INTRODUCTION

Beginning with the earliest meeting between Committee investigators and White House Counsel on February 11, 1997, the White House promised its cooperation with the Committee's investigation and committed to produce documents requested by the Committee on a timely basis. At that meeting, Counsel to the President Charles F.C. Ruff conveyed the President's wishes that Ruff's office cooperate with the Committee to the fullest extent possible.<sup>1</sup>

The Committee was, of course, well aware of the dilatory tactics confronted by prior Congressional investigations into Clinton Administration activities.<sup>2</sup> Ruff and the staff of lawyers he put together to handle the numerous investigations into White House wrongdoing, however, joined the White House Counsel's office only in early 1997.<sup>3</sup> The Committee therefore remained cautiously optimistic that Ruff's promises to cooperate were real, and that Ruff and his staff did not intend to adopt the blatantly obstructionist methods of his predecessors.<sup>4</sup> The Committee hoped that, in this instance, the Clinton White House would choose to emulate the responsiveness of the Reagan and Carter Administrations—each of which voluntarily waived executive privileges applicable to documents requested by Congressional investigative bodies.<sup>5</sup> Instead, Ruff and the White House Counsel's office selected the Nixon White House as their model.

Eleven months' experience with White House document production practices unfortunately established that the Committee's initial optimism was undeserved, and that the White House never

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<sup>1</sup> See Memorandum from Paul L. Robinson to Michael J. Madigan, *et al.*, Feb. 17, 1997 (Ex. 1); See also Letter from Charles F.C. Ruff to Donald T. Bucklin noting continuing applicability of earlier pledge to "voluntarily provide all of the information that the Committee needed for its investigation," July 29, 1997 (Ex. 2).

<sup>2</sup> See 143 Cong. Rec. S716 (daily ed. Jan. 28, 1997) (statement of Sen. Thompson) ("If one looks solely to the past, there is little reason to be optimistic. We have seen what appears to be a grudging release of information . . . . We have seen all manner of delaying tactics which congressional oversight committees claimed were intended to avoid scrutiny by Congress . . . ."); Memorandum from Michael Madigan to Charles F.C. Ruff attaching "excerpts from the Whitewater investigation final report that illustrate the type of document production problems/miscommunications" faced by the Whitewater investigators, February 17, 1997 (Ex. 3). See also S.Rep. 104-280, Report of the Special Committee to Investigate Whitewater Development Corp. and Related Matters, pp. 151, 225-27, 237-39; H.Rep. 104-849, Report of the Committee on Government Reform and Oversight on the Investigation of the White House Travel Office Firings and Related Matters, pp.154-59.

<sup>3</sup> See Deposition of Charles F.C. Ruff, Oct. 27, 1997, pp. 4-5 ("Q: What is your current position? A: Counsel to the President. Q: How long have you held that position? A: Since February 10, 1997."); Deposition of Lanny A. Breuer, Oct. 17, 1997, p. 6 ("I joined the White House on—I believe it is February 16, 1997."); Deposition of Michael X. Imbrosio, Oct. 17, 1997, p. 7 ("I began work in the White House on March 3, 1997.').

<sup>4</sup> See 143 Cong. Rec. S716 (daily ed. Jan. 28, 1997) (statement of Sen. Thompson) ("There is a new team in the White House, individuals who command respect. I am hoping that the new White House counsel will understand that his position is one of counsel to the office of the President. He is not the President's personal attorney.').

<sup>5</sup> See *id.* ("As instructive examples of the cooperation of . . . Presidents [Reagan and Carter], they both allowed congressional examination of all documents . . . .").

had any intention of cooperating beyond what its staff believed was absolutely necessary, when under extreme pressure. The Committee presented the White House with an immediate opportunity to prove its good intentions by initially agreeing to proceed with the production of documents from the White House without first issuing a subpoena. The White House, however, responded to the Committee's expression of goodwill by improperly delaying and manipulating its document production to take advantage of the Committee's December 31, 1997 expiration. The Committee's later attempt to jump start the White House's production through issuance of a formal—although ultimately unenforceable<sup>6</sup>—Committee subpoena was met with continued White House obstruction.

The following is a discussion of the most egregious examples of the White House's consistently uncooperative approach to its production of documents to the Committee. This discussion begins with a description of the White House's utter disregard for *any* reasonable document production schedule set by this Committee or promised by the White House itself. It then describes broken promises relating to particular documents withheld by the White House on spurious assertions of executive privilege. Finally, this section summarizes the manipulative manner in which the White House handled its production to the Committee of White House entrance records, White House videotapes and several other specific categories of documents and other materials.

In spite of the significant problems posed by the White House's efforts to obstruct and manipulate the Committee's investigation, the Committee remains satisfied that it met one of its primary goals of uncovering for the American people important information about their government. Whether disseminated through the Committee's hearings or through the simultaneous production of documents by the White House to the Committee and to the press,<sup>7</sup> the American people now possess far more knowledge about the inner workings of the Clinton White House than they did prior to the commencement of the Committee's investigation.

#### *Slow-walking in the production of documents*

In response to the White House Counsel's pledges of cooperation and the Committee's optimism that the document production prob-

<sup>6</sup>Senate committees are powerless to enforce subpoenas against executive branch employees acting in their official capacities. See 28 U.S.C. §1365(a). That provision vests in the United States District Court for the District of Columbia original jurisdiction over actions brought by the Senate or its committees to enforce compliance with its subpoenas. Section 1365(a), however, also explicitly withholds district court jurisdiction over actions to enforce subpoenas issued "to an officer or employee of the executive branch of the Federal Government acting within his or her official capacity . . . ."

<sup>7</sup>The White House, on a number of occasions, attempted to manipulate the Committee's investigation by providing copies of significant documents to the press at the same time that it produced the documents to the Committee. For instance, the White House produced copies of the purportedly belatedly discovered White House videotapes to the Committee late in the evening of October 14, 1997, and made the video footage available to the press on the following day. See Susan Schmidt & Lena H. Sun, "On Tape, Clinton Links Lead in Polls, Issue Ads," *Washington Post*, Oct. 16, 1997, p. A1. Similarly, on December 8, 1997, the White House simultaneously produced to the Committee and to the press copies of a daily chronicle of Presidential activities. See Marc Lacey & Glenn F. Bunting, "White House Forwards More Donor Records," *Los Angeles Times*, Dec. 9, 1997, p. A1. The Committee notes, however, that the White House chose not to provide to the press copies of the thousands and thousands of pages of useless and irrelevant material it produced to the Committee, such as 40,000 printed pages of unintelligible information from the White House database. See Letter from Donald Bucklin to Charles F.C. Ruff, July 28, 1997 (Ex. 4).

lems that burdened prior Congressional investigations into the Clinton Administration could be avoided, the Committee, at the request of the White House, elected to proceed with the production of White House documents without first issuing a subpoena to the White House. Instead, on April 9, 1997,<sup>8</sup> the Committee delivered a request for production of documents in the form of a letter to the White House Counsel's office.<sup>9</sup> This document request constituted a "narrowly defined" subset of a larger document request that the Committee intended to make in the future.<sup>10</sup> The Committee understood that most of the documents had already been gathered by the White House Counsel's office in response to written directives sent by previous White House Counsel Jack Quinn to all White House personnel in December 1996 and January 1997.<sup>11</sup> By limiting the request to these documents, the Committee—facing a December 31, 1997 deadline—hoped to expedite the time frame within which it could expect a production from the White House. In fact, the Committee expressly requested "as many of these documents as possible within . . . ten days."<sup>12</sup>

On April 11, 1997, Committee counsel met with Lanny Breuer of the White House Counsel's office and discussed the April 9 letter request "line by line."<sup>13</sup> Breuer assured the Committee that the White House would produce the majority of the records responsive to the April 9, 1997 request on April 21.<sup>14</sup>

Late in the afternoon of April 21, however, the Committee received a single box of documents accompanied by a letter indicating that additional documents would be forthcoming the following week.<sup>15</sup> Chief Counsel Michael Madigan expressed the Committee's "shock[ ] that [only] a single box of documents was produced" and that the Committee would "not receive the balance of the requested documents until next week."<sup>16</sup>

Even the subsequent week's production, however, did not represent the balance of the documents responsive to the April 9 letter request. On May 13, 1997, Chairman Thompson called Erskine Bowles, White House Chief of Staff, to complain about the pace of the White House's production of documents.<sup>17</sup> Bowles then ordered Breuer and Michael Imbroscio of the White House Counsel's office to meet with Committee Senior Counsel Donald Bucklin to discuss

<sup>8</sup>After the initial meeting on February 11, 1997, the Committee and White House spent "several weeks" negotiating the terms of a document protocol addressing the White House's confidentiality and privilege concerns. See Letter from Michael Madigan to Charles Ruff, April 23, 1997 (Ex. 5). The White House's document production could not proceed until the protocol was finalized in April. The protocol, when completed, outlined the procedures for Committee review, storage and use of documents designated "Confidential" or "Highly Confidential" by the White House. It also created a mechanism for Committee review of documents withheld from production by the White House. See "Security Procedures and Other Protocols," April 1, 1997 (Ex. 6). Unresolved issues relating to the funding for and scope of the Committee's investigation also played a role in the early suspension of the progress of the investigation. These issues were settled by the Senate's adoption of the Committee's funding resolution on March 11, 1997. See Helen Dewar, "Senate GOP Widens Election Fund Probe; Legal but 'Improper' Practices Included," *Washington Post*, March 12, 1997, p. A1.

<sup>9</sup>Letter from J. Mark Tipps to Lanny Breuer, April 9, 1997 (Ex. 7).

<sup>10</sup>*Id.*

<sup>11</sup>See Ex. 5.

<sup>12</sup>Ex. 7.

<sup>13</sup>See Ex. 5.

<sup>14</sup>See *id.*

<sup>15</sup>Letter from Charles F.C. Ruff to The Honorable Fred Thompson, April 21, 1997 (Ex. 8).

<sup>16</sup>See Ex. 5.

<sup>17</sup>See Bob Woodward, "Senator Criticizes White House Action in Fund-Raising Probe," *Washington Post*, May 16, 1997, p. A14.



the delinquent production.<sup>18</sup> After the meeting, Bucklin provided to the White House a detailed list of the “several categories” of documents requested by the Committee that the White House had not yet produced.<sup>19</sup>

On May 21, 1997, the Committee, as promised, issued a second, more comprehensive document request to the White House by letter from Bucklin to Breuer.<sup>20</sup> Although Senior Counsel Donald Bucklin indicated that the Committee “consider[ed] the items contained in the . . . request to be a priority,”<sup>21</sup> the White House responded with the same lack of urgency and timeliness as it did with the April 9 request. The White House delivered its documents to the Committee in small batches and on a schedule that bore no discernible relation to the Committee’s deadlines or expressions of urgency. In fact, almost four months after the Committee’s first document request, Ruff acknowledged in a July 25, 1997 letter to Madigan that not only was the White House’s production in response to several of the Committee’s April 9 requests still incomplete,<sup>22</sup> twenty-four of the forty-two “priority” items contained in the May 21 request had also not received a White House response.<sup>23</sup> In retrospect, it is apparent that the only Committee deadline of any interest to the White House was the Committee’s December 31, 1997 termination date.

In response to the White House’s consistent failure to abide by any reasonable production schedule—as well as its frequent production of documents either immediately before or even *after* deposition or hearing testimony relating to the author or subject of the documents (discussed in detail below)—the Committee voted unanimously on July 31, 1997 to issue a subpoena to the White House bearing a return date of August 12, 1997.<sup>24</sup> Although Chairman Thompson himself communicated to Ruff the Committee’s insistence on “strict and prompt compliance” with the subpoena,<sup>25</sup> the subpoena did not succeed in altering the lack of the responsiveness of the White House in any meaningful way. For instance, as discussed below, it was not until well after the August 12 return date on the subpoena that the White House produced videotapes of White House coffees. The White House also produced highly relevant documents even after the December 31, 1997 termination of the Committee’s investigation. On January 16, 1998, the White House hand delivered to the Committee (and simultaneously pro-

<sup>18</sup> See *id.*; Memorandum from Donald T. Bucklin to Lanny A. Breuer, May 15, 1997 (Ex. 9).

<sup>19</sup> *Id.*

<sup>20</sup> Document Requests attached to Letter from Donald T. Bucklin to Lanny A. Breuer, May 21, 1997 (Ex. 10).

<sup>21</sup> *Id.*

<sup>22</sup> Letter from Charles F.C. Ruff to Michael J. Madigan, July 25, 1997 (Ex. 11). Although Ruff stated in the text of his letter that “all of the [April 9] requests have been completed,” he nevertheless identified in an attachment to his letter four specific document requests for which production remained incomplete.

<sup>23</sup> See *id.* The Committee issued a specifically targeted “supplemental” document request on June 9, 1997. Letter from Donald T. Bucklin to Lanny A. Breuer, June 9, 1997 (Ex. 12). By July 28, 1997, the White House had completed its production in response to *none* of the four requests contained in the supplemental request. See Letter from Donald T. Bucklin to Charles F.C. Ruff, July 28, 1997 (Ex. 13).

<sup>24</sup> See Guy Gugliotta, “Panel Unanimously Issues Subpoena to White House; Committee Allows Sen. Thompson to ‘Order’ Compliance if Deadline is Not Met,” *Washington Post*, Aug. 1, 1997, p. A16.

<sup>25</sup> Letter from Chairman Fred Thompson to Charles F.C. Ruff, Aug. 6, 1997 (Ex. 14).

duced to the press<sup>26</sup>) a package containing documents found in the files of a White House employee charged with evaluating facsimile technology services offered to the White House by Johnny Chung, a central figure in the Committee's investigation.<sup>27</sup> The White House did not attempt to explain why this employee's files had not previously been searched for these unquestionably responsive documents.

*Broken promise to assert the executive privilege in only the narrowest circumstances*

The scope of executive privilege applicable to the documents sought by the Committee was the central focus of the February 11, 1997 meeting between the Committee and representatives of the White House Counsel's office, the first substantive discussion of document production issues.<sup>28</sup> At that meeting, Ruff stated that he anticipated that executive privilege would be *inapplicable* to most White House documents relating to campaign contributions.<sup>29</sup> While he added that the privilege would apply to documents relating to allegations that campaign contributions influenced a White House policy decision, Ruff also stated that the White House would accommodate the Committee by permitting review of the purportedly privileged documents.<sup>30</sup> Ruff's suggestion that the Committee have an opportunity to review documents withheld on executive privilege grounds was subsequently incorporated by the Committee on April 1, 1997 into its formal protocol governing White House document production issues.<sup>31</sup>

The actual breadth of executive privilege ultimately asserted by the White House—as opposed to the theoretically narrow privilege suggested by Ruff on February 11, 1997—was revealed by documents withheld from the first White House production to the Committee on April 21, 1997. This production demonstrated vividly that the White House did not validate the Committee's initial optimism that the WH would adopt the narrow approach to executive privilege asserted by the Reagan and Carter Administrations. For example, request number 19 in the Committee's April 9 letter asked for the production of “[a]ll documents referring or relating to Charlie Trie’s appointment to the Commission on US-Pacific Trade and Investment Policy, and all documents regarding Executive

<sup>26</sup>See “Party Donor Pitched Fax Business to White House,” *Washington Post*, January 17, 1998, p. A12.

<sup>27</sup>See Letter from Lanny A. Breuer to Michael Madigan, January 16, 1998 (Ex. 15). Among the significant documents produced by the White House on January 16 was a July 17, 1995 memorandum from Harold Ickes to a DNC employee “strongly urging” that the DNC obtain “broadcast fax capability” and suggesting Johnny Chung’s company as a suitable outside contractor for such service. See Ex. 33 to the section of this report on Johnny Chung. The White House also belatedly produced in January 1998 a list identifying the dates on which certain large contributors to the DNC spent the night in the Lincoln Bedroom. “U.S. Senate Committee on Government Affairs Request—Certain Overnight Guests Dates,” Dec. 23, 1997 (Ex. 16). The Committee specifically requested this information from the White House in August and continued to actively pursue this request in the succeeding months. See Letter from Glynna Parde to Dimitri Nionakis, Oct. 31, 1997 (Ex. 17).

<sup>28</sup>See Ex. 1. In a floor speech on January 28, 1997, Chairman Thompson also expressed his opinions on the proper breadth of the executive privilege. See 143 Cong. Rec. S716 (daily ed. Jan. 28, 1997) (statement of Sen. Thompson).

<sup>29</sup>See Ex. 1.

<sup>30</sup>See *id.*

<sup>31</sup>See Ex. 6, p. 4.

Order #12987 signed on January 31, 1996.”<sup>32</sup> On April 21, 1997, the White House produced only a few documents in response to request number 19, but notified the Committee that a substantial number of additional responsive documents had been withheld on executive privilege grounds.<sup>33</sup>

In accordance with the document production protocol, Committee counsel reviewed the two and one-half boxes of withheld documents at the White House.<sup>34</sup> After a four-hour review, Committee counsel concluded that most of “the documents withheld did not remotely resemble the type of sensitive information” that Ruff had suggested the White House would withhold.<sup>35</sup> The documents instead included a number of public speeches, manuals, background news articles, resumes and other similar public documents, and few documents that legitimately implicated deliberative process concerns.<sup>36</sup> Committee counsel segregated the most relevant documents from the two and one-half boxes, and Madigan thereupon insisted in his April 23, 1997 letter to Ruff that the segregated portion be produced to the Committee.<sup>37</sup> Although the White House produced these documents on May 7, 1997,<sup>38</sup> it both redacted the documents and also insisted that they be accorded “highly confidential” treatment under the protocol, and thereby made available only to specifically-designated Committee staff.<sup>39</sup> The White House’s spurious assertion of executive privilege succeeded in forcing the needless review by the Committee of wrongfully withheld documents and delaying by several weeks the progress of central aspects of the Committee’s investigation.

#### *Production of incomplete WAVES records*

Another category of documents requested from the White House in the Committee’s April 9 letter request were “Workers and Visitors Entrance System” (“WAVES”) records identifying the dates and times of White House admission by John Huang and other central figures involved in the Committee’s investigation.<sup>40</sup> Although the White House produced records in response to this request on April 21, 1997,<sup>41</sup> the Committee discovered during a meeting with representatives of the United States Secret Service on April 30, 1997 that the records produced by the White House left out critical categories of unquestionably relevant information.<sup>42</sup> The Secret Service explained to the Committee that complete WAVES records contain a comments section in which problems that surfaced during a particular individual’s background check are noted, and an “XX”

<sup>32</sup> Ex. 7.

<sup>33</sup> Ex. 5.

<sup>34</sup> See Ex. 6.

<sup>35</sup> See Ex. 5.

<sup>36</sup> See *id.*

<sup>37</sup> *Id.*

<sup>38</sup> Letter from Lanny Breuer to Don Bucklin, May 7, 1997 (Ex. 18).

<sup>39</sup> *Id.*; see also Ex. 6. The White House produced additional documents relating to Trie’s appointment to the Commission on U.S.-Pacific Trade and Investment Policy on July 24, 1997 and September 10, 1997. See Letter from Lanny A. Breuer to Donald T. Bucklin, July 24, 1997 (Ex. 19) and Letter from Dimitri J. Nionakis to Donald T. Bucklin, Sept. 10, 1997 (Ex. 20). The Committee’s public hearings on Trie’s illegal activities concluded on July 31, 1997.

<sup>40</sup> See, e.g., Document Request No. 1, attached to Ex. 7.

<sup>41</sup> See Ex. 2.

<sup>42</sup> See Memorandum from Margaret A. Hickey to Donald T. Bucklin, May 9, 1997 (Ex. 21). The Secret Service generates the WAVES records of all individuals entering the White House and turns over a computer tape of the records to the White House at the end of each month. *Id.*

notation identifying those whose admission is questioned by the Secret Service.<sup>43</sup> Neither section was included in the WAVES records produced by the White House on April 21, 1997.

The White House, when confronted with these omissions, explained that it believed that this information had not been requested by the Committee.<sup>44</sup> As the Committee's April 9 letter request expressly asked for the production of "'WAVE[S]' records"—and not exclusively the entrance and departure information contained in those records—the Committee immediately demanded production of copies of these records in the form described by the Secret Service.<sup>45</sup> Incredibly, Karen Popp of the White House Counsel's office then informed the Committee during a telephone call that, in spite of the Secret Service's description of the records, the categories of information missing from the records already produced to the Committee by the White House simply did not exist. The White House withdrew this specious assertion and eventually produced complete copies of the WAVES records, but only after its position was specifically refuted during a meeting among representatives of the Committee, the Secret Service, and the White House.

*Production of relevant documents either immediately before, or in some cases, even after a witness' deposition or hearing testimony*

In spite of Ruff's assertion that "the timing of [the White House's document] production . . . had absolutely nothing to do with politics or tactics," and that the White House "produced . . . documents as soon as we found them,"<sup>46</sup> the pattern of White House production of documents either immediately before or even *after* the deposition or hearing appearance of the author or subject of those documents leads the Committee to the opposite conclusion. The repeated instances of the production of significant documents relating to a particular witness whose testimony was immediately upcoming or just completed belies Ruff's suggestion that the timing of the production was merely coincidental.

The most egregious example of the White House's timing of the production of particular documents to coincide with the Committee's deposition or hearing schedule was its production of the WAVES records of Ng Lap Seng, the Macau-based businessman and financial supporter of Charlie Trie. On July 29, 1997, Jerry Campana, an FBI agent on detail to the Committee, testified before the Committee concerning the results of the Committee's investigation into the source of the funds used by Trie for his substantial contributions to the DNC. The Committee had found that Trie relied on over \$1 million wired by Ng Lap Seng from accounts he maintained at banks in Hong Kong and Macau to support his laundered political contributions.<sup>47</sup> Late in the afternoon of July 29, 1997, after the completion of Campana's testimony, the White House hand-delivered to the Committee a package of documents containing WAVES records revealing that Ng Lap Seng had visited

<sup>43</sup> See *id.*

<sup>44</sup> See Letter from Donald T. Bucklin to Lanny A. Breuer, May 12, 1997 (Ex. 22).

<sup>45</sup> See *id.*

<sup>46</sup> "Statement of Charles F. C. Ruff," July 30, 1997 (Ex. 23).

<sup>47</sup> See the section of this report on Charlie Trie's DNC contributions and fundraising.

the White House ten times between June 22, 1994 and October 21, 1996.<sup>48</sup>

Significantly, the July 29 delivery also included handwritten notes and other documents created by Lisa Berg, a White House employee who was deposed by the Committee on the same day that Campana testified.<sup>49</sup> Berg's deposition concluded approximately three hours before the production of these documents.<sup>50</sup>

Chairman Thompson publicly excoriated the White House on July 30, 1997 for its blatant efforts to manipulate the work of the Committee.<sup>51</sup> The Chairman added that the Committee would no longer tolerate such improprieties, and that a subpoena had been prepared for the overdue White House document production.<sup>52</sup> As discussed above, the Committee unanimously voted to issue the subpoena on July 31, 1997.

*Late production of White House audio and videotapes*

On October 1, 1997, Michael Imbroscio of the White House Counsel's office revealed to Committee Counsel Donald Bucklin that he had discovered the existence of videotapes of several coffees and other events attended by the President.<sup>53</sup> In the following weeks, the White House produced to the Committee one videotape containing footage of President Clinton's attendance at forty-four White House coffees and sixty-six additional videotapes of hundreds of other fundraising events attended by President Clinton.<sup>54</sup>

These videotapes were responsive to the Committee's first document request to the White House—the April 9 letter request—which expressly requested the production of videotapes.<sup>55</sup> The Committee's May 21, 1997 document request and its July 31, 1997 subpoena also expressly included videotapes within their explanations of the types of materials sought by the Committee.<sup>56</sup> These specific requests for videotapes (as well as subsequent direct inquiries by Committee counsel), however, produced only assurances from the White House Counsel's office that no responsive videotapes existed.<sup>57</sup>

In spite of the Committee's repeated requests for the production of videotapes, the tapes were produced to the Committee only after

<sup>48</sup> See Memorandum from Glynna Parde to Donald T. Bucklin attaching copies of Ng Lap Seng's WAVES records, July 30, 1997 (Ex. 24).

<sup>49</sup> See *id.*

<sup>50</sup> See *id.*

<sup>51</sup> Hearing Transcript, statement of Chairman Fred Thompson, July 30, 1997, pp. 121–22.

<sup>52</sup> *Id.*, pp. 122–23.

<sup>53</sup> See Memorandum from Donald T. Bucklin to Senator Fred Thompson, Oct. 6, 1997 (Ex. 25). Imbroscio testified that he informed Bucklin of the existence of the videotapes on the following day, on October 2, 1997. Testimony of Michael Imbroscio, Oct. 29, 1997, pp. 126–27. As discussed below, Imbroscio's recollection of the events leading to the discovery of the videotapes differs in several significant ways from the recollection of other individuals involved in the discovery and production of the videotapes.

<sup>54</sup> The White House, however, produced the videotape footage of the White House coffees to *Time* magazine prior to its Saturday, October 4, 1997 production to this Committee. *Time*'s article discussing the contents of the videotapes appeared on the newsstands on Monday, October 6. See Michael Duffy & Michael Weisskopf, "Let's Go to the Videotape," *Time*, Oct. 13, 1997, p. 30. This production to *Time* in advance of the Committee's receipt of the videotapes is one more example of the White House's cynical effort to manipulate the investigation.

<sup>55</sup> See Ex. 7 (defining "document" as "any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, . . . including, but not limited to, the following: . . . graphic or oral records or representations of any kind (including, without limitation, . . . videotape . . .)").

<sup>56</sup> See Ex. 10.

<sup>57</sup> See Ex. 25.

the Committee was able to rebut the White House Counsel's initial insistence that none existed and direct the White House's own inquiry to locate them. In an August 7, 1997 meeting with representatives of the White House Counsel's office, Bucklin—acting on the basis of information provided by a third-party source—requested that the White House “double-check” with an entity called the White House Communications Agency (“WHCA”) for the existence of responsive videotapes.<sup>58</sup> After receiving no response, Bucklin subsequently reiterated this request in an August 19, 1997 letter to Breuer.<sup>59</sup> On August 29, 1997 (after the unexplained passage of an additional ten days), Imbroscio followed up on Bucklin's lead and met with Steven Smith, WHCA's Chief of Operations.

During his August 29, 1997 meeting with Smith, Imbroscio learned that WHCA videotaped fundraisers, political dinners and other events attended by the President.<sup>60</sup> Imbroscio testified that Smith also informed him that WHCA typically did not record “closed events”—closed to the press as well as the public—and that a WHCA cameraman would thus not have attended the White House coffees.<sup>61</sup> While Imbroscio reported this information to the Committee in a meeting on September 9, 1997,<sup>62</sup> it turned out to be both incorrect and inconsistent with the information that Smith recalled communicating to Imbroscio during their August 29, 1997 discussion. Smith testified that he told Imbroscio that WHCA videotaped closed events “all the time,”<sup>63</sup> but that Imbroscio never asked him specifically about the videotaping of coffees.<sup>64</sup> In fact, Smith testified that “[t]he word “coffee” . . . was never used” during his meeting with Imbroscio.<sup>65</sup>

Imbroscio further misinformed the Committee during the September 9, 1997 meeting by stating that WHCA possessed a log of its videotapes that he would make available to the Committee.<sup>66</sup> Imbroscio, at the same time, failed to notify Committee counsel that Smith had informed him that WHCA instead possessed a searchable computer database of its videotapes through which WHCA could confirm the existence of videotapes of desired White House events.<sup>67</sup> The confusion created by Imbroscio's misstatements led Bucklin to repeatedly urge Imbroscio to produce the log to the Committee instead of pushing for the ultimately more fruitful exercise of searching the database.<sup>68</sup> Imbroscio testified that he did not search WHCA's database and uncover the existence of the responsive videotapes until October 1, 1997.<sup>69</sup>

Imbroscio immediately shared his discovery with Ruff, who directed Imbroscio to pass his findings on to Bucklin.<sup>70</sup> When Ruff

<sup>58</sup> See *id.*

<sup>59</sup> Letter from Donald T. Bucklin to Lanny A. Breuer, Aug. 19, 1997 (Ex. 26).

<sup>60</sup> Deposition of Michael Imbroscio, Oct. 17, 1997, pp. 89–90.

<sup>61</sup> *Id.*, p. 91.

<sup>62</sup> *Id.*, p. 116.

<sup>63</sup> Deposition of Steven Smith, Oct. 10, 1997, pp. 138–139; see also Testimony of Steven Smith, Oct. 23, 1997, pp. 52–53.

<sup>64</sup> Smith testimony, p. 53.

<sup>65</sup> *Id.*

<sup>66</sup> Imbroscio deposition, pp. 116–19.

<sup>67</sup> Smith deposition, pp. 146–47; see also Smith testimony, p. 52.

<sup>68</sup> Imbroscio deposition, pp. 120–22 (acknowledging Bucklin's frequent requests to review a log of WHCA's videotapes).

<sup>69</sup> *Id.*, pp. 152–53.

<sup>70</sup> *Id.*, pp. 172–74.

later met with Attorney General Janet Reno on October 2, 1997, however, he did not inform her of the discovery of the videotapes, even though he knew that Reno was preparing a letter to House Judiciary Committee Chairman Henry Hyde addressing Hyde's recommendation that several allegations of White House fundraising improprieties (to which the videotapes proved to be relevant) necessitated the appointment of an independent counsel.<sup>71</sup> Without the benefit of several illuminating portions of the White House videotapes, Reno concluded in her October 3, 1997 letter to Chairman Hyde that she found that the evidence against President Clinton did not call for any action under the Independent Counsel statute.<sup>72</sup> The Committee, however, believes that the evidence provided in the White House videotapes compels the opposite conclusion.

The failure of the White House Counsel's office to explicitly direct White House employees to turn over responsive "videotapes" was a primary factor in the failure of the White House to produce the videotapes in a timely fashion. On April 28, 1997, Ruff circulated to "[e]very employee" of the Executive Office of the President a memorandum (the "Ruff Directive") directing its recipients to "conduct a thorough and complete search of ALL of your records (whether in hard copy, computer, or other form)" for "[a]ny documents or materials" relating to the subjects of the various ongoing campaign fundraising investigations (including this Committee's investigation).<sup>73</sup> Unlike the Committee's April 9, 1997 document request, which specifically defined the term "document" to include "videotape[s],"<sup>74</sup> the Ruff Directive neither defined the terms "document" or "material" nor otherwise expressly indicated the Committee's intention that responsive videotapes be produced.

Representatives of the White House Counsel's office defended the decision to replace the Committee's detailed definition of "document" (which included an express reference to "videotape") with the instruction to White House employees to search "ALL of your records." Breuer testified that he believed that the deletion of the Committee's detailed definition actually made it *more likely* that the video tapes would have been produced in the first instance.<sup>75</sup> Breuer claimed that busy White House employees, most of whom are not lawyers, would be less likely to carefully read and properly respond to a detail-laden document request than they would to the White House's simplified replacement.<sup>76</sup>

For two reasons, the Committee finds the White House Counsel's explanation to be untenable. First, Smith, WHCA's Chief of Oper-

<sup>71</sup> See Roberto Suro, "Reno Explores Probe of Gore Phone Calls; Statement Cites 'Complexity' of Issues," *Washington Post*, Oct. 4, 1997, p. A1.

<sup>72</sup> See *id.*

<sup>73</sup> Memorandum from Charles F.C. Ruff to Executive Office of the President, April 28, 1997 (Ex. 27). White House Special Counsel Lanny Breuer explained that the Ruff Directive was not specifically tailored to collect documents responsive to the Committee's April 9 letter request. In addition to responding to this Committee's request, the Ruff Directive was designed to "collect the materials that were responsive to . . . the House request, the Justice Department request, and other subcommittees and other investigatory bodies that were interested in campaign finance investigations." Deposition of Lanny Breuer, Oct. 17, 1997, pp. 29-30. It did so, however, only by replacing the Committee's narrowly tailored requests with more generic alternatives. For example, the Committee's April 9 letter request sought "[a]ll documents referring or relating to the May 13, 1996 coffee." The Ruff Directive replaced this request with one for "[a]ny documents or materials . . . [r]eferring or relating to White House political coffees."

<sup>74</sup> Ex. 7; see footnote 55, *supra*.

<sup>75</sup> Testimony of Lanny Breuer, Oct. 29, 1997, p. 202.

<sup>76</sup> Breuer deposition, pp. 37-38.

ations, specifically rejected Breuer's suggestion. Smith stated that "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."<sup>77</sup> The Committee also finds that the elimination from the Ruff Directive of the Committee's specific reference to videotapes substantially decreased the likelihood that individuals outside of WHCA who were familiar with WHCA's practice of videotaping events involving the President would have identified the need to produce the videotapes. Deputy Counsel to the President Cheryl Mills, who testified to the Committee that she "certainly" knew that one of WHCA's functions was to videotape the President,<sup>78</sup> and who frequently attended meetings of the White House lawyers working on the campaign finance investigation,<sup>79</sup> would have been a likely source of this information. However, as Mills also testified that "everybody . . . in the White House" knew that WHCA videotaped events,<sup>80</sup> others should have identified to the White House Counsel its oversight at an earlier time.

A contributing factor leading to the failure of WHCA personnel to turn over the videotapes immediately in response to the Ruff Directive was the mysterious failure of the White House Military Office—WHCA's parent entity—to transmit a complete copy of the Ruff Directive to WHCA. Alan Sullivan, head of the White House Military Office, testified that he remembered receiving the Ruff Directive from the White House Counsel's office, and directing that it be faxed to the Military Office's "operating units."<sup>81</sup> Although Col. Charles Campbell, Deputy Commander of WHCA, remembered receiving the fax from the White House Military Office, he testified that WHCA received an incomplete copy of the Ruff Directive.<sup>82</sup> Campbell testified that WHCA did not receive the page of the Ruff Directive that specifically directed its recipients to search their "files and records for . . . [a]ny documents or materials . . . [r]eferring or relating to White House political coffees."<sup>83</sup> WHCA personnel testified to the Committee that they believed that if they had received a complete copy of the Ruff Directive, they would have searched WHCA's database and produced the videos of the White House coffees at that time.<sup>84</sup>

<sup>77</sup> Smith deposition, p. 166; *see also id.*, pp. 167–68.

<sup>78</sup> Deposition of Cheryl D. Mills, Oct. 18, 1997, p. 83. Mills, in fact, appears on the videotape of the President's March 11, 1995 radio address. *See id.*, pp. 59–60. Johnny Chung purchased admission for himself and a delegation of Chinese businessmen to the radio address attended by Mills with a \$50,000 check he hand delivered to the First Lady's Chief of Staff at the White House. *See* the section of this report on Johnny Chung.

<sup>79</sup> *See* Breuer deposition, p. 24.

<sup>80</sup> Deposition of Cheryl D. Mills, Oct. 18, 1997, p. 87; *see also* Deposition of Alan P. Sullivan, Oct. 16, 1997, pp. 80–81 ("[T]hese tapes were made by two guys lugging a commercial Beta camera around with a boom mike with a fuzzy grey ball, wandering around in front of large groups of people. Hardly what one would categorize as covert activities.").

<sup>81</sup> Alan Sullivan deposition, pp. 52–56.

<sup>82</sup> Deposition of Charles Campbell, Oct. 21, 1997, p. 48.

<sup>83</sup> *Id.*, p. 53. The White House Military Office produced to the Committee copies of the faxes that it sent to four other units under its supervision, each of which contained a complete copy of the Ruff Directive. All four of the faxes are dated April 29, 1997 and all bear fax confirmation information indicating that they were sent within minutes of each other. *See* Ex. 28–31. Neither WHCA nor the White House Military Office was able to find the purportedly incomplete copy of the Ruff Directive that the Military Office faxed to WHCA. Campbell deposition, pp. 53–54.

<sup>84</sup> *See*, e.g., Testimony of Charles McGrath, Oct. 23, 1997, p. 92.



WHCA's purely speculative assessment of the impact of this mysterious and inadvertent transmission error, however, is a considerably less significant and blameworthy factor in the delinquent production of the videotapes than the absence from the Ruff Directive of a specific reference to videotapes. WHCA certainly cannot be held accountable for its failure to receive a complete copy of the Ruff Directive from the White House Military Office. The White House, on the other hand, made the intentional decision to infect the document production process with uncertainty and imprecision by eliminating the Committee's express reference to videotapes.

*Delinquent production of Presidential diaries and daily chronicles*

A further category of information specifically requested by the Committee in its document requests and subpoena to the White House was "diaries."<sup>85</sup> Although Imbroscio acknowledged his awareness of the existence of a Presidential diarist "in the opening months that [he] was working at the White House,"<sup>86</sup> the White House concealed the existence of the detailed daily diaries of the activities of the President from the Committee until the deposition of the diarist, Ellen McCathran, on October 27, 1997.<sup>87</sup> McCathran testified in her deposition that she prepares and maintains a detailed chronological log of the President's movements and activities that is based on a broad range of documentary material, including annotated presidential schedules, movement logs, and various phone logs.<sup>88</sup>

Instead of producing the complete diary, the White House turned over to the Committee approximately one thousand pages of the documentary material used by McCathran to prepare her diary.<sup>89</sup> These records, however, are merely the pieces of the jigsaw puzzle that the diarist had already completed. As McCathran herself indicated, the diary she prepares from the voluminous documentary material represents the only *complete* source of information on the President's activities.<sup>90</sup> Despite the Committee's repeated requests, and Ruff's assurances that he "underst[oo]ld the Chairman's con-

<sup>85</sup> See Document Request No. 9 attached to Ex. 10 ("All personal or business calendars, date books, personal notes, logs, phone logs, call sheets, journals or diaries maintained or used by President Clinton or Vice President Gore from 1993 to the present that refer or relate to any of the individuals or entities listed [above]."); see also, e.g., Document Requests attached to Ex. 7 (Defining "document" as "any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, . . . including, but not limited to, the following: . . . diaries . . .").

<sup>86</sup> Imbroscio deposition, p. 191. Imbroscio joined the White House Counsel's office on March 7, 1997. *Id.*, p. 7.

<sup>87</sup> The discovery of the existence of the diaries was a serendipitous event and not the primary purpose for the deposition of the diarist. The Committee deposed the diarist after discovering that she was the custodian of presidential telephone logs originally created by WHCA. The Committee's discovery of the continued existence of the telephone logs was itself contrary to earlier representations of Imbroscio, who reported to Committee counsel during a September 9, 1997 meeting that WHCA's phone logs were destroyed after 60 days. Imbroscio deposition, pp. 238-40.

<sup>88</sup> Deposition of Ellen McCathran, Oct. 27, 1997, pp. 15, 19, 41-42.

<sup>89</sup> Testimony of Charles F.C. Ruff, Oct. 29, 1997, pp. 198-99. Imbroscio, in fact, sought to contradict in public hearings Chairman Thompson's assertion that the White House concealed the existence of the diaries by simply referring to the quantity of documents produced from the files of the diarist. Imbroscio testimony, pp. 114-15. While the mass of background information gathered from the diarist's files may indeed reveal to the Committee the existence of a diarist, it was patently disingenuous for Imbroscio to suggest that these background materials somehow revealed the existence of the diarist's final work product.

<sup>90</sup> See "Talking Points for Senate Deposition," prepared by Ellen McCathran, Oct. 27, 1997 (Ex. 32).

cerns” about the White House’s failure to produce the diaries,<sup>91</sup> the White House never produced them to the Committee.

The White House also failed until December 8, 1997 to disclose to the Committee the existence of a second diary-type document. On December 8, the White House simultaneously produced to the Committee and to the press hundreds of pages of a “chronicle” of the daily activities of the President prepared by Special Assistant to the President and Records Manager Janis Kearney.<sup>92</sup> Kearney reports to Nancy Hernreich, Deputy Assistant to the President and Director of Oval Office Operations.<sup>93</sup> Kearney testified that when she began work in the White House in December 1995, Hernreich directed her to “keep a daily chronicle of the Presidency” derived from her review of White House correspondence and attendance at various White House meetings.<sup>94</sup>

Hernreich certified in a memorandum to the White House Counsel’s office on April 29, 1997 that she “directed all individuals in [her] office to search their files” in response to the April 29, 1997 Ruff Directive, and that “all responsive documents ha[d] been provided.”<sup>95</sup> However, although Kearney’s “chronicles” were unquestionably responsive to the Committee’s document requests,<sup>96</sup> Kearney testified that Hernreich instructed her that “there was no need” for Kearney to respond to the White House Counsel’s requests.<sup>97</sup>

#### CONCLUSION

Although the White House repeatedly pledged its cooperation with the Committee’s investigation, its actions spoke far more loudly than its words. The White House produced documents to the Committee pursuant to its own schedule and without regard to any deadlines other than the December 31, 1997 expiration of the Committee’s investigation. The White House, in fact, ignored even deadlines imposed by the scheduling of deposition or hearing testimony of the author or subject of particular documents, and instead often produced documents after the appearance of the witnesses to whom the documents related. It withheld documents under specious assertions of executive privilege. It concealed the existence of highly relevant materials and unreasonably and improperly redacted significant information from many of the documents it chose to disclose. Finally, the White House’s intentional omission from the document search directive disseminated among White House employees of any indication of the breadth of the materials sought by the

<sup>91</sup> Ruff testimony, p. 218.

<sup>92</sup> Marc Lacey and Glenn Bunting, “White House Forwards More Donor Records,” *Los Angeles Times*, Dec. 9, 1997, at A1.

<sup>93</sup> Deposition of Janis Kearney, Dec. 23, 1997, p. 12.

<sup>94</sup> *Id.*, pp. 17–18, 21–22.

<sup>95</sup> Memorandum from Nancy Hernreich to Dimitri Nionakis, April 29, 1997 (Ex. 33).

<sup>96</sup> For instance, the June 19, 1996 entry states that “[the President] hosted a coffee, that Nancy H[ernreich] described as a “political” coffee that would probably last all morning. She explained the difference between “money” coffees and the “political/issues” coffees as how much [the President] interjected.” Diary entry of Janis Kearney, June 19, 1996 (Ex. 34). This entry falls squarely within May 21, 1997 Document Request No. 11 which sought “[a]ll documents referring or relating to any White House coffee . . . .” Ex. 10. The late production of this entry is also particularly significant, as it appears to contradict Nancy Hernreich’s affirmative response in her deposition to the suggestion that she could not “tell [the Committee] much about what happened at the coffees or after the coffees with regard to fund-raising.” Deposition of Nancy Hernreich, June 20, 1997, pp. 104–05.

<sup>97</sup> Kearney deposition, p. 60.

Committee caused a six-month delay in the production of the critically important White House videotapes.

This is not the behavior of a White House seeking to cooperate with a Senate Committee's exercise of its important oversight authority. Rather, these actions vividly demonstrate the lengths to which this White House went in order to obstruct the work of a Committee seeking to reveal information that the White House hoped to keep secret. In spite of the White House's efforts, however, the Committee's efforts led to the exposure by the White House—either through 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.

In light of the above, the Committee urges other lawful authorities who are investigating criminal conduct and who are subpoenaing White House records, to exercise extreme caution in assuming that any White House document production is either complete or accurate.

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## DNC DOCUMENT PRODUCTION

The DNC's failure to comply fully and in a timely manner with the Committee's subpoena significantly hampered the Committee's investigation. The DNC delayed the production of documents, produced documents in a manner calculated to impede the effective examination of DNC officers and employees, and generally obstructed the Committee's investigation. More specifically, the DNC responded slowly to the Committee's long-anticipated subpoena, produced previously-gathered documents only on the eve of depositions at which they were to be used, and never fully complied with the Committee's subpoena. In so doing, the DNC's constant refrain was that the financial burden of complying with the Committee's lawful subpoena was too great. Alternatively, the DNC would urge that its resources were being diverted by grand jury subpoenas. All the while, the DNC could take comfort from the Committee's investigatory deadline, knowing that judicial enforcement of the Committee's subpoena was impossible.

The deadline imposed on this Committee lurked at all times behind the DNC's noncompliance. As discussed elsewhere in this report,<sup>1</sup> many organizations simply chose to ignore this Committee's subpoenas, with the hope that the time limit imposed on the Committee's investigation would render court enforcement of its subpoenas impossible—and perhaps legally moot. The DNC could not pursue the same strategy and ignore this Committee's subpoena; the political costs of doing so would have been too great. The DNC still found its own ways to hinder the Committee's investigation by exploiting the Committee's investigatory deadline.

The Committee and the DNC engaged in many battles over document production. The purpose of this section of the report is not to describe every shortcoming in the DNC's production of documents in response to the Committee's subpoena. Nor is the purpose of this section to document tediously every meeting and phone call between Committee staff and the DNC's lawyers on issues that arose concerning document production. Rather, the Committee merely wishes to focus attention on a few serious issues that arose in the course of the DNC's alleged compliance with the Committee's subpoena, and which the Committee believes fairly illustrate a pattern of obstruction on the part of the DNC.

One case in particular—the belated production of Richard Sullivan's files—may even raise criminal issues. The Committee cannot exclude the possibility that these files were intentionally withheld, which would constitute the crime of obstruction of Congress. Indeed, the inconsistent, incredible explanations for the belated pro-

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<sup>1</sup>See *e.g.*, the section of this report on the noncompliance by nonprofit organizations with the Committee's subpoenas.

duction of those files give weight to the possibility that they were deliberately withheld from the Committee.

*The committee's subpoena*

The Committee issued a subpoena to the DNC on April 9, 1997. The subpoena was served on April 10. The subpoena's return date—the date by which the DNC was to comply with the subpoena—was April 30, 1997.

This subpoena hardly came as a surprise to the DNC. As early as November 6, 1996, the day after the 1996 election, DNC General Counsel Joseph Sandler sent a memorandum to all DNC division directors, headed “*Immediate Attention*,” which directed them to preserve DNC documents and required DNC employees to prepare an inventory of their files.<sup>2</sup> The memorandum was drafted in apparent anticipation of congressional and law enforcement subpoenas.<sup>3</sup>

Moreover, the Committee gave a draft of the subpoena to the DNC's outside lawyers on March 18, 1997. By March 18, the DNC was thus aware that the Committee would request, at a minimum, documents already requested by grand jury subpoenas. The DNC was also permitted to comment on the draft subpoena, with an eye toward streamlining and expediting its document production. In some cases, the Committee even incorporated into the final subpoena suggestions made by the DNC's lawyers. In short, the DNC should have been well-prepared for the Committee's subpoena.

*The DNC's sluggish response to the subpoena*

Despite having ample time to prepare to respond to the subpoena, the DNC responded sluggishly. Sandler testified that the DNC circulated a memorandum directing employees to search their files on or about April 24, 1997—less than a week before the subpoena's return date, and nearly two weeks after the Committee issued its long-anticipated subpoena.<sup>4</sup>

In fact, the DNC chose to ignore the subpoena's return date. Sandler testified that the DNC did not require its employees to finish searching their files pursuant to the April 24, 1997, search memorandum until nearly four months after the Committee's subpoena was issued—and nearly one month after the Committee commenced public hearings. Sandler's testimony on this point contained an implicit suggestion that this Committee's subpoena was either ignored or given a “low priority”:

Q: All right. Mr. Sandler, you had indicated in one of your previous answers that DNC employees began reviewing their files for documents specifically responsive to this committee's subpoena on or about April 24th of this year?

A: Something—yeah. I'd have to look at the search memo. That's right.

Q: Now, how long did that process take for employees to complete their search of their files?

<sup>2</sup>Memorandum from Joe Sandler, November 6, 1996 (Ex. 1).

<sup>3</sup>Memorandum from Joseph E. Sandler, January 13, 1997 (Ex. 2). By January 13, 1997, the DNC had received at least two federal grand jury subpoenas.

<sup>4</sup>Deposition of Joseph E. Sandler, August 22, 1997, pp. 113–14.



A: It took a long time. It didn't—it wasn't completed until a couple weeks ago. *We set a deadline of July 31st.* It was a Friday, around there was the—we set an absolute deadline. A lot of people had turned stuff in already, but we made a point of having it wrapped up by then.

Q: So it was only within the past two weeks that the—I mean, that the—am I correct that the process of having employees of the DNC review their files in terms of responsiveness to our subpoenas lasted from approximately April 24th until approximately two weeks ago?

A: Two or three weeks ago. But I want to say that it was an ongoing process. There were continually materials being received. You asked us to focus again on certain things as a matter of the committee's priorities. And you have to keep in mind, Mr. Mattice, that the DNC has been simultaneously responding to 12 other subpoenas, *most of which were issued by federal grand juries that can hardly be ignored or made a lower priority.*<sup>5</sup>

The Committee concludes that the DNC was slow-walking its response to the subpoena, knowing that the DNC could use the allegedly more urgent subpoenas issued by federal grand juries as an excuse for delaying the Committee, even though the DNC knew the Committee's investigation would have to be concluded by the end of the year. The DNC's bad faith is patent.<sup>6</sup>

*A pattern of gamesmanship*

While the DNC waited for months for its employees to finish searching their files to respond to the Committee's subpoena, it began to produce some documents soon after the receipt of the subpoena. From the very beginning of this production, the Committee discerned a pattern of gamesmanship. Between April 25 and April 30, 1997, the DNC produced approximately 25 boxes of documents to the Committee. The Committee understood that these boxes contained documents previously produced to other governmental entities (such as grand juries) in response to their subpoenas. Although a smattering of these documents were relevant, most were of no value. The production included repetitive donor lists, thousands of pages of "The Hotline" (a political newsletter circulated by electronic mail), and non-consecutive spreadsheets containing donor information, which were virtually impossible to piece together in the form produced.

Because of the Committee's investigative deadline, depositions for DNC witnesses had to begin quickly. The shortage of relevant documents would impair the Committee's examination of DNC witnesses, many of which were scheduled for May. The Committee was concerned that the DNC's manner of production would result in having to constantly re-call witnesses as documents relevant to them trickled out of the DNC. Responding to the Committee's con-

<sup>5</sup> *Id.* at pp. 114–15 (emphasis added).

<sup>6</sup> Moreover, as will be discussed in some detail later, the DNC's July 31, 1997 deadline for searching documents may have contributed to the late discovery of 4,000 documents from the files of Richard Sullivan. If Paul DiNino's testimony is to be credited, he looked into one drawer of the only file cabinet in his office only when, in late July, the DNC sought to ensure that all files had been searched for responsive documents by the end of July. See *infra*, notes 35–38 and accompanying text.

cern, the DNC agreed to produce documents relating to particular witnesses in advance of their depositions.

Unfortunately, even more gamesmanship ensued. The DNC's supposed compliance with its agreement smacked of bad faith; it routinely produced documents relevant to particular witnesses the afternoon before their deposition, even though the documents had been gathered by the deponents long before.

One representative example of this sort of egregious behavior concerns documents relevant to the testimony of DNC Deputy National Finance Director David Mercer. The Committee began to depose Mercer on Wednesday, May 14, 1997. On the afternoon of Tuesday, May 13, the DNC delivered two boxes of documents previously gathered by Mercer from his files. When the Committee could not conclude Mercer's deposition on May 14, his deposition was scheduled to resume on Tuesday, May 27, 1997, the day following Memorial Day. On the evening of Friday, May 23, 1997, the DNC produced four boxes of additional documents that the DNC represented had been previously gathered by Mercer from his files. During the continuation of his deposition on May 27, Mercer was shown one of the documents produced on the previous Friday, and he testified that the document had been produced by him to Sandler around "Christmastime" of 1996.<sup>7</sup>

The Committee concludes that the DNC's production of documents on the eve of a witness' second day of deposition testimony, when the witness had gathered the documents and given them to the DNC's counsel roughly six months earlier, was an obstructionist tactic. Unfortunately, the DNC frequently employed this tactic in the course of the Committee's investigation.

In the midst of this gamesmanship, the DNC informed the Committee in a meeting in the middle of June 1997 that 55 boxes of documents had been produced to other governmental entities in response to their subpoenas, but had not been produced to the Committee—even though they had been specifically requested by the Committee's subpoena, and the Committee had been led to believe that the productions between April 25 and April 30 were comprised primarily of documents previously produced to other governmental entities. Even more surprising was that the DNC would not just copy the contents of these boxes and forward them to the Committee; rather, the DNC insisted on re-reviewing these documents and producing them incrementally—allegedly to protect privileges, even though any alleged privilege would have been waived by the previous production to other governmental entities. The DNC produced the documents over the days leading up to the July 4 holiday; production of the 55 boxes was not complete until July 2, 1997—less than a week before the commencement of the Committee's public hearings, which were to open with the testimony of former DNC National Finance Director Richard Sullivan.

This dismal pattern of production continued throughout the Committee's investigation.

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<sup>7</sup> Deposition of David Mercer, May 27, 1997, p. 59.

*Richard Sullivan's file cabinet: Possible Obstruction of Congress*

On Monday, July 28, 1997, several DNC lawyers met with Committee counsel to discuss many of the document production problems. In the course of that meeting, they described documents then in the immediate "pipeline" to the Committee. In so doing, they specifically represented to the Committee that it would soon be receiving several boxes of "generic" Finance Division documents.

On Friday, August 1, 1997—one day after the Committee had concluded its July hearings and adjourned for the August recess—a DNC lawyer called the Committee and informed it that the representation that the boxes were generic Finance Division documents may have been "mistaken." According to the DNC, it had just learned that a number of the boxes were actually from Richard Sullivan's files. Sullivan had been deposed in May and June, and had been the Committee's first witness in public hearings on July 9–10.<sup>8</sup> The DNC promised that the documents would be produced by Monday, August 4, as it clearly recognized the significance of failing to produce documents relating to the Committee's first public witness. Indeed, on that same day, August 1, DNC Chairman Roy Romer personally called Chairman Thompson to inform him of the same discovery and to apologize for the delay.

On Monday, August 4, 1997, the DNC's delivered two boxes of documents from Richard Sullivan's files. The Committee estimates the total number of pages produced at 4,000. Committee staff quickly reviewed the documents, and discovered that the documents were among the most significant yet produced to the Committee. The documents included:

- Approximately 1,500 pages of Sullivan's handwritten notes, apparently taken during meetings or telephone conversations.<sup>9</sup>
- Sullivan's "Roger Tamraz" file.
- Sullivan's "Johnny Chung" file.
- Sullivan's "Mark Middleton" file.
- Sullivan's "Harold Ickes" file, which, among other things, included documents relating to possible fund-raising phone calls placed by the President and Vice President.
- Numerous call sheets prepared by the DNC for the First Lady.

The press was quick to pick up on the DNC's belated production of such highly relevant files concerning a major witness. In a front-page article in *The Washington Post* on August 8, 1997, entitled "Senate Panel Probes DNC Files Delay," reporter Bob Woodward quoted DNC Chairman Roy Romer as saying that the new Sullivan

<sup>8</sup>During the first day of Sullivan's deposition, he expressed concerns about his access to the documents that he left behind at the DNC. See Deposition of Richard Sullivan, June 4, 1997, pp. 13–27. At the same time, Sullivan's lawyer, Robert Bauer, expressed vague concerns to the Committee that the DNC had not produced all of Sullivan's documents to the Committee. In fact, Bauer later informed the Committee that, immediately following the second day of Sullivan's deposition, on June 5, 1997, he had spoken with Judah Best, a lawyer for the DNC, and advised Best that it appeared that the Committee had not received all of Sullivan's documents.

<sup>9</sup>Sullivan acknowledged during the first day of his deposition testimony that he "worked off a legal pad" during his day; however, he also testified that he "did not take copious notes of meetings." Deposition of Richard Sullivan, June 4, 1997, p. 10. Sullivan also testified that he "would keep the legal pads for a period of two to three weeks as they were relevant to what I was working on, and then generally would throw them away." *Id.* In the light of the subsequent production of 1,500 pages of Sullivan's handwritten notes, which represent only those notes responsive to the Committee's subpoena, Sullivan's candor is called into serious doubt.

material was discovered on July 30 by Paul DiNino, the new DNC finance director who had replaced Sullivan.<sup>10</sup> Woodward reported that he had interviewed DiNino, and that DiNino said that the new Sullivan documents were in a drawer in the only file cabinet in his office. Woodward's article continued:

Asked why he waited more than five months to look in the drawer, DiNino said there was a new push at the end of July to make sure all DNC files had been reviewed. "I hadn't looked in before . . . I don't like paper anyway, and I didn't need space for files. Richard [Sullivan] and I have different styles. Richard saved a lot of things. When he discovered the material July 30, DiNino said, he called DNC lawyers at once."<sup>11</sup>

The Committee investigated the delay in producing the Sullivan files. The testimony on this subject was contradictory,<sup>12</sup> which raises disturbing inferences, especially given the proximity of the depositions to the events in question.

*Joe Birkenstock's testimony*

The first witness to testify on this topic was Joseph Birkenstock, who was deposed on August 28, 1997. Birkenstock is a lawyer working for the DNC's Office of General Counsel, and he primarily handles document production issues relating to the various campaign finance investigations. He reports directly to Sandler.<sup>13</sup>

Birkenstock testified that he first became aware of the existence of the Sullivan files on Wednesday, July 30, 1997.<sup>14</sup> On that day, he overheard DiNino and Scott Freda, formerly Sullivan's administrative assistant and now the Finance Division's chief of staff, talking about "a certain group of documents that they seemed unfamiliar with and seemed not to know whose responsibility they would be to search . . ." <sup>15</sup> So, Birkenstock called Freda and offered to resolve the issue by having "somebody from the document group come over with a bunch of boxes. We would just box the documents up and take them with us and put them into the production process."<sup>16</sup> Obviously, Birkenstock thought the documents were relevant from the snippets of conversation he allegedly overheard. Indeed, if DiNino's testimony, discussed later, is to be credited,

<sup>10</sup> Bob Woodward, "Senate Probes DNC Files Delay", *The Washington Post*, Aug. 8, 1997, p. A14.

<sup>11</sup> *Id.*

<sup>12</sup> One day after the Woodward article, Marc Lacey and Alan Miller of *The Los Angeles Times* reported on their own interview with Paul DiNino. Marc Lacey & Alan Miller, "Delayed DNC Papers Irk Thompson," *The Los Angeles Times*, Aug. 8, 1997, p. A16. According to their report, DiNino said that he had "opened the drawers of the filing cabinet at some point after he first arrived at his DNC office on Feb. 20, and, in a cursory review, spotted brochure and other seemingly innocuous material." *Id.* The article continued:

"I opened the top drawer and it appeared to me to be very common items such as brochures," he said. "I opened another drawer that had legal pads with doodles on them."

DiNino said that when DNC officials recently urged staffers to search the premises again for papers sought under a Senate subpoena, he inspected the filing cabinet again on July 30 and discovered four boxes of relevant records.

*Id.* There are subtle inconsistencies between this account and that reported by Woodward.

<sup>13</sup> Deposition of Joseph M. Birkenstock, August 28, 1997, p. 8.

<sup>14</sup> *Id.* at p. 109.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at pp. 113-14.

DiNino was certainly aware of the relevance of the documents prior to discussing them with Freda.

When the documents were retrieved by personnel from the General Counsel's office, they filled four boxes—roughly 12,000 pages.<sup>17</sup> Two days later, Birkenstock realized the documents were Richard Sullivan's, and "alarms went off" in his head.<sup>18</sup>

Birkenstock was asked how these documents were overlooked earlier. He explained that, on the day that Sullivan was leaving the DNC, Birkenstock met with Sullivan in an office located about two doors down from Sullivan's office.<sup>19</sup> Sullivan was leaving about eight boxes of documents in the room.<sup>20</sup> Birkenstock testified that he thought the eight boxes comprised the entire universe of Sullivan's files:

I asked him if all of these documents—if this was all of the files he had at the DNC. As I recall his response—I guess you are aware of his characteristic way of speaking in which he would kind of being three—or a handful of phrases and then finish one of them. So, again, I don't recall the specific words that he used, but, in general, I recall his response being, "To the best of my—as far as I know—as far as I can—yes, these are all my files."<sup>21</sup>

Birkenstock re-affirmed that, "in general, what I am asking him was whether those were all of his files, and in general, I recall him responding that they were."<sup>22</sup>

*Richard Sullivan's testimony*

Sullivan's recollection differs significantly from Birkenstock's. Concerning the meeting they had on the day of Sullivan's departure, Sullivan testified as follows:

A: . . . I pointed out to him the boxes in which I assembled the documents from my office with the exception of the file cabinet and I pointed out the file cabinet to him.

\* \* \* \* \*

Q: Why did you point the file cabinet out to him?

A: Because I had moved everything else but the file cabinet, all the—a new finance director was coming in. So, I had moved everything out of my desk and on my desk and on a table that was in my office into another office. I did not move the file cabinet nor did I box—nor did I place in any boxes the contents of the file cabinet. So, I pointed to the boxes in one room and then pointed to the file cabinet in the other room.<sup>23</sup>

<sup>17</sup> See *Id.*

<sup>18</sup> *Id.* at pp. 114–15.

<sup>19</sup> *Id.* at p. 111.

<sup>20</sup> *Id.* at p. 112.

<sup>21</sup> *Id.* at p. 112–13.

<sup>22</sup> *Id.* at p. 113. Sandler testified that, when Sullivan departed the DNC, Sullivan "assembled a number of boxes which he represented to . . . Mr. Birkenstock constituted all of his files at the DNC." Deposition of Joseph E. Sandler, August 22, 1997, p. 100. Sandler said that the reason the file cabinet documents were not produced earlier was "that Mr. Sullivan didn't turn them over to Mr. Birkenstock when he left the DNC." *Id.* at p. 105.

<sup>23</sup> Deposition of Richard Sullivan, September 5, 1997, p. 215.

Sullivan repeated his claim that he pointed out the file cabinet to Birkenstock.<sup>24</sup>

*Paul DiNino's testimony*

Paul DiNino was deposed on September 16, 1997. He admitted to inspecting the file cabinet at least twice prior to July 30, 1997. He stated that he first opened the file cabinet sometime within a month or so of his arriving at the DNC on February 20, 1997.<sup>25</sup> He testified that he opened the file cabinet “[j]ust to see what was in there.”<sup>26</sup> According to DiNino, he opened two drawers of the four-drawer filing cabinet: the top drawer and the third drawer down.<sup>27</sup> In the top drawer, he saw “brochures,” and in the third drawer, he found “doodled legal pads.”<sup>28</sup> His concluding thought was, “It’s junk.”<sup>29</sup>

A few months later, DiNino testified that he “opened the same drawers and I saw the same thing and I closed it. Again, that time it was probably more out of boredom than of curiosity.”<sup>30</sup> DiNino was pressed concerning his explanation for why he opened the same two drawers of the filing cabinet that he had previously opened and found to be junk. His answers are hard to accept:

Q: Do you know why it would be that you, on at least two occasions, opened drawers one and three but never looked in drawers two and four?

A: I wish I had an answer for you. No, I don’t

Q: You said that through boredom or curiosity you looked in drawers one and three.

A: Mm-hmm.

Q: Curiosity never led you to two and four?

A: My curiosity was pretty much killed in one and three. There was nothing in there.<sup>31</sup>

<sup>24</sup>*Id.* at 216. Sullivan also testified that, in response to one of the DNC’s search memoranda for documents to respond to various subpoenas, he believed he may have referenced his file cabinet as a location for potentially responsive documents on a schedule that he, like other DNC employees, was to return to Joe Birkenstock. *Id.* at p. 218; *see also id.* at p. 216. (provided schedule to Birkenstock). The DNC has resisted production of that schedule, asserting that the schedule was protected from disclosure by the work product doctrine. On the strength of Sullivan’s testimony about the contents of the schedule, the Committee asserted that any work product protection was waived, and sought the schedule again from the DNC. The DNC produced the schedule on September 11, 1997. One could reasonably read the schedule as corroborating, in some respects, Sullivan’s testimony. Among other things, the “Johnny Chung” file which was in the file cabinet of documents belatedly produced to the Committee, appears to be referenced in that schedule (the schedule describes a responsive document as “Johnny Chung Luncheon List”). Its location is described as “File.” Although the reference is not as clear as the phrase “File Cabinet,” it is similar. Memorandum from Richard Sullivan to Joe Birkenstock, December 19, 1996, p. 2 (Ex. 3).

Further buttressing the probability that Sullivan’s account is truthful is that Sullivan told the Committee about his file cabinet on the first day of his deposition. *See* Deposition of Richard Sullivan, June 4, 1997, p. 12. If Sullivan were attempting to conceal the existence of these files, this would be odd. Moreover, given Sullivan’s reference to his file cabinet in the deposition on June 4 (in which a lawyer representing the DNC was present), and given that Sullivan’s lawyer informed a DNC lawyer on June 5 that he believed that the Committee may not have received all of Sullivan’s responsive documents, *see supra* note 8, it is difficult to comprehend that DNC’s continued “oversight” of Sullivan’s file cabinet.

<sup>25</sup> Deposition of Paul DiNino, September 16, 1997, pp. 22–23.

<sup>26</sup>*Id.* at p. 23.

<sup>27</sup>*Id.* The file cabinet had four drawers, and DiNino testified that it stood about four or four and a half feet tall. *Id.* at p. 11.

<sup>28</sup>*Id.* at p. 23.

<sup>29</sup>*Id.*

<sup>30</sup>*Id.* at p. 26.

<sup>31</sup>*Id.* at pp. 29–30.

When even more questions were asked on this topic, it turns that DiNino did have an answer for the Committee about why he opened only drawers one and three:

Q: I guess my question would be I'm curious and maybe you can clarify why on a repeated number of occasions you'd looked through drawers one and three and not looked in drawers two and four.

A: Again, that's a good question. *The first drawer is at eye level. The third drawer is at the level my hand is. I ask myself the same question.*

Q: Okay, Now, the second time you looked at the drawers you said you were also bored or curious?

A: I'm a pacer. I opened the same drawers. They were at eye level and they were at the same level as my hand.

Q: I guess the point I don't understand is if you've looked at drawers one and three and you're curious, wouldn't you be looking in two and four?

A: If my curiosity was organized, I would have done that. I didn't. Had I, this would have been taken care of a long time ago.<sup>32</sup>

The Committee finds this explanation—that drawer one was at eye level and drawer three was at hand level—preposterous. The file cabinet stood four and a half feet tall. DiNino was a man of normal height. Four feet tall is not eye level, and, more important, drawer three (which is the second drawer up from the floor) would have been far from hand level. Anyone reading DiNino's testimony in the presence of a four-drawer filing cabinet would find his explanation incredible.

Be that as it may, DiNino testified under oath that he did not open drawer two until July 30.<sup>33</sup> He testified that he never opened the bottom drawer, drawer four.<sup>34</sup> The reason he re-investigated the file cabinet was that, at a senior staff meeting on Tuesday, July 29, "it was announced that a woman on staff would be going around to every filing cabinet, assigning each filing cabinet a number, and whoever's area that filing cabinet or box or whatever was in, they were responsible to have that filing cabinet searched."<sup>35</sup> This was part of "a final push at the DNC to get all the documents that complied with the subpoena" by Friday, August 1, 1997.<sup>36</sup> DiNino further testified that, when "the filing cabinets were numbered, I asked my assistant . . . if she would search the filing cabinet. And before I asked her to do that I wanted to make absolutely sure that there was nothing in there that she would stumble upon, so I investigated first."<sup>37</sup> When he opened drawer two, he discov-

<sup>32</sup> *Id.* at pp. 33–35 (emphasis added).

<sup>33</sup> *Id.* at pp. 9–12; 35–36.

<sup>34</sup> *Id.* at pp. 12, 29.

<sup>35</sup> *Id.* at p. 27.

<sup>36</sup> *Id.* Recall that the DNC did not require its employees to complete their search of their files to respond to the Committee's subpoena until July 31, 1997. See *supra*, note 5 and accompanying text.

<sup>37</sup> DiNino Deposition at pp. 35–36. This testimony is internally inconsistent: on the one hand, DiNino asserts that he asked his assistant if she would search the file cabinet; on the other hand, he asserts that *before* asking her to do so, he first investigated the file cabinets and discovered the Sullivan documents. Obviously, this discovery—and DiNino's alleged instruction to Freda to handle the documents—eliminated the need for asking his assistant to search the file.

Continued

ered three documents that “complied with the document search that we were finishing up.”<sup>38</sup>

DiNino then called Freda into his office, and asked Freda to take care of the documents.<sup>39</sup> Originally, DiNino did not remember any further discussion on that day with Freda concerning the documents.<sup>40</sup> Later, DiNino testified that, after he called Freda into his office to take care of the documents, Freda came back and said he had spoken with Joe Sandler, and that the documents would be taken care of.<sup>41</sup>

DiNino’s recollection of events in this regard could be at odds with Birkenstock’s. If DiNino called Freda into his office, it seems less likely that Birkenstock would have overheard Freda and DiNino conversing regarding the file cabinet. Moreover, DiNino does not seem to recall the conversation with Freda as one concerning who would be responsible for searching the newly discovered files, which seemed to be Birkenstock’s recollection of the nature of the conversation between Freda and DiNino.<sup>42</sup>

Paul DiNino resigned from the DNC within days of his deposition.<sup>43</sup>

### *Conclusion*

The testimony concerning the belated production of documents from Richard Sullivan’s file cabinet is largely incredible. The many unanswered questions and contradictions require further exploration, because they raise the possibility that some individual or group within the DNC or acting on its behalf may have acted intentionally to withhold these documents from the Committee. If that is the case, a crime may have been committed; the intentional withholding of documents from a Congressional committee constitutes obstruction of Congress.<sup>44</sup> The Committee thus urges the Justice Department to investigate.

### THE AUGUST 29, 1997 ORDER

Given the DNC’s pattern of noncooperation, obstruction, and delay, Chairman Thompson issued an order on August 29, 1997. Among other things, the order required that the DNC produce all documents responsive to the Committee’s April 9, 1997 subpoena by September 3, 1997. After recounting examples of the DNC’s tactics in responding to the Committee’s subpoena, the Chairman specifically determined that the “DNC . . . willfully refused to comply

*See infra*, note 39 and accompanying text. Nevertheless, DiNino testified that he asked his assistant to search the file cabinet.

<sup>38</sup>*Id.* at p. 9; *see also id.* at pp. 11–12, 35–36.

<sup>39</sup>*Id.* at p. 9.

<sup>40</sup>*Id.* at pp. 15–16.

<sup>41</sup>*Id.* at pp. 31.

<sup>42</sup>The Committee sought to re-depose Freda and DiNino to try to sort out some of these contradictions. Counsel for Freda and counsel for DiNino each informed the Committee that their clients would not appear for a deposition without a formal subpoena. Just before the Committee requested that Freda and DiNino appear and testify voluntarily, the Committee had reached an understanding that no additional subpoenas for depositions would be issued. Apparently, the minority advised the lawyers for DiNino and Freda of the understanding, resulting in DiNino’s and Freda’s unavailability (both had appeared voluntarily for depositions earlier—Freda before the discovery of the file cabinet—when the Committee was routinely issuing subpoenas).

<sup>43</sup>*See* Brian McGrory, “Democrats Name Finance Director,” *Boston Globe*, Sept. 23, 1997, p. A4.

<sup>44</sup>*See* 18 U.S.C. §§ 1501, 1505.



with the lawful subpoena the Committee issued on April 9, 1997. . . .”<sup>45</sup>

The DNC simply ignored the order, and sought yet another meeting with the Committee to discuss document production issues. The meeting was held on September 4, and was attended by Chairman Thompson, Committee staff, DNC Chairman Roy Romer, and DNC in-house and outside counsel.<sup>46</sup>

In the course of this September 4 meeting, which largely consisted of the DNC’s assertions that it was doing everything that it could to respond to the Committee subpoena and could not comply with the August 29, 1997 order, a repeated topic of conversation between the Committee staff and the DNC’s lawyers was revisited: Why had the Committee received virtually no electronic mail (“e-mail”) from the DNC?<sup>47</sup>

The DNC explained—for the first time—that a computer system crash in March 1996 made all e-mail prior to that date unrecoverable. Moreover, the DNC further represented—for the first time—that no e-mail from March 1996 to November 1996 could be recovered unless the receiver failed to open a message. In sum, virtually no DNC e-mail could be recovered prior to the 1996 election. The loss of almost all e-mails from March 1996-November 1996 occurred, according to the DNC, because the DNC e-mail system, in the course of “backing-up,” was overwriting on back-ups of previous e-mails, thereby erasing them.

According to Jack Young, of the staff of the DNC’s Office of General Counsel, who attended the September 4, 1996 meeting, the DNC determined only during the first week of September that most e-mail for the period March 1996-November 1996 was not available. This late discovery suggests that the DNC was not looking for e-mail requested by the Committee until then—underscoring that the DNC never intended to comply with the Committee’s subpoena’s return date, or even the DNC’s self-imposed July 31 deadline.<sup>48</sup>

*The DNC produces 15 boxes as the committee closes the investigation*

On December 23, 1997, two days before Christmas and roughly a week before the Committee’s deadline for concluding its inves-

<sup>45</sup> August 29, 1997 Order (Ex. 4).

<sup>46</sup> In the meantime, the DNC’s pattern of obstructionism and gamesmanship continued. On Friday, September 5, 1997, the DNC produced approximately 20,000 documents gathered from the personnel within the “Office of the Chairman.” Former DNC National Chairman Don Fowler was then scheduled to testify only four days later, on Tuesday, September 9, 1997, when he did, in fact, testify. Documents from the Friday afternoon production were used at the public hearings the following Tuesday, but would have been more useful had they been produced in a timely manner, such as before Fowler’s May 21, 1997 deposition.

Additional evidence of DNC obstructionism concerns DNC General Chairman Christopher Dodd. The DNC did not produce files relating to him until October 31, 1997, after Chairman Thompson had announced earlier that day that the hearings were being recessed subject to the call of the chair.

<sup>47</sup> The Committee believed that DNC e-mail might be a fruitful area for discovery, because users are often extremely candid in their e-mail messages.

<sup>48</sup> The date of the DNC’s discovery that e-mail from March 1996 to November 1996 was not generally recoverable was provided to the Committee only after repeated letters and phone calls to Young in the wake of the September 4 meeting. Young was asked three times during the September 4 meeting to explain precisely when the DNC learned that much of the e-mail could not be produced; indeed, both Chairman Thompson and Governor Romer asked the question directly. No answer was given in that meeting.

tigation, the DNC produced 15 boxes of documents.<sup>49</sup> Because the investigation was ending on December 31, most of the staff had left or were in the process of leaving. Because the few remaining staff were drafting the Committee's final report (which was due by the end of January 1998), the Committee could not and has not reviewed the documents in the 15 boxes. Thus, the Committee cannot ascertain whether the December 23, 1997 production, like the belated production of Richard Sullivan's files, contains documents that would have been significant to the investigation. The Committee can state, however, that the December 23 production is emblematic of the DNC's dilatory and obstructionist tactics.

The DNC's response to the Committee's subpoena was rife with gamesmanship, hindrance, and obstruction. Engaging in such practices no doubt consumed much of the DNC's treasury, a fact that, ironically, the DNC has used to impugn investigations of its fund-raising practices.<sup>50</sup> The DNC also trumpets the raw numbers of documents produced—but the manner of their production undercuts any claim they might make of full cooperation and good faith.<sup>51</sup> In short, one of this country's major political parties deliberately hindered the Committee in fulfilling the Senate's constitutional role for oversight and investigation, a sad event for the American public.

Sadder still is that the DNC was aided and abetted by an unreasonable deadline imposed on the Committee's investigation. The Committee concludes that no successful investigation involving unwilling parties may be undertaken with an unreasonable short-term cutoff date. No future investigatory committee should labor with such a burden. The realistic treat of seeking judicial enforce-

<sup>49</sup> A box holds approximately 3,000 pages of documents. Most of the boxes were at least two-thirds full, which means that the December 23 production contained approximately 30,000 to 45,000 documents. conclusion

<sup>50</sup> Peter Kadzik, one of the DNC's attorneys, complained on the Cable News Network that, "I think that there is a strategy here to use the investigations to cripple the [DNC] and to benefit the Republican Party for the upcoming 1998 elections, and we're certainly not going to participate in that kind of a scheme." *Inside Politics*, CNN, December 12, 1997. Even the President has voiced this accusation, urging that the investigations are "obviously part of a strategy" to hobble Democrats, and complaining, "I've worked very hard this year to try to keep it [the strategy] from bankrupting the party." Jeanne Cummings, "From one Angle or Another, Half the Committees in House Plan to Probe Democrats' Fund Raising," *The Wall Street Journal*, December 24, 1997, p. A12.

Much of the President's "hard" fund-raising work could have been avoided if the DNC had been more forthcoming in responding to the Committee's subpoena. The DNC could have easily gathered and copied responsive documents and forwarded them to the Committee at modest expense. Instead, the DNC and its principal outside law firm, Debevoise & Plimpton, opted to pursue the expensive strategy of managing the document production to obstruct and run out the clock on this investigation. The Committee cannot estimate the legal fees consumed by Debevoise & Plimpton lawyers, who were constantly negotiating (in person, over the phone, and in letters) with the Committee over document production issues, re-reviewing documents already produced to the other governmental entities, *see supra* (discussing late June through early July production of 55 boxes previously produced to other governmental entities), and fighting losing battles over asserted "common interest" privileges. *See* the section of this report on fund-raising phone calls. Had the DNC and Debevoise & Plimpton been forthcoming and responsive to the Committee's subpoena, the DNC would have saved substantial resources.

<sup>51</sup> In fact, the raw number of documents produced does not correlate in any way to a party's good faith. Lawyers refer to document productions in which boxes upon boxes of trivial, arguably non-responsive documents are produced (interspersed with significant, responsive documents) as a "boxcar" production—as in handing over a "boxcar" of documents and letting the other party sift through the documents in search of the important, relevant documents. The DNC's approach has been consistent with this technique, and it has excused every oversight and delay by boasting about the number of documents it has produced—and complaining about the expense of photocopying so many documents. The December 31, 1997 investigative deadline encouraged the use of this production tactic, because the DNC could easily calculate that it is difficult to find a needle in a haystack in a limited period of time.

ment of Senate subpoenas must be present to coerce compliance from those—such as the DNC in this investigation—who will not voluntarily cooperate.

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CAMPAIGN FINANCE REFORM ISSUES BROUGHT TO THE FOREFRONT  
BY THE SPECIAL INVESTIGATION

I. INTRODUCTION

On March 11, 1997, the Senate passed Senate Resolution 39 empowering the Senate Governmental Affairs Committee to investigate “illegal and improper” activities that arose during the 1996 federal elections. While the Senate Governmental Affairs Committee does not have jurisdiction over campaign finance reform legislation, one of its oversight responsibilities encompasses operation of the current federal campaign finance system. Therefore, it is the Governmental Affairs Committee’s obligation, to report our findings to the Senate committee with legislative authority in this area, the Senate Rules Committee. Included in this section of the report are examples of violations of the campaign finance laws that were revealed by our investigation, as well as findings of improper federal campaign activity. These findings should be taken into consideration in any Senate evaluation of federal campaign finance system reform.

As a result of the Governmental Affairs Committee investigation into illegal and improper federal campaign activity during the 1996 federal election two things are abundantly clear. First, there is no doubt that a wide range of activity undertaken by the Clinton/Gore ’96 Re-election Campaign Committee, the Democratic National Committee, the AFL–CIO, various non-profit organizations, and a variety of other individuals either explicitly violated the Federal Election Campaign Act (the “FECA”), or violated the spirit of the FECA. Second, the never ending quest by those involved in the campaign process to use any vagaries of the law to their own advantage, and the resulting legal uncertainties based upon twenty years of the courts’ and the FEC’s stressing and straining to provide coherent interpretations of the FECA, have made it timely and appropriate for Congress to consider revisions to the existing law.

In the 1996 election President Clinton decided to accept federal campaign funding in return for an agreement to cap spending, but he nevertheless coordinated with the DNC on expenditures of soft money above that cap to broadcast thinly disguised issue advertisements meant to advocate his election. Due to such activity the federal campaign finance system virtually collapsed. When the FECA was passed in the early 1970s, no member of Congress could have foreseen some of the developments that will be discussed in this section of the report: the distinction between “hard” and “soft” money; the use of “issue advocacy” to advance the election of specific candidates; the total direction and control that a presidential candidate would come to assert over national and state party committee expenditures; the explosive growth in the cost of running for office and placing television campaign advertisements; and how the

creation of an untested independent regulatory agency structure to oversee the FECA would impact the law. As a result of the Committee's investigation and examination of various illegalities and improprieties during the 1996 federal elections, it appears that it may be time to re-evaluate the effectiveness of the campaign finance system as it exists today.

It must first be recognized that the regulation of federal campaigns today is not carried out under the comprehensive scheme anticipated by Congress when it enacted the FECA. As Thomas Mann, Director of Government Studies at the Brookings Institute testified, "the 1974 law worked pretty well at the Presidential level, but because the Court intervened [to] cut off pieces of the law on free speech grounds, the Congressional system was really never in play."<sup>1</sup> During testimony before the Committee, Professor Burt Neuborne, Legal Director of the Brennan Center for Justice at New York University School of Law, asserted that the current system "is the worst of all possible worlds" because it has "emerged as a judicial mutant."<sup>2</sup> Although Congress originally devised and enacted a comprehensive statute, the provisions of which were intended to interact through checks and balances, over time various legal interpretations issued by the courts and the Federal Election Commission ("FEC") produced a system quite different from the one Congress enacted.

The law now in place had its genesis in the Federal Election Campaign Act of 1971, together with the 1971 Revenue Act. The FECA, effective April 7, 1972, not only required full reporting of campaign contributions and expenditures, but also limited spending on media advertisements. These limits on media advertisements were later repealed. The FECA incorporated an explicit ban on foreign contributions that had been enacted in 1966. The FECA continued the long standing ban on direct contributions by corporations (first enacted in the 1907 Tillman Act) and a similar ban imposed on unions (part of the Taft-Hartley Act of 1947), but at the same time established the basic legislative framework for separate segregated funds, popularly referred to as PACs (political action committees). Thus, the FECA provided corporations and unions a previously unavailable opportunity to participate in federal elections through PACs, but limited that opportunity only to PAC involvement. The sole use of corporate and union general treasury funds allowed under the FECA was for the PAC's establishment, operation and solicitation of *voluntary* contributions. It is these voluntary donations that in turn are contributed to Federal races. Under the 1971 Revenue Act—the first of a series of laws implementing Federal financing of Presidential elections—citizens could check a box on their tax forms authorizing the Federal government to use one of their tax dollars to finance Presidential campaigns in the general election.

It was not until passage of the 1974 amendments to the FECA, however, that Congress created a comprehensive structure regulating the financing of federal political campaigns. This system incorporated a number of features from the regulatory past—the ban on

<sup>1</sup> Testimony of Thomas E. Mann, September 23, 1997, p. 64.

<sup>2</sup> Neuborne Prepared Testimony submitted to the Governmental Affairs Committee.



union, corporate and foreign contributions, for example—and it strengthened the reporting requirements while creating the Federal Election Commission to enforce and administer the legislation. The FEC was given jurisdiction in civil enforcement matters, authority to write regulations and responsibility for monitoring compliance with the FECA.

The new post-1974 FECA was primarily a structure of limitations on the movement of money and a venture into public funding of presidential politics. The 1974 legislation imposed a variety of limitations on contributions. Individuals were limited to contributions of \$1,000 per candidate per election, and to a total calendar-year contribution cap of \$25,000, of which \$20,000 could go to national party committees. PACs and party committees could contribute no more than \$5,000 per election to a candidate, except for the major party senatorial committees that were allowed to contribute \$17,500 to each party senatorial candidate. Expenditure limits were also put in place, but all of them except those limiting expenditures by party committees were eventually struck down by the courts.<sup>3</sup>

Based on the law as modified by the courts, the Governmental Affairs Committee made an initial examination of illegal and improper activities carried out during the 1996 federal elections. In late September, 1997 the Committee reflected on its investigatory findings to that point by holding four days of hearings on the statutory flaws and omissions that campaign finance experts maintained allowed or encouraged the very activities under Committee review. During these four days of hearings the Committee made a deliberate attempt to gain insight from a broad range of experts representing truly diverse viewpoints toward federal campaign finance regulation. As part of the discussion of campaign finance statutory shortcomings, the Committee examined proposed legislative action advocated to prevent future illegalities and improprieties. The various experts who testified advocated everything from replacement of the current federal campaign finance system's reliance on contribution limits and prohibitions with an open market system relying solely on disclosure<sup>4</sup> to a highly regulated system involving a full public financing option.<sup>5</sup>

As a result of these four days of testimony, in addition to knowledge gained through the overall investigation, the Committee identified several issues as particularly problematic in the current statutory scheme regulating federal campaigns in the United States. Issues that seem particularly salient and partly responsible for the widespread abuses in the 1996 federal elections include the following: failure to properly vet large contributions; the use of soft money to circumvent restrictions in the law; the conflict between First Amendment guarantees of free speech and campaign spending limitations; campaign spending by non-profits; the potential to undermine the current campaign system through coordination between entities; the use of union members' dues in political cam-

<sup>3</sup>*Buckley v. Valeo*, 424 U.S. 1, 39–59. The Court emphasized that the interest in “equalizing the relative financial resources of candidates” was not sufficient to justify the First Amendment infringement imposed by expenditure ceilings.

<sup>4</sup>Testimony of Leo Troy, Sept. 24, 1997, p. 171.

<sup>5</sup>Testimony of Ellen Miller, Sept. 24, 1997, p. 188.

paings; as well as a variety of structural problems related to administration of the current system. The problem areas examined by the Committee for possible reform are highlighted below. This review is not intended to advocate or criticize any particular reform, but rather it is designed to ensure that the results of this investigation are considered whenever Congress undertakes reform of the FECA.

## II. SOFT MONEY

Much of the testimony the Committee heard involved “soft money,” as opposed to “hard” money which is raised within the prohibitions and limitations of the FECA. “Soft” money is raised and spent in the political process outside of the FECA prohibitions and limitations. As a result of the evolutionary process discussed in this section, national party committees now raise and spend “soft” money received from corporations, unions and individuals in unlimited amounts. This money is in turn spent by national and state political party committees. In certain instances outlined below, national party committees allocate specific expenditures between soft and hard money according to predetermined ratios established by the FEC to reflect the percentage of impact such expenditures are estimated to have on federal versus other elections. According to testimony before the Committee, \$265 million in such soft money funds entered national party committee coffers for uses related to the 1996 federal elections.<sup>6</sup> In addition to the corporate and union sources, much of this money was made up of unlimited individual contributions from those who had otherwise given the maximum amount permitted to given political committees under the FECA limits.

Soft money has also grown to mean money spent directly by corporations, unions, non-profits or individuals to impact specific elections through the discussion of issues, but which avoids the *Buckley* Court’s “magic words” of express advocacy<sup>7</sup> on behalf or in opposition to an identifiable federal candidate. Such funds, according to current regulation, whether expended by party committees, unions, corporations, or other entities, are supposed to be expended only on “get-out-the-vote” campaigns and other non-candidate specific activities.

This is an area of the law where vagueness, court interpretations, and FEC guidance have encouraged those active in campaigns to avoid the restrictions of the system in a manner that the authors of the FECA could not have possibly foreseen. As a result of the demand for campaign funds, some believe that the limits established by federal law have been rendered meaningless. Some like Professor Burt Neuborne argue “soft money is nothing more than a campaign contribution. It is a contribution by a person to a political party with the funds to be used in some sense in connection with a campaign.”<sup>8</sup>

<sup>6</sup>Testimony of Burt Neuborne, Sept. 25, 1997, p.129 and A. Corrado, T. Mann, D. Ortiz, T. Potter and F. Souraf [HEREINAFTER Corrado], *Campaign Finance Reform A Sourcebook*, 167 (1997).

<sup>7</sup>See discussion of Advocacy Standards below.

<sup>8</sup> Neuborne testimony, p. 130.

### A. Background of soft money

The alleged abuses of the soft money stem from two provisions of the current FECA, and court interpretations of those provisions over the past twenty years. First, party committees are limited in the amount of money they are allowed to spend on behalf of their individual candidates.<sup>9</sup> These coordinated “hard” money accounts must consist of contributions from non-prohibited sources (no union, corporate or foreign money),<sup>10</sup> and be within the \$20,000 limit placed on individual contributions to party committees.<sup>11</sup> Disbursements from these accounts are called “coordinated expenditures” because they can be made in direct coordination with a candidate’s campaign. (They are also known as 441a(d) monies, since this is the section of Title 2 of the United States Code that authorizes such spending.) Given that the FECA indexes these coordinated amounts for inflation, by 1996 they were roughly three times their original level: National party committees could spend \$12 million on behalf of a presidential candidate, or \$30,910 for a House candidate (\$61,820 in a single-district state), and from \$61,820 in the smallest states, to \$1.4 million in California on behalf of a Senate candidate.<sup>12</sup>

Prior to the 1996 election, it was presumed that the full amount of party expenditures on any broadcast advertisements placed to assist a party’s candidate would necessarily be paid for with hard dollars from such coordinated hard dollar accounts.<sup>13</sup> As a result of the Supreme Court’s decision in *Colorado Republican Federal Campaign Committee v. FEC*, (*Colorado Republican*), 116 S. Ct. 2309 (1996), the last federal election also saw the advent of party committee independent expenditures made on behalf of non-presidential federal candidates. Thus, for the first time since the passage of the FECA, party committees were allowed to expend unlimited *hard* money to expressly advocate the election or defeat of clearly identified federal candidates and not count those expenditures against their 441a(d) limits, so long as those expenditures were not made in express coordination with a candidate in the particular race.

The various uses of soft money in 1996 are a culmination of a long evolutionary process. In amendments to the FECA passed by Congress in 1979 to encourage grass-roots participation, greater leeway was given to party organizations to spend federal funds (hard money) with respect to election-related activity. As a result of these amendments party organizations could spend unlimited amounts of hard money on voter registration and identification, certain types of campaign material, and voter turnout programs. Although these 1979 Amendments authorized a circumscribed realm of unlimited party expenditures, they did not sanction unlimited spending by party committees of unregulated (soft money) on activities designed to assist a particular candidate for federal office. The latter activity came into vogue as a result of FEC interpreta-

<sup>9</sup> 2 U.S.C. § 441a(d).

<sup>10</sup> 2 U.S.C. §§ 441b(a) & 441e.

<sup>11</sup> 2 U.S.C. § 441a(a)(1)(C).

<sup>12</sup> 2 U.S.C. § 441a(d) and 1996 Coordinated Party Expenditure Limits, 22 Federal Election Commission Record 14 (April, 1996).

<sup>13</sup> See the discussion below of changes wrought by FEC Advisory Opinion 1995–25, Fed. Elec. tion Camp. Fin. Guide (CCH) ¶ 6162 at 12,109 (August 24, 1995).

tions of the FECA. In Advisory Opinion 1978–10 the FEC declared that the Kansas Republican State Committee could use corporate and union money to finance a share of their voter drives, so long as it allocated its costs to reflect the federal and nonfederal shares of any costs incurred.<sup>14</sup> They did this because in Kansas, as in many states, the use of corporate and union money in state elections is permissible. By direct analogy, national party committees have since been allowed to split the costs of such grassroots “state based” activity between soft and hard money elements. The practice grew because federal and state committees are largely allowed to transfer funds without restriction.<sup>15</sup> The practice also grew despite the eventual acknowledgment by the courts that such grassroots activity directly impacted federal elections.<sup>16</sup>

Thus, just as Congress was allowing party organizations to spend unlimited amounts of money raised under federal rules on voter programs and other activities, the FEC allowed them to pay a share of such costs with funds not subject to federal limits.<sup>17</sup> As a result of this evolution, national party committees could now spend ever greater amounts of soft money, and the quest was on to find a way to spend this money outside of the system to directly benefit federal candidates.

As an outgrowth of Common Cause court action against the it,<sup>18</sup> the Federal Election Commission finally issued new soft money regulations that took effect on January 1, 1991. Under these rules, all party committees raising and spending soft money in conjunction with federal elections must file regular disclosure reports of their contributions and disbursements with the FEC. These reports must identify any contributors to national party committees who give more than \$200 to soft money accounts or party building-fund accounts.

Most importantly the new regulations established specific allocation formulas for the use of soft and hard money. These rules require national party committees to pay for 65% of all their overall “generic voter drive” costs made in a presidential election year out of “hard dollar” accounts (60% must come from hard dollars in non-presidential election years). Thus, 35% of the money spent on generic activity during a presidential election year (40% in non-presidential election years) may come from money raised outside the limits and prohibitions of the Federal Election Campaign Act.<sup>19</sup> As a result of these new regulations, the public learned in 1992 that the major party committees raised more than \$83 million in soft money, or about four times the amount of soft money estimated to have been spent by party committees in 1984. In the 1996 cycle the explosion in soft money continued. Soft money receipts at the Republican national party committees increased by 178% over 1992 to \$138.2 million, while Democratic party committee receipt of soft

<sup>14</sup> FEC Advisory Op. 1978–10, Fed. Election Camp. Fin. Guide (CCH) ¶ 5340 at 10,335 (August 29, 1978).

<sup>15</sup> 2 U.S.C. § 441a(a)(4).

<sup>16</sup> See *Common Cause v. Federal Election Commission*, 692 F. Supp. 1391 (D.D.C. 1987) and *Common Cause v. Federal Election Commission*, 692 F. Supp. 1397 (D.D.C. 1988).

<sup>17</sup> FEC Advisory Op. 1978–10, Fed. Election Camp. Fin. Guide (CCH) ¶ 5340 at 10,335 (August 29, 1978).

<sup>18</sup> See *Common Cause v. Federal Election Commission*, 692 F. Supp. 1391 (D.D.C. 1987) and *Common Cause v. Federal Election Commission*, 692 F. Supp. 1397 (D.D.C. 1988).

<sup>19</sup> 11 C.F.R. § 106.5(b).

money increased 242% over 1992 levels to \$123.9 million.<sup>20</sup> Due to such disclosure we now know the extent and potential impact of party committee soft money in the federal political process. No such disclosure exists for direct corporate, or large individual soft money expenditures on “issue advertisements.”

The latest, and perhaps the most significant event, contributing to the current questionable use of soft money for issue advocacy advertisements was the FEC’s issuance of Advisory Opinion 1995–25.<sup>21</sup> In Advisory Opinion 1995–25 the FEC ruled that party issue advertisements relating solely to congressional legislative proposals would have to be paid for by a mixture of hard and soft money, even if they did not expressly advocate the election or defeat of any identifiable federal candidate. The FEC ruled that such party issue advertisements must be paid for by using 60% (1995 was a non-presidential election year) hard money. The FEC reasoned that because of the very nature of a national party committee, it would not make any generic expenditures that did not in some way benefit federal election candidates.

#### *B. Problems arising from soft money*

As outlined above, soft money can be spent directly by a national party committee for a portion of its state based generic party building and issue advocacy, or transferred to the various affiliated state party committees for similar activity. Under no circumstances can soft money be utilized to advocate the election or defeat of a clearly identifiable federal candidate (i.e. express advocacy). The statute, FEC application of the law, and court opinions make clear that party committees in particular are further prohibited from spending soft money on any kind of electioneering message. As defined by the FEC, “electioneering messages” are statements “designed to urge the public to elect a certain candidate or party.”<sup>22</sup> The electioneering message standard is discussed in greater detail in the advocacy section of this report.

As described in further detail in the coordination section below, the Clinton/Gore ’96 campaign devised a way to circumvent the DNC’s 441a(d) coordinated expenditure limit and, in violation of the FECA, illegally utilize approximately \$44 million in national committee soft money to their candidate’s advantage through electioneering messages that they claim to be pure issue advertisements. These advertisements carefully avoided expressly advocating the election of President Clinton, but these party committee expenditures were clearly made for the purpose of influencing the Presidential election. This election influencing purpose has been acknowledged by those who worked directly with President Clinton on them, including Dick Morris<sup>23</sup> and Leon Panetta.<sup>24</sup>

It is established practice that national party committees and state party committees work in tandem when spending for federal,

<sup>20</sup> Corrado, *Campaign Finance Reform A Sourcebook*, 175 (1997).

<sup>21</sup> FEC Advisory Op. 1995–25, Fed. Election Camp. Fin. Guide (CCH) ¶ 6162 at 12,109 (August 24, 1995).

<sup>22</sup> FEC Advisory Op. 1985–14, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5819, at 11,185–11,186 (May 30, 1985).

<sup>23</sup> Deposition of Dick Morris, August 20, 1997, pp. 274 & 345. See also the section of this report on *The Thirst for Money*.

<sup>24</sup> *Meet the Press* (NBC television broadcast, March 9, 1997).

state and local elections. Given that state party committees may spend the same coordinated amounts as the national party organizations in House and Senate races, “agency agreements” have gained popularity. In those states or districts where a state party lacks adequate funding to meet the coordinated spending limit, and a national party committee, usually a congressional or senatorial campaign committee, considers a race strategically important, the state and national party committees form an “agency agreement” that transfers the state party’s spending quota to the national committee. With national party committees now able to spend soft money on an expanding array of things that they formerly paid for with hard money,<sup>25</sup> “agency agreements” have become increasingly common because national party committees have larger reserves of hard money to maximize potential coordinated expenditures on express advocacy in tight contests.

In addition to agency agreements, the DNC deftly utilized state party committees in 1996 as a conduit to further increase their illegal expenditure of soft money on electioneering messages favoring the re-election of President Clinton, all the time claiming such advertisements consisted of pure issue advocacy outside of the realm of the FECA. Such manipulation of the current FECA for party committee advantage results from the regulatory distinction establishing different hard to soft expenditure ratios for state party committees and national party committees.<sup>26</sup> The FEC lacks jurisdiction to regulate any state party committee spending outside that made on behalf of federal candidates. Therefore, FEC guidelines leniently allow general state party expenditures that have an incidental federal election impact to be allocated over a two year election cycle using the ratio of federal to nonfederal candidates on that State’s November ballot. For example, in a state where the ballot includes candidates for two types of federal races—say, presidential and congressional—and candidates for eight nonfederal offices, the state party could pay for 80% of the generic activities with soft dollars. Given that hard dollars (raised in \$1,000 increments from FECA non-prohibited sources) are significantly more difficult to raise, the distinction described above creates an incentive to have the state party pay for as many activities as possible using soft money. To take advantage of the current system, national party committees have begun transferring soft money to state party committees to utilize the various states’ higher soft money allowance. Substantial amounts of such transfers are made to state and local political parties for “generic voter activities” that in fact ultimately benefit federal candidates because the funds for all practical purposes remain under the control of the national committees. The use of such soft money thus allows more corporate, union treasury, and large contributions from wealthy individuals into the system.

Despite disclosure regulations for the national party soft money accounts, monies raised and spent by state and local committees that claim to be unrelated to federal election express advocacy do not have to be reported to the FEC (but they are often reported at

<sup>25</sup> Witness the broadcast issue advertisements that appeared as a result of FEC Advisory Op. 1995-25, Fed. Election Camp. Fin. Guide (CCH) ¶ 6162 at 12,109 (August 24, 1995).

<sup>26</sup> Testimony of Anthony Corrado, September 25, 1997, p. 7.

the state level). Of course, transfers to the state party committees from the national party committees are reported as expenditures on the national party committee FEC filings. Disclosure reports required to be filed at the state level by state party committees are often inadequate to fully disclose the ultimate use of such transferred funds.<sup>27</sup>

In the crucial 1995 pre-election year, according to FEC reports, the DNC transferred almost \$11.4 million in soft money to state parties, followed by another \$6.4 million in the first quarter of 1996. In sharp contrast, the RNC shifted a little over \$2.4 million to the states from January 1, 1995 to February 29, 1996. Ultimately the DNC quietly transferred at least \$32 million,<sup>28</sup> and perhaps as much as \$64 million,<sup>29</sup> to state Democratic party committees in the 1996 cycle. This transfer of funds allowed state party committees to utilize a higher proportion of the national party committee's soft money in areas impacting federal elections than if the national party committee had made the expenditures directly. The DNC on its own would have had to purchase the very same air time under the much tighter federal allocation guidelines requiring a higher percentage of hard dollars.

Recent history is replete with evidence that these different state and national allocation formulas are being utilized to circumvent the FECA. In October 1990, the DNC accepted a \$230,000 contribution in soft money from Louisville, Kentucky newspaper publishing heiress Mary C. Bingham. Shortly thereafter, the DNC transferred \$215,000 to the Kentucky Democratic Party, which in turn paid for an advertising blitz that closely paralleled the themes that Bingham's favored candidate used in campaigning for the U.S. Senate.<sup>30</sup> In the Spring of 1995 the Pennsylvania Democratic Party was \$200,000 in debt, but after receiving \$2.8 million from the DNC it used approximately \$2.7 of the funds to pay for television spots created by DNC media consultant Squier, Knapp & Ochs. The Squier firm was also paid by the Clinton/Gore '96 campaign committee, and ads that it produced for the Clinton/Gore '96 committee were either identical to, or closely mimicked by state party and DNC reelection campaign ads.<sup>31</sup> The flow of funds in and out of the Michigan Democratic Party during the first quarter of 1996 vividly displays this scheme. On five separate occasions, the DNC shifted cash from both its federal and nonfederal accounts to the Michigan Democratic Party. Within days of each transfer, the Michigan Democratic Party wrote a check in the same amount to the Squier firm to pay for pro-Clinton ads.<sup>32</sup> Moreover, the proportion of hard

<sup>27</sup> Testimony of Anthony Corrado, September 25, 1997, p. 8, ll. 7-12.

<sup>28</sup> *Democrats Used the State Parties to Bypass Limits*, *New York Times*, October 1, 1997, at A1.

<sup>29</sup> Anthony Corrado testimony, p. 7.

<sup>30</sup> Federal Election Commission Enforcement Matter Under Review 3182 (DNC, Kentucky Democratic Party, Harvey Sloane for U.S. Senate, et al.).

<sup>31</sup> J. Barnes, *Party Favors*, *National Journal*, May 11, 1996, p. 1038.

<sup>32</sup> For example, the investigation uncovered an advertisement containing the same visuals incorporating President Clinton giving a speech and the exact language which, according to the disclaimers on the advertisement, was alternatively paid for by the DNC, or the Michigan Democratic Party. The narration of that advertisement stated the following: "Every year in America, one million women are the victims of domestic abuse. It is a violation of our Nation's values. It's painful to see. It's time to confront it. The President's plan: Increased child support enforcement. Work, not welfare, to encourage stronger families. Improve and enforce domestic violence laws. One million women. A test of our national character. A challenge we will meet."

Continued

and soft dollars that the Michigan Democrats used to pay Squier was exactly the same as the hard and soft-dollar transfers from the DNC. All told, the DNC conveyed \$172,731 from its federal (hard-dollar) account and \$281,824 from its nonfederal (soft-dollar) account to the Michigan Democrats. That is exactly the same ratio as the FEC allocation formula that applies to the cost of generic activities paid for by the Michigan Democrats in 1996: 38% hard and 62% soft. If the DNC had directly paid for those ads in Michigan, its 65/35 FEC allocation formula would have required the committee to spend \$295,461 in hard dollars and \$159,094 in soft dollars.<sup>33</sup> Thus, the DNC saved \$122,810 in hard dollars by using the Michigan Democratic Party as a conduit to pay for these particular advertisements. If this is not a violation of the current FECA, it is definitely a manipulation of an undesirable “loophole” in violation of the spirit of the law.

FEC reports of the receipts and expenditures of a dozen state Democratic parties from July 1, 1995, through March 31, 1996, indicate that the state entities operated as little more than a pass-through for the DNC to pay for the production and broadcasting of ads by the Squier firm. Clearly, the Democratic National Committee produced commercials that various state Democratic party committees in turn placed in their local media market with a disclaimer stating that the advertisements had been paid for by that specific state Democratic party committee. In news accounts the Pennsylvania Democratic Party spokeswoman Kelly McBride said, when asked about DNC transfers and the subsequent ads, “The state party cooperated with the national party to produce those commercials.” This scheme to avoid FEC mandated allocation is especially odious in that it allows national party committees to continue to control the content and placement of advertisements, and at that same time avoid adherence of the FEC’s specific regulations. The truth was probably most accurately reflected by Florida Democratic Party communications director Jo Miglino who said, when asked about such Florida Democratic Party advertising in her state, “Those aren’t ours; those are the DNC’s.”<sup>34</sup>

### *C. Potential reforms directed at soft money*

Under the FECA’s current system of contribution limitations, the investigation has found, soft money spending by political party committees eviscerates the ability of the FECA to limit the funds contributed by individuals, corporations, or unions for the defeat or benefit of specific candidates. The development of soft money has severely undermined the party coordinated expenditure limits of the FECA, since party committees that reach this coordinated limit can now continue to spend money to influence federal elections beyond the coordinated limit through a variety of means. One option available to national party committees is to simply shift their spending to issue advocacy ads (those having a bearing on issues of the specific election contest, but avoiding explicit advocacy of any candidate). Another course national parties can now pursue as a

Given the acknowledged “gender-gap” of the 1996 election there is little doubt that this mention of President Clinton during an election year was intended to influence the Presidential election.

<sup>33</sup> J. Barnes, *Party Favors*, *National Journal*, May 11, 1996, p. 1038.

<sup>34</sup> *Id.*



result of the *Colorado Republican* decision (discussed *infra*) is to make independent expenditures<sup>35</sup> that can benefit a candidate without counting against any party spending ceilings. Finally, unlimited national party committee soft money can be transferred to state parties to pay for issue advertisements carefully designed to influence a federal election, but at the same time avoid reporting by not expressly advocating the election or defeat of an identifiable federal candidate.

Reforms in the area of soft money must recognize that state parties are governed by state laws; that traditional party-building activities from voter registration and get-out-the-vote drives to sample ballots impact both the campaigns for state and local office and campaigns for federal office; and that most students of the system believe it is desirable to enhance the role of parties. One solution for the "soft money" morass that the Committee heard advocated was a suggestion to simplify the current complicated distinctions between hard money, soft money, coordinated money, and independent expenditures. Anthony Corrado suggested a clear statutory definition of national party committee money, subjecting it all to federal limitations and prohibitions.<sup>36</sup> Eliminating the legal distinction between non-federal (soft) and federal (hard) funds at the national party committee level is a tempting proposal, if a decision is made to rid the system of soft money. Many people maintain that the *Buckley* decision allows political parties to be subjected to the same source and amount restrictions that apply to candidate contributions.<sup>37</sup> Don Simon of Common Cause brought to the Committee's attention a letter co-signed by 124 constitutional scholars from across the country. That letter concludes that Congress clearly possesses the power to limit the soft money system through such a limitation on national party committee funds.<sup>38</sup>

The wisdom of extending the hard money limitations now being imposed on candidates to party committees, hinges on the assumption that national political party expenditures inevitably affect the outcome of federal elections, that national party committees do not expend funds unless they benefit their candidates, and that the courts will accept the argument that such contributions to party committees have the potential to influence a legislator's votes and thus can have a corrupting influence. Court decisions support the proposition that Congress has broad power to regulate the flow of funds into the electoral process. Courts have upheld limitations ranging from the overall \$25,000 individual annual contribution limit to the \$5,000 PAC contribution ceiling.<sup>39</sup>

In return for prohibiting national party committee receipt of soft money, some advocate raising the existing limits on individual contributions to parties, such as creating a separate \$25,000 annual limit to party committees above and beyond any other annual limit imposed on individual contributors. At the same time, party com-

<sup>35</sup> See discussion elsewhere in this section of *Colorado Republican Federal Campaign Committee v. FEC*, 116 S. Ct. 2309 (1996).

<sup>36</sup> Testimony of Anthony Corrado, Sept. 25, 1997, pp. 96 & 97.

<sup>37</sup> Neuborne testimony, September 25, 1997, pp. 130-134.

<sup>38</sup> Letter from Ronald Dworkin and Burt Neuborne to Senator John McCain and Senator Russell Feingold, September 22, 1997.

<sup>39</sup> See *California Medical Ass'n v. FEC*, 453 U.S. 182 (1981); *FEC v. National Right to Work Committee*, 459 U.S. 197 (1982), and *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990).

mittees could be allowed to allocate these “hard money” resources among their candidates as they choose without restriction.<sup>40</sup> Under this reform scenario, the party committees would retain control of their spending priorities, the public would have full disclosure of the source of funds, and the party system would be freed of excessively large contributions from individuals, unions or corporations that might lead to the appearance of corruption or actual quid pro quo.

Curtis Gans, Executive Director of the Committee for the Study of the American Electorate, proposed Congress merely prohibit the use of party committee soft money for broadcast advertising. Rather than completely eliminating soft money, this approach would allow its continued use for non-federal grassroots activity and institutional building.<sup>41</sup> On the other hand, Anne McBride of Common Cause testified that any compromise under which soft money was allowed to exist at the state level, but not at the federal level, would result in more manipulation and “gaming” of the system.<sup>42</sup>

One witness testified that soft money limitations on national party committees would be unconstitutional because money to party committees raises no compelling state interest in preventing quid-pro-quo corruption.<sup>43</sup> Brent Thompson, former director of the Fair Government Foundation, credits soft money for allowing party organizations to increase their role in elections and thus strengthen the “federalism” of the American party structure.<sup>44</sup> He also argues that party committee receipt of such soft money separates the source of the funds from the candidates, and thus prevents the appearance of corruption or actual quid pro quos for campaign dollars.

Yet others note that candidates, such as President Clinton, essentially *are* the party committee,<sup>45</sup> and as such control party solicitations and reap the rewards of these excessive contributions. Such a posture makes the candidate just as susceptible to corruption or actual quid pro quos as if the contributions were given directly to the candidate’s campaign committee. Failure of the FECA to effectively address the symbiosis between a sitting President and his party committee is another example of the need for an overall coherent set of checks and balances to counteract the revisions read into the FECA since its passage.

During the Committee’s hearings, witnesses such as Edward Crane, President of the CATO Institute and Roger Pilon, Senior Fellow at the CATO Institute, argued that there should be no restrictions at all on the source or amount of party committee expenditures. Under such a system, prompt and complete disclosure is seen as sufficient regulation to control the potential evils of union, corporate and large contributions. There is no explanation of how such disclosure prevents state reporting gaps, potential delays in federal reporting, or the FEC’s previous inability to suffi-

<sup>40</sup> Testimony of Norman Ornstein, Sept. 24, 1997, p. 82 and Testimony of Douglas C. Berman, Sept. 24, 1997, p. 200.

<sup>41</sup> Testimony of Curtis Gans, September 24, 1997, p. 157.

<sup>42</sup> McBride testimony, p. 5.

<sup>43</sup> Testimony of Roger Pilon, Senior Fellow, CATO Institute, Sept. 25, 1997, pp. 144, and 153–155.

<sup>44</sup> Brent Thompson, *Despite Reform Frenzy, Don’t Blame Soft Money for Campaign Scandal*, *Roll Call*, March 27, 1997, p. 12.

<sup>45</sup> Deposition of Richard (Dick) Samuel Morris, August 20, 1997, pg. 30.

ciently sanction violators of similar provisions in order to avoid recurrence. Despite all of these options discussed, it may be impossible to completely control the flow of soft money as our system of Federalism makes it unlikely that federal legislation could constitutionally deprive the various state party committees of the right, where it is now legal under state law, to continue to raise corporate, union and large individual contributions.

### III. FOREIGN CONTRIBUTIONS

A central focus of the Committee's investigation was the manner in which illegal foreign money made its way into the federal election process. Title 2 U.S.C. § 441e explicitly makes it illegal for any foreign national to contribute to any federal or non-federal election in the United States, either directly or indirectly.<sup>46</sup> This prohibition dates from 1966 legislation responding to congressional hearing revelations that Philippine sugar producers and agents of Nicaraguan president Luis Somoza contributed to federal candidates. The foreign contribution prohibition also prevents domestic subsidiaries of foreign corporations from establishing PACs if the foreign parent finances the PAC's establishment, administration, or solicitation costs, or if individual foreign nationals within the corporation have an impact on the decisions of the PAC, participate in its operation, or serve as officers.<sup>47</sup> Since federal law prohibits a foreign national from making contributions through another person or entity, the FEC has made it clear that domestic subsidiaries of foreign parent corporations may only make contributions out of domestic profits.<sup>48</sup>

The Committee's investigation heard testimony that three problems led to increased illegal foreign contributions in the 1996 federal elections. First, organizations like the Democratic National Committee (DNC) failed to establish and abide by sufficiently stringent vetting procedures to review even the largest contributions. Second, the solicitation of massive amounts of soft money increased the perception that large contributions could result in some quid pro quo, and thus foreign contributors decided their money might influence policy. Finally, the foreign contribution prohibition is very difficult to enforce for the average contribution because recipient committees lack a reliable method to ensure that donors who are not known to campaign solicitors are in fact American citizens.

Foreign contributions were encouraged by many contributors' belief that the DNC's obviously desperate and aggressive search for large contributions meant contributing in 1996 was more likely

<sup>46</sup> § 441e Contributions by Foreign Nationals

(a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

(b) As used in this section, the term "foreign national" means —

(1) a foreign principal, as such term is defined by section 611(b) of title 22, except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by section 1101(a)(20) of title 8.

<sup>47</sup> 11 C.F.R. § 110.4(a)(3).

<sup>48</sup> FEC Advisory Op. 1992-16, Fed. Election Camp. Fin. Guide (CCH) ¶ 6059 at 11,813 (June 26, 1992).

than ever to lead to personal gain. One prime example of the DNC's encouragement of this state of mind is found in a \$250,000 contribution from South Korean businessman, John K. H. Lee.<sup>49</sup> Michael Mitoma, the mayor of Carson, California, testified during the Committee's public hearings on September 5, 1997 that he believed arrangement of a meeting between President Clinton and Lee would encourage Lee's decision to locate a factory in Carson.<sup>50</sup> Once Mitoma related information to John Huang about a Korean businessman who was considering starting a business in America, Mr. Huang and his colleagues at the DNC anxiously arranged a photo-op for Lee with the President in exchange for a \$250,000 contribution. Any casual observer, let alone someone vetting a \$250,000 contribution to the President of the United States, should have quickly come to the conclusion that the source of this particular corporate soft money contribution, Lee's newly incorporated U.S. company Cheong Am America, Inc., was merely a front for processing an illegal foreign contribution from Lee. Despite the fact that Lee spoke no English, and needed to fly to Washington from Korea, he and four individuals of his choice were able to meet on April 8, 1996 with Don Fowler, Richard Sullivan, Peter Knight, and ultimately the President. A simple check of the California incorporation records would have shown that Cheong Am was incorporated at the end of February 1996.<sup>51</sup> Thus, even without the bank records showing that the Cheong Am America bank account was funded by a transfer of \$1.3 million from Korea on March 26, 1996,<sup>52</sup> one could have surmised that it was unlikely Cheong Am America had operated long enough to generate the U.S. revenue needed to make a U.S. political contribution. This \$250,000 contribution was covered with red flags—all of which were ignored.

In their zeal to raise money, DNC officials at best neglected to ask the obvious questions, and at worst deliberately looked the other way. The drive for large contributions led the DNC to accept the Lee contribution. Considering that the legal hard dollar limit for individuals is \$1,000 per election, the person solicited for a \$250,000 soft money contribution would logically anticipate something in return, or at least expect a higher level of access. As Common Causes' Ann McBride pointed out in her testimony,

[i]f you look at what this Committee exposed about foreign contributions, . . . [they] simply would not have found a way into the system if this huge unlimited, unregulated system did not exist, and so we believe the best reform to end the problem revealed in this Committee about foreign contributions is to end the soft money system.<sup>53</sup>

During the 1996 election, the issue of whether this foreign national prohibition applies to the gift of "soft" or nonfederal money to a national party committee came to the forefront. The FECA def-

<sup>49</sup> See detailed discussion of the John K.H. Lee contribution in the section of this report on John Huang's illegal fundraising at the DNC.

<sup>50</sup> Testimony of Michael Mitoma, September 5, 1997, p. 126.

<sup>51</sup> See section of this report entitled "John Huang's Illegal Fund-raising at the DNC," Ex. 11, State of California Certificate of Incorporation.

<sup>52</sup> *Id.*, Ex. 12, Assorted bank records of Cheong Am America.

<sup>53</sup> McBride testimony, p. 5.

inition of “contribution” is limited to “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person *for the purpose of influencing any election for Federal office.*”<sup>54</sup> As seen in the footnote above quoting the FECA foreign prohibition, it only bans foreign *contributions*. Technically, soft money as described above, by definition may not therefore constitute a “contribution” because it is supposedly not made “for the purpose of influencing any election for Federal office.” In response to a question from Senator Thompson challenging her stance that “soft money” never constitutes a “contribution,”<sup>55</sup> Attorney General Janet Reno’s testimony before the Senate Judiciary Committee on April 30, 1997, indicates that the Department of Justice interprets Section 441e to prohibit soft money contributions to party committees from foreign nationals.<sup>56</sup> Certainly that was the common understanding prior to the 1996 elections, and clearly the DNC believed such a prohibition to exist as it refunded all such foreign soft money contributions that it was found to have received. Regardless of this questionable new interpretation limiting the reach of the FECA’s foreign contribution prohibition, the President’s unprecedented use of soft money to advance his re-election prospects renders the acceptability of foreign soft money contributions moot in the present context.

The dismantling of the DNC vetting procedures<sup>57</sup> only exacerbated the problem of foreign contributions finding their way into the 1996 federal elections. For the 1992 election cycle the DNC implemented a system for vetting contributions over \$10,000. Any check for \$10,000 or more was to go through a vetting desk.<sup>58</sup> This desk was supervised by Barbara Stafford, an attorney in the DNC’s Office of General Counsel. Stafford had full-time responsibility for vetting contributions, as did her assistant, David Blank.<sup>59</sup> In fact, the 1992 vetting system involved an entire group of individuals, usually numbering between six and ten, who did nothing but vet major contributions.<sup>60</sup> Current DNC Deputy General Counsel Neil Reiff confirmed to the Committee that there was once a separate “unit” of about seven or eight people, supervised by Barbara Stafford, that vetted checks.<sup>61</sup> Indeed, current DNC General Counsel Joseph Sandler has testified that “for the 1992 election a procedure known as Major Donor Screening Committee” was in place.<sup>62</sup> Sometime after the 1994 election this vetting procedure was dismantled.<sup>63</sup> According to FEC records, the DNC received 178 contributions of \$100,000 or more in 1995 and 1996 without an appropriately established vetting procedure, and without in fact checking to determine if they were legal. The DNC’s failure to properly vet donations facilitated the funneling of foreign contributions to the DNC by fundraisers like John Huang.

<sup>54</sup> 2 U.S.C. § 431(8)(A)(i) (emphasis added).

<sup>55</sup> Attorney General Reno letter to Senator Orrin Hatch, April 14, 1997.

<sup>56</sup> See Department of Justice Oversight, *Hearing of the Senate Judiciary Committee*, Federal News Service, April 30, 1997.

<sup>57</sup> See the section of this report on The DNC Dismantled Vetting System.

<sup>58</sup> Deposition of Robert J. Stein, June 17, 1997, p. 58.

<sup>59</sup> Stein deposition, p. 81.

<sup>60</sup> Deposition of Melissa A. Moss, June 11, 1997, pp. 12 and 17.

<sup>61</sup> Deposition of Neil Paul Reiff Esq., June 20, 1997, p. 30.

<sup>62</sup> Deposition of Joseph E. Sandler, May 15, 1997, p. 47.

<sup>63</sup> For a fuller account, see the section of this report on The DNC Dismantled Vetting System.

In addition to strengthening sanctions imposed upon those who do not take appropriate precautions to avoid violating existing FECA provisions, witnesses at the Committee's hearings raised the possibility of establishing through law stringent vetting procedures. There are currently no established statutory or regulatory requirements detailing appropriate vetting procedures to be utilized by political committees to ensure acceptance of contributions within the limitations and prohibitions of the FECA. Such vetting procedures could be modeled after the FEC's regulatory requirements detailing the best efforts required of political committees to obtain required contributor information.

As a result of the discussion above, application of the foreign contribution prohibition to soft money also might be reformulated. Banning contributions from permanent non-citizen residents did not meet with much approval when it was discussed during the Committee's hearings.<sup>64</sup> One alternative raised would prohibit those who cannot legally vote from contributing to political campaigns (*i.e.*, non-U.S. citizens, as well as those who are not 18 years old or who are convicted felons).<sup>65</sup> A bright line test such as a voting eligibility requirement is easily understandable and could be communicated through a required disclaimer on all campaign solicitations.

#### IV. ADVOCACY STANDARDS

##### *A. Issue advocacy, express advocacy and electioneering message*

The FECA, as interpreted by the FEC and various court opinions, allows the government regulation of the political speech of corporations, unions, non-profits and individuals on First Amendment grounds in only those instances containing express advocacy of the election or defeat of a clearly identifiable candidate.<sup>66</sup> The Supreme Court in *Buckley v. Valeo* indicates the following explicit advocacy terms satisfy the strict "express advocacy" test applied when limiting First Amendment rights: "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject."<sup>67</sup> Still, at no point did the Court state that this list was exhaustive. The Court stated such a strict line was required because,

the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.<sup>68</sup>

According to the Court, a standard that depends on the speaker's intent or purpose has a chilling effect on political speech.

<sup>64</sup> Discussion between Senator Akaka and Thomas E. Mann, September 24, 1997 pp. 55–56.

<sup>65</sup> Discussion between Senator Akaka and Thomas E. Mann, September 24, 1997, p. 56.

<sup>66</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976); see caveat in Coordination section below.

<sup>67</sup> *Buckley*, 424 U.S. at 44 n.52.

<sup>68</sup> *Id.* at 42.

Applying the Supreme Court's reasoning in *Buckley*, the Ninth Circuit in *Federal Election Commission v. Furgatch*, 807 F. 2d 857 (1987), *cert denied*, 484 U.S. 850 (1987) reviewed the following advertisement text:

DON'T LET HIM DO IT.

The President of the United States continues degrading the electoral process and lessening the prestige of the office.

It was evident months ago when his running mate outrageously suggested Ted Kennedy was unpatriotic.

The President remained silent.

And we let him.

It continued when the President himself accused Ronald Reagan of being unpatriotic.

And we let him do it again.

In recent weeks [Jimmy] Carter has tried to buy entire cities, the steel industry, the auto industry, and others with public funds.

We are letting him do it.

He continues to cultivate the fears, not the hopes, of the voting public by suggesting the choice is between "peace and war," "black or white," "north or south," and "Jew vs. Christian." His meanness of spirit is divisive and reckless McCarthyism at its worst. And from a man who once asked, "Why not the best?"

It is an attempt to hide his own record, or lack of it. If he succeeds the country will be burdened with four more years of incoherences, ineptness and illusion, as he leaves a legacy of low-level campaigning.

DON'T LET HIM DO IT.<sup>69</sup>

Despite the lack of any of the magic words from *Buckley*, the Ninth Circuit found this to constitute express advocacy. The opinion specifically stated, "[a] test requiring the magic words 'elect,' 'support,' etc., or their nearly perfect synonyms for a finding of express advocacy would preserve the First Amendment right of unfettered expression only at the expense of eviscerating the Federal Election Campaign Act. 'Independent' campaign spenders working on behalf of candidates could remain just beyond the reach of the Act by avoiding certain key words while conveying a message that is unmistakably directed to the election or defeat of a named candidate."<sup>70</sup> Instead of the magic words test, the Furgatch court outlined the following three prong test to determine whether advocacy comes within the purview of the FECA: (1) speech constitutes express advocacy if it is "unmistakable and unambiguous, suggestive of only one plausible meaning;" (2) such express advocacy speech must present a "clear plea for action"; and (3) it must be clear what action is being advocated.

When applying *Buckley* to determine whether advocacy falls within the regulatory framework of the FEC, other federal appeals courts have held that the express advocacy test set out in *Buckley* can only be met by communications that contain explicit and un-

<sup>69</sup> *Furgatch*, 807 F.2d at 858.

<sup>70</sup> *Id.* at 863.

ambiguous words that urge readers (or viewers) to elect or defeat a clearly identified candidate. This includes the First [*Faucher v. Federal Election Commission*, 928 F. 2d 468 (1991), cert. denied sub nom., 502 U.S. 820 (1991)], the Second [*Federal Election Commission v. Central Long Island Tax Reform Immediately Committee*, 616 F. 2d 45 (2d Cir. 1980)], and the Fourth circuit [*Federal Election Commission v. Christian Action Network*, 894 F. Supp. 946 (W.D. Va. 1995), aff'd, No. 95-2600, slip op. (3d Cir. Aug. 2, 1996)].

When the FEC tried to incorporate the *Furgatch* express advocacy standard into its regulations it was successfully challenged in the First Circuit, where a district court ruled the new regulations are unconstitutional on their face. *Maine Right to Life Committee, Inc. v. Federal Election Commission*, 914 F. Supp. 8 (D. Me. 1996). In striking down the Commission's "express advocacy" regulations, the court distinguished between mere "contact," which the court ruled cannot be regulated, and issue advocacy that is "coordinated" with or authorized by a candidate, which the court suggested could be. The court pointed out that "*Buckley* talked only about prohibiting expenditures 'authorized or requested by the candidate,' interpreted at its broadest as 'all expenditures placed in cooperation with or with the consent of a candidate.' The FEC has gone far beyond 'cooperation' or 'consent' in these prohibitions of all contact and consultation in the preparation of voter guides . . ."<sup>71</sup>

Thus, currently the laws have been interpreted to allow pure uncoordinated "issue advocacy" to be paid for directly by corporations, unions, non-profits or individuals with soft money (i.e. from sources and in amounts beyond the prohibitions and limitations of the FECA). In the 1996 cycle this distinction led to abuses as unions and non-profits ran "issue advertisements." Evidence shows that these advertisements were coordinated with candidate committees, and in some instances seem to cross the line from issue based advertising into candidate targeted express advocacy.

As opposed to the clearly independent entities discussed above, the courts have indicated, and the FEC has clearly implemented, an "electioneering message" threshold for regulation of party committee expenditures coordinated with federal candidates and made in connection with a candidate's federal election."<sup>72</sup> In her April 14, 1997 letter to Senator Hatch and the Senate Judiciary Committee, Attorney General Reno reaffirms the "electioneering message" standard as appropriate when applied to "party media advertisements that focus on 'national legislative activity.'"<sup>73</sup> The FEC advisory opinions cited by the Attorney General define "electioneering message" to mean statements "designed to urge the public to elect a certain candidate or party."<sup>74</sup> This distinction from the standard applied to independent groups flows from the following Supreme Court discussion found in *Buckley*:

[I]ndependent advocacy . . . does not presently appear to pose dangers of real or apparent corruption comparable

<sup>71</sup> *Clifton v. Federal Election Commission*, 927 F.Supp. 493, 499 (D. Me. 1996).

<sup>72</sup> See FEC Advisory Op. 1995-25, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶6162, at 12,109-12,110 (August 24, 1995); and FEC Advisory Op. 1985-14, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶5819, at 11,185-11, 186 (May 30, 1985).

<sup>73</sup> Reno Letter to Hatch, April 14, 1997 at 7 (citing FEC Advisory Opinions above).

<sup>74</sup> FEC Advisory Op. 1985-14, 2 Fed. Elec. Camp. Fin. Guide (CCH) ¶5819, at 11,185-11, 186 (May 30, 1985).



to those identified with large campaign contributions. The parties defending [the FECA] contend that it is necessary to prevent would-be contributors from avoiding the contribution limitations by the simple expedient of paying directly for media advertisements or for other portions of the candidate's campaign activities. They argue that expenditures controlled by or coordinated with the candidate and his campaign might well have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse. *Yet such controlled or coordinated expenditures are treated as contributions, rather than expenditures under the Act* (emphasis added). [The FECA's] contribution ceilings . . . prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions . . . The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given a quid pro quo for improper commitments from the candidate.<sup>75</sup>

The Court later limited the express advocacy standard to the banks, corporations, and labor organizations discussed in section 441b of the FECA:

[W]hen the maker of the expenditure is not within these categories—when it is an individual *other than a candidate or a group other than a 'political committee'*—the relation of the information sought to the purposes of the Act may be too remote. To insure that the reach of § 434(e) [detailing FECA reporting requirements] is not impermissibly broad, we construe 'expenditure' *for purposes of that section* . . . to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate.<sup>76</sup>

The Court in *Buckley* made clear that the term "political committees" can "only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate. Expenditures of candidates and of 'political committees' so construed can be assumed to fall within the core area sought to be addressed by Congress."<sup>77</sup> As provided throughout the FECA, "political committees" are more highly regulated than other entities. Thus, coordinated electioneering messages by political committees (such as the DNC) must be paid for with so called hard-money (money acquired within the limits established by the FECA and from non-prohibited sources).

<sup>75</sup> *Buckley v. Valeo*, 424 U.S. 1, 46–47.

<sup>76</sup> *Buckley*, 424 U.S. at 80 (emphasis added). See also *FEC v. Massachusetts Citizens for Life* ("MCFL"), 479 U.S. 238, 249 (1986).

<sup>77</sup> *Buckley*, 424 U.S. at 79.

*B. Examples of questionable issue advocacy*

*1. The DNC*

In the 1996 election the Governmental Affairs Committee investigation found blatant electioneering messages illegally paid for with soft money funds by the Democratic National Committee and its affiliated state party committees, all of which were made at the behest of the Clinton/Gore '96 campaign. In clear contradiction to the FECA, court pronouncements and FEC guidance, these party committees maintained that their advertisements were immune from federal regulation because they constituted issue advertisements, which did not expressly advocate the election or defeat of the Clinton/Gore ticket. Such attempts at clever obfuscation of the appropriately applicable legal standard, through positive or negative portrayal of certain candidates in the context of issues, does not ultimately exempt a party committee from the electioneering message standard.

The following are sample DNC and Democratic state party committee advertisements which the investigation reviewed from videotapes, and which appear to constitute "electioneering messages" within the FECA's jurisdiction (despite DNC insistence that they are appropriate issue advertisements) outside the jurisdiction of the FECA:

- "American values. Do our duty to our parents. President Clinton protects Medicare. The Dole/Gingrich budget tried to cut Medicare \$270 billion. Protect families. President Clinton cut taxes for millions of working families. The Dole/Gingrich budget tried to raise taxes on eight million of them. Opportunity. President Clinton proposes tax breaks for tuition. The Dole/Gingrich budget tried to slash college scholarships. Only President Clinton's plan meets our challenges, protects our values."
- "America's values. Head Start. Student loans. Toxic cleanup. Extra police. Protected in the budget agreement; the President stood firm. Dole, Gingrich's latest plan includes tax hikes on working families. Up to 18 million children face healthcare cuts. Medicare slashed \$67 billion. Then Dole resigns, leaving behind the gridlock he and Gingrich created. The President's plan: Politics must wait. Balance the budget, reform welfare, protect our values."
- "Head Start. Student loans. Toxic cleanup. Extra police. Anti-drug programs. Dole, Gingrich wanted them cut. Now they're safe. Protected in the '96 budget—because the President stood firm. Dole, Gingrich? Deadlock. Gridlock. Shut-downs. The President's plan? Finish the job, balance the budget. Reform welfare. Cut taxes. Protect Medicare. President Clinton says get it done. Meet our challenges. Protect our values."
- "The President says give every child a chance for college with a tax cut that gives \$1,500 a year for two years, making most community colleges free, all colleges more affordable . . . And for adults, a chance to learn, find a better job. The President's tuition tax cut plan."

- “Protecting families. For millions of working families, President Clinton cut taxes. The Dole-Gingrich budget tried to raise taxes on eight million. The Dole-Gingrich budget would have slashed Medicare \$270 billion. Cut college scholarships. The President defended our values. Protected Medicare. And now, a tax cut of \$1,500 a year for the first two years of college. Most community colleges free. Help adults go back to school. The President’s plan protects our values.”

The Republican National Committee’s issue advocacy campaign seems to have complied with the law. It is true that the RNC broadcast a series of commercials highlighting key legislative and other issues confronting the country during the spring and summer of 1996. It also ran a commercial discussing traditional American values shared by Senator Dole in helping to formulate the Republican legislative agenda. The commercial called on Americans to urge their elected officials to support the agenda of welfare reform, criminal justice reform, and ending wasteful government spending. In educating Americans on these key issues, the RNC’s spots did not expressly advocate the election or defeat of any candidate, and do not otherwise seem to reflect an electioneering message.

The Committee found no evidence of coordination between Senator Dole and the RNC sufficient to make these RNC issue advertisements in-kind contributions to the Dole for President Committee. The Committee gathered no evidence contradicting Senator Dole’s assertion that the RNC retained editorial control over its advertising at all times.<sup>78</sup> There is no evidence that anyone at the Dole for President Committee—including Senator Dole—dictated what the content of RNC advertisements would be, or decided where or how often the advertisements would be broadcast.

## 2. Unions and non-profits<sup>79</sup>

While the Democratic National Committee opened the soft money advocacy wars in 1995 with advertisements designed to deter primary challengers to President Clinton and bolster his support by portraying him as standing up to the new Republican congressional majority,<sup>80</sup> the AFL-CIO followed suit by announcing a \$35 million soft money issue advertising campaign aimed at the legislative records of potentially vulnerable Republican House incumbents.<sup>81</sup> As discussed in the Misuse of Nonprofits section of this report, these advertisements often crossed over into express advocacy due to the level of alleged coordination between candidates and the AFL-CIO. After the conventions, a variety of issue groups and organizations, usually tax-exempt 501(c)(4) organizations, began running “issue ads” to counter the AFL-CIO efforts in targeted districts and states.<sup>82</sup>

Currently, tax-exempt organizations that utilize issue advocacy attempt not to cross the line into judicially defined express advocacy to avoid election law limits on the amount and sources of campaign contributions and contributor restrictions. However, such

<sup>78</sup> *Dole: Illegal Ads Cost Him Election*, AP Wire Story, January 9, 1998.

<sup>79</sup> For a detailed discussion of 1996 nonprofit activity reviewed by the Committee’s investigation see the section of this report on “Misuse of Nonprofit Groups in the 1996 Elections.”

<sup>80</sup> See the section of this report on *The Thirst for Money*.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

non-profits often secretly, and illegally, coordinate their efforts with the candidates they favor in particular elections. Such mixing of politics and non-profits carries little risk to any politician who might benefit because financial penalties imposed by the Internal Revenue Code for prohibited political activity can only be levied against the charity and its managers. Besides, by the time the IRS pursues such activity the money can be spent and the organization disbanded.

### C. Proposed reform

The Committee heard testimony from Professor Daniel R. Ortiz, that “[t]o anyone interested in campaign finance reform, issue advocacy is the 800-pound gorilla. Without taming it, campaign finance reform—no matter how thoroughly it addresses public funding, soft money, PACs, and other perceived problems—will come to naught.”<sup>83</sup> Nothing in the *Buckley* decision, or the First Amendment, prevents Congress from substituting a better definition for election related activity that is more encompassing than the magic words express advocacy standard. While the *Buckley* decision criticized any express advocacy standard based on a subjective interpretation of the speaker’s intent, one option is to establish a “totality of the circumstances test” for FECA application to speech that would *objectively* gauge the speaker’s intent. Such a standard would incorporate such considerations as proximity to the election, the use of the candidates’ name or likeness, and whether the ad is geographically targeted.<sup>84</sup> Under this approach, much of what was labeled “issue advertising” during the 1996 elections would fall within FECA regulation, and thus the money used to pay for such ads would have to be raised and reported in accordance with the federal election laws. Thus unions, corporations, non-profits and others wishing to run candidate targeted electioneering advertisements would need to raise funds for such ads in accordance with the FECA.

Another proposal would require any advocacy that uses a federal candidate’s name or likeness in a given period of time before a primary or general election date to be paid for with funds within the prohibitions and limitations of the FECA, and appropriately disclosed through reporting.<sup>85</sup> A 90 day time frame often has been suggested for such reporting because it reflects the same time frame used by Congress to limit lawmakers’ postal patron mass-mailing communications. This proposal maintains the magic words express advocacy test of *Buckley* prior to the 90 day period, and might pass the Supreme Court’s compelling interest test by imposing reporting obligations on issue advocacy for only a very limited time period. Unions, corporations and non-profits could run issue ads as they did in the 1996 race up until this 90 day threshold, after which they could continue their activity if they utilized hard money from affiliated political action committees, which register and report. The undergirding rationale behind this proposal is that the mention or appearance of any candidate in mass media advertising is bound to have some impact on that candidate’s election,

<sup>83</sup> Testimony of Daniel R. Ortiz, September 25, 1997, p. 19.

<sup>84</sup> Neuborne testimony, p. 136.

<sup>85</sup> See McCain/Feingold proposed legislation.

and that the Court might interpret *Buckley* to find the totality of the circumstances (e.g. timing close to an election) compelling enough in such a situation to allow “issue advertisements” to be treated as a campaign contribution. Furthermore, the courts have been more receptive to restrictions placed upon corporations and unions than any other groups. Pure issue advocacy groups (e.g. The Sierra Club, the NRA, NARAL, the National Right to Life Committee, etc.) that wish to engage in candidate directed issue advocacy during this limited 90 day time period could establish registered and reporting separate segregated funds for such activity during that time period.<sup>86</sup>

In response to proposed expansions in the definition of express advocacy, the obvious First Amendment sensitivity to regulating issue advocacy leads many to believe any limits violate the right to free speech. In his testimony before the Committee Professor Roger Pilon, Senior Fellow at the Cato Institute, cited *Buckley* when he argued that limitations on contributions and expenditures “are subject to strict judicial scrutiny: they must serve a ‘compelling state interest’ employing the ‘least restrictive means.’”<sup>87</sup> Although it is not explicitly clear whether a more encompassing definition of express advocacy is desirable, or even constitutional, if the course of non-action is followed, it must be recognized that Congress would be encouraging further growth of union, corporate non-profit and individual independent expenditures. As was witnessed in the 1996 election, such independent expenditures often drown out the advertisements of the very candidates competing in certain congressional elections. Senator Bennett indicated during testimony that he and other candidates want more, not less, control of their own campaigns.<sup>88</sup>

As a result of the Supreme Court’s application of the compelling state interest test to the regulation of issue advocacy, some argue in favor of a constitutional amendment allowing limited regulation of political speech, as opposed to other First Amendment protections. It has been argued that the constriction of the free speech rights of private groups and political candidates increased the influence and power of the press, and is therefore bad public policy.<sup>89</sup> As Edward H. Crane, President of the CATO Institute, noted during the Committee’s hearings, “[t]he media functions as a gatekeeper of information to the public and its gatekeeping role is reduced when candidates [or third parties] can communicate directly with the voters.”<sup>90</sup>

#### V. COORDINATION

The Supreme Court in *Buckley* distinguished between “independent” advocacy and advocacy coordinated with a candidate when it declared restrictions on independent spending by individuals unconstitutional.<sup>91</sup> If an entity’s express advocacy expenditures are “coordinated” with candidates, the expenditures are treated as in-

<sup>86</sup> Neuborne Opening Statement, Sept. 25, 1997, Hearing Transcript, pp. 130–140.

<sup>87</sup> Pilon testimony, pp. 143–144.

<sup>88</sup> Hearing Testimony of Senator Bennett, Sept. 24, 1997, pp. 63 & 64.

<sup>89</sup> Brent Thompson, *Will campaign reform hurt?*, *Washington Times*, 1/14/97.

<sup>90</sup> Testimony of Edward H. Crane, Sept. 24, 1997, p. 139, ll. 17–20.

<sup>91</sup> *Buckley*, 424 U.S. at 46–47.

kind contributions that are applicable to the entity's contribution limits. The courts have only recently begun to address whether individuals and organizations who fund issue advocacy must also act independently of candidates, or otherwise risk exposure to the financial limitations, prohibitions, registration and reporting requirements of the FECA. On the other hand, as will be discussed below, FEC enforcement matters have clearly determined that coordination of any advocacy results in in-kind contributions subject to FECA regulation.

In *Colorado Republican*<sup>92</sup> the Supreme Court overruled the previously accepted presumption that a party committee could not make independent expenditures, but in doing so made the degree of coordination between candidates and their party committees the crucial determining factor in deciding whether the expenditure was truly "independent." Indeed, in the Court's view, the "constitutionally significant fact" requiring the absence of limits on independent expenditures "is the lack of coordination between the candidate and the source of the expenditures."<sup>93</sup> The Court recognized that the FECA's structure would make no sense if the FECA's limits could be easily circumvented through the actions of third parties who coordinated with candidates. Importantly, Justice Breyer's plurality opinion was not the only one that stressed coordination in determining the legality of the regulation of the relationship between a party and its candidates. Two additional justices, who along with the three justices joining in Justice Breyer's opinion constitute a majority of the Court, believe that all party spending on behalf of a candidate is a "contribution," and hence subject to the FECA limits.<sup>94</sup>

The Committee's investigation discovered that the Clinton/Gore '96 Re-election campaign not only subverted the Federal Election Campaign Act by coordinating spending and other activities with the Democratic National Committee, but in fact the DNC served as little more than a conduit through which funds raised by the re-election campaign were funneled into advertisements commissioned, designed, revised and placed by the reelection campaign in order to advance the President's reelection chances. Here again, those involved in the political process have stretched to the breaking point an illogical interpretation of a provision of the FECA, in clear contradiction to FEC guidance, all in order to gain advantage.

During 1995 and 1996 the DNC paid for a variety of advocacy pieces supporting the re-election of Bill Clinton and Al Gore under the thin guise of issue advertisements. These advertisements were paid for using soft money.<sup>95</sup> An Annenberg Public Policy Center Report indicates that about \$44 million in soft money was used for such DNC advertising.<sup>96</sup> None of these ads were counted against the 1996 DNC presidential campaign coordinated expenditure limit of \$11,994,007.<sup>97</sup> There is also evidence that the Clinton/Gore '96

<sup>92</sup> *Colorado Republican Federal Campaign Committee v. FEC*, 116 S. Ct. 2309 (1996).

<sup>93</sup> *Id.* at 2317.

<sup>94</sup> *Id.* at 2332.

<sup>95</sup> See the section of this report on The Thirst for Money.

<sup>96</sup> The Annenberg Pub. Policy Ctr., No. 16, Issue Advertising During the 1996 Campaign: A Catalog (1997).

<sup>97</sup> 1996 Coordinated Party Expenditure Limits, 22 Federal Election Commission Record 14 (April, 1996).

campaign coordinated its activities through the DNC with the AFL-CIO, EMILY's List, and others.<sup>98</sup> The degree of coordination between the DNC, and these other entities, and agents of the Clinton/Gore '96 campaign committee raises the specter of a wide variety of Federal Election Campaign Act violations.

#### A. *The law*

The FECA defines "contribution" to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."<sup>99</sup> Under the FECA, payment for a communication made "for the purpose of influencing any election for Federal office" is automatically considered a contribution if it is 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."<sup>100</sup>

Pursuant to these statutory directives, the FEC has issued regulations that clearly and directly state that coordination of an expenditure with a candidate places such expenditure within the purview of the FECA. The FEC regulations elaborate on the statute by asserting a presumption of coordination when an expenditure is made "[b]ased on information about the candidate plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made. . . ."<sup>101</sup> Under the FEC's regulations, the financing of the dissemination of any broadcast or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents in cooperation or consultation with a third party shall be considered a contribution to that candidate from the third party for the purpose of contribution limitations and shall be the reporting responsibility of the person making the expenditure.<sup>102</sup> Such contributions are illegal if they violate the prohibitions and limitations of the FECA.

The FEC has pursued the issue of coordination in a variety of enforcement cases. In one such case, the FEC found illegal coordination when the agent of a presidential candidate committee recommended a vendor to assist an outside individual in towing a banner behind an airplane that read "No Draft Dodger for President."<sup>103</sup> Based on this illegal coordination, the FEC found the campaign had received an in-kind contribution. While the campaign committee certainly never maintained any control over the individual's expenditure, and the message did not contain express advocacy of a distinctly identifiable candidate, the FEC nonetheless found a violation. In the end, the presidential political committee admitted to the violation by its agent and paid a civil penalty.

In the FEC enforcement case most analogous to the coordination undertaken between President Clinton's reelection campaign committee and the DNC, the FEC found similar circumstances to con-

<sup>98</sup> See specific discussions of these organizations in the section of the report on Misuse of Non-profit Groups.

<sup>99</sup> 2 U.S.C. § 431(8).

<sup>100</sup> 2 U.S.C. §§ 431(9)(A)(i), 441a(a)(7)(B)(i).

<sup>101</sup> 11 C.F.R. 109.1(b)(4)(i)(A).

<sup>102</sup> 11 C.F.R. §109.1(d)(1).

<sup>103</sup> FEC Enforcement Matter Under Review 3608.

stitute illegal coordination resulting in an excessive in-kind contribution. The FEC emphasized coordination in the Hyatt Legal Services enforcement case,<sup>104</sup> in which the candidate's principal media consultant also prepared issue advertisements on the public policy issues of health care and crime for an outside organization bearing the candidate's name. The Hyatt for Senate Committee's "campaign director" acted as liaison between the media consultants and the outside organization, and, in addition, the candidate exercised final editorial approval over each of the scripts for the third party organization's radio advertisements. As the FEC conceded, these advertisements definitely did not constitute express advocacy advertisements under *Buckley*, and they were paid for with soft money. Nonetheless, the FEC found the coordination between the campaign and the third party organization sufficient to make the expenditures for these advertisements illegal under the FECA.

To reach this conclusion the FEC used the following logic. Payments for any communication made for the purpose of influencing a federal election are contributions if the communication is coordinated with a candidate, a candidate's committee, or agents of the candidate or committee.<sup>105</sup> The FEC determined that certain communications or activities involving the participation or control of a federal candidate resulted in a contribution or expenditure on behalf of the candidate if: "(1) direct or indirect reference is made to the candidacy, campaign or qualifications for public office of you or your opponent;" or (2) reference was made to "your views on public policy issues, or those of your opponent, or [to any] issues raised in the campaign;" or "(3) distribution of the newsletter is expanded significantly beyond its present audience, or in any manner that otherwise indicates utilization of the newsletter as a campaign communication."<sup>106</sup>

Under FEC regulations and decisions, any issue advertisement containing an "electioneering message" and coordinated by a union, corporate, or non-profit sponsor with a candidate falls under the FECA's definition of "contribution" and its applicable limits.<sup>107</sup> Although to date the courts have not definitively dealt with coordination in the issue advocacy context, Attorney General Reno's April 14, 1997 letter to the Senate Judiciary Committee acknowledged the central importance of coordination when advocacy materials contain an "electioneering message."<sup>108</sup> In citing FEC Advisory Opinion 1985-14, Attorney General Reno brought to the forefront the FEC's emphasis on coordination. As noted above, in AO 1985-14 the FEC held that "[e]lectioneering messages include statements "designed to urge the public to elect a certain candidate or party."<sup>109</sup> Although the FEC concluded that the "issue advertisements" specifically outlined in the request were not subject to the FECA limitations, it explicitly based its decision on the complete lack of coordination. The FEC stated it viewed the request "as lim-

<sup>104</sup> FEC Enforcement Matter Under Review 3918.

<sup>105</sup> 2 U.S.C. § 441a(a)(7)(B)(i).

<sup>106</sup> See FEC Enforcement MUR 3918 [citing FEC Advisory Op. 1990-5, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5982 at 11,612 (March 27, 1990)].

<sup>107</sup> Noble testimony, September 25, 1997, p. 73.

<sup>108</sup> Letter from Attorney General Reno to Senator Orrin Hatch, April 14, 1997, at 7.

<sup>109</sup> FEC Advisory Op. 1985-14, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5819 at 11,185 (April 12, 1985).



ited to the situation where expenditures for these communications are made without any consultation or cooperation, or any request or suggestion of, candidates seeking election to the House of Representatives in the selected districts.”<sup>110</sup>

Lyn Utrecht, General Counsel for Clinton/Gore '96, argues that a political party is legally allowed to coordinate activities with the party's Presidential candidate because that candidate may even designate the national committee of his party as his own principal campaign committee. Ms. Utrecht fails to note that the same sections of the FECA and FEC regulations that allow a presidential candidate to declare a national party committee as his authorized campaign committee, also require that national party committee to maintain separate books of account for that purpose.<sup>111</sup> Furthermore, at no time did the Clinton/Gore '96 campaign designate the DNC as its principal campaign committee, nor did it maintain separate books of account as such a designation would require. She argues that the Commission has always presumed coordination between a party committee and its presidential candidate.<sup>112</sup> Ms. Utrecht fails to note that the Supreme Court in the *Colorado Republican* decision,<sup>113</sup> discussed above, definitively stands for the proposition that party committee's cannot be presumed to coordinate with candidates. Furthermore, the existence of FECA coordinated party expenditure limits for presidential candidates is illusory if Ms. Utrecht's interpretation is adopted.<sup>114</sup>

#### *B. Reform related to coordination*

The degree of coordination undertaken between the DNC and the Clinton/Gore '96 campaign cannot be justified in light of prior court opinions, despite the lack of an explicit Supreme Court decision directly on point about coordination between a party committee and a party candidate.<sup>115</sup> As a result of a clear reading of the FECA and prior FEC guidance, the current General Counsel of the Federal Election Commission unequivocally stated the following in the Committee's investigatory hearings:

The Commission views coordination as relevant. It does matter. A candidate coordinating an ad may turn that ad into a contribution to the candidate and, thus, soft money would be prohibited being used for that ad.<sup>116</sup>

Committee hearing discussion on coordination reform centered mainly on the need for legislation clarifying the legal status of issue advertising paid for by third parties and coordinated with candidate committees.<sup>117</sup> Trevor Potter, a former Chairman of the FEC, maintained before the Committee that the *Buckley* decision clearly stands for the proposition that “if spending by some third party is controlled by a candidate, is done at the direction of the

<sup>110</sup> *Id.*

<sup>111</sup> See 2 U.S.C. § 432(e)(3)(A)(i) & C.F.R. § 102.12(c)(1).

<sup>112</sup> Lyn Utrecht, *Issue Ads: They're Legal*, *The Washington Post*, December 4, 1997, at A23 [hereinafter: *Issue Ads*].

<sup>113</sup> *Colorado Republican Federal Campaign Committee v. FEC*, 116 S. Ct. 2309 (1996).

<sup>114</sup> 2 U.S.C. § 441a(d)(2).

<sup>115</sup> Discussion between Thompson and Thomas E. Mann, Sept. 24, 1997, pp. 25–26.

<sup>116</sup> Noble testimony, p. 34, ll 17–20.

<sup>117</sup> Discussion between Senator Cochran and Don Simon, Sept. 24, 1997, pp. 92–94.

candidate, then it can be attributed to the candidate.”<sup>118</sup> Professor Daniel Ortiz concurred by stating, “if there is direct coordination between a candidate and an individual or any of these other entities . . . there is a very strong argument that should count as an in-kind contribution . . .”<sup>119</sup> It was thus proposed that coordination regarding issue advocacy be more explicitly prohibited between candidates and third parties.<sup>120</sup> Norman Ornstein pointed out the following:

What the Supreme Court set up in the law as an independent expenditure, which meant that there could be no coordination with parties or candidates, referred to express advocacy and hard money. What we are now finding is people have begun to use that definition to get around it so that they can, in fact, collude together in ways that I think go against the grain of what we hope to have in a free and robust political debate in our process where you know who is making the charges and where you have some sense of where things are coming from.<sup>121</sup>

In the view of various witnesses, reformers should be careful not to shut down the availability of disclosed soft money, only to encourage candidates to hide their donations through unreported coordinated issue advocacy with third parties.<sup>122</sup> As Thomas Mann testified,

if you ban soft money but do nothing about issue advocacy, the parties, the candidates, and most importantly, the consultants, will rush to this opportunity to engage in undisclosed coordination of private dollars going to sham issue advocacy campaigns, which will do more than anything else to undermine the whole notion of accountability of candidates and parties in our elections.<sup>123</sup>

#### VI. CORPORATE AND UNION SPENDING IN U.S. FEDERAL ELECTIONS<sup>124</sup>

During the Committee’s investigation, there was much discussion on the proper role of unions and corporations in federal elections, and specifically the appropriate use of membership dues paid to the unions or general treasury funds expended by corporations. Due to the disproportionate influence that unions and corporations are able to exert as a result of their ability to accumulate large amounts of funds, they have long been restricted in their involvement in the federal electoral process. The combined wealth of the corporate community is an undeniable fact, and testimony before the Committee confirmed that unions today continue to hold huge financial sway, as they “possess \$10 billion in assets collectively.”<sup>125</sup>

<sup>118</sup> Potter testimony, September 25, 1997, p. 36.

<sup>119</sup> Ortiz testimony, September 25, 1997, p. 37.

<sup>120</sup> Mann testimony, September 24, 1997, p. 26.

<sup>121</sup> Ornstein testimony, p. 57, ll. 4–13.

<sup>122</sup> Mann testimony, September 23, 1997, p. 65.

<sup>123</sup> Mann testimony, September 24, 1997, p. 24.

<sup>124</sup> Some of the following discussion is attributable to: U.S. Library of Congress. Congressional Research Service. *The Use of Union Dues for Political Purposes and Agency Fee Objectors*. CRS Report 97–555 E, by Gail McCallion, October 14, 1997; and *Political Spending by Organized Labor: Background and Current Issues*. CRS Report 96–484 GOV, by Joseph E. Cantor.

<sup>125</sup> Testimony of Leo Troy, Sept. 24, 1997, p. 169.

### A. Background

Corporations have been prohibited from directly contributing to federal candidates since the 1907 Tillman Act. The Smith-Connally Act, or War Labor Disputes Act of 1943, first prohibited labor unions from using their treasury funds to make political contributions to candidates for federal office. As a war measure, Smith-Connally expired six months after the end of the World War II, but the ban was made permanent by including it as one of the provisions of the Taft-Hartley Act, or the Labor Management Relations Act of 1947. This prohibition against the use of labor union treasury funds as a source of candidate contributions has been part of federal law ever since, and was incorporated along with the analogous corporate prohibition into the Federal Election Campaign Act at Section 316.<sup>126</sup>

Presently, corporations and unions spend money to influence the political process through four principal mechanisms.<sup>127</sup> First, these entities use separate segregated funds (called political action committees or PACs) to influence federal elections. These funds are regulated by law, and must consist of totally voluntary union member contributions,<sup>128</sup> in the case of union PACs. In the case of corporate PACs, the money must be garnered voluntarily from corporate stockholders, executive or administrative personnel or their families. These PAC funds can be directly contributed by corporate or union PACs to federal campaigns, or utilized for independent expenditures, which by definition expressly advocate the election or defeat of an identifiable candidate. Despite the voluntary nature of the contributions to these accounts, the costs of administering such separate segregated funds (PAC) may be paid out of general treasury funds. Second, unions are explicitly allowed under the FECA to conduct unlimited communications with union members and their families on any subject, including advocacy of the election or defeat of clearly identifiable federal candidates.<sup>129</sup> Similarly, corporations are allowed such unlimited communications with stockholders, executive or administrative personnel. Unions and corporations are further allowed to conduct nonpartisan registration and get-out-the-vote campaigns aimed at these same people.<sup>130</sup> For

<sup>126</sup> "It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section." 2 U.S.C. § 441b(a).

<sup>127</sup> U.S. Library of Congress. Congressional Research Service. *Business and Labor Spending in U.S. Elections*. CRS Report 97-973 GOV, by Joseph E. Cantor. October 28, 1997.

<sup>128</sup> "It shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction." 2 U.S.C. § 441b(b)(3)(A); See also 11 C.F.R. § 114.5(a).

<sup>129</sup> 2 U.S.C. §§ 431(9)(B)(iii) and 441(b)(b)(2)(A).

<sup>130</sup> 2 U.S.C. § 441(b)(b)(2)(B).

these activities unions and corporations may use non-regulated general treasury funds (so-called “soft money”). Third, such non-regulated union or corporate soft money may be used for contributions to state and local elections (including contributions to national parties for use in state and local elections or other purposes), in those states and local jurisdictions which do not have their own prohibition against union or corporate contributions. It has been asserted that such expenditures have a tangential impact on simultaneously conducted federal elections. The fourth, and most controversial, mechanism is the use of so-called issue advertisements (public education that promote union public policy perspectives) financed directly out of union revenue, and consequently, largely paid for by union member and nonmember dues and fees. Keeping in mind their fiduciary duties to stockholders, corporations have a similar mechanism available to them. As our investigation revealed, sometimes union and corporate revenue is given directly to third party entities, such as non-profit organizations, so that these groups may pay for their own issue advertisements outside of FECA regulation.

In the 1996 federal elections, the AFL-CIO utilized to its advantage some of the questionable interpretations imposed on the vagaries of the FECA to advance its federal candidate specific political agenda. The AFL-CIO then allegedly expanded on those questionable interpretations by illegally coordinating its pursuit of a \$35 million “issue advocacy” campaign in 1996 with the Clinton/Gore '96 Re-election campaign, as well as other entities and candidates. The AFL-CIO allegedly carried out such an advocacy program in part through a special assessment included in their member's union dues and non-member's compulsory agency fees,<sup>131</sup> rather than through their political action committee. The current controversy over the use of such funds centers on two issues. First, there is the question of whether such advertisements were actually issue based, or rather, cleverly designed advertisements avoiding the use of express words of advocacy, but nonetheless aimed at specific federal candidates.<sup>132</sup> The specific activities undertaken by unions such as the AFL-CIO and problems associated with issue advocacy, as well as proposals for legislative action in that area, are found elsewhere in this report. This section of the report centers on the second issue, which involves agency fees required to be paid by all individuals covered by union bargaining agreements as part of union security agreements permitted in 29 states and the District of Columbia.

In non-right to work states union security agreements are agreements between employers and unions that require employees to give financial support to unions as a condition of employment. Section 8(a)(3) of the National Labor Relations Act (NLRA) and Section 2, Eleventh of the Railway Labor Act<sup>133</sup> explicitly authorize an employer and a union to enter into an agreement requiring all employees in the bargaining unit to pay union dues as a condition of

<sup>131</sup> Full union members pay union dues voluntarily, as opposed to those who resign from the union. In non-right to work states these non-members are compelled to pay “agency fees” for that portion of union expenses determined to be germane to collective bargaining.

<sup>132</sup> Discussion between Senator Bennett and Norman J. Ornstein, September 23, 1997, pp. 90–91.

<sup>133</sup> 29 U.S.C. § 158(a)(3), and 45 U.S.C. §§ 151–158.

continued employment, whether or not the employees become union members. The premise was that under the principle of exclusive representation, a certified union must represent all the workers in a bargaining unit, so it is only fair that all such workers pay their fair share of the union's costs in doing so. Nonetheless, out of deference to "states' rights," under the language of Section 14(b) of the NLRA, individual states are free to prohibit agency shops and union security clauses in collective bargaining agreements. The Supreme Court has ruled that a union security agreement may not require an employee to actually join a union but only to pay union initiation fees and dues.<sup>134</sup> An employee who chooses not to join is called a "financial core member" or "dues-paying non-member" because he or she continues to provide financial support to the union but does not participate in other union activities.

The political use of such agency fees paid by financial core members first reached the U.S. Supreme Court when Harry Beck and twenty of his coworkers sued the Communications Workers of America (CWA) over support of Democrat Hubert H. Humphrey in his bid for the presidency in 1968. Beck and his colleagues were strong opponents of gun control, and therefore they filed suit against the CWA over the use of agency fees to benefit Humphrey, who strongly advocated gun control. It took until 1988 for the Supreme Court to rule in *Communications Workers of America v. Harry E. Beck*, 487 U.S. 735 ("Beck"), that dues-paying non-member employees covered by union security agreements may only be charged a pro rata share of union dues and fees that are attributable to collective bargaining, contract administration, or grievance adjustment; they may not be charged a pro rata share of union dues and fees that are attributable to union expenses for political or ideological purposes.<sup>135</sup> In determining that the CWA should reimburse all excess fees Beck and his colleagues paid since January 1976, the Supreme Court majority placed heavy emphasis on the lower court finding that the union was unable to establish that any more than 21 percent of its funds were used in support of collective-bargaining efforts.

Individuals like Beck, who are members of a bargaining unit covered by a union security agreement, but who object to the use of their dues for political purposes, are now called agency fee objectors.<sup>136</sup> In order to pay a reduced agency fee, an employee must be aware of his right to object to payment of union political expenses, and then must express his objection to the union. In addition, in order to qualify as an agency fee objector, a union member must first resign his union membership. According to the U.S. Bureau of Labor Statistics, in 1996 16.3 million individuals age 16 and over were members of unions (14.5% of all those employed); and, 18.2 million individuals were represented by unions (16.2% of all those employed). Thus, in 1996, 1.9 million individuals (including government workers many of whom cannot be covered by union security agreements, and agricultural workers) were represented by unions, but were not union members. There is no way of knowing the num-

<sup>134</sup> *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963).

<sup>135</sup> See U.S. Library of Congress. Congressional Research Service. *The Use of Compulsory Union Dues for Political Purposes*. CRS Report 97-618 A, by John Contrubis. July 12, 1994.

<sup>136</sup> *Id.*

ber of union members that, if given the option, would request a portion of their funds not be utilized for political purposes.

On April 13, 1992, President George Bush signed Executive Order 12800. This order directed the Secretary of Labor to require all companies performing federal contract work to post notices in their plants and offices during the term of their contract informing workers of their *Beck* rights. In doing so President Bush quoted Jefferson's declaration that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors is sinful and tyrannical." Ultimately this all came to naught, as in one of his first official acts in office, President Clinton issued Executive Order 12836, rescinding President Bush's Executive Order 12800.

After President Clinton assumed office all agency initiatives attempting to support President Bush's Executive Order 12800 were also stymied. The Department of Labor ("DOL") had previously published 28 pages of proposed rules revising the manner in which labor unions report their financial condition to the DOL, the NLRB, and their members. One noteworthy proposed revision pertained to forms LM-2 and LM-3 and the inclusion of a new schedule entitled "Statement C—Expenses," which would be used by unions to allocate all expenses among eight new functional categories: contract negotiation and administration; organizing; safety and health; strike activities; political activities; lobbying; promotional activities; and "other." Internationals and labor organizations in general were united in the opinion that such unit-by-unit accounting would be extremely costly and burdensome, just to account for *Beck* related costs. On February 10, 1993, the DOL, under Clinton and then Labor Secretary Robert Reich, proposed a one-year extension in the effective date of these final rules. In Final Rules issued December 21, 1993 the Clinton administration DOL ultimately rejected most of the proposed Bush Administration changes.

The NLRB has issued three important decisions, among many others, interpreting and applying *Beck*. In two cases issued on December 20, 1995, *California Saw and Knife* (320 NLRB 224) and *United Paperworkers International Union* (320 NLRB 349), the Labor Board ruled that unions must inform all workers of their *Beck* rights when they are hired; that organizing costs are not core expenses,<sup>137</sup> but lobbying or litigation expenses are; that unions can limit the time during which workers may object; that a notice published once a year in a union newspaper is acceptable notice; that unions may set their own methods for handling differences with objectors and they do not have to let outside auditors see their books. In *Service Employees International Union*, 323 NLRB 39, March 21, 1997, the NLRB ordered an SEIU local to take affirmative steps to notify individuals covered by the collective bargaining agreement of their rights to remain nonmembers of the union, and to abstain from paying that part of agency fees attributable to political expenditures.

<sup>137</sup> Apparently one cannot be forced to pay for union efforts to proselytize others.

*B. Problems reviewed by the investigation*

The Committee heard testimony that union use of general treasury soft money funds for political issue advocacy violates both the spirit of the FECA and the *Beck* decision. Senator Kassebaum Baker testified to the following:

I tend to believe that the unions have been coercive in their activities, have been particularly focused in those efforts, and actually the corporate contributions and individual contributions found ways to match that by utilizing this ability to use the so-called soft money, where you do not have to identify that you are for or against a candidate. You can speak to an issue and clearly influence how the viewer would regard that candidate.<sup>138</sup>

Professor Leo Troy, of the Rutgers University Department of Economics, testified that in reality, the *Beck* decision provides union members no protection from the use of their dues for political advocacy they oppose. He noted that members are not sufficiently informed about their *Beck* rights, nor sufficiently empowered, to take an affirmative stand against their union leadership and demand a refund.<sup>139</sup> Senator Nickles maintained during the hearings that *Beck's* solution of requiring post-hoc affirmative action by union members seeking a refund serves only to ostracize such union members from their organization. Furthermore, it was acknowledged during the hearings that *Beck* actually requires union members to first forfeit their union membership and any corresponding involvement in the union's policy decisions before seeking such a refund. As Senator Nickles points out, that is hardly the equivalent of a voluntary contribution.<sup>140</sup> Even if you accept that the advertisements run by the unions are issue oriented, and not candidate specific, Professor Troy notes that "dues-paying member[s] . . . are often being compelled to pay for something, political preferences and ideas that they do not support."<sup>141</sup> One need only remember that the *Beck* challenge initially revolved around opposition to gun control, not merely the candidate that espoused gun control.

*C. Reform proposals*

There are a range of ideas aimed at reforming this hotly disputed area of campaign finance. One idea is to codify some form of the *Beck* decision. As discussed elsewhere in the report, other witnesses testified before the Committee that legislation designed to deal with the interaction of soft money and issue advocacy is necessary to effectively tackle union and corporate manipulation of the current system.

Don Simon of Common Cause stated that "if you do ban soft money, then the only contribution that a union could make to a political party would be out of its affiliated political action committee, which by definition has voluntarily contributed money."<sup>142</sup> Senator

<sup>138</sup> Testimony of Senator Nancy Kassebaum Baker, September 30, 1997, p. 76.

<sup>139</sup> Testimony of Leo Troy, September 24, 1997, p. 192.

<sup>140</sup> Discussion between Senator Don Nickles and panelists, Mann, Ornstein, Simon, and McBride, September 24, 1997, pp. 109–110.

<sup>141</sup> Troy testimony, p. 170.

<sup>142</sup> Testimony of Donald J. Simon, September 24, 1997, p. 111.

Kassebaum Baker testified that she and former Vice President Mondale agreed with Presidents Bush, Carter, and Ford that one of the most needed reforms is “a ban on soft money contributions to the national parties and their campaign organizations, equally applied to corporations and unions.”<sup>143</sup> Nonetheless, Thomas Mann, Director of Government Studies at the Brookings Institute, clarified that merely abolishing soft money would not deal with the problem because of the possibility that “shutting off soft money will lead to an incredible growth in coordinated issue advocacy with groups and their favorite candidates basically running shadow campaigns outside the regulated system.”<sup>144</sup> Such issue advocacy was exactly the crux of the problem in the 1996 election use of \$35 million in union general treasury funds composed of membership dues.

A ban on the raising of soft money by national party committees effectively deals with the use of union and corporate general treasury funds in the federal political process only if it is combined with some restriction on issue advocacy. One such proposal discussed in the issue advocacy section of this report expands the definition of express advocacy during a set period prior to an election to include any use of a candidate's name or image. As former Vice President Mondale testified before the Committee,

[t]he McCain-Feingold amendment would repeal the availability of soft money from union treasuries or corporate treasuries for what is called express advocacy and, under the expanded definition, that would include ads that use candidates' names under the terms. I think that is a good amendment. It restores the voluntary nature of contributions from union members so that they have to be voluntary. And it seems to me that is a good resolution of the dispute.<sup>145</sup>

Another proposal of particular note in this area is a California state initiative that will be placed on the next California ballot. That initiative seeks to require public and private employers and labor organizations to obtain permission from employees and members before withholding pay or using union dues or fees for political contributions. Permission must be obtained annually using a prescribed form. That annual permission would be sought through a form, the sole purpose of which is for the documentation of such a request. The form would contain the name of the employee, the name of the employer, the total annual amount which is being withheld for a contribution or expenditures and the employee's signature. Labor organizations would in turn be required to maintain records of all such authorizations for review upon request of the California Fair Political Practices Commission (the California equivalent of the FEC).

Proposed federal legislation would codify the *Beck* decision by requiring unions to notify non-union members of their right to request a refund of the portion of their agency fees used for political

<sup>143</sup> Senator Nancy Kassebaum Baker, p. 5.

<sup>144</sup> Thomas E. Mann testimony, p. 87.

<sup>145</sup> Testimony of Vice President Walter Mondale, September 30, 1997, p. 74, ll. 9–17.



activities.<sup>146</sup> Other legislation calls for notification of *Beck* rights in writing for each new employee, as well as annual written notification for all employees.<sup>147</sup> Under legislation proposed in the fall of 1997, unions would be required to notify such non-members of their reimbursement rights, and they would be required to obtain written, voluntary authorization before a union could use member or nonmember dues or fees for political activities.<sup>148</sup> Nonetheless, such initiatives might not successfully deal with one of the problems that existed in the 1996 elections for the reason that the AFL-CIO is not a union, per se. Technically, *Beck* cannot be directly applied to the AFL-CIO because it is a federation of various unions, and it could quite possibly argue that the 1996 special assessment was really the burden of the constituent unions, and not necessarily paid out of union member dues. However, non-members could challenge the possible use of their agency fees by the AFL-CIO affiliated union, and thus seek a refund after the fact.

The bills currently being considered include a variety of proposals that would, if enacted into law, have an impact on unions. They include new posting requirements, requiring unions to receive written permission to use an individual's dues for political purposes, revamping union financial reporting requirements, and eliminating union security provisions altogether. Labor unions object to all of these proposals on the grounds that they are too onerous and expensive to implement.

Employer posting of *Beck* rights, however, would not create any overt burden on a union. Posting would be the responsibility of the employer. The AFL-CIO publicly stated its willingness to accept codification of *Beck* rights during Senate consideration of S. 25. However, unions have also argued that it is unfair to single out *Beck* rights for special posting requirements. They argue that if new employer posting requirements are enacted, they should not be limited to *Beck* rights, but should include requirements to post employee rights to organize and join unions as well.

Unions oppose a new requirement that they receive written permission to use dues for political purposes because of the administrative burdens it would entail and because it might result in more individuals choosing to become agency fee objectors. Nonetheless, it is the constitutional right of those that might choose to become agency fee objectors to do so, and the administrative burden can hardly outweigh an otherwise unjustifiable requirement for union members to pay for support of beliefs they oppose. Supporters of this proposal argue that union members can only make educated decisions if they are fully informed of their *Beck* rights.

Finally, vigorously opposed by unions are proposals to abolish union security agreements, or to require unions to allow agency fee objectors to remain union members rather than, as now, to withdraw from the union when they choose to become an agency fee ob-

<sup>146</sup> See S. 25 (McCain/Feingold), the Bipartisan Campaign Reform Act of 1997, Introduced January 21, 1997; referred to the Committee on Rules and Administration. Considered September 29, 1997, by the Senate, modified by unanimous consent, amendments SP 1258 through 1265 proposed.

<sup>147</sup> See S. 179 (Hutchinson), the Campaign Finance Reform and Disclosure Act of 1997, Introduced January 22, 1997; referred to the Committee on Rules and Administration.

<sup>148</sup> See S. 9 (Nickles), the Paycheck Protection Act, Introduced January 21, 1997; referred to Committee on Rules and Administration. Hearings held on June 25, 1997, by the Committee on Rules.

jector. Regarding membership requirements, one union witness before the Subcommittee on Employer-Employee Relations testified that:

Unions, like every other voluntary association, operate on the principle that it is the right of the majority to decide the duties of membership, and that those who desire to enjoy the privileges of membership are required to become members of the organization and accept whatever responsibilities come with membership . . . to force a union to allow dissidents who withdraw from membership to retain the right to participate in membership decisions would turn *Beck*—and the First Amendment—on their heads.<sup>149</sup>

#### VII. DEALING WITH THE DEMAND FOR CAMPAIGN FUNDS

Testimony by Professor Burt Neuborne described the current campaign finance regulatory system as strictly “supply side” because it only limits contributions. Prior to the *Buckley* court’s finding that expenditure limits were largely unconstitutional unless voluntarily agreed to in exchange for some benefit, the FECA had attempted to lessen the demand for funds by placing caps on campaign expenditures. Professor Neuborne noted that as a result of the *Buckley* decision “expenditures, whether made by candidates from their personal wealth; or by candidates using money raised from supporters; or by independent entities wishing to support a candidate, are virtually immune from regulation.”<sup>150</sup> Ornstein pointed out in his testimony that the inability to limit expenditures was probably for the best because “we need a significant and large sum of money or resources in our political arena because what you want in a campaign process, as what you want in the legislative arena, is a robust dialogue, a communication process that people can see.”<sup>151</sup>

Nonetheless, the desire to win political contests, and the demand for the money participants believe necessary to do so, helps drive the never-ending cycle of fund-raising.<sup>152</sup> Under such circumstances, the Court’s interpretation that there is no legally enforceable upper expenditure limit for federal candidates only increases the drive not to fall behind in fund-raising. Spiraling campaign costs are further exaggerated by the media costs associated with a candidate’s important task of getting his message to the public. The Committee heard testimony that 60 percent of every competitive Senatorial campaign dollar goes to media and 30 percent goes to fund-raising, with the remaining 10 percent for travel and staff.<sup>153</sup> Ornstein, and others the Committee heard from, argue that in order to get a grasp on current campaign improprieties, legislation must somehow appropriately deal with the desperate pursuit for campaign funds that creates an environment wherein pro-

<sup>149</sup> Testimony of James Coppess, Communication Workers of America, before the U.S. Congress. House. Committee on Education and the Workforce. Subcommittee on Employer-Employee Relations. Hearing on Union Dues. 105th Congress, 1st Sess., March 18, 1997, pp. 7–8.

<sup>150</sup> Neuborne testimony, September 25, 1997, pp. 130–140.

<sup>151</sup> Testimony of Norman J. Ornstein, September 23, 1997 p. 66, ll. 20–25.

<sup>152</sup> See the section of this report on The Thirst for Money.

<sup>153</sup> Gans testimony, September 24, 1997, p. 155.

priety and the law are stretched to the breaking point.<sup>154</sup> Ornstein expressed the feelings of most witnesses on this issue in the following statement:

I am not for spending limits. I am uneasy about spending limits, and I am afraid, especially now as I see what is happening with the issue ads, that if we put spending limits on candidates that it is going to enhance the role of some of the outside groups.

I would prefer to go in a different direction which is to increase the incentives and provide [other] ways of ameliorating the demand. . . .<sup>155</sup>

Below is a discussion of ideas advocated to dampen demand for campaign spending, increase public participation and allow candidates more time to concentrate on the issues of the election instead of spending excessive time fund-raising.

#### A. *Free or subsidized postage and television time*

Most proposals for dampening the demand for campaign funds center around the provision of some free or subsidized postage and/or television time to candidates and parties. Testimony before the Committee indicated that television costs are increasingly a larger percentage of every candidate's costs, and such costs are clearly driving up the overall costs of campaigns.<sup>156</sup> Proposals range from block grants of television time given to the party committees to allocate as they see fit, to fund-raising qualification thresholds for individual candidates to receive television time in their markets of choice. The argument is that party committees and candidates will spend less time raising funds and more on the issues if they are assured the opportunity to espouse their beliefs.

While there is no requirement that the provision of such free services necessarily be in return for anything, testimony before the committee noted that if free television or reduced postal rates are enacted in return for overall expenditure limitations, the net impact may be an undesirable reduction in the overall political discourse. Professor Pilon quoted the Eighth Circuit when it assessed similar state provisions: "one is 'hard-pressed to discern how the interests of good government could possibly be served by campaign expenditure laws that necessarily have the effect of limiting the quantity of political speech in which candidates for public office are allowed to engage.'" <sup>157</sup> While free television time might be made contingent on certain candidate behavior, it could instead be provided with no strings as a floor enabling all qualified candidates the ability to spread their views to the voting public.

#### B. *Public financing*

The Committee heard testimony that some sort of extension of the Presidential public funding system to Congressional elections would eliminate the demand-driven pressure to obtain campaign contributions. The public financing currently available at the state

<sup>154</sup> Ornstein testimony, September 23, 1997, p. 56.

<sup>155</sup> Ornstein testimony, September 24, 1997, p. 107.

<sup>156</sup> McBride testimony, September 24, 1997, p. 58.

<sup>157</sup> Pilon Opening Statement, September 25, 1997 Hearing Transcript, quoting *Shrink Missouri Government PAC v. Maupin*, 71 F.3d 1422, 1426 (8th Cir. 1995).

or local level in Maine, Arkansas, and Nebraska was noted. Twelve states are currently considering public funding legislation.<sup>158</sup>

A compromise suggestion to encourage small contributors is creation of a 100% tax credit for contributions of \$100 or less to federal candidates. To truly encourage broad-based small contributions, as opposed to subsidizing current large contributors, this tax credit could be limited to individuals who contribute less than \$500 during the tax year.<sup>159</sup> As one witness testified, “[r]ight now, let us face it, a candidate is going to do a cost-benefit analysis before spending time to raise money, and raising money from small donors takes a lot of time, and the return is not there.”<sup>160</sup> In addition to lessening the candidates’ scramble for funds, this reform suggestion stems from the belief that encouragement of small contributors will lead citizens to become more involved in the political process. It is hoped that such small contributors will feel they have more at stake in the process, and it will reduce the public’s perception that contributions buy legislative action.

### *C. Revising contribution limits*

There was much discussion before the Committee about the possibility of revising the current contribution limits imposed on individuals, candidates and party committees. Many agreed with Senator Bennett’s assessment that “one of the problems we have now is campaign contribution limits. . . . Certainly the greatest demand on your time is fund-raising.”<sup>161</sup> When discussing Eugene McCarthy’s primary challenge of Lyndon Johnson, both Senator Bennett and Curtis Gans made the point that today’s \$1,000 per contributor limit would have prevented the relatively unknown McCarthy from mounting any campaign.<sup>162</sup> In fact, the individual contribution limit of \$1,000 (set in 1972) is worth approximately \$259 today. In order to have the same amount of purchasing power today as in 1972, individual contribution limits would need to be increased to approximately \$3,800.

Edward H. Crane, President of the CATO Institute, advocated abolition of campaign contribution limits all together. He noted “[t]he First Amendment applies to all Americans, not just those in the media, which is why we should eliminate contribution limits on individual contributors.”<sup>163</sup> Toward the other extreme, Norman Ornstein testified contribution limits are necessary, otherwise “contributor[s] cannot say, ‘Jeez, I’m sorry I’ve maxed out at some point,’ the relentless pressure can be very, very great, which is not good.”<sup>164</sup>

Most discussions in this area centered around adjusting the current \$1,000 figure for inflation since the FECA was enacted, and providing some sort of automatic future inflation adjustment device.<sup>165</sup> Particular emphasis was placed on raising the individual

<sup>158</sup> Senator John Glenn Hearing Transcript, September 24, 1997 p. 126.

<sup>159</sup> Ornstein testimony, September 23, 1997, p. 84.

<sup>160</sup> Ornstein testimony, September 24, 1997, p. 123.

<sup>161</sup> Hearing transcript discussion between the Senator Robert F. Bennett and panelist Ann McBride, September 24, 1997, p. 65–66.

<sup>162</sup> Remarks of Senator Robert F. Bennett, September 23, 1997, p. 37 and Gans testimony, September 23, 1997, p. 154.

<sup>163</sup> Testimony of Edward H. Crane, September 24, 1997, p. 140.

<sup>164</sup> Ornstein testimony, September 23, 1997, p. 67.

<sup>165</sup> Ornstein testimony, September 24, 1997, p. 73.

contribution limit to political campaign committees. Currently individuals have a \$25,000 annual limit, and of that, a sub-limit of \$20,000 can be given to party committees. Testimony before the Committee advocated creating two separate \$25,000 annual individual limits: one for party committees and the other for all other federal contributions.<sup>166</sup> It was pointed out that a ban on soft money would make such a revision all the more important. Without such a revision party committees would be in direct competition for scarce resources with their very own candidates.<sup>167</sup>

#### VIII. POLITICAL ACTION COMMITTEES (PACS)

Other than the ability of PACs to coordinate their activities with affiliated soft money independent expenditure issue advocacy programs, the Committee heard little testimony regarding problems with PACs. The Committee heard of no improprieties that arose from the FECA's treatment of PACs. The Committee did hear testimony indicating that a ban on political action committees would be found to be unconstitutional because there is no empirical evidence that such a ban would meet the compelling governmental interest of preventing corruption as defined by the courts—"a financial quid pro quo, dollars for political favor."<sup>168</sup>

#### IX. THE FEDERAL ELECTION COMMISSION AND ENFORCEMENT

As Professor Neuborne pointed out in his testimony before the Investigation Committee, "[i]f you have good rules, but you do not have an enforcement mechanism, people will laugh at the rules. . . ."<sup>169</sup>

##### *A. A brief history of the Federal Election Commission*

In 1975, Congress created the Federal Election Commission (FEC) to administer and enforce the Federal Election Campaign Act (FECA)—the statute that governs the financing of federal elections. The regulation of federal campaigns emanated from a congressional judgment that our representative form of government needed protection from the corrosive influence of unlimited and undisclosed political contributions. The laws were designed to ensure that candidates in federal elections were not—or did not appear to be— beholden to a narrow group of people. Taken together, it was hoped, the laws would sustain and promote citizen confidence and participation in the democratic process.

Guided by this desire to protect the fundamental tenets of democracy, Congress created an independent regulatory agency—the FEC—to disclose campaign finance information, to enforce the limits, prohibitions and other provisions of the election law, and to administer the public funding of Presidential elections. The FEC is made up of six members, appointed by the President and confirmed by the Senate. Each member serves a renewable six-year term; and two seats are subject to appointment every two years. By law, no more than three Commissioners can be members of the same politi-

<sup>166</sup> Ornstein testimony, September 24, 1997, p. 82 and Testimony of Douglas Berman, September 24, 1997, p. 200.

<sup>167</sup> Ornstein testimony, September 24, 1997, p. 85.

<sup>168</sup> Pilon Written Testimony, p. 5.

<sup>169</sup> Neuborne testimony, September 25, 1997, p. 137.

cal party, and at least four votes are required for any official Commission action. This structure was created to encourage non-partisan decisions. The Chairmanship of the FEC rotates among the members each year, with no member serving as Chairman more than once during his or her term.

### *B. Structural problems*

Critics of the Federal Election Commission claim it is designed to fail. Further, these critics cite political patronage and the exclusion of third party commissioners as detrimental to the FEC's professional even-handed interpretation of the law.<sup>170</sup>

One problem that arises is due to the fact that there are an even number of Commissioners, which often leads to stalemates over their decisions. The six voting members are traditionally equally divided between Democrats and Republicans, making it difficult if not impossible for the FEC to move against a campaign that is seen as injurious to only one of the parties. Such a structure is not conducive to coherent rulings, but there are a limited number of proposals that are designed to restructure the Federal Election Commission. The major proposal is with regards to the terms of the FEC Commissioners. If the repetitive six-year terms that Commissioners now serve were replaced with a single eight year-term having no holding over after expiration, some of the problems inherent with shorter patronage appointments might be relieved. Specifically, it is hoped that this will preserve the independence of Commissioners from political pressure related to their re-appointment.

Another proposal has to do with strengthening the office of the FEC chairman and creating a new presiding officer as the Commission's "Chief Administrator."

### *C. Disclosure*

One of the primary missions of the FEC is to disclose to the public the source of federal candidate campaign contributions, as well as the ultimate use of those funds by candidates. Faster and more complete disclosure will aid in alleviating many of the problems found in the current system. To facilitate speedy and universal access to campaign reports this Committee heard testimony from Thomas Mann and Norman Ornstein recommending that electronic filing become mandatory for all federal candidates and reporting committees after a de minimus threshold is crossed. Such electronic filing was almost universally endorsed by those appearing to testify.<sup>171</sup> Such mandatory electronic filing is already the rule in state elections held in California.

Yet another idea to enhance disclosure is to require a campaign to provide all requisite contributor information to the FEC before allowing deposit of any contribution. Should any disclosure information be missing, a contribution could be put in an escrow account where the money cannot be spent. In turn, the current ten-day maximum holding period on checks would have to be waived. This would solve past reporting discrepancies where some committees achieved over 95% contributor identification disclosure, while

<sup>170</sup> *Id.* at 138-140.

<sup>171</sup> Testimony of Becky Cain, September 24, 1997, p. 151; Ornstein testimony, September 23, 1997, p. 77; Mann testimony, September 23, 1997, p. 79.

others supplied the required identification for less than half of their contributors.

*D. Other suggested changes*

To speed the process of justice and avoid inaction resulting from partisan splits on the FEC, many people advocate the creation of a private cause of legal action directly against the alleged wrongdoer where the FEC is (a) unable to act by virtue of a deadlock, or (b) where injunctive relief would be necessary and appropriate (a high standard requiring a showing of immediate, irreparable harm). To deter frivolous actions, a “loser pays” standard should apply to requests for injunctive relief. Another suggestion involves streamlining the process for allegations of criminal violations, by creating more shared procedures between the FEC and the Justice Department, and fast-tracking the investigation from the FEC to Justice if any significant evidence of fraud exists.

#### X. CONCLUSION

As reflected throughout this report, the committee’s investigation uncovered blatant abuses and violations of the FECA. The current state of our campaign finance system is in serious need of an overhaul. Unanticipated loopholes discovered in the federal campaign finance laws since they were developed in the 1970s, as well as the active manipulation of vague aspects of the FECA by parties trying to gain advantage through the system, lead to dissatisfaction with the currently enforced system by all parties. After this investigation, the Committee can reaffirm the following statement made by Senator Thompson, which accompanied the investigation’s original charter: “[t]he Founders of this Republic did not believe that the errors of government were self-correcting. They knew that only constant examination of our shortcomings, and learning from them, would enable representative government to survive.”<sup>172</sup> The Committee’s investigatory hearings have certainly provided a learning experience for both participants and the general public. Now is the time to apply the knowledge gained from this experience to effective legislation, or the American public must be prepared to endure more blatant campaign finance law manipulation and corruption.

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<sup>172</sup> Senator Fred Thompson, March 10, 1997, Senate Report 105–7 at 2.





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## RECOMMENDATIONS

Based on its findings, the Committee makes the following recommendations to the Senate and the Executive Branch. Some of the recommendations are for legislative action; others could be implemented by government agencies without Congressional action.

1. In this report, the Committee sets forth new grounds which call for the appointment of an independent counsel with regard to the campaign finance scandal and urges the Attorney General to seek the appointment of an independent counsel. Consistent with this recommendation, the Committee urges the Department of Justice to aggressively pursue the many instances of apparently illegal activity as set forth in this report.

2. Throughout this report, the Committee highlights the testimony of different witnesses, given under oath, whose truthfulness or candor are called into question, as their testimony appears to have been contradicted by other witnesses and/or documentary evidence. The Committee recommends and expects that the Attorney General will review this report with care and make determinations as to whether or not such instances constitute perjury within the meaning of 18 U.S.C. § 1621 or obstruction of the Committee's investigation prohibited by 18 U.S.C. § 1505.

3. The Committee recommends that executive branch procedures for granting top secret security clearances be changed. Persons seeking security clearances who have lived in foreign countries should receive background checks on their activities while in those foreign countries. Access to classified materials should be strictly limited to what the official needs to know as part of his or her job responsibilities. Persons performing classified briefings must know the job responsibility of the persons to whom they show classified materials. No one should be given access to classified material as a routine matter before a background check is conducted. Agencies should ensure that security clearances are terminated when employees leave the positions necessitating clearances.

These recommendations flow directly from acts to the contrary that took place with respect to John Huang during the 1990's. Huang was given top secret security clearance while working at the Commerce Department. Although Huang had lived for many years abroad, no background check was undertaken with respect to his work in those foreign countries. No follow up was done on the "hit" on the computer database that tracks convictions with regard to Huang's being detained by the INS in the 1970's. Huang was not only shown top secret documents that he had no reason to see, but also, documents related to areas of responsibility he was specifically excluded from handling. Those materials were very relevant to the interests of his former employer. Insufficient steps were taken to make sure that only persons with a need to know were knowledgeable of the top secret material. This occurred because the

briefers, including CIA personnel, did not know what Huang's job responsibilities were. The problem was compounded because of the indiscriminate manner in which security clearances were given to political appointees as soon as they began employment.

Even worse, Huang held on to his security clearance after he left the Commerce Department and worked for the DNC. There is no justification for this breach of security to occur, and it was inappropriate for any Commerce Department officials to suggest arrangements by which Huang could keep his security clearance after he left the government.

The Commerce Department has already changed some of its policies regarding security clearances, but there is a potential problem with any government department or agency. Whether legislation is enacted or not, the Committee's investigation has demonstrated the inappropriate manner in which classified information was made available to Huang and, through him, possibly to others whose knowledge of such information was not in the interests of the United States.

4. The Committee recommends that Congress legislate guidelines for the operation of legal defense funds. Congress should also legislate guidelines for contacts between the funds and the beneficiary of the funds and the beneficiary's staff.

In recent years, members of Congress, and now the President, have established legal defense trusts to assist in paying of the principal's legal fees incurred in defending against civil cases, ethics complaints, and criminal charges. Although the Office of Government Ethics regulates certain executive branch legal defense trusts, legislation is needed to standardize the rules governing all such trusts. Persons interested in the operation of the government, limited in the amount of hard campaign contributions they could provide, might believe that they could obtain influence with powerful figures if they were to make large contributions to the legal defense fund established to benefit that individual. The more than \$700,000 that Charlie Trie raised for the President's legal expense trust obviously was calculated to achieve that result.

In the absence of legislation, contributions to legal defense funds may achieve that effect. To discourage that result, Congress should pass uniform guidelines for the creation and operation of legal defense funds by executive branch and legislative branch officials. Such legislation should mandate accounting procedures, require that contributions be disclosed and limited, and that the sources of funds be according to federal election law, among other guidelines.

It is important also to establish the independence of these defense funds. In the case of the President's legal expense trust, meetings were held between the director of the trust and large numbers of White House staff. Given the nature of the discussions held, these meetings raise serious questions about the independence of the trust from the person for whose benefit the trust was created. Congress should strictly limit contact between the trust and the beneficiary.

5. The Committee intends to revisit the Independent Counsel Act. In addition to all the specific concerns that have been raised about the statute's operation, the Committee believes it important that the Attorney General did not invoke the statute to investigate

the subject of the Committee's investigation, when its operation was clearly called for, and whether legislation can remedy that situation in light of the discretion in seeking an appointment that the Attorney General must constitutionally possess. The Committee expects to revisit the statute in 1998 to determine whether it should be reauthorized and, if so, with what amendments.

The independent counsel statute was enacted to prevent the inherent conflict of interest that occurs when the Justice Department investigates the possibly criminal conduct of high-ranking government officials. The facts at issue in the Committee's investigation clearly warranted the appointment of an independent counsel. Yet, as of now, none has been appointed, except as to a matter arising from the course of the Committee's hearings themselves. The Attorney General enjoys absolute discretion under the statute to decide whether the standard of appointment has been triggered. This discretion is necessary to the statute's constitutionality.

Nonetheless, serious questions were raised, based on credible allegations, that the President and other covered officials may have violated federal law. These allegations should have triggered the seeking of the appointment of an independent counsel. It makes no difference that the facts were essentially established, but the issues of law were disputed. In determining whether a crime "may have been committed" by a covered person, the conflict of interest is the same whether the Attorney General is called upon to determine the facts or the law. The statute was passed to avoid this conflict.

Apart from the theoretical reasons for the need to appoint an independent counsel, confidence of the American people in the conduct of the investigation mandates the appointment in these circumstances. The Department's investigation has not engendered public confidence. Documents have been left unexamined, including public record documents and classified materials of great relevance. Stones have been left unturned. Moreover, the legal positions taken by the Attorney General have been inconsistent in many cases with the sources she claims support her, as well as Supreme Court decisions in some instances.

In addition, the Attorney General seems to have set the bar higher to begin the investigation of a covered person than to investigate an ordinary citizen. Any information against an ordinary citizen can lead a prosecutor to begin an investigation. Under the Attorney General's interpretation of the current independent counsel statute, however, unless the evidence rises to a level sufficient to trigger the appointment of an independent counsel, no investigation of a covered person can occur. This turns the intent and language of the statute on its head. Under this interpretation, a covered person has more protection from investigation than he would enjoy in the absence of the statute.

This Committee is the committee of jurisdiction in the Senate for this statute. The Committee plans to hold hearings in 1998 on the operation of the statute and to propose legislation on how the statute should be altered, assuming it should be reauthorized beyond 1999.

6. The Committee recommends that time deadlines not be imposed on investigations authorized by the Senate. Such deadlines weaken the ability of the Senate to ensure compliance with its sub-

poenas, to ensure cooperation, and to gather the facts necessary to fulfill the charge to the Senate to conduct a complete investigation.

The Committee opposed imposing a deadline on its investigation. Deadlines have been deplored by Senators of both parties over the years because they impinge on the ability of an investigating committee to perform the tasks assigned to it. In the case of the Committee's investigation, such concerns were more than theoretical. They greatly affected the ability of the Committee to ensure compliance with its subpoenas, to receive timely information, and to gain cooperation and develop the necessary facts.

Because of the deadline, many potential witnesses and possessors of documents relevant to the investigation were unwilling to cooperate. Such noncooperation was likely to be successful because the deadline rendered enforcement of subpoenas problematic and contempt proceedings academic.

The Committee encountered stalling from the White House, from the DNC, and from a number of nonprofit entities, most notably the AFL-CIO. The deadline placed on the Committee emboldened noncooperation in light of the Committee's available procedures for enforcement of subpoenas. Under these procedures, months would be necessary to gain court enforcement. By the time the case would ever go to court, the Committee's deadline would have expired, and with that, the Committee's power to enforce.

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The remaining recommendations deal with the issue of campaign finance reform. Since the Committee does not have legislative jurisdiction over the subject, the options for reform presented to the Committee during its hearings are referred to the Committee on Rules and Administration for its consideration. Among the suggestions for reform made to the Committee were the following.

7. The Committee recommends that those ineligible to vote be precluded from making contributions to candidates for federal office.

Given the extensive evidence and testimony reviewed by the Committee's investigation related to federal candidate contributions originating from foreign sources, the current prohibition on foreign contributions needs to be strengthened. At the present time, some individuals who are not legally eligible to vote are allowed to contribute to political campaigns. There is also substantial evidence that minors are being used by their parents, or others, to circumvent the limits imposed on contributors. Candidate committees could confirm through a simple question in all solicitations, and disclose as part of the currently required contributor identification material filed with the FEC, that each contributor is an American citizen of voting age.

8. The Committee recommends that Congress enact protections for union workers so that their dues are not used for political purposes with which they disagree. No person should be compelled to contribute to a federal campaign without his or her consent.

9. The Committee recommends that publicly funded presidential candidates, on behalf of their authorized campaign committee, be required to certify to the Federal Election Commission, within a certain time frame, that they have not inappropriately coordinated their activity with outside entities to overcome contribution and ex-

penditure limits placed upon those activities by the Federal Election Campaign Act. Such certification would not be required for incidental contacts between candidates and outside entities, nor for attendance at widely attended fundraisers conducted by outside entities.

The Committee's investigation established that the Clinton/Gore '96 Campaign Committee not only coordinated its activities with the Democratic National Committee in order to circumvent the contribution and expenditure limits imposed upon presidential candidates accepting public funding, but that the Clinton/Gore Campaign actually directed and controlled the soft money fundraising, television advertisement development, and placement undertaken by the DNC. Furthermore, there is evidence to indicate that Presidential candidates have shared their plans, projects and strategies with outside third-party entities in order for those entities to make what constitute in-kind contributions on behalf of the candidates. Such third party expenditures make a mockery of the current campaign finance system.

10. The Committee recommends that legislation increase the penalties for knowingly and wilfully accepting illegal campaign contributions.

The Committee's investigation revealed that between 1994 and 1996 the DNC completely dismantled a previously established vetting procedure for large and questionable contributions. As a result, a variety of contributions were accepted in direct violation of the FECA. Penalties for accepting illegal contributions, which are criminal if the campaign entity knowingly accepted such contributions, should be increased. Since the Committee believes the goal should be to prevent acceptance of such contributions in the first place, evidence that a campaign entity established stringent vetting procedures should be admissible to establish a lack of the knowledge of illegality that could lead to the imposition of criminal sanctions.

11. The Committee recommends enactment of legislation mandating electronic filing with the Federal Election Commission for all federal candidates and political committees, and providing for appropriate verification procedures for electronic filing to avoid fraud.

Easier and more rapid access to campaign finance information requires that the campaign finance laws be modernized to account for advancements in computer technology. Currently, the FEC is not even allowed to accept facsimiles, or any form of electronic filings as official because these documents cannot reflect an original signature of the filer, as called for in the current law. Available computer technology now allows almost instantaneous disclosure of political contributions and expenditures. In computer format, such data is much easier to review, compare and contrast. A recent FEC survey revealed that 85 percent of all committees or campaign operations have access to computers, that three-fourths of the computerized committees have access to the modems, and two-thirds can reach the Internet. While the FEC currently provides for voluntary electronic filing, with hard copy backup, there is no incentive for reporting entities to participate. Exercising the option for electronic filing now imposes extra work on committees beyond the

required hard copy filing. No entity wants to expose itself to speedier and more easily accessible computer disclosure if its opponents are not subjected to the same level of review. While smaller start-up participants in the federal election process may not have the resources to acquire computer technology, they could be exempted from the mandatory electronic filing legislation by providing for a relatively high financial activity threshold before such reporting would be necessary. To ensure accurate and secure reporting, legislation should also require the FEC to develop report filing verification procedures. To speed dissemination of campaign filings it would be much easier to require the FEC to place electronically filed reports on the Internet. Such universal access could be provided at the current FEC website within 24 hours of receipt. To complement these advancements, legislation should mandate that the FEC compile, publish, regularly update and post on the Internet a complete and detailed index of enforcement actions and advisory opinions. Currently there is no one repository for such information that is easily and quickly available to the public.

12. The Committee recommends legislation to require expedited reporting of all contribution activity during the 90 days immediately before an election.

With the advancement of electronic filing and broadcast technology, the Committee discovered that campaign activity has become accelerated at the end of the election cycle. The current paper filing system allows for manipulation of the disclosure process because facilitating paper filings makes necessary a cut-off date prior to the election. That would no longer be the case under an electronic filing system. Last minute surprise infusions of cash or expenditures would be disclosed in advance of the election. This would allow interested parties to evaluate the nature of a candidate's or entity's support in making an informed decision when going to the polls.

13. The Committee recommends simultaneous filing with the FEC of any required state-level state and local committee filings.

At this time, no centralized electoral finance filing system exists, even for federal candidates. Because national party committee transfers to state party committees remain unlimited, there is no way to ensure such transfers are not in turn made to facilitate expenditures by the state party committees for the benefit of federal candidates. The same is true for expenditures that might be coordinated as a result of transfers from national unions and non-profit organizations to local affiliated organizations. Federal election campaign expenditures are often intertwined with state and local election activity. The courts and the FEC have acknowledged this fact through promulgation of their allocation regulations. To understand the impact of these expenditures, and the allocations required by the FEC, a central repository of all available election materials is necessary.

14. The Committee recommends establishment of a "traffic ticket approach" of scheduled fines for minor FEC reporting violations.

The current structure of the FCA requires an elaborate due process mechanism for all alleged violations of the Act, regardless of severity. Thus, late, miscalculated and non-filed report violations are subjected to several votes of the Commission, and full briefing of



the surrounding facts before the Commission can seek a civil penalty. This process takes time and resources away from more involved and egregious violations, a category including corporate reimbursement schemes and illegal coordinated soft money issue advertisement campaigns. The Committee recommends a bifurcated process under which clear filing violations are enforced via a pre-established system of non-negotiable civil penalties, while serious allegations of wrong-doing are processed with careful consideration of due process rights (S. 1516).

15. The Committee recommends legislation be enacted reforming the structure and enforcement procedures of the Federal Election Commission. Currently there are no limits on the number of times an FEC Commissioner may be reappointed, Commissioners whose terms expire hold over indefinitely, enforcement matters are not handled in a timely manner, and there is no mechanism for resolving 3-3 split Commission votes.



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The Committee Report documents the facts surrounding what may be considered, at least from a campaign money standpoint, the most corrupt political campaign in modern history. Little needs to be added to the ugly picture that has already been painted. It is important for us now to reflect upon the other implications of the investigation.

It is well established that Congress has the authority under the Constitution to conduct investigations for the purpose of laying facts out before the American people as to the workings of their government and for the additional purpose of helping Congress to legislate. Therefore, our duties were twofold: to look into any wrongdoing and, secondly, to consider the implications of what we learn in terms of existing laws. The Committee had some success with regard to both of these responsibilities. The American people have a much better understanding of how their system operated in 1996. Also several individuals were identified as having been involved in improper or illegal conduct. Almost as soon as our Committee went out of business, federal indictments started being returned and there has been at least one call for an independent counsel by the Attorney General. These activities in large part have to do with our Committee's activities.

Although campaign finance reform legislation was not passed, it was not because of lack of information. The gigantic loopholes that were created by the Clinton-Gore campaign and the Attorney General's acquiescence in those activities are now well known because of the work of the Committee. This information should have been sufficient reason for Congress to act, but it did not. However, a permanent record has been created and will forevermore be a part of the ongoing debate which I am confident will eventually result in an overhaul of the laws pertaining to how we elect public officials in this country. Those who are critical of the Committee's efforts because we did not produce a "smoking gun" or pass a particular piece of legislation, overlook these solid contributions.

Nevertheless, we didn't do as well as we could have. Our work was affected tremendously by the fact that Congress is a much more partisan institution than it used to be. I was personally involved in the Watergate investigation. We had our share of battles on the staff level, but when push came to shove, the Members of the Watergate Committee stood together in order to ferret out wrongdoing on the part of the Nixon Administration. As a young lawyer, I signed the pleading suing President Nixon in order for the Committee to gain access to the White House tapes. Senator Howard Baker, the Ranking Republican Member, made the motion to file that suit. I asked the question in public session that revealed for the first time publicly the existence of that taping system. The Republicans on that Committee felt an obligation to thoroughly investigate the alleged wrongdoing of their own President. And, in large part because the investigation was conducted with bipartisan

cooperation, campaign finance reform was one of the benefits. Congress made sweeping changes in 1974.

We all watched the Iran Contra investigation of President Reagan and saw that, although the Committee had many rough days when witnesses seemed to put the Committee on the defensive, the Republican leader of the Committee, Senator Warren Rudman, joined with the Chairman, Senator Daniel Inouye and presented a united front in order to get at the truth.

Historically there are other examples wherein Committee minorities have cooperated in an aggressive investigation of a President of their own party.

We should realize that not only is Minority cooperation in investigations and hearings desirable and appropriate, it is actually an absolute necessity if the Committee is going to carry out its obligations to the American people. As we look to the future and possible future investigations, we should do so with the understanding that if a handful of Senators, along with counsel, see their role as defense lawyers for the President and use the Committee's valuable time to minimize and denigrate the Committee's work and to provide justification and encouragement for those being investigated, then we can be assured that the investigation will not achieve its goals.

In the past I believe that members have been deterred from extreme partisanship because of concern over public opinion and how they would be treated in the press. For whatever reason I believe that concern is not nearly as prevalent today. Partisanship begets partisanship and confrontation and the press is much more likely to report on "partisan bickering" than to pass judgment on who is responsible for it. That hurts the reputation of the Committee and plays into the hands of those who want the Committee to fail.

The minority, of course, claims that the partisanship was on the Republican side; they simply wanted the investigation to be balanced. Yet I repeatedly assured the Minority, publicly and privately, that if they would assist and participate in the investigation of illegal and improper campaign activities, I would join them not only in making sure that Republicans didn't escape scrutiny, but in assuring that we looked at the broader picture of the role of independent groups. I also promised to address other issues that might merit legislative attention in our report to the Senate and other committees of jurisdiction. I went against the wishes of many in my party and supported an inquiry broad enough to include more than just the Clinton-Gore Campaign. The Minority answered that gesture with a demand that we have the broadest possible investigation with the least amount of money with which to conduct it. From the outset, the Minority went about trying to sell the notion that the primary mission of our investigation was campaign finance reform—even though the Governmental Affairs Committee has no jurisdiction in this area. If that had been the primary reason for the hearings, the Rules Committee would have conducted it. Instead of being concerned about the massive array of criminal and improper activity that affected the basic integrity of our electoral process, the Minority attempted from the outset to divert valuable time and resources toward subpoenas to Republican-related groups which apparently were engaged in no illegal activity at

all. So even though we were faced with investigating a massive scandal, and even though scores of people were leaving the country and taking the fifth amendment and the Committee was faced with a severe time limitation, the Minority insisted that the Committee, at the very beginning, devote substantial valuable time and resources to "even things up." No Committee can effectively operate under these circumstances.

The Minority report reveals the depth of their partisan commitment. It consists of three parts: First, an attack on the Majority of this Committee; secondly, attacks on as many other Republicans as possible; and third, a defense brief for the Administration. The Minority now comprises the only group in America that does not believe that there was serious wrong doing in the Clinton-Gore campaign and the DNC during the last election. The Minority's concerns are not with the improper activities of the highest elected and appointed officials in this country. Their concerns are with Republicans who are private citizens, people such as Grover Norquist, whom they ruthlessly castigate without justification.

While espousing campaign finance reform, the Minority proved to be reforms greatest enemy. By opposing a fair investigation into the wrongdoing of the administration, they sacrificed all credibility on the reform issue and provided a safe haven for all opponents of reform.

I would recommend, that in the future, it be acknowledged that a Committee investigation cannot reach its potential if there is not agreement on the front end as to what the Committee's goals are to be. In future similar circumstances, leaders of both parties, along with the Chairman and Ranking Member of the Committee, should meet and agree upon the goals and priorities of the Committee. The agreement should be reflected in the resolution authorizing the investigation. If such an agreement cannot be reached, then the investigation should not proceed. While this seems to give the Minority a veto, in a very real sense the Minority already has a veto power as set forth above. The court of public opinion will remain the only real restraint, as is the case now.

Furthermore, future investigations should be done by a select Committee, not a standing Committee. The model should be the Watergate Committee. The leadership should select four members of the Majority and three member of the minority, based, in part, upon their agreement to work together to achieve the agreed upon purposes and priorities of the Committee.

The Committee should not have a cutoff date. As set forth in the Committee report, the imposition of a cutoff date severely hampers the Committee's work by giving those being investigated a target date by which to delay and stonewall. After the Iran-Contra hearings, Senators Mitchell and Cohen advised us of how unwise it was to impose such a cutoff date and that message needs to be delivered again.

I believe that, with adherence to the above guidelines, that Congress can continue its historic investigative responsibilities. Otherwise, unless the atmosphere in Congress changes markedly, investigations will become increasingly partisan and less productive. Under present circumstances, a President under investigation knows that, regardless of his transgressions, he will have substan-

tial support in Congress, with some Members defending his every action. It is important to recognize that a Committee *must* have a certain measure of cooperation from the President, whether it be voluntary or induced.

During this investigation, the White House did everything possible to delay, mislead and undermine the Committee. It was very mindful of the cutoff date. Time and again promises to produce documents would be broken. Records would be produced after the relevant witness already had testified. Documents would be withheld and privileges would be asserted solely for the purpose of buying time. During the Iran-Contra investigation, President Reagan waived all privileges and opened up all records, even including his own personal diaries. During Watergate, President Nixon faced a united committee and a special prosecutor willing to take him to court to force the release of the White House Tapes. President Clinton faced a much different situation. His White House felt no compulsion to cooperate, knowing that we had a divided committee and knowing he had an Attorney General who would not appoint a special counsel to investigate the campaign finance scandal.

In addition, most Committees conducting investigations as important as this one are accompanied by a very active grand jury. Again, this was true of Watergate and Iran Contra, as well as many other investigations. Aggressive criminal investigations make it much more likely for a Committee to obtain a cooperation of key witnesses because of the pressure such witnesses feel. Clearly, key witnesses felt no such pressure during our investigation. But very shortly after our Committee went out of business on December 31, 1997, indictments started to be returned against associates of the President and Vice President, even though information of their activities had been known for over a year. Although many are questioning the future viability of the independent counsel statute, the Attorney General's handling of this matter will present a strong argument *against* abolition of that statute.

It is also clear that major committee investigations have to come to terms with the realities of the modern media. Most of the activities of Congress and individual members of Congress are judged by their ability to get their message across on television, usually in short sound bites. With the proliferation of cable channels, there is extreme competition for the attention of the public, which has an increasingly short attention span. The public demands, or at least the news media thinks the public demands, high drama and quick resolutions. Witnesses with "star quality" are required. Complex Committee investigations do not fit neatly within this environment. In the first place, 16 Senators, each usually with only 10 minutes in which to question, is not a system designed to effectively cross examine witnesses. With rare exceptions, these investigations are laborious, often boring, piecemeal processes which require an audience which follows closely enough to understand the significance of the testimony they are hearing.

Watergate, of course, was an exception. Although that investigation started off in the traditional way, things soon changed. The Watergate Committee started off with a young employee of the Committee to Re-elect the President, who was questioned about an organizational chart which set forth the members of the Committee



staff. The Committee was pursuing a “bottom up” approach, starting with minor witnesses. Predictably, the hearings were pronounced boring and useless. Fortunately, shortly thereafter, James McCord was being sentenced down the street before Judge Sirica and important information was elicited. Shortly after that, Mr. McCord was before the Committee and things began to take a different course. Then, John Dean, the White House Counsel, came forth to testify against the President and then the taping system was discovered. Of course, these were extremely unusual events which had never occurred before that time and have not since then. Historically, investigations have much less dramatic results. Investigations usually resolve some matters and leave many matters unresolved, as is the case with both criminal and civil trials.

It may be that Committees could serve their purpose in the future by simply laying out the results of investigations already completed. Under such an approach, the decision as to whether or not to even have public hearings would await the completion of the investigation when results had been analyzed and conclusions reached. Regardless of the quantity or importance of the information produced, the investigative committee of the future that cannot produce a “smoking gun” or dramatic witnesses on a regular basis will not be judged as having “captured the public attention,” which now is becoming the ultimate test of success.

#### THE CHINA ISSUE

As with all other non-Republican areas of our investigation, the Minority in their report seeks to minimize the Committee’s efforts with regard to the issue of foreign influence—even to the point of using misleading closed-session comments out of context. Therefore, the public is left with a partisan split as to the interpretation of classified materials.

I would suggest to anyone who wants to objectively consider this matter to do the following: Read my July 8, 1997 opening statement, wherein I set forth some of the facts pertaining to the Chinese plan to influence our elections. First of all, you will note the difference between what I said and what some have reported that I said. I did not say, for example, that I would prove, nor did I allege, that the PRC funnelled money into our elections, although, as it turns out, there is strong circumstantial evidence that they were so involved. Some in the media have difficulty in making the distinction between the plan on the one hand, and the implementation of the plan on the other. Secondly, read the Majority report which sets forth the individuals with close ties to the Chinese government who were funneling illegal money into the Democratic National Committee. It concludes that there is “strong circumstantial evidence” that China was involved. And while reading these documents, keep in mind the fact that both of these documents were carefully worded and they were thoroughly vetted by the CIA and FBI and National Security Agency, which, are headed by appointees of the Clinton Administration. When Members of the Minority began to attack my statement, I asked FBI Director Freeh, “Would you have let me go forward with my statement knowing that it contained incorrect information?” He responded, “Of course not.”

In view of some of the comments in the Minority report and certain Minority individual views, I believe a few further comments are appropriate.

Why did I make the comments I made on the opening day of the hearings? First of all, I knew the statement was accurate and, secondly, I did not believe that the matter was being seriously investigated. Our committee had a short life span and it was my belief that, if we could not bring the matters to the public's attention, serious questions with regard to the 1996 campaigns might never be thoroughly pursued. Therefore, after consulting with the Majority on the Committee and after having asked Senator Glenn to join me (which he declined to do), I made the statement and have continued to press our federal agencies to inform Congress on the information they have on this matter and to conduct a proper and thorough investigation. As a result, our intelligence and investigative agencies began to supply to Congress—albeit grudgingly—the information to which it was entitled. The public now knows about the plan and the serious questions that have been raised concerning the implementation of the plan. Also, after several missteps, the Justice Department seems to be pursuing this matter. Indictments are now being returned. All of this has been done without revealing classified information which might jeopardize our country's means and methods or sources.

To go back in more detail, early on in our investigation, our staff became aware of the fact that our Federal intelligence and investigative agencies had information which conclusively demonstrated that in mid-1995 the Chinese government devised a plan comprised of several parts, including illegal activities with regard to our elections. Several targeted Members of Congress were briefed concerning this plan as was the National Security Council. As we looked into this matter, we came away with the distinct impression that the Justice Department was doing very little, if anything, to pursue this matter and that this information was not being coordinated with those in the Justice Department who were investigating the campaign finance scandal. These concerns later proved to be well founded.

The information, of course, was classified. We requested that the FBI, CIA and NSA work with us to develop a declassified document whereby the public could be informed of this information at least in general terms. Over a period of many days our staff worked with these agencies. The agencies made suggestions, deletions and corrections and finally agreed upon a document. They requested that the heads of these agencies not be called into public session because the mere revelations of which agency had which information might prove to be damaging to sources and methods. We agreed. So while the underlying documentation could not be revealed and witnesses could not be called in public session, we would at least be allowed to provide some hard conclusions to the American people concerning an issue of importance to them. We thought it might also have the effect of energizing the Justice Department. I assumed that, because of the sign-off by these agencies, my July 8 statement would provoke little controversy within the Committee. That, of course, proved to be an incorrect assumption.

We persisted in prodding these agencies for additional information. They became very reluctant to give us additional information, and in response to question after question, the Justice Department in particular would refuse to provide answers because of "an ongoing criminal investigation." However, even with these barriers, troubling signs appeared. On two different occasions, we were told that the FBI had discovered extremely relevant information, with regard to individuals with close ties to the Chinese government, that they had just discovered in their files. In other words they had the information, but they didn't know that they had it. This last occasion was after the Committee had ended its public hearings. Furthermore, the Attorney General acknowledged that this information involving China had not been given to the Campaign Finance Task Force. This prompted the Attorney General to request an inspector general investigation as to why this had happened.

So not only did the Justice Department have information concerning China's plan to involve itself in our elections. Justice also had information involving illegal money laundering by individuals with close ties to the Chinese government. Apparently no one was looking at the information in its total context to determine if there was a relationship. This, of course, was and is extremely troubling. We are now told that that problem has been rectified at this late date.

As part of the Committee report, we again worked with the above mentioned agencies to carefully draft a rendition of the facts in this area. Again, the underlying information is classified, but we were able to produce a report which demonstrates that (1) there definitely was such a plan and (2) there is strong circumstantial evidence that the Chinese were involved in causing money to be funneled into our 1996 political campaigns.

Since the Minority persists in trying to undermine this report, certain additional facts should be added. The characterizations of Maria Hsia and Ted Sieong were characterizations given to this Committee by an investigative agency of this Administration. They provided underlying information which has never been and may not be disclosed, which more than amply supports these characterizations. While it is certainly not usually desirable to make such a statement about individuals without being able to supply all of the reasons for making it, on balance its obvious importance and relevance to this investigation makes it important that this information be given to the public. There is little point in undertaking a sentence-by-sentence rebuttal of the deficiencies in the Minority discussion. However, a few representations made in the Minority chapter are worth mentioning here.

First, the Minority's narrative regarding Mochtar and James Riady, which states "there was no non-public relevant information not already uncovered in the Committee's public investigation,"<sup>1</sup> is wrong. There is additional information available from two separate federal agencies. It discloses a long-term relationship between the Riadys and a Chinese intelligence agency that is distinct from the business relations between the Riadys and China Resources cited by the Minority.

<sup>1</sup> Minority Report, Chapter Two, section "The Riadys."

Second, the Minority chapter discusses the notion of what constitutes an “agent” at some length, stating that its use in the Committee report resulted in “misleading allegations.”<sup>2</sup> The Committee report employs the word in one instance—to describe Maria Hsia. The word choice was agreed to by the relevant intelligence and law enforcement agencies. In fact, it was suggested by them. As the Minority well knows, or ought to know, the use of the word “agent” is amply supported by information made available to the Committee, which cannot be disclosed publicly.

Quite apart from these and other problematic representations by the Minority, I am bothered by their selective and misleading quotations drawn from the Committee’s July 28, 1997 closed session hearing. The apparent point of that exercise is to revisit the issue of whether the opening statement I made on July 8, 1997 regarding the “China Plan” was accurate or not. To this end, the Minority suggests that “senior Executive Branch officials” disagreed with my July 8 statement.

As the Minority Members must know, since most of them were there, the same officials *confirmed* the accuracy of the July 8 statement during the July 28 hearing, particularly regarding whether the information then available suggested that the 1996 Presidential race might have been affected by Chinese efforts to influence our electoral process. It is safe to say that the July 28 hearing was confusing, for reasons that became clear at a September 11, 1997 briefing attended (and called) by those same senior Executive Branch officials.<sup>3</sup> At the September 11 briefing, one senior Executive Branch official reconfirmed the accuracy of my July 8 statement, and explained that the earlier confusion was largely a matter of semantics. Questions posed at the July 28 session generally asked whether there was any “evidence” regarding certain matters, and such questions elicited answers in the negative.<sup>4</sup> The official explained that he had construed “evidence” narrowly to include only proof which would be admissible during a court proceeding.<sup>5</sup> When asked questions more broadly about “all the information and circumstances,” the official gave quite different answers, and observed that the July 8 statement was reasonable and accurate.<sup>6</sup>

As early as July 1997, Minority Members “acknowledge[d], and never denied, that the information shown to us strongly suggested the existence of a plan by the Chinese Government—containing components both legal and illegal—designed to influence U.S. congressional elections.”<sup>7</sup> At the same time, significant contributions to the DNC and, to a lesser extent, other campaigns, including Republican causes, were being made or solicited by individuals who have ties to the PRC government. One would think that this sequence

<sup>2</sup> Minority Report, Chapter Two, section “Intermediaries: Relation to the Committee’s Public Investigation.”

<sup>3</sup> The Minority mistakenly calls the September 11 gathering a hearing. It was not. The senior Executive Branch officials called the meeting at their own behest in order to share with the Committee some significant information about a leading figure in the campaign finance investigation. The briefing was not transcribed, and in hindsight, I am sorry it was not.

<sup>4</sup> See, e.g., Minority Report, Chapter Two, section “Political Contributions to Federal Elections.”

<sup>5</sup> Closed Committee Briefing, September 11, 1997.

<sup>6</sup> *Id.*

<sup>7</sup> Joint Statement by Senators John Glenn and Joseph Lieberman, July 15, 1997.

of events would have engaged the curiosity of the Minority more fully.

#### CAMPAIGN FINANCE REFORM

Having refused to participate in the investigation of the most egregious offenses of the 1996 campaign, the Minority now pronounces the Committee's work a failure because we did not "produce" campaign finance reform. This line has been readily adopted by many beltway pundits. This must be the first time in history that the investigating committee has been charged with the responsibility of creating a public groundswell to cause sufficient pressure on Congress to produce a particular piece of legislation. The theory seems to be while on the one hand the Committee's revelations were not significant and not interesting enough to merit television coverage, the Committee, nevertheless, should have produced such a groundswell and probably would have if we only had been more "bipartisan." Interestingly, in the few days of testimony we had concerning our campaign finance system, lessons to be drawn from our hearings to date and possible remedial legislation, there was no television coverage and few reporters in the hearing room.

Despite the hypocrisy of many carrying the "reform banner" it must be noted that our investigation did demonstrate the fact that there are no longer any effective limits on campaign contributions in this country and apparently very few limits on what people are willing to do to get them. Primarily because of the Clinton-Gore campaign and the Attorney General's view of those activities, big money now dominates the American political scene as never before. And it will only get worse.

Even though the President and Vice President certified that they would abide by federal fundraising and spending limits in order to receive public funds, they devised a scheme whereby they could raise an additional \$44 million on behalf of their campaign. Others will now follow that example.

Decades ago, we decided in this country that we did not want corporations and labor unions to dominate the political scene. We outlawed contributions by them, imposed limits on individual and political action committee contribution and allowed a certain amount of soft money for local party building activities. Now because of FEC rulings, court rulings and Attorney General opinions, that system has been totally eviscerated.

The 1996 campaign provides us with a glimpse of the future. Money laundering, solicitation of foreign contributions, shakedown of Indian tribes and Buddhist Monks and, apparently, policy being purchased with regard to a casino were all due at least in part to the new perception of what could be gotten away with. Campaigns can control huge wads of soft money spent on TV ads and feel perfectly safe from a legal standpoint. The problem is of course, that the much harder-to-prove transaction that produced the soft money is often illegal. Without Congress lifting a finger we have rapidly moved from an era of the \$1,000 individual contributor or \$10,000 "party builder" contributor to one where in order to be a real player you are going to have to come up with hundreds of thousands of dollars. Unless we change the situation, this will lead to future

scandals and further cynicism among the American people. A recent public opinion survey on trust in government conducted by the PEW research center revealed that only 44% of the American people believe that their leaders are trustworthy. Among people between the ages of 18 through 29, the number is 39%. And this survey was conducted during a time of economic prosperity at home and peace abroad. These results are consistent with other surveys and should cause the Congress to seriously reconsider the role of money in politics and what effect it is having on the public's perception of us.

Congress has not revised the campaign finance laws since 1979. In many other areas we see that after a period of time laws have been passed that resulted in unintended consequences, and elsewhere court decisions and administrative rulings point out weaknesses in the legislation which go contrary to congressional intent. In those instances we have concluded that we need to address the law again. As a result of this investigation, I believe that this is what we are going to have to do so with regard to campaign finance legislation.

In passing the Federal Election Campaign Act Congress eliminated private contributions to general election Presidential campaigns altogether for those who opted into the Presidential public financing program that was established. For the last 25 years Presidential nominees who were willing to certify that they would not raise and spend additional funds were given millions of dollars of taxpayers money to fund their campaigns. As with the idea of limiting corporate, union, and individual contributions, the idea was to cut down on the corrupting influence or appearance of corruption of large sums of private money being given to elected official and those who aspired to political office. Congress also believed this legislation would have the added benefit of pulling candidates out of the fundraising chase, and instead allow them time to focus on the issues and not so much on the money provided by factions supporting those issues.

Things began to happen in the '70s, which along with later more significant developments in the early '90s, totally transformed the system that Congress had established. For example, the national, state, and local party committees were limited as to what they could spend for individual candidates. These expenditures were called coordinated expenditures. In the late 70's Congress amended the campaign laws, and the FEC interpreted those amendments, to allow national parties to spend unlimited amounts for voter registration, voter turnout, etc., without these monies counting against the limitations. On the grounds that these expenditures also benefited state and local candidates not subject to "hard money" limits, Congress and the FEC also allowed part of these expenditures to be funded with money that might be referred to as "outside the system"—what came to be known as "soft money." Under these new rules, parties could raise additional unlimited monies from individuals, corporations and unions and use those monies for grassroots efforts.

In 1991, the FEC decided that national parties could fund 35 per cent of their generic voter drive costs from soft money (40 per cent in a non-election year). The rest would come from hard money.

These new regulations also provided for the first disclosure of party soft money activity, and thus the public learned in 1992 that the major party committee raised more than \$83 million in soft money, or about four times the amount of soft money estimated to have been spent by party committees in 1984.

In the 1996 cycle, the explosion in soft money continued. Soft money receipts at the Republican National Party committees increased by 178 per cent over 1992, to \$138.2 million, while Democratic Party committee receipts of soft money increased 242 per cent over 1992 levels, to \$123.9 million. Naturally, with all this new money on hand, there was a tremendous urge to marry that money up with the largest campaign costs by far—television advertisements.

That marriage was destined to happen once the FEC issued Advisory Opinion 1995–25 on August 24, 1995. Despite an attempt to use careful language, the clear import of Advisory Opinion 1995–25 was to place the FEC stamp of approval for the first time on the use of soft money by national party committees to pay for broadcast media advertisements that directly referenced federal candidates. From that point on candidate-specific, but issue based, TV advertisements could be lumped with grassroots activity encouraged by the 1979 Amendments. The DNC and the Clinton-Gore campaign felt sanctioned under the FEC's hard/soft allocation regulations to run such helpful TV advertisements utilizing 40% soft money in 1995 (and 35% in the 1996 election year). The first such soft-money DNC and Democratic state party committee ads (also controlled and directed by the Clinton-Gore Re-election Committee) began running in October of 1995. At about the same time the AFL–CIO built on the idea by running similar soft money candidate-specific, but issue based, ads in favor of Clinton-Gore. However, the rules still prohibited soft money electioneering messages and coordination.

The stage was set for those who were willing to take the soft money game to its next level, even if it meant violating the letter and the spirit of the rules. The Clinton-Gore campaign in 1995 and 1996 filled that role. Briefly stated, the Clinton-Gore campaign circumvented the DNC's coordinated expenditure limit and used approximately \$44 million in national committee soft money to their candidates' advantage through electioneering messages that they *claimed* to be "issue advertisements."

The President and Vice President personally raised a good deal of the soft money—putting them back into the campaign fundraising chase that Congress specifically intended the campaign laws to put them above. The President personally reviewed and edited the television commercial scripts that the soft money went for and helped make the decisions on where the ads would be run. As I pointed out earlier, soft money is not permitted to go to support individual candidates and is not supposed to be coordinated or directed by those candidates. Nevertheless, the Attorney General, through her opinion on this matter, has permitted this abuse.

The second large area that was exploited in the 1996 election cycle had to do with the transfer of large amounts of soft money from the national party to the state parties which in turn would be *directed* by the national parties as to how to use the funds for

national party purposes. Under FEC rules the amount of permissible soft money expenditures by state parties depends upon the ratio of federal to non-federal candidates on that state's November ballot. For example, if there are two federal races, say Presidential and Congressional, and candidates for eight non-federal offices, the state party can pay for 80 per cent of its generic activities with soft dollars. Given that hard dollars raised in \$1,000 increments are significantly more difficult to raise, this gives an incentive to the state party to pay for as many activities as possible using soft money. To take advantage of the system, national party committees begin transferring soft money to state party committees to utilize the various state's higher soft money allowance. Substantial amounts of such transfers are made with state and local parties for "generic voter activities," but in fact ultimately benefit federal candidates, since the funds remain under the control of the national committees. So, again, the use of such soft money allows more corporate, union and large contributions by wealthy individuals into the system.

In the crucial 1995 pre-election year, according to FEC reports, the DNC transferred almost \$11.4 million of soft money to state parties, followed by another \$6.4 million in the first quarter of 1996. The RNC shifted a little over \$2.4 million to the states in about that same period of time. Ultimately the DNC quietly transferred at least \$32 million and perhaps as much as \$64 million to state democratic party committees in the '96 election cycle. Much of this money was used for television commercials. This transfer of funds allowed state party committees to use the national party soft money in areas to help their federal election goals more than if the national party committee had made expenditures directly. The DNC on its own would have had to have purchased the same air time under guidelines requiring a higher percentage of hard dollars.

Our hearings demonstrated that on some occasions the very same ad would be run by both the national party and the state party, all created by the DNC Clinton-Gore media consultant, Squire, Knapp and Ochs. FEC reports of the receipts and expenditures of a dozen state Democratic parties from July 1, 1995 to March 31, 1996 indicate that the state entities operated as little more than a pass-through for the DNC to pay for the production and broadcasting ads by the Squier firm.

Thus, the DNC and the Clinton-Gore campaign found a way to use all of the big corporate, union, and individual soft money they could raise for the direct benefit of the Clinton-Gore campaign. The Clinton-Gore campaign would actually raise the soft money for the DNC, which in turn would spend it as they were directed by the Clinton-Gore campaign on ads to benefit the Clinton-Gore campaign. In addition, the DNC would send soft money to the states, which could use higher percentage of soft money than could the DNC, then direct the states as to how to use the money, once again for television ads to benefit the Clinton-Gore campaign.

It was all an obvious ruse, but it could work in a world where the FEC might take four or five years to impose a modest fine, and with an Attorney General who was willing to adopt a tortured Clinton-Gore legal defense theory in order to justify such actions.



Of course, labor unions and the 501(c)(4) tax exempt independent groups supporting both parties have kept apace of these new developments. They, too, now systematically run ads supporting or targeting specific candidates, all the while coordinating their activities with the candidate they support and often with each other. As with issue ads the national parties, they claim that the ads they run are "issue ad" and, therefore, can't be regulated even though sometimes they contain clear electioneering messages. However, the fact that they are coordinated with the candidate makes the expenditure, in effect, contributions to the candidate's campaign under *Buckley*, 424 U.S. (1976), and various FEC enforcement cases. There is nothing in the court cases that would indicate that such coordination is legal. In fact, quite the contrary. Moreover, the FEC takes the position that even "issue ads" which are coordinated are illegal. National parties and independent groups seem to be taking the position that "we didn't coordinate," but if we did it's legal anyway. The DNC and the Clinton-Gore campaign stand alone in this regard because their coordination and actual control by the candidate himself of the soft money expenditure was so open and so blatant that they had to make an all out legal defense based upon the proposition that coordination is permissible.

*Buckley* addressed the problems of would-be contributors avoiding the contribution limitations by the simple expedient of paying directly for media advertisement for a candidate when the expenditures were controlled by or coordinated with the candidate or his campaign. *Buckley* stated ". . . such controlled or coordinated expenditures are treated as *contributions* rather than expenditures under the Act's (the FECA's) contributions ceilings (And this) . . . prevents attempts to circumvent the Act through pre-arranged or coordinated expenditures amounting to disguised contributions . . . ."

And it certainly makes no difference if the person who wants to purchase the television ad runs his contribution through the DNC instead of buying it directly. The potential corrupting influence is present either way. Nevertheless, the Attorney General seems to have adopted the Clinton-Gore's campaign argument.

The Attorney General's position will have many ramifications. Her position is based upon the idea that soft money contributions are not "contributions" under the FECA. But if that blanket position is true, then soft money foreign contributions are not illegal either. It is only foreign "*contributions*" that are illegal under the statute. Under her interpretation, unlimited amounts of foreign money could be brought in by a political campaign and placed in a soft money account and used for so-called "issue ads" and it would be perfectly legal.

So in summary, we see that the '96 elections produced some clear violations of the criminal law and Congress' job in this area is to exercise oversight over the Justice Department to make sure that the laws are enforced. However, we also see the way in which soft money, issue advocacy and coordination are being used—used in ways that have been long considered to be violations of the law. So with the combination of court rulings, FEC opinions, and lax law enforcement, as a practical matter we are left with no campaign finance system at all.

There are some simple legislative solutions to many of the problems witnessed during the Committee's investigation, and touched on in the discussion above. First, the national party committees and federal candidates must address the soft money situation. The practice of allowing publicly funded primary and general Presidential candidates to raise soft money for themselves, or others, is not consistent with the Federal election Campaign Act's major goal of preventing actual, or the appearance of, corruption resulting from a quid pro quo for large campaign contributions. Legislation needs to be passed prohibiting federal party committees from soliciting, accepting or directing any money outside that regulated under the Federal Election Campaign Act. Furthermore, federal candidates should be prohibited from soliciting or directing soft money in any manner related to federal elections. The courts, and numerous constitutional scholars, agree that unions and corporations can be constitutionally prohibited from participating in the federal political process. Such a limitation could certainly extend to the party committees whose main purpose is to elect federal candidates.

Implicit in doing away with the soft money system is the corresponding need to raise the hard money contribution limits to a reasonable level in order to dampen the demand for money outside the regulated system. The Committee's investigation revealed that the constant pressure to raise more and more contributions in \$1,000 increments has lessened the time federal election candidates have to spend on the actual issues of the campaign, and increases the risk that illegal contributions will be accepted without proper vetting. Inflation has taken its toll over the years. An individual contribution of \$1,000 (set in 1972) is worth \$259 today. In order to have the same amount of purchasing power today as in 1972, individual contributions would need to be increased to approximately \$3,800. All of the contribution limits established in the FECA are subject to the same devaluation. Therefore, it seems advisable to raise all contribution limitations established by the FECA, and index them for future inflation.

As noted in the Final Report's recommendations, the foreign money prohibition can be strengthened by allowing contributions to federal candidates and party committees only from those eligible to vote. This is a brighter line that is more easily enforced than the current law.

Finally, certain revisions in the law related to the FEC itself will speed and facilitate fuller disclosure, as well as more effectively allow the FEC to do its job. The most important component of such legislation would be the mandatory requirement that all political committees file electronically with the FEC. This allows for quicker and more widely distributed searchable data to be placed on the internet at very little cost. In order to "unclog" the FEC enforcement system, it is also necessary to establish a traffic ticket type schedule of fines for minor reporting violations. Currently the FEC wastes incredible resources processing the most minor violation under the complicated due process procedures established by the FECA with more serious violations in mind.

## THE COORDINATION ISSUE

The Minority contends that it is legal for a presidential candidate to direct and control the content of the issue advocacy conducted by that candidate's political party. The Minority also contends that the Majority's conclusion to the contrary is unsupported by any authority. In fact, under current law, it is illegal for a presidential candidate to control his party's issue advocacy expenditures in excess of the permissible coordinated expenditure limits. The purported authorities cited by the Minority are inapposite.

For presidential campaigns, the Federal Election Campaign Act creates an optional public finance system whereby candidates who make the required certifications to the Federal Election Commission can receive federal matching funds. 26 U.S.C. §§ 9003, 9004, et seq. Candidates who voluntarily agree to participate in this system of partial public financing are limited in the amount of money they can spend. 2 U.S.C. § 441a(c). Political parties can make expenditures in connection with the election campaigns of their presidential candidates, but such "coordinated expenditures" are limited to amounts set in the FECA (in 1996, \$11,994,007). 2 U.S.C. § 441a(d).

In enacting the presidential campaign funding mechanisms of the FECA, "Congress properly regarded public financing as an appropriate means of relieving major-party candidates from the rigors of soliciting private contributions." *Buckley v. Valeo*, 424 U.S. 1, 96 (1976) (*per curiam*). The FECA's contribution limits to congressional and presidential candidates in general, and the institution of the public financing of presidential campaigns in particular, were enacted "to limit the actuality and appearance of corruption resulting from large individual financial contributions." 424 U.S. at 26 (contribution limits), 96 (public financing of presidential campaigns). In the *Buckley* case, the Supreme Court upheld the scheme of limits on contributions and expenditures when they were conditioned by the receipt of public funds. The rationale for these limits was to restrict the influence of prospective donors. Clearly, this would apply equally when candidates solicit directly for contributions to their campaigns or to a party committee the candidate controls.

Under the FECA, two important variables that determine whether a particular contribution or expenditure is legal are the content of the message and whether coordination exists between the candidate and the entity that funds the expenditure. In her April 14, 1997 letter to Senator Hatch, Attorney General Reno purported to rely upon FEC rulings that "advertisements that do not contain an 'electioneering message' may be financed, in part, using 'soft money,'" to support the contention that the President's ads were legal. Letter from Attorney General Janet Reno to Senator Orrin Hatch, April 14, 1997, p. 7. Then the Attorney General assumed, without discussion, that the Clinton-Gore ads did not contain an electioneering message. She did so because, consistent with the Minority Report, she equated "electioneering message" with "express advocacy." In other words, she and the Minority apparently take the position that if the ads are not express advocacy, they, by definition, do not contain an electioneering message. However, the FEC

draws a distinction between the two concepts. And under their definition, these ads contain an electioneering message.

The FEC defines “electioneering message” to cover a broad range of expression, broader than the express advocacy standard set forth in *Buckley v. Valeo*. Under FEC Advisory Opinion 1985–14, “[e]lectioneering messages include statements ‘designed to urge the public to elect a certain candidate or party.’” FEC Advisory Op. 1985–14, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5819 at 11,185 (April 12, 1985) (citing *United States v. United Auto Workers*, 352 U.S. 567, 587 (1957); see also FEC Advisory Op. 1984–15; FEC Advisory Op. 1984–23; and FEC Advisory Op. 1984–62). For instance, in Advisory Op. 1985–14, the FEC found the following language that is clearly not express advocacy to constitute an electioneering message: “Let your Republican Congressman know that their irresponsible management of the nation’s economy must end—before it’s too late.” If an advertisement contains an “electioneering message,” then the FECA’s restrictions on sources and amounts of funding, and its disclosure and disclaimer requirements apply. See 2 U.S.C. §§ 441d (disclaimer provisions); 431 *et seq.* (contribution limitations); 441b(a) (prohibition on corporate and union funds); 441e (prohibition on foreign funds); 441f (prohibition on contributions made in the name of another); 434 (reporting requirements); 441a(d)(2) (limitations on the amount of “coordinated expenditures” a party can make on behalf of its presidential candidate).

Clearly, under the FEC’s test, which defines “electioneering message” to encompass far more than “express advocacy,” the Clinton-Gore controlled DNC ads were “electioneering message” ads and could not be legally funded with soft money. President Clinton drafted ads that referred to both the President and to Republican Presidential candidate Bob Dole. These ads all criticized candidate Bob Dole and praised candidate Clinton, and compared the two. This content is what the FEC means by advertising “designed to urge the public to elect a certain candidate or party.” Accordingly, these advertisements clearly could not legally be funded with “soft money,” but rather only with hard money subject to the coordinated expenditure limits set further in the FECA.

Similarly, the Attorney General’s April 14, 1997 letter to Senator Hatch, which the Minority Report again adopts, stated: “The FECA does not prohibit the coordination of fundraising or expenditures between a party and its candidate for office. Indeed, the Federal Election Commission . . . has historically *assumed* coordination between a candidate and his or her political party.” Letter from Reno to Hatch 4/17/97, at 6–7 (emphasis in original). The conclusion that the legality of coordinated media advertisements between candidates and parties turns solely on the content of the advertisement, and not on the degree of coordination that the Minority finds to be “assumed,” runs counter to Supreme Court case law as well as FEC rulings.

Under the FECA, payment for a communication made “for the purpose of influencing any election for Federal office” is automatically considered a contribution if it is 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. §§ 431(9)(A)(I), 441a(a)(7)(B)(I). FEC regulations

provide that coordination is presumed when candidates provide information about their plans, projects, or needs to third persons with a view towards having an expenditure made, 11 C.F.R. § 109.1(b)(4)(I)(A). In addition, those regulations state that financing of a candidate's broadcast materials in cooperation or consultation with a third party is a contribution for the purpose of contribution limitations. 11 C.F.R. § 109.1(d)(1).

In its enforcement actions, the FEC found that an in-kind contribution resulted from coordination when the agent of a presidential candidate recommended a vendor to assist an outside individual who towed a banner behind an airplane that read "No Draft Dodger for President." (MUR 3608). The FEC found a violation even though the message contained no express advocacy. And in the Hyatt Legal Services MUR (MUR 3918), the FEC found that electioneering advertisements not containing express advocacy and paid for with soft money were illegal under the FECA when coordinated between a candidate and an outside organization. The advertisements held to constitute an electioneering message stated only, "Hyatt Legal Services. Serving the people of Ohio." The FEC found that this constituted an electioneering message given that the ad's discussion of bankruptcy due to health care costs in promoting legal services echoed a theme of Hyatt's campaign, and that no ads for Hyatt Legal Services outside Ohio mentioned a similar theme. Additionally, in that case, the campaign's media consultant prepared issue advertisements for the outside organization, and the candidate exercised final editorial approval over each of the scripts for the third party organization's radio advertisements. The FEC determined that certain communications involving the participation of a federal candidate results in a contribution on behalf of the candidate if, *inter alia*, "(1) direct or indirect reference is made to the candidacy, campaign or qualifications for public office of you or your opponent;" or (2) reference is made to the candidate's "views on public policy issues, or those of [the] opponent . . . ." (MUR 3918) (citing FEC Advisory Op. 1990-5, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5982 at 11,612 (March 27, 1990)).

More importantly, the most recent Supreme Court decision in this area contradicts the Minority's position on coordination. *Colorado Republican Fed. Campaign Comm. v. FEC*, 116 S. Ct. 2309 (1996). In the Court's lead opinion, Justice Breyer explained that the Court has held limitations on expenditures generally unconstitutional, but limitations on contributions constitutional. Nonetheless, the Court has treated "coordinated expenditures . . . as contributions rather than expenditures" in order to "prevent attempts to circumvent the Act through prearrangement or coordinated expenditures amounting to disguised contributions." *Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976) (*per curiam*). Accordingly, Congress can regulate coordinated expenditures consistent with the First Amendment, since "[t]he FECA contribution limit governs not only direct contributions but also indirect contributions that take the form of *coordinated expenditures* . . . ." *Colorado Republican*, 116 S. Ct. at 2313 (emphasis added). Where, however, as in *Colorado Republican*, a party makes expenditures actually independent of its candidates, those independent expenditures cannot be regulated.

According to the Court, the FECA may require coordinated expenditures to be treated as contributions subject to limitations, notwithstanding the First Amendment, because large coordinated expenditures (and contributions) create an appearance of corruption that Congress has a compelling interest to prevent. Indeed, in the Court's view, the "constitutionally significant fact" requiring the absence of limits on independent expenditures "is the lack of coordination between the candidate and the source of the expenditures." *Colorado Republican*, 116 S. Ct. at 2317. The Court recognized that the FECA's structure would make no sense if the FECA's limits could be easily circumvented through the actions of third parties who coordinated with candidates. Importantly, Justice Breyer's plurality opinion was not the only one that stressed coordination in determining the legality of the regulation of the relationship between a party and its candidates. Two additional justices, who along with the three justices joining Justice Breyer's opinion constitute a majority of the Court, believe that all party spending on behalf of a candidate is a "contribution," and hence subject to the FECA limits. 116 S. Ct. at 2332. (Stevens, J., dissenting).

To be sure, the Court did not address whether the First Amendment prohibits Congressional efforts to limit overall party coordinated expenditures, although the parties asked it to reach that question. But the Court noted that the Colorado Republican Party's suggested affirmative answer to that question presented "the first case in the 20-year history of the Party Expenditure Provision to suggest that in-fact coordinated expenditures by political parties are protected from Congressional regulation by the First Amendment." *Colorado Republican*, 116 S. Ct. at 2319.

I, therefore, cannot agree with the Attorney General's position that "[w]ith respect to coordinated media advertisements by political parties . . . , the proper characterization of a particular expenditure depends not on the degree of coordination, but rather on the content of the message." Reno Letter to Hatch 4/14/97, at 7. If that were an accurate understanding of the law, the *Colorado Republican* case would have been decided differently: the Court would have simply considered the fact that the advertisement could not have constituted a contribution under the FECA because "the content of the message" was not express advocacy. It would not have stressed that the "constitutionally significant fact" of these party advertisements was "the lack of coordination between the candidate and the source of the expenditures." *Colorado Republican*, 116 S. Ct. at 2317. The position that content alone controls would not only render the Court's entire discussion of coordination irrelevant, but would make nonsensical the Court's decision to reserve the question whether party-coordinated expenditures with candidates could be constitutionally limited.

Moreover, *Colorado Republican* contradicts the position in the Attorney General's letter that "the law specifically applies only to *contributions* as technically defined by the Federal Election Campaign Act (FECA)—funds commonly referred to as 'hard money.'" Letter from Reno to Hatch 4/17/97, at 4 (emphasis in original). Soft money is outside the scope of the FECA only to the extent it is used for the narrow purposes the statute permits, purposes that do

not include issue advertisements designed to influence federal elections. As Justice Breyer wrote, “We also recognize that FECA permits unregulated ‘soft money’ *contributions* to a party for certain activities, such as electing candidates for state office, see Section 431(8)(A)(I), or for voter registration and ‘get out the vote’ drives, see Section 431(8)(B)(xii). But the opportunity for corruption posed by these greater opportunities for *contributions* is at best attenuated. Unregulated ‘soft money’ *contributions* may not be used to influence a federal campaign, except when used in the limited, party-building activities specifically designated in the statute.” 116 S. Ct. at 2316 (emphasis added).

Since *Colorado Republican* and the cited FEC regulations and decisions make clear that coordination is the key circumstance that determines whether expenditures on behalf of candidates are legal, *a fortiori*, when a candidate directs and controls the expenditures of an outside organization as the President did with respect to the DNC’s issue advocacy advertisements, coordinated expenditure limitations necessarily apply to that more egregious use of a third party to disseminate the candidate’s message.

The evidence produced by the Committee on Governmental Affairs’ Special Investigation in depositions and at its hearings show conclusively that Dick Morris and the President devised a scheme in which the Clinton-Gore reelection committee used the DNC as a separate and additional campaign checking account. The President’s control of the DNC was so extensive that to characterize the situation at issue as “coordination” would be to credit the DNC with much more active participation than, in fact, it provided. It is hard, if not impossible, to imagine how a candidate could do more, and a party less, to raise and spend money for that candidate’s reelection. These ads, created, financed, and run at the personal request and authorization of the candidate, clearly must be treated as expenditures by the Clinton-Gore reelection campaign.

As pointed out above, the intent of the FECA in providing limited federal funding is to remove the candidate from the fundraising process and to prevent the raising of large private campaign contributions. The deal the taxpayers make with the candidate is that in exchange for their funding, the candidate will forswear outside money, thereby making it less likely that the election will be influenced or appear to be influenced by big money. Obviously, in the matter before us, the clear purpose of the law was circumvented. If a candidate can easily circumvent those limitations through coordination with a third party, such as by raising unlimited sums for a party committee the candidate controls, that objective of the statute is completely undermined.





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GOVERNMENTAL AFFAIRS COMMITTEE SPECIAL INVESTIGATION INTO  
CAMPAIGN FINANCE ILLEGALITIES AND IMPROPRIETIES DURING  
THE 1995-96 ELECTION CYCLE

FINAL REPORT

*Additional views of Senator Collins (R-ME)*

I agree with the findings and recommendations set forth in the Report of the Governmental Affairs Committee Special Investigation into Campaign Finance Illegalities and Improprieties during the 1995-96 Election Cycle. While I am filing additional views to emphasize my belief that the Committee's hearings also demonstrate the need for fundamental changes in our campaign finance laws, it is imperative that calls for reform, whether made by me or others, not be used to justify the failure to enforce existing laws. Thus, my endorsement of new legislation in no way diminishes my support for the Committee's recommendation advocating the appointment of an independent counsel and urging "the Department of Justice to aggressively pursue the many instances of apparently illegal activity as set forth in this report." Indeed, without aggressive enforcement that is impartial both in fact and in appearance, enacting new laws is a meaningless gesture.

Regarding the need for new legislation, the hearings provided overwhelming evidence that the twin loopholes of soft money and bogus issue advertising have virtually destroyed our campaign finance laws, leaving us with little more than a pile of legal rubble. In an area otherwise beset with constitutional disagreements, the Supreme Court has clearly said that Congress may restrict campaign contributions to avoid the potentially corrupting effect of big money flowing to candidates. Yet, the efforts of Congress to establish such limits, made in the aftermath of the Watergate scandal, have been undermined by the loophole-seekers, who after years of probing, discovered that by making creative uses of soft money and running negative campaign ads with nominal references to issues, they could get around the barriers erected to prevent large donations from eroding the confidence of the American people in our electoral process.

Without reviewing the mass of evidence presented at the hearings, the episodes involving Roger Tamraz and Yogesh Gandhi suffice to show the use of soft money contributions to purchase access to high-ranking officials, including the President of the United States. In the first instance, an individual facing an Interpol arrest warrant for allegedly embezzling more than \$150 million, made or solicited more than \$300,000 in donations, with much of that amount going to the Democratic National Committee ("DNC") in the form of soft money, to buy entry to the White House to promote a pipeline project. Feeling no uneasiness at trading money for access, Mr. Tamraz proudly volunteered to the Committee that next

time he would double his largesse. Similarly, Mr. Gandhi, having been denied a meeting at the White House, made a donation to the DNC of \$325,000, allegedly in laundered foreign money, to obtain a picture with the President for two foreign business associates eager to impress potential customers with their connections to the leader of the most powerful country on earth. Conduct of this sort makes a mockery of the \$1000 campaign contribution limit imposed on individuals.

Even more damaging to our democracy is the perception that soft money contributions may buy not only access but results as well. The Hudson Band of Chippewa Indians, an impoverished tribe in the State of Wisconsin, has every reason to suspect that the denial by the Secretary of the Interior of its casino license was driven by the expectation of large soft-money donations by the wealthy tribes opposing its application. The fact that Native Americans now apparently feel they must play the soft money game to participate in our democracy may be the saddest commentary of all on our campaign finance system.

The hearings also reinforced what every American television viewer learned in the 1996 elections, namely, that bogus issue advertising makes a sham of our campaign contribution limits. These ads usually take the form of savage political attacks thinly disguised as statements advocating a position on an issue. If organizations, some of which are barred from contributing to federal campaigns, and individuals, all of whom are restricted in the amounts they may contribute, are allowed to spend unlimited funds to attack a candidate's opponent, and thereby influence the outcome of the election, the reforms of the 1970's are rendered a dead letter. Indeed, it has been persuasively argued that the situation will have been made worse, as candidates will not even be accountable for this potentially massive and frequently deceptive form of campaign advertising.

At a minimum, the hearings demonstrate a need to close these loopholes to restore the original purpose of the post-Watergate reforms, and I have cosponsored legislation to that effect. But the hearings also suggest a more fundamental problem which, if left unaddressed, will certainly give rise to new loopholes. That problem is the mania for money that has infected our political system.

It would be naive to suggest that the mania for money is new in the political life of our country, but as the hearings revealed, it has reached epic proportions. Indeed, the television ad race has become the political counterpart of the nuclear arms race, characterized by the same insecure feeling that one can never have enough. Unless we address the spending side, we will be condemned to the endless task of plugging leaks in whatever dams we build to limit the flow of contributions.

Before these proceedings began, I announced my support for legislation that would place voluntary limits on campaign spending in return for reduced-priced television time for political ads and free mailing privileges for campaign materials. The insatiable appetite for television money, revealed in the hearings, has strengthened my belief in the need for such legislation.

The hearings had another effect, however, which was to strip away the illusion that voluntary spending limits or any other solu-

tion will be perfect for all times. The pressure for money is so great that we may have no choice but to recognize that there will be a recurring need to amend our campaign finance laws to deal with the latest abuses. In the final analysis, the loudest message of these hearings is that if we fail to aggressively enforce our current laws, and amend them when necessary to close loopholes, we risk a democracy driven not by the quality of one's ideas or the level of one's integrity but rather by the thickness of one's wallet.

SUSAN M. COLLINS,  
March 10, 1998.



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#### ADDITIONAL VIEWS OF SENATOR ARLEN SPECTER

The Senate Governmental Affairs Committee had the potential to make a significant, if not decisive, impact on campaign finance reform when we voted 99 to 0 on March 11, 1997, to include improper as well as illegal activities in our investigation of the 1996 federal elections.

That potential was immediately undermined by the December 31, 1997, deadline. On March 11, I initiated a colloquy with the Committee Chairman and Ranking Member pointing to the obvious incentive of opponents of our investigation to engage in delaying tactics beyond the cutoff date. That December 31st cutoff date was a constant cloud over Committee initiatives deterring the Committee from activities which might not or could not have been concluded before that date. In the end, the cutoff date and severe partisan differences led the Committee to conclude its hearings on October 31st, even two months before the mandated termination date.

The partisan disagreements were the main reason the Committee could not and did not do more to expose the facts which could have created the public demand necessary to compel the Congress to enact campaign finance reform. I have long been convinced that such reform would not occur until there was the kind of a tidal wave of public pressure which led to such legislation after Watergate.

It is obviously an uphill battle to change the current system which protects incumbents. It did not take too much provocation on any issue for one side or the other to throw up roadblocks when the Committee would come to an intersection where bipartisan agreement was necessary. To try to assess blame would be hopeless and pointless. It was a bipartisan, joint failure.

A key difference arose over who would be subpoenaed and how broad those subpoenas would be. In June, Senator Levin and I were deputized to work out a dispute on the subpoena controversy. We succeeded, perhaps too well, because we were never deputized again.

Some subpoenas were particularly sensitive because they might have implicated Members. Those not in the Senate have not seen and probably cannot understand the constant, frequent interchanges among Members on numerous issues which require collegiality for the institution to function. Every effort is made by Senators to modulate disagreements over specific issues with the prevailing attitude being that the next vote is more important than the last vote. I would not say that the Congress cannot investigate itself; but in this matter, we did not.

Several subpoena recipients correctly complained that their subpoenas were too broad. Instead of limiting and then enforcing the subpoenas, the partisan controversy festered and ultimately nothing was done. In my opinion, our failures to enforce those subpoe-

nas constitutes a serious precedent weakening the Senate's institutional authority.

The Committee's work was substantially hindered by difficulties in obtaining important information from the CIA and FBI. On September 11, 1997, Attorney General Reno, FBI Director Freeh and CIA Director Tenet testified before the Committee on a sequence of events which was and is extraordinarily difficult to understand and impossible to justify. Director Tenet testified that a Committee briefing by the CIA and FBI in July 1997 was incomplete because the Committee was not told at that time about an FBI report that an individual, who had been identified in many news accounts as a major foreign contributor to political campaigns and political committees, had made significant contributions as part of a plan of the government of China.

The FBI Director advised that the information about that individual had been in the FBI files since September or October of 1995 on one report and since January 1997 on a second report. The FBI Director advised that the Committee was not told about that information at the July 1997 briefing because the FBI did not know it had the information in its files.

The Governmental Affairs Committee was further advised at the September 11, 1997, briefing that if in the future the Department of Justice found similar information, they would "very seriously consider and talk about bringing that information to the committee." That was palpably insufficient.

After that event, I had no confidence in the completeness of information furnished to the Committee by the FBI or CIA. During my service on the Intelligence Committee, I found similar instances where critical information was withheld by the CIA. My experience with former CIA Director John Deutch, FBI Director Freeh and CIA Director Tenet leads me to believe they did not know about such withheld information.

In reporting on the Aldrich Ames case, then CIA Inspector General Fred Hitz stated that former Directors William H. Webster, Robert M. Gates and R. James Woolsey should be held accountable on the following rationale:

We have no reason to believe that the DCIs who served during the relevant period were aware of the deficiencies described in this report. But DCIs are obligated to ensure that they are knowledgeable of significant developments related to crucial Agency missions. Sensitive human source reporting on the Soviet Union and Russia during and after the Cold War clearly was such a mission, and certain DCIs must therefore be held accountable for serious shortcomings in that reporting.

That controversial approach has not been adopted, but it is worth considering in the light of repeated failures by heads of those departments to find out and know what is in their agencies files.

After the strong criticism by Committee Members at the Senate September 11, 1997, hearing, it was reported that the FBI then looked further to determine whether other information had not been disclosed. Shortly thereafter, on September 27, 1997, FBI

Agent Ray Wickman resigned. Agent Wickman had served as a unit chief on Chinese intelligence matters.

The House Government Reform and Oversight Committee has inquired into the circumstances surrounding Wickman's termination. One explanation is that he chose to resign because he was over the 57 retirement age. Another explanation was that he chose to resign rather than accept a new assignment after being replaced as the unit chief.

House Chairman Burton questioned FBI Director Freeh in House hearings on December 10 and Director Freeh stated:

“. . . he (Wickman) has said that he is retired because he wanted to retire and did not retire because he felt forced. The other thing—excuse me. The idea that he was told to turn in his sources is a nonsensical notion.”

Chairman Burton later asked Director Freeh:

“. . . have any agents or anybody at the Bureau indicated that he was dissatisfied with the Justice Department regarding their inquiry into his sources?”

Mr. FREEH: “No sir.”

At a later point in the hearing Director Freeh asked to “put one thing on the record” and then testified:

Mr. FREEH: I got this note from my general counsel, who asked to ask a question with respect to Mr. Wickman. I'm told by my counsel that Mr. Wickman was concerned with the question of DOJ attorneys accessing what we call asset files. An asset file is not the substantive information, but lists the names and address of the informant, which is the most sensitive files that we have.

I'm told that once the DOJ attorneys understood that the asset files were not substantive, that was the end of that issue. But let me get some more information and report back to you.

As of this date, March 4, 1998, Director Freeh has not yet reported back.

In the total context, there may be more to this issue than just the identity of assets and this inquiry should be pursued to determine whether Agent Wickman or anybody else at the FBI or the Department of Justice had any other information on the Chinese issue which was not turned over to our Committee.

In late February 1998, as the Committee was preparing its final report, Chairman Thompson was advised by Attorney General Reno that there was new important information on the China issue which could not be disclosed. I urged that the information at least be made available to the Committee Chairman and Ranking Member so that there could be their evaluation as to whether that information or perhaps a redacted version could be available for our report. No information has been made available by the Department of Justice.

Obviously, additional investigation is necessary to develop further the facts on the issue of the government of China influencing the 1996 federal elections.

I believe campaign finance reform is urgently required. My specific recommendations are set forth in Senate Bill 1191 captioned "The Campaign Finance Reform Act of 1997." Following my statements on the subject including arguments on the Senate Floor, I believe that Independent Counsel should be appointed to investigate the financing of the 1996 federal elections.

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## ADDITIONAL VIEWS OF SENATOR ROBERT BENNETT

It is my intention to address the question of Mr. John Huang in more detail and in another forum.

Attached are *unclassified* answers from the Directors of the Central Intelligence Agency and the Federal Bureau of Investigation to questions I submitted to them on July 28, 1997.

CENTRAL INTELLIGENCE AGENCY,  
*Washington, DC, November 3, 1997.*

Hon. ROBERT F. BENNETT  
*United States Senate*  
*Washington, DC.*

DEAR SENATOR BENNETT: Enclosed are the unclassified responses to the questions you submitted to the Director of Central Intelligence on 28 July 1997. (We have previously provided classified responses to the Office of Senate Security.) As you will note, we were not able to provide unclassified responses to all the questions you raised. For those questions to which it was possible to offer unclassified answers, the information was drawn from a variety of domestic and foreign open sources. While we have included references to specific publications in a number of these answers, these references should not be regarded as a CIA endorsement of either the publication or the specific information that is cited.

In your comments during the hearing on 7 October 1997, you expressed dismay because our original response to you did not include unclassified answers. Since the initial receipt of your questions in July, our goal has been to provide you and the committee with responsive answers. For most of your questions, unclassified answers are incomplete and therefore inherently inadequate (a judgment that is obvious from a comparison of our classified response of 3 October with the information we are able to provide in the attachment to this letter).

It is important to understand why so little unclassified information is available on the issues about which you asked questions. The focus of the mission of the Central Intelligence Agency is to collect and analyze foreign intelligence information that is generally sensitive and therefore classified. On the specific issues now before the committee, much of CIA's information is obtained from sources and methods that are particularly sensitive. I understand your desire to address publicly important questions raised in the course of the committee's investigation, but the nature of this Agency's work necessarily limits the information available for public release.

Please feel free to call me if you have any questions or concerns on this matter.

Sincerely,

DAVID P. HOLMES,

(for John H. Moseman, Director of Congressional Affairs.)

*Question 1.* Has the Intelligence Community been officially tasked to report on Chinese government attempts to influence the American political system?

Answer. The CIA as a matter of regular practice reports to senior US policymakers on Chinese activities, including attempts to influence US policy. The Agency brings this information to the policy-maker in several ways.

- Sometimes, the disseminated reporting is sent directly to our customers.

- Finished intelligence also plays a large role—through the National Intelligence Daily, the Economic Executives Intelligence Brief, and numerous briefings, intelligence reports, and memoranda tailored to meet specific requests and audiences.

*Question 2.* As a deputy director of the PLA's Liaison Department, does Deng Maomao have any responsibility for media placement or other attempts to influence the American political system?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

*Question 3.* Did the Chinese Communist Party's United Front Work Department play a role in Chinese efforts to influence the American political system?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

*Question 3a.* Did the Second Department of the PLA's General Staff Department play a role in Chinese attempts to influence the American political system?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

*Question 4.* How much money does the Intelligence Community devote to China? To Russia?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

*Question 5.* How many Chinese language officers do you have at Level 2 or better? How many Russian linguists?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

*Question 6.* What is the relationship between Stanley Ho and Beijing authorities, especially the Chinese Communist Party?

Answer. According to various Hong Kong press reports, gambling magnate Stanley Ho was awarded Macau's casino monopoly in 1962. He is the Managing Director of the Sociedade de Turismo e Diversões de Macau (STDM), which operates nine casinos, the Macau Jockey Club, and several hotels and banks in the territory.



- According to Dow Jones, Ho also holds a 14 percent share of Air Macau. The airline's majority shareholder is a wholly-owned subsidiary of the Civil Aviation Administration of China.

Press reporting indicates that Ho's relationship which Beijing is characterized by mutual suspicion.

- Accounts in the Hong Kong press claim that Beijing is uncomfortable with Ho's gambling monopoly and has long sought to ensure greater influence—including efforts to secure seats on STDM's board of directors—over the billions of dollars in tax revenues the concession generates for the Macau government.

- The Far Eastern Economic Review reported on 6 September 1996 that Ho is increasing his investments in China.

*Question 6a.* What is the relationship between Ted Sioeng and Beijing authorities, especially the Chinese Communist Party?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

*Question 6b.* What is the relationship between Beijing authorities and Charlie Trie [pronounced Tree]?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

*Question 7.* What is the business relationship between Ng Lap Seng [pronounced Ung Lop Song] and Charlie Trie? Are they partners in Ng Lap Seng's Hong Kong Food City operations?

Answer. We are aware from open source materials, including the Wall Street Journal, that they are close associates and that Mr. Trie appeared to have helped Mr. Ng establish a subsidiary of his Macau-based property development corporation here in the United States. The same reporting also shows that Mr. Ng subsidized a number of Mr. Trie's business activities here in the United States.

*Question 8.* While a member of a White House U.S.-Asia advisory group, Charlie Trie received a CIA briefing on Asian economic issues. How many classified briefings did Charlie Trie receive? How many classified documents did Charlie Trie receive or review? Please furnish the contents of all classified briefings and documents that Charlie Trie received.

Answer. On 23 April 1996, analysts briefed the 18-member Presidential Commission on U.S.-Pacific Trade and Investment at the unclassified level on the general economic outlook for East Asia. Mr. Trie, as a member of this Commission, was present at the briefing.

The briefers provided a general overview of China's economy, its importance to the global economy, and its major trade and investment partners, especially those in East Asia. It also covered China's, Hong Kong's, and Taiwan's economic futures. No classified information was disclosed or furnished.

*Question 9.* What is the relationship between Ted Sioeng and James Riady?

Answer. Indonesian press reporting shows an indirect link between Ted Sioeng and James Riady through the Tanuwidjaja family of Indonesia. The Riady family and the Tanuwidjaja family are reported in the press as long-time friends. Sioeng is related by marriage to the Tanuwidjajas—one of his daughters is married to

Subandi Tanuwidjaja. There are also business connections—the Tanuwidjaja family bought into the Worldwide Golden Leaf company, which distributes the same Chinese cigarettes as Sioeng's companies.

*Question 10.* What ties does Mr. James Riady have to Beijing officials?

Answer. A variety of press reporting shows that James Riady—the eldest son of Mochtar Riady—is in charge of Lippo's Indonesian operations and plays a substantial role in managing Lippo's international businesses, particularly in Hong Kong, where he is Deputy Chairman of Lippo Limited, which controls most of Lippo's investments in China. According to Moody's International, Lippo has 17 of its 138 subsidiaries and 13 of its 30 affiliates incorporated in China. Almost all of these are joint ventures with local, regional, and central governments in China. Lippo has provided financial backing for large-scale public works projects; for example, Lippo has provided concessionary-rate loans to finance many of these projects in key party members' home areas.

*Question 11.* What ties does Stephen Riady have to Beijing officials?

Answer. Stephen Riady lives in Hong Kong and is the Chairman of Lippo Limited, which manages Lippo's investments in China. U.S. business press reporting states that Lippo has substantial interests in China—about \$2 billion in the Riady's ancestral province of Fujian alone. These include real estate, banking, electronics, currency exchange, retail, electricity, and tourism. According to Moody's International, Lippo has 17 of its 138 subsidiaries and 13 of its 30 affiliates incorporated in China. Almost all of these are joint ventures with local, regional, and central governments in China. Lippo has provided financial backing for large-scale public works projects; for example, Lippo has provided concessionary-rate loans to finance many of these projects in key party members' home areas.

*Question 12.* What relationship did John Huang develop with Chinese authorities while he was a banker in Hong Kong?

Answer. U.S. press reports claim that John Huang worked for the Lippo Group, which is a co-owner of the Hong Kong Chinese Bank with China Resources—owned by China's Ministry of Foreign Trade and Economic Cooperation.

- In January 1994, Lippo Group and the State of Arkansas sponsored five Chinese government officials—four from the Ministry of Foreign Trade and Economic Cooperation and one from the China Friendship Service—to visit the United States. The group named Huang as the contact person for their group.

*Question 13.* What advice did the CIA give to the Federal Reserve on the China Construction Bank (CCB) licensing application? What role did Ted Sioeng have in the license application?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

*Question 14.* Concerning Ted Sioeng's "Red Pagoda" brand cigarettes concession, how did he obtain the concession? What area does it cover? The U.S.? Southeast Asia? What is its value?

Answer. According to U.S. press reports, including Business Week, Mr. Sioeng made money in the late 1970s by selling refurbished tobacco equipment to China's Yunan Province. He was later granted government rights to manufacture and export Hongtashan ("Red Pagoda Mountain") cigarettes throughout the world.

The producers of Hongtashan cigarettes made pre-tax profits of \$975 million in 1996, according to press reports. A company official told the press in May that the Yuxi Cigarette Plant in Yunan Province earned \$115 million in foreign exchange last year through export.

*Question 15.* What relationship does Ted Sioeng have to the Iowa Wesleyan College?

Answer. According to U.S. press reports, including Business Week and Time, Mr. Sioeng has donated money to Asian-American groups and his donations to Iowa Wesleyan College were recognized with an honorary doctorate.

*Question 16.* What relationship does Ted Sioeng have with Mr. Chio Hocheong of Macao?

Answer. Our review of Hong Kong and Western press reporting shows that Chio Hocheong is a Macao legislator and nightclub owner. He won a seat in Macao's September 1996 legislative elections. Chio ran under the banner of the Macao Economic Promotion Association, which was backed by the territory's gambling, entertainment, and property development interests. Press reporting is unclear about the nature of the relationship between Ted Sioeng and Chio Hocheong, if there is any.

*Question 17.* Johnny Chung started seven California companies with Chinese nationals as officers, directors, or shareholders. Who are the Chinese nationals involved in these businesses?: What relationship does Johnny Chung have to the China International Trust and Investment Corporation aka CITIC?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

*Question 18.* What relationship do the Riadys have with CITIC?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

*Question 19.* What relationship does the CP Group of Thailand have with Beijing authorities?

Answer. The Charoen Pokphand (CP) Group is the single largest foreign investor in China with, according to a Harvard study on major corporations in ASEAN, 130 joint ventures and subsidiaries in 27 provinces worth about \$3 billion. More than 60 percent of CP's revenues come from China. CP's investments are diversified in numerous industries including agro-business, auto parts manufacturing, real estate, telecom, and energy.

- CP first entered the Chinese market in 1979 in the agro-business sector—this has since become the dominant source of earnings for CP, contributing about 50 percent of the company's overall total. CP is the world's second largest producer of chicken boilers and operates more than 100 feed mills in more than 12 countries, according to Western Press reports, including Reuters. China alone holds about 70 feed mills which produce most of more than 6 mil-

lion tons of chicken feed per year and process more than 2 million birds a week, holding substantial market share.

- CP is China's second largest motorcycle dealer and holds more than a 15 percent market share in one of China's fastest growing industries. CP also is heavily invested in real estate development in Shanghai.

- CP founded its subsidiary Chia Tai, a Chinese translation of its Thai name. The Chia Tai Group name is almost always used for business ventures, meeting with Chinese officials, and making charitable contributions.

- CP was unique from other foreign investors, who concentrated mainly on industry. In addition, CP continued to invest in China after the Tiananmen incident when other investors either stopped or slowed their investment.

CP also makes generous contributions to charitable and infrastructure projects. In 1991, Dhanin delivered \$1.9 million to Chen Hong, Chinese Vice-Minister of Civil Affairs and Secretary General of the China Committee of the "International Decade for Natural Disaster Reduction," for relief assistance to China's flood-stricken areas, according to official Chinese press.

*Question 19a.* What relationship does the CP Group have with the PLA?

Answer. Both the PLA and CP have ventures in the retail petroleum business, according to several press reports.

*Question 19b.* What relationship does the CP Group have with CITIC?

Answer. Western press reporting shows that the CP Group is the single largest investor in China—concentrating in agro-business and auto parts—and CITIC is the primary vehicle for foreign direct investment into China, making commercial interaction between the two organizations likely.

*Question 20.* Does the CP Group do business with or in Iran, Iraq, Syria, or Libya?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

*Question 21.* What are the business relationships between Gregory Luchanskiy of Nordex and Vadim Rabinovich of OSTEX? What business relations do either of them have with Roger Tamraz?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

*Question 22.* Does the China Ocean Shipping Company (COSCO) have a business relationship with Johnny Chung, Charlie Trie, John Huang or Ted Sioeng?

Answer. According to U.S. press reports, Johnny Chung brought a COSCO executive into the White House. COSCO's shipping fleet handles about 85% of Chinese exports to the United States.

*Question 23.* Is it true that the last National Intelligence Estimate on the Chinese military was issued in 1992? Is it also true that a draft NIE on the PLA was prepared by the CIA last summer but was suppressed by an outside panel of experts?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

*Question 24.* In 1976 CIA Director George Bush established a Team B to have a second look at Community reporting on the Soviet Union. Team B was composed of outside experts who were critics of the reporting at the time and who later became the leading policymakers of the Reagan Administration. Would you consider a Team B for China headed by, for example, former Ambassador to Beijing James Lilley?

Answer. We cannot provide an unclassified response that answers this question. A classified response has been provided to the Office of Senate Security.

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