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Union Calendar No. 595

106th Congress, 2d Session – – – – – – – – – – – House Report 106–1027

JANET RENO'S STEWARDSHIP OF THE JUSTICE DEPARTMENT: A FAILURE TO SERVE THE ENDS OF JUSTICE

TENTH REPORT

BY THE

COMMITTEE ON GOVERNMENT REFORM

together with

MINORITY VIEWS

Volume 1 of 2

Available via the World Wide Web: http://www.gpo.gov/congress/house
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DECEMBER 13, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

67–356 WASHINGTON : 2000

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, December 13, 2000.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Government Reform, I submit herewith the committee's tenth report to the 106th Congress.

DAN BURTON,
Chairman.

CONTENTS

	Page
Findings of the Committee on Government Reform	VII
I. The Attorney General's conflicted investigation	1
A. Background on the Independent Counsel Act	3
B. A rocky start: early conflicts in the Justice Department's campaign finance investigation	9
C. Attorney General Reno changed her interpretation of the Independent Counsel Act	14
D. Memoranda from FBI Louis J. Freeh and Task Force Supervising Attorney Charles La Bella recommending that an independent counsel be appointed	19
E. Department of Justice rebuttal memoranda	44
F. Department of Justice's bad faith in its application of the Independent Counsel Act	54
G. The failure to appoint a special counsel for Vice President Gore	59
II. The failures of the Justice Department investigation	63
A. The Justice Department failed to pursue the December 15, 1995, coffee tape	63
B. The Justice Department has failed to question the President and Vice President effectively	71
C. The Justice Department failed to pursue relevant documents	74
D. The Justice Department failed to pursue key individuals and entities	84
E. The Justice Department failed to pursue the Kansas conduit contribution scheme	107
F. The Justice Department failed to investigate leaks harmful to the campaign fundraising investigation	116
III. The Justice Department's political interference with congressional oversight	123
A. Failure to comply with subpoenas for the Freeh and La Bella memoranda	123
B. Failure to produce the Conrad memorandum	143
C. The Justice Department's political gamesmanship	146
IV. The favorable treatment of the Attorney General's friends	154
A. The Justice Department's handling of the Soka Gakkai matter	154
B. Robert Bratt	181
Exhibits	188

APPENDIXES

Appendix 1.—Correspondence between the committee and the Justice Department	638
Appendix 2.—Kansas Democratic party disclosure forms (receipts and disbursements)	1862

VIEWS

Minority views of Hon. Henry A. Waxman, Hon. Tom Lantos, Hon. Major R. Owens, Hon. Edolphus Towns, Hon. Paul E. Kanjorski, Hon. Carolyn B. Maloney, Hon. Eleanor Holmes Norton, Hon. Chaka Fattah, Hon. Elijah E. Cummings, Hon. Dennis J. Kucinich, Hon. Rod R. Blagojevich, Hon. Danny K. Davis, Hon. John F. Tierney, Hon. Jim Turner, Hon. Harold E. Ford, Jr., and Hon. Janice D. Schakowsky	2008
Exhibits	2034

FINDINGS OF THE COMMITTEE ON GOVERNMENT REFORM

The Attorney General of the United States has exhibited a critical lack of judgment in her stewardship of the campaign fundraising investigation. Furthermore, the reputation of the Justice Department has suffered greatly during her tenure. Given the evidence compiled by the committee, it is hard to escape the conclusion that the Attorney General has acted politically to benefit the President, the Vice President, and her own political party. Specifically:

- **The Attorney General had a conflict of interest in the Justice Department investigation of possible criminal wrongdoing involving the President and Vice President.** Any investigation of the campaign fundraising scandal required a detailed examination of the actions of the President and Vice President. The Justice Department is wholly unsuited to conduct such an investigation, and the repeated failures of the Department during the last 4 years proves that the Attorney General cannot investigate her superiors.
- **When investigative matters arose that touched upon the President, the Vice President, or the Democratic party, the Attorney General abandoned her expressed belief that an appearance of conflict was to be avoided by the Nation's chief law enforcement official.** On May 14, 1993, Attorney General Reno testified before Congress. She stated: "It is absolutely essential for the public to have confidence in the system and you cannot do that when there is a conflict *or an appearance of conflict* in the person who is, in effect, the chief prosecutor." This belief gave way to an inexplicable acceptance of the very appearance of conflict she sought to avoid when she retained supervision of the campaign finance investigation of the President, the Vice President and her own political party.
- **The decision to retain control of the investigation of the President and the Vice President showed an unacceptable indifference to an appearance of impropriety.** The principal beneficiaries of the campaign finance scandal of 1996 were President Clinton and Vice President Gore. In insisting that she retain control of the investigation of the President and Vice President, Attorney General Reno has failed to exercise a minimally acceptable standard of judgment required of the custodian of Federal law enforcement. If her investigation of campaign fundraising matters had indeed been thorough and vigorous, and if she had exhibited good faith cooperation with legitimate congressional oversight of her investigation, there would be less cause for concern. However, the decision to retain supervision of the investigation of the President, the Vice Presi-

dent, senior administration officials and her political party—juxtaposed with numerous missteps, failures, preferential treatment of political appointees, rejection of the advice of senior advisors, combined with the obvious bad faith exhibited toward congressional oversight—does not instill confidence in the Department of Justice.

- **The decision to retain control of the investigation of her own political party showed an unacceptable indifference to an appearance of impropriety.** For much of her adult life, the Attorney General has been an elected public official. She has, throughout that time, been elected on the Democratic party ticket. Although there has been an effort to describe the 1996 campaign finance scandal as a matter of "everybody does it," it is worth noting that Campaign Financing Task Force supervisor Charles La Bella devoted approximately 65 pages to possible Democratic misconduct and approximately 2 pages to possible Republican misconduct. The Attorney General's insistence on maintaining supervision of the investigation of her own political party again showed indifference to the appearance of even-handed application of justice, and a critical lack of judgment. An example of this is the Justice Department failure to investigate an apparently illegal scheme by the DNC to use conduit contributors to funnel over a third of a million dollars to the Kansas Democratic party. The Department conducted a 3 year investigation of contributions to Republicans in Kansas but failed even to consider an illegal—and successful—effort by her own party to use straw donors for political benefit.
- **The failure to conduct a thorough investigation promoted an appearance of favoritism. This reflected poorly on the judgment of the Attorney General, particularly given recommendations made in 1997, 1998, and 2000, that someone else should supervise the investigation.** Charles La Bella made the following point in his first recommendation for an independent counsel: "[i]f these allegations involved anyone other than the President, Vice President, senior White House, or DNC and Clinton/Gore '96 officials, an appropriate investigation would have commenced months ago without hesitation."

  The following failures bolster the conclusion that the Justice Department has not lived up to its obligation to conduct a thorough investigation of the campaign fundraising scandal, and that the country would have been better served if an independent counsel or special counsel had been appointed to handle the investigation:

  - The President was not asked a single question about foreign money until 2000.
  - The President was not asked a single question about James Riady until 2000.
  - The President was not asked a single question about John Huang, Charlie Trie, Mark Middleton, and the Presidential Legal Expense Trust until 2000.

- The President was not asked a single question about his 5 minute meeting with Korean national John K.H. Lee, which resulted in a $250,000 illegal political contribution, until 2000.
- The President and Vice President were not asked a single question about White House coffee fundraising events until 2000.
- The Vice President was not asked a single question about the Hsi Lai Temple fundraiser until 2000.
- The Vice President was not asked a single question about Maria Hsia until 2000, after she had been convicted in Federal court. To make matters worse, the Justice Department failed to subpoena the White House for records regarding Hsia.
- The Vice President was not asked a single question about John Huang or James Riady until the year 2000.
- The Justice Department should have been aware of evidence that, on December 15, 1995, the Vice President expressed an interest in showing political advertisements to James Riady, who lived in Jakarta, Indonesia. Not only did the Justice Department fail to obtain the original evidence for over 6 months, at least one unidentified source within the Department sought to discredit the possible evidence before it was even reviewed.
- The Vice President's former Director of Political Affairs appears to have never been interviewed by the Justice Department. This comes in spite of the fact that she authored such communications as the recently produced e-mail that discusses a "coffee list" and states: "these are FR coffees right?" [1]
- The Vice President was not asked about the September 27, 1993, fundraiser with John Huang and China Resources Chairman Shen Jueren until 2000.
- At a very sensitive time in the Department's investigation of Charlie Trie, it became clear that Trie's former bookkeeper was destroying evidence. Although the FBI wanted to move swiftly and execute a search warrant, Justice Department lawyers refused to approve such a warrant.
- The Justice Department failed to subpoena the White House for records regarding Ernest Green and Mark Middleton until 2000.

To date, the Justice Department has failed to advance an investigative rationale for these significant failures. It appears that the President and Vice President received preferential treatment at the expense of the campaign finance investigation.

[1] When the White House released this document on Sept. 22, 2000, White House staff anonymously suggested that "FR" could stand for "finance-related," not fundraiser. Other documents authored by the same individual, however, show that her use of the abbreviation "FR" refers to fundraisers.

- **The Attorney General has taken an active step to assist the Vice President during his election campaign.** On August 23, 2000, the Attorney General announced that she would not appoint a special counsel to investigate Vice President Gore: "I have concluded that there is no reasonable possibility that further investigation could develop evidence that would support the filing of charges for making a willful false statement [in the Hsi Lai Temple or White House coffee investigation]." The Attorney General further explained her position in a committee interview on October 5, 2000: "[t]he Vice President defined what he meant by a fund-raiser. . . . Based on his definition of what a fund-raiser was and what he said, I would not be able to prove, based on that, that he believed it to be a fund-raiser and testified falsely." Minutes later, the Attorney General reinforced this point: "I think the whole statement clearly reflects what the Vice President understood a fund-raiser to be, and within his definition, I think he made it clear that his statement was not inaccurate."

  There can be no more stark example of why the Attorney General should refrain from acting as investigator, judge and jury in a matter involving the Vice President. There are many suspects of criminal inquiry or criminal defendants around the country who would be eager to accept an offer from the government to be allowed to insert their definition of a factual matter in place of a jury's determination of a factual matter. The Attorney General has made an extraordinary accommodation to the Vice President—she effectively allowed him the opportunity to define a material element of the investigation and then said not only that she believed him, but that there was no possibility of developing evidence that would cast doubt on his definition.

- **The Attorney General has gone to extraordinary lengths to cover up the failures of the Justice Department.** Examples of bad faith negotiation by the Justice Department regarding document requests are legion. While the Department has argued that turning over documents would harm ongoing investigations or chill internal communications, these explanations have almost universally turned out to be pretexts to cover up embarrassment. For example:

  - On December 10, 1999, the Department of Justice announced that it would not comply with a committee subpoena for FBI interview summaries of the President and Harold Ickes. One month prior to this notification, committee staff had been told that the documents would be produced, without fail, on a specific date. After relying on Department representations, the committee was disappointed to learn of the Department's new position. Not surprisingly, the change of position came the week before John Huang was scheduled to testify before the committee. It must be noted that the hypocrisy of the Department's position was underscored by the fact that when Democrat Senate Committee Chairman Donald Riegle requested FBI interview summaries in 1994, 84 such documents were produced by

the Attorney General. It appears that a special standard was developed for the campaign finance investigation—one made more understandable when the interviews of the President were finally produced and it became clear that the Justice Department had neglected to ask a single question about foreign money or James Riady.

The hypocrisy of the Department's refusal was also underscored by the assertion that "[t]he Department has observed what appears to be an increasing incidence of public release of [FBI interviews]." Chairman Riegle released 84 FBI summaries in 1994. The Committee on Government Reform, however, had released a grand total of *one* FBI summary in the previous 3 years.

- The Freeh and La Bella memoranda, and the transcripts of the Justice Department interviews with the President and Vice President, show an investigation derailed. Thus, the committee believed it was prudent to come to an understanding of what documents had been subpoenaed by the Justice Department. This too proved informative. For example, by obtaining subpoenas issued to the White House, the committee now knows that the Justice Department did not even ask the White House for information about former Presidential advisor Mark Middleton (who invoked his fifth amendment rights before this committee) or about Vice Presidential friend and fundraiser Maria Hsia. Unfortunately, however, the Justice Department and DNC have gone to extraordinary lengths to keep this committee from obtaining the subpoena issued to the DNC. The DNC and the Justice Department have worked hand-in-glove to keep the committee from learning whether the Department was thorough in making its document requests to the DNC. As of October 10, 2000, the DNC continues to refuse to comply with a congressional subpoena for the document requests issued to it by the Justice Department.

- **The Attorney General and her subordinates have made false statements to obtain tactical advantage in different negotiations.** At various points in the committee's investigation, the Justice Department relied upon obfuscation. The Attorney General and her staff ignored truth when a falsehood made one of their arguments stronger.
  - The Attorney General continued to rely on Lee Radek's advice regarding campaign finance matters even after he was rebuked within the Justice Department for attempting to mislead his superiors about important elements of the investigation.
  - After a Federal court ruling made it permissible for the Justice Department to share most of the Freeh and La Bella memoranda with Congress, committee staff requested the opportunity to review the memoranda and were rebuffed. Nevertheless, the Attorney General stated in a letter, "[w]e advised the Committee staff last fall that the memorandum

with reduced redactions was available for review." The Attorney General's statement was patently false. This statement is typical of the deceptive, self-serving statements made by the Justice Department throughout the debate on the Freeh and La Bella memoranda.

- After the committee subpoenaed the Freeh and La Bella memoranda, the Attorney General and Director Freeh signed a statement that the committee's subpoena was "unprecedented." This allowed the media and other commentators to paint the committee in an unfavorable light. The committee pointed out that this statement was factually inaccurate, and the FBI Director withdrew his statement. The Attorney General, however, persisted in claiming that the subpoena was unprecedented until the following year when one of her subordinates finally admitted, in writing, that the subpoena was not unprecedented. By then, of course, the Attorney General had obtained the desired political benefit, and there were no negative repercussions. While this admission would have greatly harmed the Justice Department's political position in August 1998 during the contempt debate, by March 1999 few in the public cared.

- **Justice Department officials believed that a key supervisor of the campaign finance investigation thought that the Attorney General's political future hinged on her decisions regarding her political superiors. The Attorney General's decision to retain control of this investigation while there was such a cloud over its stewardship shows a critical failure of judgment.** William Esposito, the former Deputy Director of the FBI, testified before the committee that in November 1996, Lee Radek, the head of the Public Integrity Section, told him that he "felt a lot of pressure," and that the Attorney General's job might "hang in the balance" depending on his decisions in the campaign finance investigation. This testimony, which was corroborated by another senior FBI official, Neil Gallagher, reinforced the committee's long-held view that the Attorney General had a political conflict of interest in trying to investigate the fundraising of the President, the Vice President and the Democratic party.

- **The Justice Department's political support for the President and Vice President was evident when its officials publicly undermined prosecutors who recommended independent investigations of the President, Vice President and Democratic party. The Attorney General's failure to solve this problem by appointing an independent counsel to conduct the investigation was a significant failure of judgment.** Justice Department officials showed that they were acting in a political manner when they publicly disparaged their colleagues on a number of occasions. The Attorney General tolerated this conduct by keeping the investigation under the purview of these same individuals.

- When Robert Conrad recommended that a special counsel be appointed to investigate Vice President Gore, the New York Times reported that "Justice Department officials disparaged his conclusions." The newspaper reported: "[o]ne Justice Department official said that Mr. Conrad was alone in his recommendation. 'No other prosecutor in this matter thought that there should be a need for a special counsel,' said the official, who spoke on the condition of anonymity." This was such an egregious lie that even the Attorney General could not allow it to go unremarked. The same day, she stated that Conrad's recommendation was supported by other prosecutors.
- When Director Freeh recommended that an independent counsel be appointed to look into fundraising matters, he was savaged by both Justice Department and White House officials. For example, the New York Times reported the following in 1997: "[a]lthough Mr. Clinton had pointedly avoided answering questions about Mr. Freeh's disagreement with Ms. Reno's decision, White House aides were not so circumspect. They privately ripped into Mr. Freeh—once lauded by the President as one of his best appointees—and called him a disloyal subordinate."
- When Charles La Bella's recommendation for an independent counsel was being openly discussed in the media by the Attorney General's advisors, not only was La Bella's legal acumen attacked. One Justice Department official commented that some people were wondering whether La Bella had a "deep-seated psychiatric problem," or whether he was unstable. One can hardly imagine a clearer message to refrain from making honest recommendations than having a government official question your sanity.

- **The committee has been obstructed by the Justice Department's failure to provide guidance regarding subjects of investigation that would hamper ongoing criminal investigations.** While investigating the illegal fundraising activities of John Huang, Charlie Trie and Johnny Chung, the committee respected requests by the Justice Department not to ask questions about certain individuals or subjects. For example, on November 9, 1999, Chairman Burton informed Attorney General Reno: "I will respect the Department's wishes, and avoid questioning Mr. Trie about these two individuals, as long as they are under active investigation. I will also instruct other members of the Committee to avoid questioning Mr. Trie about those two individuals." Many months later, the committee sought guidance as to whether it is permissible to go back and revisit the unresolved subjects. The Justice Department has simply refused to cooperate and respond to numerous committee requests on these matters.
- **The Justice Department's failure to be vigorous in pursuit of evidence indicates a lack of judgment and a proclivity to take the side of the White House.**

- **The Justice Department appears to be more interested in defending the White House in the e-mail matter than investigating it.** The Justice Department appears to be engaging in a vigorous defense of the White House in the e-mail matter, rather than investigating possible wrongdoing by the White House. Although the Justice Department refuses to disclose staffing levels of the e-mail investigation, it has become known that the one part time lawyer handling the e-mail investigation for the Department has recently left government employment. This does not indicate an aggressive allocation of resources. (For a detailed discussion of this issue, please refer to the recently-released committee report "The Failure to Produce White House E-Mails: Threats, Obstruction, and Unanswered Questions.")
- **Justice Department lawyers have taken affirmative steps to mislead the public regarding key matters that relate to document discovery in the campaign finance investigation. This undermines confidence in the Justice Department and shows an extreme lack of judgment on the part of the Attorney General.** Department of Justice lawyers are taking active steps to mislead a Federal court and the public about essential elements of White House document production. For example, Department lawyers stated that the "technical failure [to produce the e-mails] is a long-standing matter of public record that has been confirmed by the White House itself." This, of course fails to disclose that the White House did not tell the Justice Department investigators and Congress that it had not fully complied with subpoenas. (For a detailed discussion of this issue, please refer to the recently-released committee report "The Failure to Produce White House E-Mails: Threats, Obstruction, and Unanswered Questions.")
- **The failure to investigate whether there has been an obstruction of congressional investigations of the campaign finance scandal indicates that the Justice Department is giving the White House preferential treatment.** In an October 5, 2000, interview with the committee, Attorney General Reno made it clear that she would not take proactive steps to determine whether the White House had obstructed congressional investigations by failing to take steps to produce subpoenaed e-mail records. (For a detailed discussion of this issue, please refer to the recently-released committee report "The Failure to Produce White House E-Mails: Threats, Obstruction, and Unanswered Questions.")

- **For reasons unexplained to date, the Attorney General has been lenient in her treatment of major foreign benefactors of the President, Vice President and DNC.** There has been a very lengthy delay in Justice Department efforts to indict major DNC benefactors James Riady, Ji Shengde, Liu

Chao-ying and Tomy Winata. There is no acceptable explanation for the lack of vigor in the investigations of these individuals.

- **Leaks from Justice Department personnel have harmed the campaign finance investigation. The Attorney General has exhibited poor judgment in leaving the investigation in the hands of people who have demonstrated their interest in harming the investigation.** The Justice Department's campaign fundraising investigation has been plagued by leaks. These leaks, which were often made at strategic times, greatly harmed the Justice Department's investigation, and strongly suggested that certain officials in the Justice Department did not want the investigation to succeed. These leaks provide a clear example of why the Attorney General should have appointed an independent counsel—to remove the investigation from politically biased officials at the Justice Department.
- **While acting as the primary Main Justice supervisor of the campaign finance investigation, Deputy Assistant Attorney General Alan Gershel took time away from his responsibilities to be the lead attorney in the trial of Charles Bakaly. It is difficult to determine which is a greater failure of judgment—Gershel agreeing to take on this assignment, or the Attorney General and the head of the Criminal Division allowing him to take on the assignment.** Charles Bakaly was the spokesman of Independent Counsel Kenneth Starr during the Lewinsky investigation. For Gershel or the Attorney General to have decided that he, and only he, out of hundreds of lawyers qualified to work on the case, was essential to the Bakaly prosecution, shows an astounding lack of judgment. At a time when it was becoming clear that the Justice Department had failed to ask the President and Vice President questions about significant campaign finance matters—and a whole new element of the investigation was opening up with the disclosure that the White House had failed to produce e-mail records to the Justice Department—Gershel decided to take on additional responsibility. Perhaps more important, he was oblivious to concerns that as the supervisor of an investigation of the President and his election tactics, he might look less than impartial if he prioritized his time so that he was a lead prosecutor in a case urged by the President, and designed to discredit Independent Counsel Starr.

Union Calendar No. 595

106TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPT. 106–1027, Vol. 1 of 2

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DECEMBER 13, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BURTON, from the Committee on Government Reform submitted the following

TENTH REPORT

On October 19, 2000, the Committee on Government Reform approved and adopted a report entitled, "Janet Reno's Stewardship of the Justice Department: A Failure to Serve the Ends of Justice." The chairman was directed to transmit a copy to the Speaker of the House.

I. THE ATTORNEY GENERAL'S CONFLICTED INVESTIGATION

Since the inception of the Department of Justice's Campaign Financing Task Force, many people have believed that a conflict or perceived conflict of interest existed for the Department of Justice to investigate the fundraising issues surrounding the Democratic party and the reelection of President Clinton and Vice President Gore. This was because Attorney General Reno, ostensibly the final decisionmaker in any Justice Department investigation, was appointed by the President and answered only to him. The Independent Counsel Act[1] ("the Act") was enacted for just such situations. In order to avoid a conflict or an appearance of a conflict when the Attorney General would have to investigate the administration of which she is a part, she was able to request the appointment of an independent counsel. However, Attorney General Reno disregarded the Act and insisted that she was able to conduct the campaign finance investigation without conflict. This assertion was unfortunate considering she had an inherent conflict in any investigation involving the President, Vice President, and Democratic National Committee as central figures. Her actions troubled the

[1] 28 U.S.C. §§ 591–599 (expired 1999).

committee and were the committee's impetus for conducting oversight of the Department of Justice in this matter. Although the Independent Counsel Act expired, and Reno would not have been able to request the appointment of an independent counsel in this matter after June 30, 1999, the committee believed it was important to investigate because the Attorney General's handling of the campaign finance investigation was tantamount to obstructing her own investigation.

What the committee eventually came to discover was alarming. Through various memoranda eventually produced to the committee, it was learned that Reno engaged in a creative analysis of the law in what appeared to be an effort to avoid the implementation of the Independent Counsel Act. FBI Director Louis J. Freeh and later, Task Force Supervising Attorney Charles La Bella, took the position that under both the discretionary and mandatory provisions of the independent counsel statute, the Attorney General should request the appointment of an independent counsel for the campaign finance investigation. However, the Attorney General and her senior advisers disagreed with the conclusions reached by Freeh and La Bella. After each preliminary investigation of senior level White House officials, including the President and Vice President, opened by the Public Integrity Section (PIS), the Attorney General determined that no independent counsel was warranted. There are dozens of memoranda among senior level Justice Department officials discussing whether an independent counsel should be appointed to investigate campaign finance matters. The Justice officials, in their memoranda, spend hundreds of pages in an attempt to explain away the need for an independent counsel. The committee was shocked to find that the Chief of the Public Integrity Section, who was in charge of the application of the Independent Counsel Act, frequently misrepresented the facts and the law in memoranda for the Attorney General. In retrospect, had an independent counsel been appointed, thousands of hours could have been spent investigating criminal and possible criminal conduct, rather than fighting the recommendations of those that believed an independent counsel was necessary.

The Attorney General was able to avoid the appointment of an independent counsel through a disregard of the law and a narrow view of the evidence. She did this by refusing to consider all of the evidence, taken as a whole, to determine whether there was sufficient information to appoint an independent counsel. Instead, she would examine individual pieces of information, as if in a vacuum, and disregard the fact that nearly all of the allegations relating to campaign finance violations led back to the overwhelming need for money created by the President and Vice President themselves.

To make the appointment of an independent counsel more unlikely, the Task Force was not able to seek out information relating to covered persons under the Act. It seems that they had to hope that specific information from a credible source would simply appear. If this were to happen, the Department would then be able to initiate a preliminary investigation.[2] Ultimately, Attorney Gen-

[2] In nearly all of the preliminary investigations conducted by the Department of Justice, the allegations investigated came from an outside source. The press first reported on the President and Vice President's fundraising phone calls from the White House. The Senate Governmental

eral Janet Reno chose to ignore the facts, the political conflicts, and the trust placed in her by the American people, by refusing to appoint an independent counsel for the campaign finance matter.[3]

On June 30, 1999, the Attorney General and many senior level political appointees at the Justice Department could breathe a collective sigh of relief. On that day, the Independent Counsel Act expired.[4] After holding hearings, Congress decided not to reauthorize the Act.[5] Therefore, the Department of Justice could no longer be called upon to implement the Act in the campaign finance investigation. After the Act expired, the Attorney General assured Congress and the public that the Department had instituted regulations allowing for a "special counsel." A special counsel was supposed to be similar to an independent counsel, but without the statutory authority or independence. It came as no surprise that when Reno's new Supervising Attorney, Robert Conrad, determined that a special counsel should be appointed to investigate Vice President Gore, Reno declined.

A. BACKGROUND ON THE INDEPENDENT COUNSEL ACT

The Independent Counsel Act allowed the Attorney General, in certain situations, to remove an investigation from the Department of Justice, and place it in the hands of a neutral party who was empowered to investigate and prosecute Federal crimes.[6] That neutral party was the independent counsel. The Office of Independent Counsel was entirely separate and independent from Main Justice.[7] What made the independent counsel truly unique was that it had all of the power and authority of the Department of Justice, but did not report to the Attorney General or President.[8] This was considered to be the best manner in which to assure the public that a truly non-partisan investigation, free from undue influence, would be conducted.

1. Legislative History of the Act

The independent counsel statute was conceived in the aftermath of the Watergate investigation. As a result of the experiences of Watergate, Congress came to believe that the Attorney General and political appointees at the Department of Justice were not always able to conduct an impartial investigation when Presidential and party politics were involved. For instance, during the Senate Select Committee on Presidential Campaign Activities' (Watergate Committee) investigation, the committee uncovered evidence of im-

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Affairs Committee brought the issue of Ickes' alleged perjury to the Task Force's attention. Common Cause first brought the media fund allegations to the Department.

[3] The Independent Counsel Act expired June 30, 1999. 28 U.S.C. § 599. However, soon after the expiration of the Act, the Department of Justice enacted regulations allowing the Attorney General to appoint a special counsel, who would be authorized to investigate and prosecute matters when the Attorney General concludes that extraordinary circumstances exist such that the public interest would be served by removing a large degree of responsibility for a matter from the Department of Justice. 28 C.F.R. § 600 et. seq. (1999).

[4] 28 U.S.C. § 599 (1994).

[5] See generally hearing on the "Reauthorization of the Independent Counsel Statute," before the subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary, 106th Cong. (1999); hearings on the "Independent Counsel Act," before the Senate Committee on Governmental Affairs, 106th Cong. (1999).

[6] Because of the authority it conveyed upon an independent entity, appointed by a three judge panel, many people charged that the Independent Counsel Act was unconstitutional.

[7] 28 U.S.C. § 594(i).

[8] 28 U.S.C. § 594(a).

propriety on the part of the Department of Justice.[9] In particular, the Watergate Committee concluded that the Chief of the Department's Criminal Division, Henry Peterson, acted as a conduit for information from the grand jury to the Counsel to the President and the President himself.[10] In addition, Peterson gave the President tactical advice regarding the manner in which the White House should respond to the Watergate investigation.[11] The committee also determined that Peterson "attempted to insure that the Department of Justice investigation of Watergate 'was narrowed down' to avoid investigating the President."[12] After uncovering this troubling conduct, at the completion of its investigation the Watergate Committee recommended the establishment of a permanent, independent prosecutor to handle "criminal cases in which there is a real or apparent conflict of interest in the executive branch."[13] In so doing, Congress wanted to ensure that nothing similar could happen in the future.

Between 1974 and the Act's passage in 1978, both the Senate and House held numerous hearings on the various bills proposing an independent prosecutor. The first Senate hearings focused on the political and personal conflicts of interest in the Attorney General investigating the President or high-level administration officials. Whitney North Seymour, Jr., who was later appointed as an independent counsel,[14] testified in 1974, that, "[l]oyalty to the political interests of the administration may often require disloyalty to the goal of impartial justice."[15] Seymour illustrated the point that the Office of Attorney General is a political one, and that the Attorney General's loyalty often lies with the President who appointed him. Therefore it would be presumed that the Attorney General would want to shield the administration. Similarly, Watergate Special Prosecutor Archibald Cox testified regarding his belief in the need for independent counsel legislation. He stated, "[t]he pressures, the tensions of divided loyalty are too much for any man, and as honorable and conscientious as any individual might be, the public could never feel entirely easy about the vigor and thoroughness with which the investigation was pursued. Some outside person is absolutely essential."[16] Cox recognized the importance of the public's confidence in an investigation of a political figure. Likewise, the theory of those advocating the legislation was that if someone independent were to conduct the investigation, the public's concerns would be allayed.

In its reports on the independent counsel legislation, Congress echoed the themes of conflicts of interest and public confidence in

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[9] CRS Rept. No. 87–192A, "Legislative History and Purposes of Enactment of the Independent Counsel Provisions of the Ethics in Government Act of 1978," Mar. 4, 1987, at 2.

[10] Id.

[11] Id.

[12] Id. (citing "Final Report of the Senate Select Committee on Presidential Campaign Activities," S. Rept. No. 93–981, at 80–81 (1974)).

[13] Id. (citing "Final Report of the Senate Select Committee on Presidential Campaign Activities," S. Rept. No. 93–981, at 96 (1974)).

[14] Whitney North Seymour, Jr. was appointed on May 29, 1986, to investigate former aide to President Reagan, Michael Deaver. The allegations involved post-employment conflict of interest laws relating to Deaver's representation of certain foreign clients before the White House after leaving government employment.

[15] "Removing Politics from the Administration of Justice," hearings on S. 2803 and S. 2987 before the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, 93d Cong. 216 (1974).

[16] Id. at 200.

investigations. The following rationales for passage of the Act were highlighted:

- The Department of Justice has difficulty investigating alleged criminal activity by high-level government officials.
- It is too much to ask for any person that he investigate his superior.
- It is a basic tenet of our legal system that a lawyer cannot act in a situation where he has a conflict of interest or the appearance thereof. . . . The Attorney General and his principal assistants are appointees of the President and members of an elected administration. It is a conflict of interest for them to investigate their own campaign or, thereafter, any allegations of criminal wrongdoing by high-level officials of the executive branch. The appearance of conflict is as dangerous to public confidence in the administration of justice as true conflict itself. Having men of integrity operate in the face of a conflict is an insufficient protection for a system of justice.[17]

Although there was a general consensus of why there was a need for some type of independent prosecutor, at first there was not agreement on how the entity should be structured. One of the first bills proposed the establishment of an "independent Department of Justice," or some other permanent mechanism for appointing special prosecutors, rather than relying on the Attorney General to make a request in each instance.[18] The Senate's reasoning behind such a proposal was that "[i]t is not sufficient to rely on the President or the Attorney General to appoint a temporary special prosecutor the next time the Attorney General or the President has a conflict of interest or the appearance thereof. It is not at all obvious that such an appointment will occur."[19] Attorney General Janet Reno was met with that same criticism for her refusal to appoint an independent counsel in the campaign finance matter. However, under the language of the Act as passed, the Attorney General had the prerogative on whether or not to appoint an independent counsel.

2. Language of the Act

The Independent Counsel Act was not passed until 1978, approximately 4 years after the Congress first began looking into the concept.[20] The proposed purpose of the Act was "to provide a mechanism to avoid the inherent or structural conflicts of interest, or the appearances of conflicts or of 'conflicting loyalties,' which could arise where the Attorney General or the President must supervise or conduct criminal prosecutions of themselves, or of high level offi-

[17] S. Rept. No. 95–170 at 5–6 (1977).

[18] "Legislative History and Purposes of Enactment of the Independent Counsel (Special Prosecutor) Provisions of the Ethics in Government Act of 1978," CRS Rept. No. 87–192A at 3, Mar. 4, 1987 (citing "Removing Politics from the Administration of Justice," hearings on S. 2803 and S. 2978 before the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, 93d Cong. (1974)).

[19] Id. at 9 (citing S. Rept. No. 94–823, at 5).

[20] The Independent Counsel Act was passed as Title VI of the Ethics in Government Act of 1978, Public Law No. 95–521, as amended and reauthorized by Public Law 97–409, Public Law 100–191, and Public Law 103–270 (codified at 28 U.S.C. §§ 591–599 (1994)) (no longer in effect June 30, 1999). The Act as first passed referred to a "special prosecutor." Id.

cials or colleagues in the President's Administration."[21] In order to do so, certain individuals were automatically covered by the Act:

- the President and Vice President;
- Cabinet level officials;
- an individual working in the Executive Office of the President and compensated at a rate equivalent to SES II;
- any Assistant Attorney General, or DOJ employee compensated at or above SES III;
- the Director and Deputy Director of the CIA, and the Commissioner of the IRS;
- any person who held a position listed in (1)–(5) for 1 year after the person leaves office;
- the chairman and the treasurer of the campaign committee seeking the election or reelection of the President, and any officer of that committee exercising authority at the national level, during the incumbency of the President.[22]

Congress also realized that situations would arise where investigation by the Attorney General or Department of Justice officials of an individual not identified in the statute would create some type of conflict. Therefore, the Attorney General was permitted to appoint an independent counsel for any person if he determined that an investigation by him or other Department of Justice officials might have resulted in a "personal, financial, or political conflict of interest."[23] This "catch-all" conflicts provision was not added to the Act until 1982, when the Act was reauthorized.[24] A similar provision had been considered in 1977, but had been dropped prior to the enactment of the Independent Counsel Act. Although it did not remain in the final legislation, the House report noted:

> The mechanism recommended by the committee is triggered by a conflict of interest. That conflict is defined to occur in two situations. The first situation arises when specified high-level executive branch officials are accused of committing specified offenses. . . . The second situation arises when an investigation or prosecution directly and substantially affects *the political interests of the President or Attorney General*.[25]

The original report language demonstrates that there surely would be a conflict were the Attorney General to investigate a matter relevant to the political interests of the President and their political party. During the 1982 reauthorization, Congress determined that the "catch-all" provision was needed in the Act because there were situations where serious conflicts of interest could arise that were

[21] "Independent Counsel Provisions: An Overview of the Operation of the Law," CRS Rept. No. 98–283, at 3 (Mar. 20, 1998).
[22] 28 U.S.C. § 591(b).
[23] 28 U.S.C. § 591(c)(1).
[24] Public Law No. 97–409.
[25] "Legislative History and Purposes of Enactment of the Independent Counsel (Special Prosecutor) Provisions of the Ethics in Government Act of 1978," CRS Rept. No. 87–192A, at 17 (Mar. 4, 1987) (citing H. Rept. No. 95–1307, at 4–5 (1978)) (emphasis added).

not covered by the mandatory provision. The 1982 Senate report explained, "[t]he Committee recognizes that there may be instances when investigations by the Attorney General of persons not covered by the Act may create an actual or *apparent* conflict of interest."[26] At the time of consideration, Congress clearly understood that perceived conflicts could be just as harmful to the public's trust in a Department of Justice investigation as actual conflicts.[27]

As a consequence of the amendments in 1982, the statute could be triggered in one of two ways. The mandatory triggering occurred when the Attorney General received information alleging a violation of Federal law by a covered official. Under the discretionary provision, the Attorney General could determine that some other individual posed a conflict for him or the Department. Thereafter, there were several steps the Attorney General would take to determine whether an independent counsel was necessary under the Act. The first step was the threshold inquiry, in which the Attorney General examined the sufficiency of the allegations presented to determine whether there were grounds to investigate. In determining the sufficiency of the allegations that a covered individual violated a Federal law the Attorney General could only consider the "degree of specificity of the information" and the "credibility of the source of the information."[28] The Attorney General would have 30 days in which to make this determination.[29] If, within the 30 days, he decided that the information received was specific and the source was credible, or, if he were unable to make any determination within that time, the investigation would move on to the "preliminary investigation" stage.[30] The Act required that the preliminary investigation be completed within 90 days.[31] In addition, the Attorney General was able to request that the Special Division grant a one time extension of 60 days in which to complete the preliminary investigation.[32] During this phase, the Attorney General, after reviewing the matter, was to determine whether there were "reasonable grounds to believe that further investigation is warranted."[33]

The Act was drafted so that the Department of Justice would have limited authority to conduct an investigation during the threshold inquiry and preliminary investigation stages; therefore the parameters of those inquiries were purposely narrow. Similarly, there was no authority to "convene grand juries, plea bargain, grant immunity, or issue subpoenas" during the preliminary investigation.[34] The statute intentionally limited the power of the Attorney General during this period in order to prevent his extensive participation in substantive decision making. Again, this is to avoid potential conflicts of interest. If, at the completion of the preliminary inquiry, the Attorney General determined that no further investigation were warranted, he was required to notify the Special

[26] Id. at 17–18 (citing S. Rept. No. 97–469, at 9 (1981) (emphasis added).

[27] Attorney General Reno has recently interpreted the Act so as to exclude perceived conflicts. See letter from Janet Reno, Attorney General, U.S. Department of Justice, to Orrin G. Hatch, chairman, Senate Judiciary Committee, (Apr. 14, 1997).

[28] 28 U.S.C. § 591(d)(1).

[29] 28 U.S.C. § 591(d)(2).

[30] 28 U.S.C. § 591 (a), (c).

[31] 28 U.S.C. § 592(a)(1).

[32] 28 U.S.C. § 592(a)(3).

[33] 28 U.S.C. § 592(a)(1).

[34] 28 U.S.C. § 592(a)(2)(A).

Division of the Court of Appeals[35] that handled independent counsel matters.[36] As a check on his discretion, the Attorney General was not permitted to make a determination that "no further investigation was warranted" based on a finding that the official lacked the state of mind required for the violation, unless there was "clear and convincing evidence."[37] Congress believed that the Attorney General would rarely base a determination on state of mind, noting: "Congress believes that the Attorney General should rarely close a matter under the independent counsel law based upon finding a lack of criminal intent, due to the subjective judgments required and the limited role accorded the Attorney General in the independent counsel process."[38]

In considering whether further investigation was warranted, the Attorney General was required to take into account the written or other established policies of the Department of Justice relating to the conduct and prosecution of criminal investigations.[39] Had the Attorney General found reasonable grounds to believe that further investigation was warranted, or after the specified period no determination was made, the Attorney General was required to apply to the Special Division for the appointment of an independent counsel.[40] The Special Division then was responsible for appointing an independent counsel and defining his prosecutorial jurisdiction.[41]

During the campaign finance investigation Attorney General Reno initiated several preliminary investigations, including two related to President Clinton and three related to Vice President Gore.[42] Independent of those investigations, FBI Director Louis Freeh and Task Force Supervising Attorney Charles La Bella recommended that the Attorney General request the appointment of an independent counsel based on their opinion that both the mandatory and discretionary provisions of the Act had been triggered. Miss Reno declined to request the appointment of an independent counsel in each instance.[43]

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[35] The Special Division is a division of the U.S. Court of Appeals for the District of Columbia Circuit. The court consists of three circuit court judges or justices appointed by the Chief Justice of the United States. No two judges may be named to the Special Division from the same court at the same time, and one of the judges must be from the District of Columbia Circuit. The judges are appointed for 2 year terms, with any vacancy being filled only for the remainder of the 2-year period. 28 U.S.C. § 49.

[36] 28 U.S.C. § 592(b).

[37] 28 U.S.C. § 592(a)(2)(B)(ii).

[38] "Independent Counsel Provisions: An Overview of the Operation of the Law," CRS Rept. No. 98–283, at FN 22 (Mar. 20, 1998) (citing H. Rept. No. 103–511, at 11 (1994)).

[39] 28 U.S.C. § 592(c)(1)(B).

[40] 28 U.S.C. § 592(c).

[41] 28 U.S.C. § 593(b).

[42] Attorney General Reno initiated a preliminary investigation of President Clinton to examine whether he violated 18 U.S.C. section 607. The investigation related to alleged fundraising telephone calls made by President Clinton from the White House. The Attorney General also initiated a preliminary investigation of President Clinton to examine the Common Cause allegations of violations of election laws. Vice President Gore was subject to the same preliminary investigation. Two additional preliminary investigations were opened on Vice President Gore relating to fundraising telephone calls he made from his White House office. The first investigation was an inquiry into whether Gore violated section 607. The second investigation looked into whether Gore made false statements to investigators during the initial preliminary inquiry.

[43] In re William Jefferson Clinton, notification to the court pursuant to 28 U.S.C. § 592(b) of results of preliminary investigation (Special Div. DC Cir. 1997); in re William Jefferson Clinton, notification to the court pursuant to 28 U.S.C. § 592(b) of results of preliminary investigation (Special Div. DC Cir. 1998); in re Albert Gore, Jr., notification to the court pursuant to 28 U.S.C. § 592(b) of results of preliminary investigation (Special Div. DC Cir. 1997); in re Albert Gore, Jr., notification to the court pursuant to 28 U.S.C. § 592(b) of results of preliminary investigation (Special Div. DC Cir. 1998); in re Albert Gore, Jr., notification to the court pursuant to 28 U.S.C. § 592(b) of results of preliminary investigation (Special Div. DC Cir. 1998).

B. A ROCKY START: EARLY CONFLICTS IN THE JUSTICE DEPARTMENT'S CAMPAIGN FINANCE INVESTIGATION

1. Reno's Job "Hangs in the Balance"

After the November 1996 elections, Attorney General Reno was called on to decide whether to appoint an independent counsel to look into allegations of campaign finance abuses. As early as October 9, 1996, public interest group Common Cause requested that an independent counsel be appointed to investigate allegations of abuses on the part of both Republicans and Democrats.[44] Common Cause also argued that Attorney General Reno and the Department of Justice had a conflict in conducting any criminal probe of campaign fundraising.[45] Soon thereafter, Attorney General Reno received requests from the chairmen of four House committees and Senator John McCain for her to appoint an independent counsel.[46] Pressure was building for a thorough investigation into the allegations of campaign finance abuses that were appearing daily in newspapers across the country. Many people believed that because the investigation would necessarily focus on political activities and the actions of President Clinton, Vice President Gore, and other high-ranking administration officials, the Attorney General would have a conflict were she to conduct the investigation.

While Reno weighed whether to appoint an independent counsel for campaign finance, President Clinton was determining which members of his Cabinet would remain for his second term. Attorney General Reno already had stated publicly that she would like to remain in her position. However, the President refused to comment on whether he would retain Reno as Attorney General.[47] In fact, the press reported that "White House aides, meanwhile, have privately said they wish Reno would leave in part because of her readiness to send allegations of official misconduct to independent counsels."[48] The White House was making it clear, through the press, that the President was contemplating appointing a new Attorney General, in part because Reno had requested too many independent counsels. The Attorney General serves at the pleasure of the President, and the President made it clear that he did not want an independent counsel appointed for the campaign finance investigation.

Instead of appointing an independent counsel, in late November 1996, Attorney General Reno created a "Task Force" to investigate the allegations of campaign finance abuses in the 1996 election cycle. At the beginning of the investigation, the Task Force was nothing more than a few attorneys in the Public Integrity Section (PIS) of the Department of Justice. PIS was headed by Lee Radek,

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[44] Common Cause (visited Sept. 9, 2000) <http://www.commoncause.org/publications/1196jusstm.htm>. Common Cause alleged that both the Clinton and Dole campaigns violated Federal election laws by using their respective party committees to purchase TV advertisements, while circumventing the spending limits imposed on the candidates. Id.

[45] Id.

[46] Connie Cass, "Democratic Committee Bows to Pressure and Releases Financial Data," AP, Oct. 29, 1996. Chairman Bill Clinger, Chairman Benjamin Gilman, Chairman Gerald Solomon, and Chairman Bill Thomas all requested that the Attorney General appoint an independent counsel to look into allegations of improprieties in Democrats' fundraising, including allegations of illegal contributions from foreign individuals and corporations. Id.

[47] President William J. Clinton, White House press conference (Nov. 8, 1996).

[48] Carolyn Skorneck, "Attorney General Rejects Call for Special Prosecutor," AP, Nov. 8, 1996.

who Attorney General Reno placed in charge of the investigation.[49] As Chief of PIS, Radek was responsible for conducting preliminary investigations under the Independent Counsel Act and making recommendations to the Attorney General on its application.[50] Radek made his views on the Act very clear, stating in an interview that "[i]nstitutionally, the independent counsel statute is an insult."[51] He added, "[i]t's a clear enunciation by the legislative branch that we cannot be trusted on certain species of cases."[52]

FBI Director Louis Freeh expressed to Attorney General Reno his reservations about Radek and PIS' involvement in the campaign finance investigation. Director Freeh's concerns stemmed from a conversation between Lee Radek and FBI Deputy Director William J. Esposito prior to the integration of the Department of Justice and FBI agents into a formal Task Force. A meeting between Esposito and Radek took place on November 20, 1996, the same time that the media was reporting on the precarious nature of Reno's position.[53] They met to discuss, among other things, the campaign finance investigation.[54] Mr. Esposito testified that at the end of his meeting with Radek that, "[Radek] made the statement that there is a lot of pressure on him [Radek], and the Attorney General's job could hang in the balance."[55] Esposito further testified that Radek linked the Attorney General's job status with the pressure on Radek and PIS.[56] Concerned about the statement, Esposito reported the comment to Director Freeh.

Radek's comment raised the question of whether he was able to be an impartial decisionmaker in the campaign finance investigation. Director Freeh also was troubled by the statement, and raised the issue with the Attorney General.[57] In a memorandum outlining his conversation with Attorney General Reno, Director Freeh indicated that he told the Attorney General that, "those comments would be enough for me to take [Radek] and the Criminal Division off the case completely."[58] Furthermore, Radek himself later acknowledged that he was aware of rumors that the White House might not retain Reno as Attorney General during the second term. Radek stated, "I recall press speculation that the possibility of her being the Attorney General into the second term might be being held up because the White House was concerned about the way she was doing her job[,] including this campaign finance investigation."[59] Freeh's concerns regarding Radek were justified consid-

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[49] GAO report at 20.
[50] GAO report at 27.
[51] Jeffrey Goldberg, "What Is Janet Reno Thinking?," NY Times Magazine, July 6, 1997, at 30.
[52] Id.
[53] "The Justice Department's Implementation of the Independent Counsel Act," hearing before the House Committee on Government Reform, 106th Cong. 38 (2000) (testimony of William J. Esposito) (preliminary transcript).
[54] Id.
[55] Id. at 39.
[56] Id.
[57] Memorandum from Louis J. Freeh, Director, Federal Bureau of Investigation, to William Esposito, Deputy Director, Federal Bureau of Investigation (Dec. 9, 1996) (exhibit 1).
[58] Id.
[59] "Oversight Hearing on 1996 Campaign Finance Investigation," hearing before the Senate Subcommittee on Administrative Oversight and the Courts of the Senate Committee on the Judiciary, 106th Cong. 18 (2000) (Federal Document Clearing House transcript).

ering the timing of the comments and the position Radek assumed in the investigation.

According to Director Freeh, the Attorney General said that she would look into the matter of Radek's comment.[60] However, none of the individuals who were parties to the conversation were contacted about the statement.[61] In fact, after her conversation with Director Freeh, the Attorney General formally established the Campaign Financing Task Force and placed it under the auspices of the PIS, making Radek the single most important attorney in the campaign finance investigation.

The only follow-up Attorney General Reno ever conducted on Radek's comment occurred when the Freeh memo came to light, 3½ years after it was written. Once Director Freeh's concerns were made public, in May 2000, Deputy Attorney General Eric Holder and even Attorney General Reno herself, contacted Esposito and Radek to determine what they recalled about the meeting.[62] Such attention from the highest levels appears to indicate that the Attorney General realized that her disregard for Director Freeh's concerns created the perception that the Justice Department purposely ignored the conflict. As for the Attorney General, she stated that she did not recall the meeting to which Director Freeh referred in his memorandum, and did not recall any concerns raised regarding PIS or Lee Radek.[63] Likewise, Radek did not recall his meeting with FBI Deputy Director Esposito.[64] When called before House and Senate committees to testify about his alleged statement, Radek insisted that he could not recall the meeting with Esposito, but nevertheless said that he would not have made a statement linking pressure and the Attorney General's job "hanging in the balance."[65] It is difficult to understand how Radek was able to both state affirmatively that he had no recollection of the Esposito meeting and be certain that he did not make the statement attributed to him in Director Freeh's memo.[66]

2. PIS Control of the Task Force

Relations between the FBI and Department of Justice were somewhat shaky in the beginning. Prior to any formalization of the Task Force, the Department of Justice asserted to the public and the media that the Federal Bureau of Investigation (FBI) was the lead agency on the campaign finance investigation.[67] However, the FBI had yet to be contacted by the Justice Department. Despite the assertions about the FBI, PIS had been working with Commerce Department Inspector General investigators on the campaign fi-

[60] "The Justice Department's Implementation of the Independent Counsel Act," hearing before the House Committee on Government Reform, 106th Cong. 45 (2000) (testimony of William J. Esposito) (preliminary transcript).

[61] Id. at 46–48.

[62] Id. at 46–48, 50.

[63] Attorney General Janet Reno, press conference (May 19, 2000).

[64] "The Justice Department's Implementation of the Independent Counsel Act," hearing before the House Committee on Government Reform, 106th Cong. 42 (2000) (testimony of Lee Radek) (preliminary transcript).

[65] Id.; "Oversight Hearing on 1996 Campaign Finance Investigation," hearing before the Senate Subcommittee on Administrative Oversight and the Courts of the Senate Committee on the Judiciary, 106th Cong. 17 (2000) (Federal Document Clearing House transcript).

[66] "Oversight Hearing on 1996 Campaign Finance Investigation," hearing before the Senate Subcommittee on Administrative Oversight and the Courts of the Senate Committee on the Judiciary, 106th Cong. 22 (2000) (Federal Document Clearing House transcript).

[67] Exhibit 1.

nance matter.[68] FBI Director Louis Freeh stated that he told the Attorney General, "it didn't make sense for PIS to call the FBI the 'lead agency' in this matter while operating a 'Task Force' with DOC [Commerce] IGs who were conducting interviews of key witnesses without the knowledge or participation of the FBI."[69] Freeh then recommended that the FBI and "hand-picked DOJ attorneys from outside Main Justice" conduct the investigation.[70]

Director Freeh also expressed general concern over the prospect of PIS controlling the investigation. In his memorandum, Director Freeh indicated that he told the Attorney General that "in [his] view, PIS was not capable of conducting the thorough, aggressive kind of investigation which was required."[71] The Attorney General disregarded Director Freeh's recommendation and formally installed the investigation in PIS, headed by Radek. Although it was apparent that the campaign finance investigation would be followed very closely by the public, the media, and Congress, Radek appointed a junior PIS trial attorney, Laura Ingersoll, to lead the investigation. It appeared that the Justice Department was setting the investigation up to fail.

A prime example of PIS' attitude toward the investigation and the Independent Counsel Act is the early investigation of Vice President Gore's fundraiser at the Hsi Lai Temple in Los Angeles. After the media reported allegations of the Vice President's involvement in the fundraiser at the Buddhist temple, the local U.S. Attorney's Office in California consulted with Main Justice and was given approval to investigate the matter on October 17, 1996.[72] In the following 2 weeks Steve Mansfield, the Assistant U.S. Attorney assigned to the matter, actively investigated it. However, shortly before the election, Lee Radek informed the U.S. Attorney's Office that Main Justice, through PIS, was taking the case away from them.[73] Radek indicated that PIS would handle the case because the independent counsel statute had been implicated.[74] In an effort to continue his investigation, Mansfield vainly objected to PIS' effort to take the case away.[75]

What is even more troubling is that, after having taken the case away from the Central District, under the pretext of an investigation to determine whether the application of the Independent Counsel Act was appropriate, PIS never conducted the threshold inquiry. PIS' inaction gave the members of the Hsi Lai Temple the opportunity to destroy documents central to the investigation. Had they allowed the U.S. Attorney's Office to conduct the investigation, they surely would have been able to quickly subpoena documents and witnesses.

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[68] Id.

[69] Id. See also Daniel Klaidman, "Dodging A Bullet (Attorney General Janet Reno and the Investigation into Allegedly Illicit Fundraising by the Democratic Party)," Newsweek, Dec. 9, 1996, at 24.

[70] Exhibit 1.

[71] Id.

[72] See letter from Lee J. Radek, Chief, Public Integrity Section, U.S. Department of Justice, to Steven E. Zipperstein, Chief Assistant U.S. Attorney, U.S. Attorney's Office, Central District of California (Nov. 1, 1996).

[73] Memorandum from Craig C. Donsanto, Public Integrity Section, U.S. Department of Justice, to Lee J. Radek, Chief, Public Integrity Section, U.S. Department of Justice (Nov. 1, 1996).

[74] Id.

[75] Id.

In order to determine whether PIS made any attempt to investigate the matter, the committee subpoenaed the Justice Department's file on the Hsi Lai preliminary investigation. In response, the committee received a stack of news clippings.[76] There was obviously no investigation. It appears that PIS took the case away from the U.S. Attorney's office on a pretext. Radek's misleading explanations were typical of his handling of the fundraising investigation. He admittedly disliked the Independent Counsel Act, and had already acknowledged that he was under a lot of pressure regarding the Independent Counsel Act provisions. His actions with regard to the Hsi Lai Temple were representative of the manner in which Radek conducted himself during the campaign finance investigation.

Radek's control over the campaign finance investigation caused some friction with the FBI as well. From the beginning, the working relationship between the Department of Justice and FBI was strained.[77] DOJ attorneys and FBI investigators disagreed over the proper approach to the investigation, and an atmosphere of mistrust developed.[78] One of the problems was that PIS did not have any plan for investigating the campaign finance matter.[79] Radek assumed that PIS could conduct the campaign finance investigation as he would conduct any other PIS investigation.[80] In so doing, he underestimated the nature and breadth of the investigation. Unfortunately for PIS, its normal caseload did not compare with the campaign finance investigation. It ultimately became clear that PIS and Ingersoll were unable to handle such a complicated investigation.

Attorney General Reno eventually was forced to follow Director Freeh's original recommendation. The Task Force under PIS was failing and the structure had to be changed. The GAO investigation of the management and oversight, operations, and results of the Task Force reported:

> In the fall of 1997, displeased with the investigation's slow pace, disclosures in the press about critical leads not being pursued, and internal frictions, the Attorney General and the FBI Director changed the Task Force's leadership. Subsequently, the Task Force's oversight structure was streamlined by the removal of [the Public Integrity Section] from its leadership role and the commitment of additional staff and information management resources to get the investigation on track.[81]

In September 1997, Charles La Bella, first Assistant U.S. Attorney in San Diego, and James DeSarno, a former Special Agent-in-Charge of the FBI's New Orleans Field Office were placed in charge of the Task Force. After La Bella's arrival, Lee Radek and

[76] Subpoena from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General, U.S. Department of Justice (June 26, 2000) (seeking all records relating to any possible consideration of the appointment of an independent counsel in the Hsi Lai Temple matter). All correspondence between and subpoenas to the Department of Justice are contained in appendix I.

[77] GAO report at 1.

[78] Id. at 1.

[79] Id. at 20.

[80] Id. at 20.

[81] Id. at 5.

PIS were taken out of the direct chain of command.[82] However, Radek maintained primary responsibility for threshold inquiries and preliminary investigations under the Independent Counsel Act.[83]

It was the application of the independent counsel statute that remained one of the main areas of contention between the Department of Justice and FBI.[84] Radek categorized the conflict as disagreements over the threshold of information required to trigger a recommendation for an independent counsel.[85] The FBI agreed, indicating that senior FBI officials believed Radek's criteria for what information was needed to trigger the seeking of an independent counsel were too stringent.[86] The FBI had been wary of its interaction with the Department of Justice on independent counsel issues, as it was excluded from the independent counsel decision-making process previously.[87] Director Freeh wrote, "[i]t was unfortunate that DOJ declined to allow the FBI to play any role in the Independent Counsel referral deliberations."[88] By late-1997, Director Freeh made a formal recommendation that the Attorney General appoint an independent counsel.

C. ATTORNEY GENERAL RENO CHANGED HER INTERPRETATION OF THE INDEPENDENT COUNSEL ACT

To understand how the Attorney General was able to consistently refuse to appoint an independent counsel in the campaign financing investigation, it is necessary to understand her interpretation of the Independent Counsel Act. In addition, it has to be pointed out that her interpretation has not been consistent. Attorney General Reno made numerous appointments under the discretionary provision of the statute that she never could have made under her present day interpretation. Her first articulation of her revised analysis was in response to a March 1997, Senate Judiciary Committee request that she appoint an independent counsel in the campaign finance matter.[89] Reno responded 1 month later, declining to request the appointment of an independent counsel.[90] In the response, she laid out several points about the Independent Counsel Act itself, upon which her refusal was based.[91]

1. Appearance of a Conflict Versus Actual Conflict

The key to Reno's arguments was her interpretation of the statute itself. If one were to follow the simple language of the statute, it would have been difficult for Reno to explain why she could not

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[82] Id. at 37.

[83] "The Justice Department's Implementation of the Independent Counsel Act," hearing before the House Committee on Government Reform, 106th Cong. 151–152 (2000) (testimony of Lee Radek) (preliminary transcript). The GAO report indicated that, "Mr. Radek continued a direct role whenever Independent Counsel statute issues arose, as PI maintained primary responsibility for initial inquiries and preliminary investigations related to the statute." GAO report at 37.

[84] GAO report at 4.

[85] Id. at 24.

[86] Id. at 25.

[87] Exhibit 1.

[88] Id.

[89] Senate Judiciary Committee Chairman Orrin G. Hatch and nine other Republican Members made the request. See letter from Janet Reno, Attorney General, U.S. Department of Justice, to Orrin G. Hatch, chairman, Senate Judiciary Committee (Apr. 14, 1997).

[90] Id.

[91] Id.

use the discretionary provision of the Act to request an independent counsel. Reno needed to interpret the statute in such a way that she could argue that the Act did not permit her to invoke the discretionary clause. Breaking with her own previous interpretations on the discretionary provision of the Act, Attorney General Reno stated in her letter to the Senate Judiciary Committee that "[u]nder the Act, I must conclude that there is a potential for an *actual* conflict of interest, rather than merely an *appearance* of a conflict of interest."[92] In the past, she had requested the appointment of independent counsels based on an appearance of a conflict.

Reno repeated her new understanding of the discretionary provision in her May 1997 testimony before the Senate Judiciary Committee, where she was questioned about her interpretation.[93] In her testimony, she repeated her conclusions regarding the discretionary provision, using the exact words of her letter.[94] Reno expressly relied on the legislative history of a single proposed amendment to the Independent Counsel Act for her interpretation.[95] She testified regarding her theory:

> The Congress in 1994, under the reauthorization, considered a proposal for a more flexible standard for invoking the discretionary clause which would have permitted its use to refer any matter to an independent counsel when the purposes of the Act would be served. Congress rejected this suggestion, explaining that such a standard would substantially lower the threshold for use of the general discretionary provision.[96]

However, as support for her argument, Reno was relying on negative legislative history.[97] She attempted to define what Congress intended by describing what it did not do, rather than what it did. The Justice Department itself had rejected the practice, noting that it is not useful as an interpretive tool.[98] In fact, a Justice Department report to the Attorney General states, "[r]ejection is doubtful evidence of the legislative intent, let alone the meaning of the statute as enacted."[99] Furthermore, the Attorney General neglected to mention the report language supporting the idea of an *apparent* conflict of interest. The legislative history is replete with statements of intent that completely contradict the Attorney General's

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[92] Letter from Janet Reno, Attorney General, U.S. Department of Justice, to Orrin G. Hatch, chairman, Senate Judiciary Committee (Apr. 14, 1997).

[93] "Oversight of the Department of Justice," hearing before the Senate Committee on the Judiciary, 105th Cong. 12 (1997).

[94] She stated that she "must conclude that there is a potential for an actual conflict of interest rather than merely an appearance of a conflict of interest." "Oversight of the Department of Justice," hearing before the Senate Committee on the Judiciary, 105th Cong. 12 (1997) (testimony of Attorney General Janet Reno).

[95] Id.

[96] Id.

[97] Furthermore, Attorney General Reno was relying on the statement of only one Congressman, Representative Hall, for her argument.

[98] "Using and Misusing Legislative History: A Re-Evaluation of the Status of Legislative History in Statutory Interpretation," report to the Attorney General (Jan. 5, 1989). The report states:

> Rejection of proposed language does not necessarily imply an intent to reject its substance. Language may be rejected because it is perceived to be superfluous and potentially damaging to the prospects for passage of the bill. If the perception that it is superfluous is correct, the actual meaning of the statute is the same without the language as it is with it; rejection of that language cannot imply that the enacted statute should be interpreted to mean something different. Id. at 107.

[99] Id. at 108.

interpretation.[100] For example, the Senate report accompanying the 1982 amendments to the Act stated, "[t]he Committee recognizes that there may be instances when investigations by the Attorney General of persons not covered by the Act may create an actual or *apparent* conflict of interest."[101] Not only did Reno have a problem with her interpretation of the Act's legislative history, she had her own prior statements, as well as prior requests she had made for the appointment of independent counsels to explain away.

When called upon to testify before the Senate Governmental Affairs Committee on May 14, 1993, regarding the reauthorization of the Independent Counsel Act, Janet Reno stated:

> It is absolutely essential for the public to have confidence in the system and you cannot do that when there is conflict or an *appearance* of conflict in the person who is, in effect, the Chief prosecutor. There is an inherent conflict here, and I think that that is why this Act is so important.
>
> * * * * *
>
> The Independent Counsel Act was designed to avoid *even the appearance of impropriety* in the consideration of allegations of misconduct by high-level Executive Branch officials and to prevent, as I have said, the actual or *perceived* conflicts of interest. The Act thus served as a vehicle to further the public's perception of fairness and thoroughness in such matters, and to avert even the most subtle influences that may appear in an investigation of highly placed Executive officials.[102]

After the reauthorization of the Independent Counsel Act on June 30, 1994, the Attorney General, adhering to her original interpretation, referred at least four matters to an independent counsel that fell under the discretionary provision of the Act. She first referred what has become known as the Whitewater matter. In that case, she requested the independent counsel under the political conflict of interest provision because the individuals under investigation were friends and former business partners of the President and Mrs. Clinton. Similarly, under the discretionary provision, Attorney General Reno asked that the jurisdiction of the Whitewater Independent Counsel be expanded to include an investigation of former Assistant to the President for Management and Administration David Watkins for the Travel Office matter.[103] David Watkins did not satisfy any of the requirements for the mandatory provision of the Act, and had left the White House's employ several years earlier. Several months after the Watkins referral, the Attorney General again requested that the Whitewater Independent Counsel's jurisdiction be expanded to include an investigation of Anthony Marceca, an investigator with the U.S. Army Criminal In-

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[100] For examples of such statements, see section I.A. above.

[101] "Using and Misusing Legislative History: A Re-Evaluation of the Status of Legislative History in Statutory Interpretation," report to the Attorney General, at 17–18 (Jan. 5, 1989) (citing S. Rept. No. 97–469, at 9 (1981)) (emphasis added).

[102] "To Reauthorize the Independent Counsel Law for an Additional 5 Years, and for Other Purposes," hearing before the Senate Committee on Governmental Affairs, 103d Cong. 12 (1993) (statement of Attorney General Reno).

[103] Prior to joining the White House staff, Watkins had also worked on President Clinton's 1992 campaign.

vestigation Division who had been detailed to the White House. The only political conflict of interest Mr. Marceca, or any of these individuals, posed to the Attorney General or the Justice Department were their connection to the White House. Finally, the Attorney General requested that the Whitewater Independent Counsel's jurisdiction be expanded to include an investigation of a perjury allegation against former Counsel to the President Bernard Nussbaum. Nussbaum left the White House nearly 3 years earlier. As with all of the prior investigations, Nussbaum did not fall under the mandatory provision of the Act. The Attorney General had to make the determination that there was a political conflict of interest for her to investigate the McDougals, David Watkins, Anthony Marceca, and Bernard Nussbaum.

It is obvious that the Attorney General was applying the standard of an apparent conflict in these earlier independent counsel appointments. Had she been applying the actual conflict standard she surely would not have come to the conclusion that she had an *actual* conflict of interest with individuals such as the McDougals, David Watkins, Bernie Nussbaum, or Anthony Marceca, but not with any of the individuals involved in the campaign finance investigation. Her conflict, or perceived conflict, with those individuals for whom she did recommend an independent counsel was based on their relationship with President Clinton or the White House generally. The most glaring example is Anthony Marceca, a low-level detailee from the Department of Defense. It is laughable that Reno would determine that Marceca posed a conflict of interest for her while fundraisers for the DNC and friends of the President, such as John Huang and Charlie Trie, did not. By changing her interpretation, Reno set the bar for appointing an independent counsel even higher for the campaign finance investigation than previous investigations.

2. Standard for Initiating a Preliminary Investigation

Reno also raised the bar by ignoring the statutory language of the discretionary provision, and instead applying a higher standard for initiating a preliminary investigation. In interpreting the discretionary provision of the Independent Counsel Act, the Attorney General stated, contrary to the statutory language, that:

> If, on the other hand, I receive specific and credible evidence that a person not covered by the mandatory provisions of the Act *has committed a crime* and I determine that a conflict of interest exists with respect to the investigation of that person, I may—but need not—commence a preliminary investigation pursuant to the provisions of the Act.[104]

However, the statute reads:

> When the Attorney General determines that an investigation or prosecution of a person by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a prelimi-

[104] Letter from Janet Reno, Attorney General, U.S. Department of Justice, to Orrin G. Hatch, chairman, Senate Committee on the Judiciary 3 (Apr. 14, 1997) (emphasis added).

> nary investigation of such person in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether that person *may have violated federal criminal law. . . .*[105]

Under Reno's standard, before initiating a preliminary investigation under the discretionary provision, she needed to have specific and credible evidence that a crime was actually committed. However, under the language of the statute, information that a crime may have been committed was sufficient.

The original independent counsel provisions of the Ethics in Government Act of 1978, did require that in order to trigger a preliminary investigation, "the Attorney General receive[] specific information that a person has committed a violation. . . ."[106] However, in 1982, the independent counsel provisions were reauthorized and amended.[107] At that time, Congress changed the name from special prosecutor to independent counsel, and changed the requirement for triggering a preliminary investigation to "grounds to investigate whether a person may have violated . . ."[108] The accompanying Senate report clarified:

> It cannot be expected at this first step in the process that the Attorney General could or should determine that a criminal act has been committed. The purpose of the change is to make it clear that the Attorney General should proceed under the Act if the information indicates that a violation of criminal law may have taken place.[109]

The legislative history of the provision clearly shows that Congress intended to create a lower threshold, and intentionally replaced the language "has committed" with "may have."

Throughout the campaign finance investigation Reno used her creative analysis of the statute to support her argument that she did not create a conflict by investigating. However, both FBI Director Freeh and Task Force Supervising Attorney Charles La Bella wrote detailed memoranda to the Attorney General explaining why they believed that she did have a conflict of interest, and therefore must appoint an independent counsel.[110] They pointed out that the Task Force investigation was leading to the highest levels of the White House. Nevertheless, Attorney General Reno adopted a very narrow view of the language of the independent counsel statute, allowing her to claim that the campaign finance investigation had not yet reached the legal threshold for applying the Act.

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[105] 28 U.S.C. § 591(c)(1) (emphasis added).
[106] 28 U.S.C. § 591 (1978).
[107] Public Law 97–409.
[108] Id.
[109] S. Rept. No. 97–469 (1981).
[110] Memorandum from Louis J. Freeh, Director, Federal Bureau of Investigation, to Janet Reno, Attorney General, U.S. Department of Justice (Nov. 24, 1997); memorandum from Charles La Bella, Supervising Attorney, U.S. Department of Justice Campaign Financing Task Force, and James DeSarno, Assistant Director, Federal Bureau of Investigation, to Janet Reno, Attorney General, U.S. Department of Justice, and Louis J. Freeh, Director, Federal Bureau of Investigation, (July 16, 1998). Both memoranda also recommend that the Attorney General recommend the appointment of an independent counsel pursuant to the mandatory provisions of the Act. Id.

D. MEMORANDA FROM FBI DIRECTOR LOUIS J. FREEH AND TASK FORCE SUPERVISING ATTORNEY CHARLES LA BELLA RECOMMENDING THAT AN INDEPENDENT COUNSEL BE APPOINTED

Both FBI Director Freeh and Task Force Supervising Attorney Charles La Bella believed that the Attorney General was required, under the Independent Counsel Act, to request the appointment of an independent counsel in the campaign finance matter.[111] In detailed memoranda, they applied the facts of the case to the independent counsel statute and came to the same conclusions. As the head of the FBI, Director Freeh was the chief investigator for the campaign finance investigation, and was familiar with both the facts and the law. Charles La Bella was Reno's handpicked choice for the Supervising Attorney position. La Bella coordinated the entire investigation, giving him the benefit of a comprehensive view of the matter. Freeh and La Bella were the two individuals with perhaps the best grasp of the investigation as a whole. Nevertheless, Attorney General Reno ignored their counsel. She insisted on compartmentalizing the investigation, viewing from a vacuum only one issue at a time and drawing no connections between the massive illegal fundraising and the push on the part of the administration to raise unprecedented amounts of money.

1. The Freeh Memorandum

In the fall of 1997, Attorney General Reno was confronted with her first decisions under the Independent Counsel Act in the campaign finance investigation. The initial question was whether to initiate preliminary investigations of Vice President Gore and President Clinton for fundraising telephone calls made from the White House.[112] Reno agreed to the preliminary investigations, and was soon faced with making the final decision on whether to request the appointment of an independent counsel. Prior to her decision, FBI Director Freeh forwarded her a memorandum offering his recommendation that an independent counsel be appointed.[113]

The November 24, 1997, memorandum from FBI Director Louis J. Freeh outlined his evaluation of the campaign finance investigation to date.[114] He recounted the purpose and structure of the independent counsel statute, citing the legislative history. He reviewed Congress' intent in passing the legislation, outlining the justifications for the Act itself.[115] Freeh, quoting from the original Senate report on the Act, repeated the reasons for the Act's enactment: the Department of Justice has difficulty investigating alleged criminal activity by high-level government officials; it is too much to ask for

[111] Id.

[112] See memorandum from Mark M. Richard, Acting Assistant Attorney General, U.S. Department of Justice, to Janet Reno, Attorney General, U.S. Department of Justice (Sept. 29, 1997) (recommending that the Attorney General initiate a preliminary investigation into whether Vice President Albert Gore, Jr., violated Federal criminal law, 18 U.S.C. § 607, requiring that a preliminary investigation be commenced); memorandum from Mark M. Richard, Acting Assistant Attorney General, U.S. Department of Justice, to Janet Reno, Attorney General, U.S. Department of Justice (Oct. 14, 1997) (recommending that the Attorney General initiate a preliminary investigation into whether President William Jefferson Clinton violated Federal criminal law, 18 U.S.C. § 607, in soliciting contributions to the Democratic National Committee from his office in the White House).

[113] See memorandum from Louis J. Freeh, Director, Federal Bureau of Investigation, to Janet Reno, Attorney General, U.S. Department of Justice (Nov. 24, 1997) (exhibit 2).

[114] Id.

[115] Id.

any person that he investigate his superior; and, the appearance of conflict is as dangerous to public confidence in the administration of justice as true conflict itself.[116]

a. FBI's Investigative Plan

In order to explain the context in which the memorandum was written, Freeh reviewed the Task Force's investigative plan, which investigators had been following since early 1997.[117] The Task Force had developed three distinct areas of investigation, which they believed were interrelated.[118] The three matters were:

- An aggressive campaign fundraising operation developed and executed by a *core group* of individuals from the DNC and the White House, including the President, the Vice President, and a number of top White House advisors.
- Allegations of illegal conduct by a myriad of *opportunists* and other individuals who gained White House access in order to further their personal, business, and political interests.
- Efforts by the [*People's Republic of China*] and other countries to gain foreign policy influence by illegally contributing foreign money to U.S. political campaigns and to the DNC through domestic conduits.[119]

Director Freeh explained that, "[t]he core group investigative plan was based on a theory that most of the alleged campaign abuses flowed, directly or indirectly from the all-out effort by the White House and the DNC to raise money." One of the reasons for this was the President's decision to put in place an early and expensive media campaign. In order to pay for all of the television airtime and commercials they wanted to run, Clinton/Gore '96 and the DNC had to raise huge sums of money. Director Freeh pointed out that it was this need for money that led to things such as the White House coffees, overnights in the Lincoln bedroom, Presidential perks for large donors, as well as the telephone solicitations by the President and Vice President.[120] Freeh asserted that nearly all of the FBI investigators' "investigative avenues" were linked to the initiatives of the core group.[121] That was not to say that Freeh believed that the core group members were necessarily culpable for any criminal violations, but that they should not be immune from investigation.[122] Director Freeh's explanation of the investigation, and acknowledgment that it led to the "highest reaches of the White House," including the President and Vice President, seemed exactly the type of situation for which the Independent Counsel Act was drafted.[123] Because of where the campaign finance investiga-

[116] Id. at 1 (quoting the Senate Governmental Affairs Committee report upon the enactment of the Independent Counsel Act. S. Rept. No. 100–123, at 2 (1978)).
[117] See id. at 7.
[118] See id.
[119] Id.
[120] Id. at 8. See H. Rept. No. 105–829 (1998) (House Committee on Government Reform's interim report into the campaign financing investigation); S. Rept. No. 105–167 (1998) (Senate Governmental Affairs Committee final report on its investigation of illegal or improper activities in connection with 1996 Federal election campaigns.)
[121] Exhibit 2 at 8.
[122] Id.
[123] Id. at 2.

tion was leading the Task Force, the attorneys and investigators necessarily had to consider whether the independent counsel statute should apply.[124]

The Department of Justice conducted the investigation in a manner that avoided looking into the actions of the core group of individuals referred to in Freeh's memorandum.[125] Freeh explained that the FBI and Department of Justice had a fundamental disagreement over the manner in which the investigation should proceed.[126] The FBI wanted to conduct a top-down strategy, and focus on the core group of individuals.[127] The strategy followed from the working theory that the majority of the abuses occurred as a result of the core group's effort to raise vast sums of money.[128] In contrast, the Department of Justice wanted to focus on what Freeh referred to as the "opportunists."[129] Freeh stated that with such a "bottom up" strategy, the investigation may or may not ever lead to the core group.[130] In addition, by so doing, the Department of Justice was assured that it most likely would not need to address Independent Counsel Act issues. Finally, in July 1997, Freeh became frustrated with the Department of Justice's investigation and ordered FBI agents to interview "all relevant core group and DNC officials."[131] At that time there still was no prosecutor assigned to handle core group issues.[132]

b. The Department of Justice's Approach to Investigating Covered Persons

Freeh indicated that the Department of Justice attorneys in charge of the Task Force adopted a "cautious approach to investigating covered persons."[133] The Department of Justice attorneys were extremely reluctant to proceed into areas of investigation where covered persons might be implicated, whereas in a normal investigation, agents and attorneys would follow all investigative leads.[134] Freeh asserted that this process led to a flawed investigation in the following ways:

> First, the Task Force has partitioned its investigation, focusing on individual persons and events without effectively analyzing their relationship to the broader fundraising scheme. Second, the Task Force attorneys sometimes have made dispositive factual assumptions without investigating to see if those assumptions are accurate. . . . Third, important investigative areas, such as the serious allegations raised by Common Cause, have never been pursued because they have been tied up in lengthy threshold legal analyses within the Department.[135]

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[124] Id.
[125] See id. at 8.
[126] See id.
[127] Id.
[128] Id.
[129] Id.
[130] Id.
[131] Id.
[132] Id.
[133] Id. at 9.
[134] Id.
[135] Id.

Again, this manner of investigation appears to almost intentionally skirt around the independent counsel process. It was evident that Reno refused to invoke the discretionary clause of the Independent Counsel Act, and the Task Force's investigation made it very unlikely that she would have to confront an allegation against a covered person.[136]

In those instances where allegations were reviewed for the application of the Independent Counsel Act, they were handled by the Public Integrity Section.[137] The PIS attorneys had very limited involvement in the Task Force's work, and were therefore unfamiliar with the broader investigation.[138] Freeh acknowledged that the issues should have been reviewed by PIS, but believed that the front line investigators and attorneys were being excluded unnecessarily.[139] Freeh pointed out that separation between PIS and the Task Force in the independent counsel review process became even more apparent after Attorney General Reno changed the Task Force leadership and took PIS out of its leadership role.[140] Accordingly, the new Task Force leadership, Supervising Attorney Charles La Bella and Lead Investigator James DeSarno, had "no meaningful role" in independent counsel matters.[141] Freeh added that the tenor of the weekly meetings of the Task Force leadership changed "markedly," explaining that there was no longer any discussion of independent counsel related issues.[142] Although Freeh noted that "the FBI has very recently received several DOJ drafts on pending IC matters, FBI officials have not had any significant role in the deliberative process."[143]

c. Information Sufficient to Trigger the Independent Counsel Statute in the Campaign Finance Investigation

In his memorandum, Freeh laid out the argument for appointing an independent counsel using the facts of the campaign finance investigation. Freeh connected the various pieces of the Task Force's investigation to what he referred to as an "overall funding scheme."[144] The scheme was tied back to the core group's fundraising, which Freeh believed had never been investigated properly.[145] Freeh stated: "As a starting point, the Campcon Task Force has failed to address an overarching issue: whether the Clinton/Gore campaign (as well as the Dole campaign) engaged in an illegal scheme to circumvent the federal campaign financing laws."[146]

The allegations Freeh was referring to were based on allegations set forth by the public interest group Common Cause.[147] In Freeh's

[136] The Justice Department did have preliminary investigations open on President Clinton and Vice President Gore at the time Director Freeh wrote his memorandum, which Director Freeh readily acknowledges. However, those investigations were in response to media reports that both the President and Vice President had made telephone calls from their White House offices soliciting campaign contributions. Ultimately, Attorney General Reno declined to request the appointment of an independent counsel in both cases.
[137] Exhibit 2 at 9.
[138] Id.
[139] Id.
[140] Id.
[141] Id.
[142] Id. at 10.
[143] Id.
[144] Id. at 13.
[145] Id.
[146] Id.
[147] Id. at 10.

memorandum, he focused on the manner in which the Clinton/Gore campaign appeared to have violated several election laws.[148] He explained that in early 1995, the Clinton/Gore campaign agreed to engage in an "extremely ambitious series of TV ads," which would be very expensive. The problem for the campaign was that it was limited in the amount of money it was able to spend during both the primary and general elections.[149] In exchange for receiving Federal matching funds, a candidate for President is required to limit his overall campaign spending, during both the primary and general elections.[150] The Federal Election Campaign Act (FECA), Presidential Primary Matching Payment Account Act, and the Presidential Election Campaign Fund Act set forth criminal penalties for any knowing and willful violations of the spending limits.[151]

The Clinton/Gore campaign worked out a plan to use the DNC to purchase the advertising, effectively working around the spending limits imposed by accepting matching funds.[152] The campaign actually controlled the advertising, from creation to placement, while the President personally reviewed and approved all of the ads.[153] Common Cause alleged that all of the facts put together led to a violation of the law.[154] The Justice Department's preliminary conclusion was that, "this scheme was simply an act of 'coordination' between the Clinton/Gore campaign and the DNC."[155] Director Freeh argued that the allegations presented unprecedented legal issues that led to differences of opinion of the election law experts on whom the Task Force relied.[156] He added that because the law was unclear, and that there were no established enforcement policies to turn to at either the Department of Justice or the Federal Election Commission (FEC), the case should be turned over to an independent counsel to make the judgment of whether there was a prosecutable offense.[157] Freeh stated that, "[a]ny case in which there is no clear policy against prosecution or any arguably exceptional circumstances are present should be sent to a special prosecutor."[158] Freeh believed that the two most important points that the Attorney General should consider in deciding whether to seek the appointment of an independent counsel for the Common Cause allegations were: "(1) the Department has had the allegations for more than a year; and (2) there is virtually no chance that the allegations could be resolved in the course of a limited preliminary inquiry."[159]

i. Vice President Gore and President Clinton

Freeh believed that many of the other allegations of criminal or potentially criminal activity were a result of the overarching need

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[148] Id.
[149] Id. In 1996, there was a spending limit of approximately $62 million for the general election. Id.
[150] Id.
[151] 2 U.S.C. §§ 431–455; 26 U.S.C. § 9031 et. seq.; 26 U.S.C. § 9001 et. seq.
[152] Exhibit 2 at 11.
[153] Id. at. 10.
[154] Id. at 11.
[155] Id. at 11–12.
[156] Id. at 12.
[157] Id.
[158] Id.
[159] Id. at 13.

for money to pay for the media campaign. He explained, "[i]n addition to allegations of a broad conspiracy to circumvent the campaign contribution and spending limits, many of the other allegations that have arisen in the course of the investigations have a direct connection to the core group's fundraising scheme." [160] For instance, Freeh cited the preliminary investigations into President Clinton and Vice President Gore's fundraising telephone calls from the White House.[161] In the case of the Vice President, who admitted that he made fundraising calls from his White House office, the Attorney General was faced with three legal questions in determining whether to request the appointment of an independent counsel:

- Does section 607 [of the criminal code] [162] apply to the Vice President's telephone solicitations?
- Assuming section 607 does apply, is there an established DOJ policy of non prosecution of such offenses?
- Assuming section 607 applies and there is no established policy of non-prosecution, is further investigation warranted by an independent counsel? [163]

Freeh concluded that section 607 would apply under the fact pattern presented by the Vice President's phone calls.[164] He also found that there was neither a written nor other established policy of non-prosecution in section 607 cases, primarily because the facts of the individual cases are determinative.[165] Finally, Freeh acknowledged that there was a consensus among Department of Justice prosecutors that it was likely that Justice would never prosecute a case such as Gore's, even if there were a technical violation.[166] However, Freeh pointed out that the independent counsel statute did not permit the Attorney General "to simply dispose of a case through an exercise of prosecutorial discretion." [167]

As to the Vice President, Freeh concluded:

> The Attorney General should seek the appointment of an Independent Counsel with respect to the Vice President's telephone solicitations. Such an appointment is warranted on two levels. The preferable course of action would be to refer this matter as simply one piece of a comprehensive Independent Counsel investigation which focuses on the alleged scheme to circumvent the campaign financing laws. . . . Viewed in that context, it is essentially immaterial whether the telephone solicitations sought "hard" money or "soft" money, or whether they were made from public

[160] Id.
[161] Id.
[162] 18 U.S.C. section 607 makes it unlawful "for any person to solicit or receive any contribution within the meaning of section 301(8) of the FECA in any room or building occupied in the discharge of official duties by any [officer or employee of the United States].
[163] Exhibit 2 at 14.
[164] Id. at 15.
[165] Id.
[166] Id.
[167] Id. at 16. Freeh also warned against closing the case based on lack of intent. Freeh stated that based on the facts, one could not come to the conclusion, beyond a reasonable doubt, that the Vice President had no knowledge that the money he was raising would be used for both "hard" and "soft" money accounts. An important distinction to make the argument that a violation of 18 U.S.C. section 607 occurred. Id.

> space or private space. Because they were a key component of the overall fundraising scheme alleged by Common Cause and others, these solicitations should be referred for further investigation by an Independent Counsel. Such a referral could be made under either the mandatory clause or as a discretionary matter.[168]

Director Freeh took a similar position in the investigation of President Clinton's telephone solicitations from the White House residence. He acknowledged that the calls most likely were not a violation of section 607, however, considered them to be part of a larger conspiracy to circumvent the campaign finance laws.[169] For this reason, Freeh believed that an independent counsel should be appointed, and the President's phone calls should be part of the investigation.[170]

ii. White House Coffees and Overnights

The Clinton administration regularly held fundraising coffees with the President and Vice President in the White House, invited large donors to stay overnight in the Lincoln bedroom, or take trips on Air Force One.[171] Again, there was a question of whether the actions of the Clinton administration violated section 607 for fundraising on Federal property.[172] Freeh believed that the coffees, overnights in the Lincoln bedroom, and other perks for big donors were part of the overall scheme that he discussed, and that they should be part of an independent counsel investigation.[173]

iii. Solicitation of Foreign Nationals

In the course of the campaign finance investigation, the Task Force "developed substantial evidence that money from foreign nationals flowed into the DNC as a result of the massive fundraising effort coordinated by the DNC and the White House."[174] Freeh asserted that the Federal Election Campaign Act (FECA) should apply to those contributions.[175] However, early in the campaign finance investigation, the Attorney General came to the opposite conclusion. She reasoned that the foreign gifts given to the DNC were

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[168] Exhibit 2 a 17.

[169] Id. at 18.

[170] Id.

[171] See H. Rept. No. 105–829 (1998) (House Committee on Government Reform's interim report into the campaign financing investigation); S. Rept. No. 105–167 (1998) (Senate Governmental Affairs Committee final report on its investigation of illegal or improper activities in connection with 1996 Federal election campaigns.)

[172] 18 U.S.C. § 607. An Office of Legal Counsel opinion concluded that certain rooms in the White House were not covered by section 607 if they were used for "personal entertaining where there is a history of such use and where the cost of such use is not charged against an account appropriating funds for official functions." Exhibit 2 at 19. Originally, the Department of Justice assumed that all of the coffees took place in the White House residence, without ever investigating whether that was the case. However, after the belated production of White House videotapes, it became clear that the coffees took place in several different rooms, including the Oval Office.

[173] Exhibit 2 at 20.

[174] Id.

[175] Id. at 20. Section 441e of FECA states that:

> 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. 2 U.S.C. § 441e.

soft money, and that soft money did not fall within the definition of "contribution" under the FECA.[176] Freeh argued that Reno's legal reasoning was intensely criticized by numerous election law experts, and that at the very least, the issue was one of unsettled law.[177]

Soft money is neither defined nor specifically addressed in the FECA, and therefore Freeh questioned whether the Department of Justice should have engaged in "elaborate legal analysis" in the midst of determining whether an independent counsel should be appointed.[178] He also pointed out that it was premature for Attorney General Reno to consider all foreign gifts soft money.[179] Freeh stated, "[i]n light of the evidence of nearly absolute control of DNC fundraising efforts by the White House, there is a very real issue about whether the 'soft money' argument is largely a sham."[180]

d. Additional Reasons to Appoint an Independent Counsel

i. The DNC Was "Commandeered" by the White House

Freeh pointed out that the independent counsel statute was established because of the campaign related abuses of Watergate.[181] Top campaign officials were the only non-government officials to be included in the mandatory provision of the Act because those individuals are so important to the individual running for President.[182] Freeh acknowledged that under the statute, only the chairman and treasurer of Clinton/Gore would be covered. However, he argued that in the campaign finance case, the DNC itself should trigger the discretionary provision of the Act:

> It does not by its terms cover senior officers of the Democratic National Committee. However, in deciding whether to exercise her discretionary authority, the Attorney General should consider how the DNC was used during the 1996 election cycle. By essentially commandeering the DNC for the purpose of getting the President re-elected, the White House appears to have erased the traditional lines between the President's own campaign committee and the national party committee. In fact, the DNC was in large part the President's central re-election machine, under the tight control of senior White House advisors.[183]

ii. The FBI Had a Conflict in Releasing National Security Matters to the White House

The campaign finance investigation required the Task Force to look into allegations of Chinese Government efforts to influence the United States elections.[184] This particular portion of the investiga-

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[176] Exhibit 2 at 20. Contribution is defined as including, "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* . . ." 2 U.S.C. section 431(8)(A)(i) (emphasis added).

[177] Exhibit 2 at 20.

[178] Id. at 20 (quoting 1987 U.S.C.C.A.N. 2158).

[179] Id. at 21.

[180] Id. Freeh cited to a Jan. 6, 1997, statement of the FEC general counsel, indicating that if money is "used for a candidate's election directly, then there is no question that 441e applies." Id.

[181] Id. at 23.

[182] Id.

[183] Id. at 24.

[184] Id. at 25.

tion caused a conflict for both the FBI and Department of Justice because they had "conflicting duties to (1) keep the President informed about significant national security matters, and (2) simultaneously keep from the White House certain national security information that may relate to the ongoing criminal investigation."[185] Freeh acknowledged that the appointment of an independent counsel would not entirely alleviate the problem, but would ease the perception of a conflict.

e. Conclusions

Director Freeh found there was sufficient evidence under both the mandatory and discretionary provisions of the Act for Attorney General Reno to request the appointment of an independent counsel. Freeh argued that the Attorney General's interpretation of the Act, requiring an actual conflict of interest, was not supported by the language or the legislative history of the statute.[186] Finally, he concluded by stating:

> The Chief Campcon investigator, Director Freeh, has concluded that the investigation presents the Department with a political conflict of interest. This by itself does not trigger the independent counsel statute, since the ultimate resolution of the conflict issue rests solely with the Attorney General. However, the Director's view should be a significant factor in the Attorney General's continued analysis of whether to invoke the discretionary provision.[187]

Attorney General Reno ultimately disregarded the arguments set forth in Director Freeh's memorandum. She steadfastly maintained that she had no actual conflict of interest, despite what appearances might have been.

2. The La Bella Memorandum

Shortly before Freeh submitted his memorandum to the Attorney General, there was a major reorganization of the Task Force. The Department of Justice realized that the established structure of the Task Force, with PIS as the leader, was not able to conduct the investigation in a productive manner.[188] Therefore, in September 1997, Reno brought in Charles La Bella, a prosecutor from outside of Main Justice, to lead the Task Force.[189] La Bella stayed with the Task Force for approximately 1 year, leaving between July and August 1998.[190]

Prior to leaving the Task Force, La Bella drafted a 94-page memorandum outlining the facts surrounding several different investigations that La Bella believed warranted the appointment of

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[185] Id.
[186] Id. at 27.
[187] Id.
[188] GAO report at 34.
[189] The GAO report on the Campaign Finance Task Force found that "[i]n the fall of 1997, displeased with the investigator's slow pace, disclosures in the press that critical leads were not being pursued, and internal frictions plaguing CFTF, the Attorney General and FBI Director Freeh decided to replace CFTF's leaderhip." GAO report at 34.
[190] GAO report at 41. La Bella returned to San Diego to become Acting U.S. Attorney for the Southern District of California. However, he was not nominated to fill the position permanently. Id.

an independent counsel.[191] La Bella came to the same conclusion as Director Freeh had nearly 8 months earlier, that an independent counsel should have been appointed. He also echoed the concepts of a "core group" and "opportunists" outlined in the Freeh memo. However, La Bella focused his summary around individuals involved in the Task Force's investigation, including: Harold Ickes; President Clinton; Vice President Gore; Hillary Rodham Clinton; and, John Huang, Marvin Rosen, David Mercer and the DNC.[192] With respect to the individual Task Force investigations, La Bella articulated common themes running through each and tying them together:

> the desperate need to raise enormous sums of money to finance a media campaign designed to bring the Democratic party back from the brink after the devastating Congressional losses during the 1994 election cycle, and the calculated use of access to the White House and high level officials—including the President and First Lady—by the White House, DNC and Clinton/Gore '96, as leverage to extract contributions from individuals who were themselves using access as a means to enhance their business opportunities.[193]

La Bella, like Freeh, focused on the idea that the exploitation of the campaign financing laws were a direct result of the conditions established by the White House.

According to La Bella, as the pressure to raise money grew, there was a blurring of lines between the campaign and the DNC—there was an intermingling of funds, resources, and personnel—that eventually led to violations of the campaign contribution laws.[194] La Bella explained:

> The intentional conduct and the "willful ignorance" uncovered by our investigations, when combined with the line blurring, resulted in a situation where abuse was rampant, and indeed the norm. At some point the campaign was so corrupted by bloated fundraising and questionable "contributions" that the system became a caricature of itself. It is hoped that this report will place in context the abuses uncovered in our investigation: a system designed to raise money by whatever means, and from whomever would give it, without meaningful attention to the lawfulness of the contributions or the manner in which the money was spent.[195]

La Bella did not reserve his criticism for only the Clinton administration and the DNC; he was equally critical in his evaluation of the manner in which the Department of Justice had conducted the campaign finance investigation.

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[191] Memorandum from Charles G. La Bella, Supervising Attorney, Campaign Financing Task Force, and James DeSarno, Assistant Director, Federal Bureau of Investigation, to Janet Reno, Attorney General, U.S. Department of Justice, and Louis J. Freeh, Director, Federal Bureau of Investigation (July 16, 1998) (exhibit 3).
[192] Exhibit 3.
[193] Id. at 1.
[194] Id. at 3.
[195] Id. at 6.

a. The Department of Justice's Investigative Approach

The Task Force as it was run by PIS operated under a method of investigation which La Bella described as a "stovepipe" approach, conducting 30 to 40 investigations of individual targets at any given time.[196] Each investigation was assigned an investigative team of agents and prosecutors who were solely responsible for that particular investigation, and necessarily focused on its own issue.[197] La Bella expressed concern that while each team might have been aware of other teams' overlapping activities, there had never been an overall review.[198] Likewise, when the Attorney General and her advisers viewed the results of the investigation, they too focused on it one allegation at a time. Rather than viewing the entire "landscape" of allegations against covered persons, PIS, which had primary authority for the Act, viewed each allegation independently, making it difficult to trigger the application of the Act.[199] La Bella recommended an approach that looked at all of the allegations in a broader context.[200]

The memorandum was La Bella's attempt to bring all the pieces of the investigation together to form a whole picture. Upon doing so, he remarked that the information developed to that point presented "the earmarks of a loose enterprise employing different actors at different levels who share a common goal: bring in the money."[201] La Bella believed that such a situation should trigger the Independent Counsel Act. However, in practical terms, nobody at the Task Force had ever looked at the overall investigation to determine whether all the pieces of information put together might trigger the Act. That is, when viewed as a whole, whether there was specific information from a credible source that a covered person may have violated a Federal criminal law. La Bella asserted that each time such an investigation was suggested, it was rejected based on the claim that such an investigation could only be conducted as a preliminary investigation under the Act.[202] The Department of Justice then insisted that a preliminary investigation could only be initiated if there were "specific and credible *evidence* that a potential criminal violation has occurred."[203] However, the Justice Department's argument was circular. The Task Force was unable to look for information on covered persons unless there was a preliminary investigation, but could not initiate a preliminary investigation without specific and credible evidence; and, in order to find evidence one had to investigate. Obviously, with those limitations placed on the Task Force, investigations relating to covered persons would go nowhere. The Task Force had to hope that information on covered individuals would just appear.

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[196] Id. at 6. La Bella indicated that there were several investigations where key players and themes were consistent, such as the investigations of Johnny Chung, Maria Hsia, Charlie Trie, Mark Jimenez, Howard Glicken, and John Huang. Id.

[197] Id.

[198] Id. at 7.

[199] Id.

[200] Id.

[201] Id.

[202] Id. at 7–8.

[203] Id. at 8. La Bella took issue with the Department of Justice's use of the term "evidence," which was not in the statutory language. He believed it created a higher threshold for preliminary investigations.

The information in the La Bella memo was information that the Task Force already had. However, La Bella attempted to put it in the context of the entire investigation.[204] Having done that, La Bella was able to distinguish alarming patterns running through each investigation. Were he to have reviewed the individual actions in an investigative vacuum, they might have appeared innocuous.[205] La Bella remarked:

> This is especially true with respect to the conduct of senior White House officials and key DNC and Clinton/Gore officials. These individuals make brief, albeit key, appearances in the individual investigations. While their participation in a single investigation generally falls short of a knowing participation in potential criminal conduct, the sum of their appearances results in a pattern of conduct worthy of investigation.[206]

b. The Department of Justice Did Not Apply Thresholds of Investigation Uniformly

i. Initiating a Preliminary Investigation

The Attorney General instructed the Task Force to "leave no stone unturned."[207] The Task Force was able to open an investigation on an uncovered person "based upon a determination that there is an allegation which, if true, *may present* a violation of federal law."[208] Although the threshold was admittedly low, the Department of Justice had articulated "compelling" reasons why it was the most appropriate policy for the campaign finance investigation:

> the shortened statue of limitations for election violations; the rash of potential illegal activities presented during the 1996 election cycle and the resulting political crisis; the apparent injection of foreign money into our political system; the widespread circumvention of existing election law restrictions; the exposure of gaps in the law which permitted wholesale circumvention of federal election laws; and the possible participation—or willful blindness—of public officials, and high level party officials in connection with these activities.[209]

The Justice Department had put forth strong justifications for its position, but seemed to ignore that reasoning when it came to certain individuals. La Bella contrasted the stated standard for opening a Task Force investigation with the one that had been imposed when dealing with covered persons under the Independent Counsel Act. Particularly, when dealing with the President, Vice President, and senior White House personnel, the Justice Department required specific and credible evidence that a crime had been committed in order for the Department, through PIS, to commence an

[204] Id.
[205] Id.
[206] Id.
[207] Id. at 9.
[208] Id.
[209] Id. at 13.

investigation.[210] According to La Bella, this structure made it nearly impossible to investigate covered persons.

La Bella stated that "the Department would not investigate covered White House personnel nor open a preliminary inquiry unless there was a critical mass of specific and credible evidence of a federal violation."[211] Again, the standard the Attorney General mandated in cases of covered persons was "specific and credible *evidence* that a potential criminal violation *has occurred.*"[212] For La Bella, the use of the word "evidence" instead of "information," as is used in the statute, also indicated a higher standard. He also explained that when an allegation against a covered person was made, PIS took over the investigation, taking it out of the Task Force's jurisdiction. Therefore PIS controlled the standards used to consider the allegations under the Act.[213] In contrast, he noted that the Task Force initiated criminal investigations of individuals not covered by the Act on a "wisp of information."[214] Furthermore, he pointed out that even when the Department was conducting a preliminary investigation under the Act, the President, Vice President, and senior White House officials were treated more favorably than others were.[215] For example, the matters involving Interior Secretary Bruce Babbitt and Labor Secretary Alexis Herman illustrated La Bella's contention.[216] He observed that the amount of information needed to trigger the Independent Counsel Act, and subsequently warrant further investigation in those cases, was extremely low in comparison to the standards set for the President, Vice President, and senior White House personnel.[217]

La Bella believed that the standard for initiating a preliminary investigation under the Act should be the same as the threshold applied when determining whether to open a Task Force investigation.[218] The Attorney General, La Bella argued, was artificially raising the standard to determine whether there were grounds sufficient to investigate. Looking to the legislative history, La Bella stated that the reference to "the specificity of the information and the credibility of the source for the information" was intended to limit the factors the Attorney General could consider when deciding whether to proceed with a preliminary investigation. However, Reno turned the language around to create some type of higher threshold for even commencing an investigation that might implicate a covered person.[219] La Bella observed that the Department of Justice engaged in "unnecessary complication" when applying

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[210] Id. at 9.

[211] Id. at 11. La Bella also made the distinction between the terms "evidence" and "information." The Justice Department consistently used the term evidence when referring to the standard in the Independent Counsel Act, whereas the statutory language refers to "specific information from a credible source." According to La Bella, the term evidence suggests a higher burden of proof. To him, the distinction, although subtle, was significant. Id. at 10–11.

[212] Id. at 8 (emphasis added).

[213] Id. at 10.

[214] Id. at 11.

[215] Id.

[216] Id. Independent counsels were appointed for both Babbitt and Herman. In re Bruce Edward Babbitt, application of the Attorney General pursuant to 28 U.S.C. § 592(c)(1) for the appointment of an independent counsel (Special Div. D.C. Cir.) (Feb. 11, 1998); in re Alexis M. Herman, application of the Attorney General pursuant to 28 U.S.C. § 592(c)(1) for the appointment of an independent counsel (Special Div. D.C. Cir.) (May 11, 1998).

[217] Exhibit 3 at 11.

[218] Id.

[219] Id. at 12

the Independent Counsel Act standards, both in commencing and conducting an investigation.[220] La Bella added:

> This is especially so where the President and White House personnel are involved. Indeed, the continuing and often heated debate involving the so-called Common Cause allegations is an apt example. If these allegations involved anyone other than the President, Vice President, senior White House, or DNC and Clinton/Gore '96 officials, an appropriate investigation would have commenced months ago without hesitation. However, simply because the subjects of the investigation are covered persons, a heated debated [sic] has raged within the Department as to whether to investigate at all. The allegations remain unaddressed.[221]

Also with regard to the investigation of the Common Cause allegations, La Bella charged that, "[t]he contortions that the Department has gone through to avoid investigating these allegations are apparent."[222] The standards for initiating an investigation, La Bella argued, should be identical, and the better standard to use was the general Task Force standard: a determination that there is an allegation which, if true, *may present* a violation of federal law."[223]

ii. Determining Whether Further Investigation Was Warranted

Like the standard for commencing an investigation, La Bella urged that the standard for determining whether further investigation was warranted in a preliminary investigation be similar to the standard the Task Force used in both conducting and closing investigations.[224] In the Task Force's investigations, they adhered to the "leave no stone unturned" policy demanded by the Attorney General.[225] Conversely, in preliminary investigations, the Attorney General appeared to search for reasons not to continue to investigate. For example, during the campaign finance investigation, she often turned to examining the intent of the individual under investigation in order to close the investigation.[226] The Independent Counsel Act instructed the Attorney General to comply with the "written or *other established policies* of the Department of Justice with respect to the conduct of criminal investigations."[227] La Bella asserted that the "leave no stone unturned" theory was the established policy of the Task Force's investigation, as mandated by

[220] Id.
[221] Id. at 14.
[222] Id.
[223] Id. at 9, 14. Of course, the requirement that the information be specific and from a credible source would still be taken into account. Id.
[224] Id. at 12.
[225] Id.
[226] The statute makes it clear that the Attorney General may not base her recommendation on a finding that an official lacked the state of mind required for the crime, unless there exists "clear and convincing evidence." "Independent Counsel Provisions: An Overview of the Operation of the Law," CRS Rept. No. 98–283, at 4 (Mar. 20, 1998) (citing H. Rept. No. 103–511, at 11 (1994)). Furthermore, Congress, in enacting the statute, believed that it would be a "rare case" in which the Attorney General could come to such a conclusion. Id. The House report notes: "Congress believes that the Attorney General should rarely close a matter under the Independent Counsel law based upon finding a lack of criminal intent, due to the subjective judgments required and the limited role accorded the Attorney General in the independent counsel process." Id. However, that is precisely what Reno did in the case of Vice President Gore.
[227] 28 U.S.C. § 592(c)(1) (emphasis added).

Reno.[228] As such, the Department of Justice should adhere to the same standard when considering whether further investigation is warranted in a preliminary investigation. That is, the Attorney General should not have engaged in contortions to find a somewhat viable reason not to investigate. Anything that might even be considered prosecutorial discretion should have been left to an independent counsel to decide.

iii. La Bella's Interpretation of the Legislative History

La Bella supported his theories with the legislative history of the Independent Counsel Act.[229] He demonstrated that Congress often corrected the manner in which the Department of Justice was implementing the Act by amending the language of the Act. At the outset, he stated that Congress intended to create a system under which covered individuals were treated in the same manner as other individuals being investigated by the Justice Department, no more harshly or leniently.[230] The amendments in 1987 and 1994 made clear that individuals covered by the Act should be treated the same as non-covered individuals in determining whether an investigation is initiated, and once initiated, whether further investigation was warranted.[231] This was established, according to La Bella, by the language requiring the Department to follow "established policies" in making its determinations.[232]

La Bella cited numerous examples of the Congress criticizing the Department for interpreting the Independent Counsel Act in a manner that would serve Justice's own purposes. By doing so, the Justice Department substituted its own judgment for that of Congress.[233] In order to demonstrate his point that the Department had raised the bar for investigating covered individuals, La Bella pointed to the following passage to demonstrate Congress' intent on the standards for investigation:

> The *purpose* of allowing the Justice Department to conduct a preliminary investigation is to allow an opportunity for *frivolous* or *totally groundless* allegations to be weeded out. . . . On the other hand, as soon as there is any indication whatsoever that the allegations. . . . involving a high-level official may be serious or have any potential chance of substantiation, a Special Prosecutor should be appointed to take over the investigation.[234]

La Bella acknowledged that the Independent Counsel Act was not a "model" piece of legislation, but believed that people in the Department of Justice were trying to substitute what they thought to be the proper threshold for investigation.[235]

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[228] Exhibit 3 at 14. La Bella stated, "[i]t has also been the policy of the Task Force to continue to investigate allegations and to decline prosecution and/or further investigation only after each and every allegation has been fully investigated. This is true despite the fact that some allegations approached what a reasonable investigator might characterize as frivolous." Id. at n.2.
[229] Id. at 15.
[230] Id.
[231] Id.
[232] Id.
[233] Id. at 18.
[234] Id. (citing to 1978 U.S.C.C.A.N. at 4270).
[235] Id.

a. Information Sufficient to Warrant the Appointment of an Independent Counsel

There were numerous fact patterns involving covered and other individuals that the Task Force had looked into and that La Bella believed were sufficient to warrant the appointment of an independent counsel. Among those individuals implicated in the investigation were: President Clinton; Vice President Gore; Harold Ickes; Hillary Rodham Clinton; and, John Huang, Marvin Rosen, David Mercer, and the DNC.[236]

i. Harold Ickes

There were numerous allegations surrounding Harold Ickes, President Clinton's Deputy Chief of Staff, during the campaign finance investigation. Ickes was at the center of the Common Cause allegations because he ran the DNC and Clinton/Gore reelection efforts from the White House.[237] Ickes was not a "covered person" under the mandatory provision of the Act because his salary did not reach level II of the Executive Schedule, a requirement under the Act.[238] However, La Bella believed that the mandatory provision should be applied to Ickes. His argument was based on the theory that Ickes was a *de facto* officer of Clinton/Gore '96, exercising authority at the national level.[239]

In support of his argument, La Bella pointed to information such as the DNC and Clinton/Gore '96 reporting to Ickes before authorizing the disbursement of any funds or taking other actions.[240] In addition, individuals involved in the re-election effort confirmed Ickes leadership role.[241] La Bella applied the facts of Ickes case to a two-part test developed by PIS for determining whether an individual was a covered person under section 591(b)(6) of the Act.[242] The test relied upon an analysis of title and function in order to determine whether an individual was a covered person.[243] La Bella argued that when he reviewed the reality or function of Ickes' position rather than just the title he was given, Ickes fell under the mandatory provision because of his re-elect activities.[244] In the alternative, La Bella believed that Ickes fit within the discretionary provision of the Act as well.[245] La Bella cited to the legislative his-

[236] See exhibit 3 at 20–79.

[237] Id. at 24.

[238] 28 U.S.C. § 591(b)(3). La Bella pointed out that the President is authorized to pay 25 persons at level II, only 6 individuals in the Executive Office of the President are paid at that level—none of whom are involved in the campaign finance investigation. In prior administrations, the Deputy Chief of Staff had been covered by the Act by virtue of his salary. Exhibit 3 at 20.

[239] Exhibit 3 at 20. As de facto chairman of the re-elect, Ickes would be subject to the Independent Counsel Act pursuant to section 591(b)(6).

[240] Exhibit 3 at 22.

[241] Id. at 23. According to La Bella, Clinton campaign advisor Dick Morris "confirmed that Ickes was the sole person charged with making financial decisions for the White House, DNC and the reelection effort." Id. Morris also added that Ickes controlled "every aspect of DNC and Clinton/Gore fundraising and that Ickes was brought in by the President." Id. Finally, in an interview with former White House Chief of Staff Leon Panetta, Panetta told the Task Force that he personally did not have the experience needed to run a national Presidential campaign and he therefore "relied heavily on Ickes to handle all issues relating to the President's re-election." Id. at 24.

[242] Id. at 21. The test was originally developed to determine whether Clinton fundraiser Terry McAuliffe was a covered person under the Act. Ultimately, PIS determined that he was not a covered person. Id.

[243] Id.

[244] Id.

[245] Id. at 25.

tory of the discretionary provision as intending "to include members of the President's family, and *lower level campaign and government officials who are perceived to be close to the President*."[246] Due to Ickes role in the campaign, the control he wielded, and his close relationship to the President, La Bella argued that the circumstances fit the type of political conflict that the Act envisioned.[247]

Once La Bella established that the Independent Counsel Act should cover Ickes, he turned to the fact patterns that warranted the appointment of an independent counsel. The first argument La Bella made was that Ickes "knowingly permitted the DNC and Clinton/Gore '96 to accept conduit contributions collected by Charlie Trie[248] and to file false and misleading reports with the FEC."[249] Ickes had a unique knowledge of Trie's questionable contributions to another entity associated with the Clintons, the Presidential Legal Expense Trust (PLET).[250] Ickes, along with several senior White House staff, was briefed on the questionable source for the funds.[251] During the meeting, Deputy Counsel to the President, Bruce Lindsey mentioned that he knew Trie from Arkansas, and that Trie was involved with the Democratic party.[252] Ickes, who La Bella considered the *de facto* head of Clinton/Gore '96 and the DNC, was the only individual at the meeting who had regular contacts with those organizations.[253] He concluded that Ickes therefore had a duty to warn both organizations.

After the campaign finance scandal was reported in the press, the Executive Director of the DNC, B.J. Thornberry, asked Ickes about DNC fundraiser John Huang.[254] Ickes indicated that if the DNC were looking at John Huang, they should also take a look at Charlie Trie.[255] The comment, La Bella believed, spoke volumes about Ickes knowledge of Trie and his fundraising.[256] La Bella summarized, "[a]t best, Ickes engineered an effort to consciously avoid learning the truth about Trie. At worst, Ickes' failure to act

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[246] Id. at 25 (citing 1987 U.S.C.C.A.N. at 2165).

[247] Id. Ultimately, the Attorney General decided to open a preliminary investigation of Harold Ickes under the Independent Counsel Act to investigate allegations of perjury before the Senate Governmental Affairs Committee. No independent counsel was appointed.

[248] Trie was a close friend of President Clinton's from Arkansas with wide-ranging access to the White House, Presidential advisors, and Clinton administration officials. See H. Rept. No. 105–829 at 1347 (1998). Trie later plead guilty to knowingly causing the DNC to make a false report to the FEC and knowingly causing a conduit contribution to be made to the DNC.

[249] Exhibit 3 at 26.

[250] The PLET was established by and for the benefit of the President and the First Lady for the purpose of paying their personal legal bills. Contributions to the PLET were limited to $1,000 per person. See S. Rept. No. 105–167, at 2711 (1998).

[251] Exhibit 3 at 26. Michael Cardozo, the PLET Executive Director, hired a private investigator to examine the Trie donations. Cardozo briefed Ickes, the First Lady's Chief of Staff, and several of the White House counsels regarding the private investigators findings. In his prepared statement before the Senate Governmental Affairs Committee, Cardozo explained what the investigators found and why Trie's contributions were ultimately returned:

> One, the unique circumstances under which the funds were delivered to the Trust; Two, the fact that it now appeared that most if not all of these contributions were raised at meetings of a religious organization, the Ching Hai—Buddhist sect which according to IGI had been described by some as a "cult" and which raised concerns abut peer pressure and coercion; and Three, concern over the ultimate source of some of the contributions due to what appeared to be the advancement of funds by the Ching Hai organization to some contributors. Id. at 30.

[252] Exhibit 3 at 29.

[253] Id.

[254] Id. at 32.

[255] Id.

[256] Id.

was intended to conceal the truth from those who would have protected the DNC and Clinton/Gore from Trie's illegal solicitations/contributions."[257]

La Bella also believed that Ickes' role in the Common Cause allegations was troubling. He asserted that the information uncovered to date warranted the appointment of an independent counsel. He expressed frustration that the Department had not taken any action whatsoever, even independent of Ickes, on the Common Cause allegations.[258] La Bella outlined the Department's refusal to initiate an investigation and stated:

> The alternative approach—a parochial and professorial application of the [Independent Counsel Act]—is the very approach that has gotten the Department into trouble in the past. It is the same type of maneuvering and practice that triggered the 1987 Amendments to the ICA and the sharp criticism of the Department that accompanied these amendments. Indeed, one could argue that the Department's treatment of the Common Cause allegations has been marked by gamesmanship rather than an even-handed analysis of the issues.[259]

Ickes was intimately involved with the media efforts that were central to the Common Cause allegations. The President conferred the authority to run the re-election effort upon Ickes, who did so. Therefore, La Bella concluded that "[t]o the extent that there was any effort to circumvent the regulations outlined above, Ickes was at the heart of the effort."[260]

The final area of investigation relating to Ickes was the Diamond Walnut matter.[261] The allegations centered on whether there was an effort to encourage teamster contributions and support of the Democratic party through the use of the administration's influence to attempt to settle an ongoing labor dispute.[262] Ickes testified about the matter before the Senate Governmental Affairs Committee, and there were some questions regarding the truthfulness of his testimony.[263] La Bella outlined the facts and information that the Task Force had to date, and admitted that the investigation was in its "infancy."[264] However, he concluded that there was sufficient specific information from a credible source to commence an investigation. The Task Force had done so, however, La Bella believed that, in light of the other information on Ickes, a preliminary investigation should have been initiated.[265]

ii. President Clinton

La Bella laid out his argument for appointing an independent counsel to investigate the President, who is a covered person under the Act. The main issues he addressed were: Charlie Trie's PLET contributions and subsequent appointment to a Presidential com-

[257] Id. at 35.
[258] Id. at 37.
[259] Id. at 38.
[260] Id. at 40.
[261] Id. at 41.
[262] Id.
[263] Id. at 41–42.
[264] Id. at 45.
[265] Id.

mission; the Common Cause allegations and conspiracy to violate soft money regulations; and, the President and senior White House officials' knowledge of foreign contributions.[266]

As mentioned in the previous section, Charlie Trie, a close friend of the President and DNC fundraiser and contributor, delivered questionable contributions to the PLET totaling $789,000. According to its own guidelines, the PLET only accepted contributions from individual U.S. citizens using their own funds; and, the contributions had to be voluntary. Ultimately, it was discovered that the Trie contributions came from the Supreme Master Suma Ching Hai of the Ching Hai Buddhist sect, who offered to reimburse her followers if they contributed $1,000 to the PLET.[267]

Not only were the contributions suspect, but the timing of the contributions was suspect as well. Around the time of the contributions, Trie was appointed to the Commission on U.S. Trade and Investment Policy (Commission).[268] The President issued an Executive order expanding the size of the Commission on January 31, 1996, while Trie had visited the President 2 days earlier.[269] Trie delivered the first contributions on March 21, 1996.[270] Approximately a month later, Trie received his formal appointment to the Commission.[271] During the time period between the delivery of the contributions and Trie's appointment, the PLET Executive Director made the First Lady and senior White House staff aware of the problems with the contributions and Trie's delivery of them.[272] Subsequently, the President himself was made aware of the problems, as he affirmed the decision to return the funds. La Bella concluded that based on the President's knowledge of the contributions and of the status of Charlie Trie as a fundraiser and contributor to the DNC and Clinton/Gore '96, his involvement should have been further investigated.[273]

La Bella also believed that the President played a major role in the Common Cause allegations.[274] He pointed out that the President was regularly briefed on the media fund and re-election efforts.[275] In addition, as Director Freeh pointed out in his memorandum, the President was highly involved in the creation and

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[266] Id. at 46–56.

[267] See S. Rept. No. 105–167, at 2722 (1998). The money orders delivered to the PLET by Trie were sequentially numbered, meaning that they were purchased at one location. However, they were written from people living in different parts of the country. Many of the checks had the identical spelling error of "presidencial." In addition, some of the checks were written by one person on behalf of another, in violation of trust guidelines. Finally, the Supreme Master Suma Ching Hai, who provided the reimbursement for the contributions, is based out of Taiwan—a violation of the foreign money guideline. Id.

[268] The committee learned that the White House made the appointment process for the Commission very political. Because he had been instrumental in the creation of the commission, Senator Bingaman and his staff were supposed to have had a great deal of input into the creation of the Commission. Bingaman's staffer, Steve Clemons, found that he had a great deal of trouble getting Bingaman's candidates for the Commission approved. Charles Duncan, the Assistant Director of Presidential Personnel told Clemons that he checked all candidates names against a DNC donor list. When Trie's appointment was brought up, Clemons objected based on lack of experience and quality of candidate. However, the White House responded that Trie was a "must appointment" from the "highest levels of the White House." See H. Rept. No. 105–829, at 1374–1390 (1998).

[269] Exhibit 3 at 46.

[270] Id.

[271] Id. at 48.

[272] Id.

[273] Id. at 50.

[274] Id.

[275] Id.

placement of the ads. It was the President who entrusted Harold Ickes with running the media campaign that is at the heart of the Common Cause allegations. Therefore, La Bella imputes to the President knowledge of Ickes' control over both the DNC and Clinton/Gore '96 in order to effect the media campaign.[276]

In conjunction with the media fund and general re-election efforts, there was an ongoing demand for more money to sustain the campaign.[277] La Bella described events that he believed demonstrated a pattern of activity involving senior White House officials. He added, "[t]his pattern suggests a level of knowledge within the White House—including the President's and First Lady's offices—concerning the injection of foreign funds into the reelection effort."[278] The two examples La Bella used were the White House's handling of major donors Johnny Chung and Charlie Trie.

Chung had a significant amount of contact with the First Lady's office in order to make arrangements for his Chinese associates to meet both the President and the First Lady. Chung first made attempts to get meetings and perks through the DNC.[279] However, even the DNC was wary of Chung and his Chinese business associates. Therefore, Chung went to the First Lady's Chief of Staff, Maggie Williams. On two separate occasions when the DNC would not deliver, Williams was able to arrange a photo-op with the President or First Lady for Chung and groups of Chinese businessmen.[280] In one instance, Chung offered the DNC $50,000 to arrange for him and a group of Chinese businessmen to meet with President Clinton.[281] When the DNC would not do it, the First Lady's office did, using the $50,000 to retire a portion of its debt to the DNC.[282] Chung explained in an interview with the Task Force that he informed White House and DNC staff that "the more access he could get, the better his business would be and the more he could contribute."[283] It should have been clear to anyone who dealt with Chung that he was using funds from the Chinese businessmen he brought to meet the President to contribute to the DNC.

At one point, the NSC stepped in to question whether photos of the President in the White House with the Chinese businessmen should be released.[284] The NSC was told that the individuals were major DNC donors and that the President's office would like to release the photos.[285] After reviewing the Johnny Chung scenarios, La Bella concluded that the connection between Chung's foreign business associates and his DNC contributions was quite clear. He added, "[i]t is inconceivable that senior officials at the White House were oblivious to these connections."[286]

White House officials should have drawn similar conclusions about Charlie Trie and his contributions. Both the President and

[276] Id.
[277] Id. at 51.
[278] Id.
[279] Id. at 52.
[280] Id.
[281] Id.
[282] Id.
[283] Id. at 60.
[284] Id. at 53.
[285] Id.
[286] Id. at 54.

First Lady, along with senior White House staff, were warned about the possibility of problems with Trie's fundraising through the PLET fiasco.[287] Although they were aware that Trie was an active fundraiser for the DNC, nobody brought the problem to the attention of the DNC.[288] La Bella stated:

> These actions (and inactions) involving the President, First Lady, Ickes, White House Counsel and Bruce Lindsey, suggest a conscious decision not to learn the truth about Trie's fundraising activities. By not alerting the DNC and Clinton/Gore and by directing IGI not to confront Trie about the PLET "donations," the White House chose not to impede a potent fundraiser at a time when funds were needed.[289]

La Bella was able to tie all of the issues relating to the President together through the Common Cause allegations. For instance, the need to raise astronomical amounts of cash developed from the need to pay for the media campaign. Because the re-election efforts needed to raise so much cash, they turned a blind eye to problems such as foreign money coming into the campaign. Finally, under La Bella's analysis, the President was in the middle of it all. He approved the media campaign and followed it closely, assisted in raising the cash, and attending all of the fundraisers where he greeted the numerous foreign attendees, many of whom were unable to even speak English. La Bella argued that the President's role needed to be investigated and therefore, an independent counsel should have been appointed.

iii. Vice President Gore

The argument for an investigation of Vice President Gore was nearly identical to that of the President.[290] Like the President, Vice President Gore participated in the decisionmaking on the media campaign and approved the efforts.[291] Furthermore, La Bella believed that there should be a close review of the Vice President's fundraising calls from his White House office.[292] The Department of Justice already had concluded that Gore did believe that he was soliciting "hard" money, a distinction that meant that there would have been no violation of law. However, La Bella did not want to rely solely on the Vice President's word, he believed further investigation was warranted.[293]

iv. Hillary Rodham Clinton

The First Lady is not covered under the mandatory provision of the Independent Counsel Act. However, La Bella concluded that she should be considered under the discretionary provision.[294] He

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[287] Id. at 54–55.
[288] Id. at 55.
[289] Id.
[290] Id. at 57.
[291] Id.
[292] Id.
[293] Id. In fact, a subsequent preliminary investigation was opened on the Vice President when his aide's handwritten notes of a money meeting were discovered. The notes showed that hard and soft money splits for the media fund were discussed at a meeting the Vice President attended.
[294] Id. at 60.

believed that, like Ickes and the President, her role in the Charlie Trie contributions and failure to warn the DNC and Clinton/Gore about those contributions should be further investigated. In addition, the First Lady's office also had a close relationship with contributor Johnny Chung that La Bella believed also should be investigated further.[295] Chung often made arrangements through the First Lady's office for his Chinese business associates to meet with the President and First Lady.[296] La Bella summarized, "[g]iven our threshold for opening investigations, determination of what the First Lady knew and what she did (or chose not to do) in connection with the information detailed above, is something which deserves further inquiry."[297]

v. Other Campaign Finance Figures

Central to the campaign finance investigation was the role of the DNC, its officers, and fundraisers. Millions of dollars in illegal or otherwise questionable contributions flowed into the DNC's coffers during the 1996 Federal elections. It was the discovery of a foreign contribution to the DNC that led to the campaign finance investigation. John Huang, a DNC fundraiser, brought foreign money into the DNC and became a major figure in the investigation. La Bella focused on the events that brought John Huang to the DNC, the individuals involved, as well as the actions taken by the DNC that allowed them to cross the line of legality.[298] He stated, "[t]hese incidents suggest that at some level, certain DNC fundraisers were actively engaged in conduct which had the effect of concealing questionable fundraising conduct from the FEC and the public."[299]

Huang came to the DNC as a fundraiser through the intervention of President Clinton, who enlisted White House aides and personally spoke with the DNC to help Huang.[300] Prior to that, Huang was a political appointee, subject to the Hatch Act, at the Department of Commerce.[301] While at the Commerce Department, Huang had engaged in fundraising activities, in violation of the Hatch Act, with the full knowledge, and possibly at the prompting of the DNC.[302] La Bella described how David Mercer, DNC Deputy Finance Director, credited Huang's wife Jane for funds raised in order to hide the fact that Huang was violating the Hatch Act.[303] The committee later learned that while Huang was still working at

[295] Id.
[296] Id.
[297] Id.
[298] Id. at 61–73.
[299] Id. at 61.
[300] Id. at 69. Several individuals were working on Huang's behalf to get him a fundraising position with the DNC, including James Riady, Mark Middleton, and Joe Giroir. Riady, Huang, and Giroir had a meeting with the President at which they discussed Huang working at the DNC as a fundraiser. The President enlisted the help of White House aides Bruce Lindsey and Harold Ickes to pave the way for Huang with the DNC. Ickes contacted the head of DNC fundraising Marvin Rosen and DNC Chairman Don Fowler to recommend Huang. Huang's application did not move forward until the President personally mentioned Huang to Rosen during a fundraiser. Shortly thereafter, Huang was hired at the DNC. See H. Rept. No. 105–829, at 1207–1208 (1998).
[301] Exhibit 3 at 70.
[302] Id. at 67.
[303] Id.

the Commerce Department, White House Deputy Chief of Staff Harold Ickes actually asked Huang to raise money.[304]

Although there are no criminal penalties for violating the Hatch Act, La Bella believed that the disclosure of the violation would have jeopardized both Huang's Commerce Department employment and his move to the DNC, resulting in a "public relations nightmare."[305] Futhermore, La Bella indicated that the actions taken by Huang and Mercer possibly were in violation of section 371 of the criminal code. Such a violation would have involved a scheme to defraud the United States based on the Hatch Act violation.[306] In light of the other evidence, and the potential section 371 violation, La Bella believed that a full investigation was warranted.

La Bella also cited to miscellaneous events that raised questions about whether DNC officials were aware of potential irregularities and illegalities in fundraising. For instance, by mid-1994, the DNC practically dismantled its procedures for vetting all contributions of $10,000 or more.[307] Without vetting, the DNC would have no information on large contributions. As further evidence he cited to Johnny Chung's efforts to bring numerous Chinese businessmen to meet with the President. For example, Chung wrote to DNC Finance Director Richard Sullivan about a group of his Chinese associates who were to meet with the President, stating that one of the group would play "an important role in our future party functions."[308] Chung even wrote to Deputy Assistant to the President Doris Matsui, "[i]n the next two years I will be coordinating a lot of visits from Asian business leaders *to support DNC*. I look forward to working closely with you. . . ."[309] La Bella believed that in light of these and other examples, a thorough investigation of the DNC's practices was in order. Such an investigation, he said, would be a political conflict of interest for the Department of Justice.[310] He bolstered his assertion with the fact that the President and Harold Ickes were instrumental in running the affairs of the DNC and Clinton/Gore, meaning that any investigation would certainly include their activities.

vi. The Loral Matter

Illustrating his assertion that there was a higher threshold for initiating an investigation of the White House or its senior officials, La Bella cited to the investigation of the satellite communications company Loral.[311] Shortly before La Bella wrote his memorandum, there were allegations reported in the media that the administration gave Loral an export waiver for satellite technology in return

[304] Ickes asked Huang to raise funds for Jesse Jackson, Jr.'s congressional campaign during Huang's "interview" process for the DNC. Huang stated that Ickes said something like, "can you help out from the Asian American community, round-up ten to fifteen thousand dollars for Jesse Jackson, Jr.?" Ultimately, Huang did raise several thousand dollars for Jackson. FBI summary of Huang interview, DOJ–H000127–131.

[305] Exhibit 3 at 67.

[306] Id. La Bella indicated that Justice Department Research showed that, "a scheme to defraud in connection with false statements and active concealment relating to campaign funds solicited in violation of the Hatch Act, does present a viable prosecutable theory. Id.

[307] Id. at 71.

[308] Id. Chung was referring to Chairman Chen of Haomen Beer, who later used his photograph with President Clinton as a marketing tool in China. Id.

[309] Id. at 72.

[310] Id.

[311] Id. at 73.

for the campaign contributions of its CEO Bernard Schwartz.[312] According to La Bella, nobody at the Department of Justice was able to provide a sound premise upon which to base the initiation of a criminal investigation.[313] Rather, because of the media and political pressure, Justice commenced an investigation.[314] Therefore, the standard used by the Justice Department in this case was that "allegations were made which, if true, suggested a potential violation of federal law."[315] In light of the Loral investigation, La Bella believed that there was no justification for the refusal to initiate an investigation into the Common Cause allegations.[316]

As the Justice Department already had decided to commence an investigation, La Bella argued that the actual and potential conflicts of interest were such that the appointment of an independent counsel ought to be sought.[317] For instance, one of the areas of investigation was to determine whether Schwartz' campaign contributions "corruptly influenced" President Clinton's 1998 decision to grant Loral a waiver over the objections of the Department of Justice.[318] At the time of the waiver, the Department of Justice had an open criminal investigation of Loral for the alleged transfer of technology to China.[319] The Department of Justice informed the White House that a waiver would hinder its ongoing investigation of Loral.[320] In addition to investigating the decision of the President, several high-level Justice Department officials were involved in discussions with the White House prior to the President's decision to grant the waiver.[321] La Bella indicated that these officials' conversations with White House Counsel would be material to the investigation as well.[322] In the end, La Bella determined that the most important factor in the investigation was that it would be an investigation of the President. He concluded that "if the matter is sufficiently serious to commence a criminal investigation, it is sufficiently serious to commence a preliminary inquiry under the ICA since it is the president who is at the center of the investigation."[323]

d. La Bella's Conclusions

La Bella argued that Justice Department officials were waiting for some type of smoking gun that implicated, beyond a doubt, a covered person in an act that violated Federal law.[324] However, in the campaign finance matter, the information had to be gathered

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[312] Id.
[313] Id.
[314] Id. at 74.
[315] Id. In comparison, the Justice Department imposed a higher standard when considering allegations related to senior White House officials: "a determination that there is specific and credible evidence of a federal violation." Id. at 10.
[316] Id. at 74.
[317] Id.
[318] Id.
[319] Id. at 75.
[320] Id.
[321] Id.
[322] Id. Robert Litt and Mark Richard were the individuals in contact with the White House regarding the Loral matter. Litt conveyed the Department's concerns over the possible waiver to Counsel to the President Charles Ruff. Id. at 75–76.
[323] Id. at 79.
[324] Id. at 93.

and reviewed as a whole, rather than looking at each individual piece. La Bella explained:

> [T]here are bits of information (and evidence) which must be pieced together in order to put seemingly innocent actions in perspective. While this may take more work to accomplish, in our view it is no less compelling than the proverbial smoking gun in the end. . . . Indeed, were this quantum of information amassed during a preliminary inquiry under the ICA, we would have to conclude that there are reasonable grounds to believe that further investigation is warranted.[325]

The report acknowledged that there were some areas of the campaign finance investigation that as an experienced prosecutor, La Bella would not pursue. Nevertheless, he made clear that in the situation at hand, the prosecutorial discretion belonged to an independent counsel.

3. Conclusion

Both Director Freeh and Supervising Attorney La Bella believed that an independent counsel should be appointed to investigate the campaign finance investigation. Furthermore, they agreed that the Department of Justice was applying the Independent Counsel Act in a manner that almost assured that one would not be appointed. They both saw that the tunnel vision of Reno and her senior political advisors allowed them to ignore the big picture. Central to that big picture was what both Freeh and La Bella believed was some type of broad conspiracy centered around the need to raise vast sums of money and the willingness to bend or break the campaign financing laws to get it. The Common Cause allegations were a major part of their theory, and they asserted that the Department of Justice refused to investigate these allegations at any level.

The Common Cause allegations laid out a common theme in both memoranda. The facts were that the President and Vice President needed to run ads early and frequently to be re-elected. In order to run the ads the campaign needed to raise significant amounts of money. The White House, DNC, and Clinton/Gore '96 all participated in the effort to raise the money and pay for the ads. Once they began the operation, the three entities became blurred and began to spend money as if they were one. All of this happened under the watch and with the knowledge of the President, Vice President, and senior White House, DNC, and Clinton/Gore staff. As momentum started building, they needed more money, and that left the door open for people like John Huang, Charlie Trie, Johnny Chung, and Pauline Kanchanalak to bring in questionable funds. Neither Freeh nor La Bella definitively state that White House, DNC, or Clinton/Gore officials knew about the illegal contributions. However, in their memoranda they show that there was sufficient information to further investigate. Because the President and Vice President were so intimately involved in the areas being investigated, it was nearly impossible for the Task Force to conduct the investigation without looking into their conduct. As Freeh noted,

[325] Id.

the Justice Department attorneys were extremely reluctant to proceed into areas of investigation where covered persons might be implicated, necessitating the appointment of an independent counsel.

The Department of Justice was setting a very high standard for appointing an independent counsel in the campaign finance investigation. Although Attorney General Reno constantly repeated that she would appoint an independent counsel when presented with specific information from a credible source that needed to be further investigated, she had not done so in practice. As both La Bella and Freeh argued, any one piece of information seen in a vacuum might not satisfy the standard, rather, the pieces together created a pattern that could not be ignored.

E. DEPARTMENT OF JUSTICE REBUTTAL MEMORANDA

The Department of Justice circulated the La Bella memorandum to senior level personnel for review and discussion. In memoranda to the Attorney General, several senior level personnel responded to the facts and issues raised in the memorandum. The committee received the responses of Associate Deputy Attorney General Robert Litt and Chief of the Public Integrity Section Lee Radek, who both had negative reactions to the La Bella memo.

1. Litt's Response to the La Bella Memorandum

In a July 20, 1998, memorandum to the Attorney General, Litt sets forth his observations about the La Bella memo.[326] He first denied that the Department had applied an artificially high standard in applying the Independent Counsel Act. Litt then summarily stated that the Department of Justice never prohibited La Bella and the Task Force from conducting an investigation of the entire campaign finance landscape in order to determine whether specific information from a credible source sufficient to trigger the Act existed.[327] Litt believed that the comprehensive nature of La Bella's memorandum proved that the Task Force had not been impeded in its investigation.[328] In short, Litt concluded, "it is not the Independent Counsel Act that is blocking investigation of the President and those around him; it is the lack of any specific and credible information that they may have committed a crime."[329]

Litt's rebuttal of La Bella's allegations is unimpressive. He never addressed the argument that the Attorney General would look only at individual pieces of information in deciding whether the Independent Counsel Act was triggered rather than reviewing the investigation as a whole. Furthermore, he simply denied that La Bella's statements about the artificially high standard for the Independent Counsel Act were accurate. Obviously, La Bella had a difference of opinion which Litt never factually rebutted.

Litt then turned to the individual cases discussed by La Bella, including the Common Cause allegations.[330] Litt criticized La Bella for bringing up the Common Cause allegations, stating that the De-

[326] Memorandum from Robert S. Litt, Associate Deputy Attorney General, U.S. Department of Justice, to Janet Reno, Attorney General, U.S. Department of Justice, and Eric Holder, Deputy Attorney General, U.S. Department of Justice (July 20, 1998) (exhibit 4).
[327] Id. at 1.
[328] Id.
[329] Id. at 2.
[330] Id. at 3.

partment had already determined that they did not warrant criminal investigation under the FECA or Presidential Funding Acts.[331] He also dismissed La Bella's legal argument that the Common Cause allegations could be prosecuted as a conspiracy to defraud the United States.[332] Both Litt and PIS, headed by Radek, had rejected the Common Cause allegations earlier, and recommended that the charges be left to the FEC to investigate. Litt wrote:

> It is unfortunate that the FEC is so weak, but we should not use that as an excuse to disregard well-established concepts of predication and well-established procedures, to conjure up novel legal theories of which political candidates had no notice, and to take on the responsibility of primary regulator of the political process. That is not an appropriate function of the Department of Justice.[333]

There was a difference of opinion between the Task Force prosecutors and the FBI on the one side, and the Attorney General's advisors and PIS on the other about whether there was a violation of any laws in the scheme described by Common Cause. La Bella wanted at a minimum, to investigate. The Attorney General and her advisors decided that there was no predication to investigate, and refused to allow a Task Force investigation of the issue to go forward. Ultimately, La Bella and other Common Cause advocates received belated support in a FEC audit that found that the "DNC media payments ($46,546,476) to have been an in-kind contribution to either the primary or general campaign committee."[334]

Addressing another section of the LaBella memorandum, Litt generally agreed that Harold Ickes and high-ranking DNC officials ought to be investigated, but not by an independent counsel.[335] Although La Bella did advocate considering Ickes under the mandatory provision, he also urged the Attorney General to recognize the conflict of interest she and the Department had in investigating Ickes and the DNC. Litt neglected the argument that these matters ought to be considered under the discretionary provision of the Independent Counsel Act.

2. Radek Response to the La Bella Memorandum and La Bella's Reply

Lee Radek, the Chief of the Public Integrity Section, attacked La Bella's memorandum to the Attorney General in his own August 5, 1998 response.[336] Radek criticized La Bella's recommendations as "flawed and based on numerous misinterpretations of the Inde-

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[331] Id.

[332] Id.

[333] Memorandum from Robert S. Litt, Associate Deputy Attorney General, U.S. Department of Justice, to Janet Reno, Attorney General, U.S. Department of Justice 4 (Feb. 6, 1998).

[334] Addendum to interim report from Charles G. La Bella, Supervising Attorney, Campaign Financing Task Force, and James DeSarno, Assistant Director, Federal Bureau of Investigation, for Janet Reno, Attorney General, U.S. Department of Justice, and Louis J. Freeh, Director, Federal Bureau of Investigation 5 (Aug. 12, 1998) (paraphrasing finding of FEC audit) (exhibit 5).

[335] Exhibit 4 at 4.

[336] Memorandum from Lee J. Radek, Chief, Public Integrity Section, U.S. Department of Justice, to James K. Robinson, Assistant Attorney General, Criminal Division, U.S. Department of Justice (Aug. 5, 1998) (exhibit 6) this memorandum was forwarded to the Attorney General on Aug. 6, 1998.

pendent Counsel Act."[337] He also complained bitterly about what he perceived as personal digs:

> I am, to put it directly, outraged by the personal attacks and the suggestions contained in this Report, some subtle, and some stunningly blunt, that the motivations of those who have advised the attorney General over the last two years concerning the application of the Act with respect to campaign financing matters have been colored by bad faith, a deliberate twisting of the law, and an effort to protect the White House.[338]

When La Bella's was confronted with Radek's charges, he replied, "such an approach lessens legitimate debate and hampers the ability to reason to a result based on the merits."[339] La Bella, on the other hand, insisted on replying to the substance of Radek's comments, rather than to his attacks.

i. Stovepipe Versus Landscape Analysis

Radek addressed La Bella's criticism that the Department was conducting a "stovepipe" analysis rather than a "landscape" analysis. Radek contended that there had been no previous investigation that was as carefully coordinated as the Task Force.[340] He argued that efforts had been made and, "extensive steps have been taken to ensure that any overlapping evidence or potentially interlocking cases is [sic] *not* overlooked."[341] Radek asserted that if the big picture had been ignored it was the fault of La Bella himself.[342] He also denied, as "simply untrue," La Bella's contention that the Task Force had not been allowed to do a "broad survey of the entire campaign finance landscape."[343]

As evidence that La Bella was wrong, Radek pointed to the two examples that La Bella used in his memorandum. Radek first brought up the Common Cause allegations, and stated that they were "thoroughly considered, analyzed at length, and closed on their merits."[344] He also stated that the Task Force was told that they were free to investigate any of the facts underlying the investigation.[345] Similarly, Radek asserted that the core group investigation was fully pursued by the FBI and dropped because it was not fruitful.[346]

In response to Radek's assertions regarding the stovepipe analysis, La Bella clarified that he had intended "to reference the natural tendency of investigators and prosecutors to segment individual allegations and charges."[347] La Bella indicated that he was not criticizing the investigators, rather, he had hoped that his memorandum would cause the Attorney General and her advisors to see the matter from the landscape view. He believed that the

[337] Id. at 2.
[338] Id. at 1.
[339] Exhibit 5 at 1.
[340] Exhibit 6 at 3.
[341] Id.
[342] Id.
[343] Id.
[344] Id.
[345] Id.
[346] Id.
[347] Exhibit 5 at 1.

Common Cause allegations and core group analysis would have forced the Department of Justice to look at the investigation from the landscape view sooner.[348]

La Bella took issue with Radek's contention that the Common Cause allegations had been "closed on the merits."[349] On the contrary, he believed that the matter had been tabled, pending a decision by the Attorney General. La Bella stated that the Task Force had continually raised the Common Cause issue in order to come to some type of conclusion. Each time the issue was brought up, the Task Force was told that the matter remained under consideration.[350] La Bella pointed to an August 4, 1998, memorandum from Criminal Appeals regarding Common Cause in support of his contention that the matter was very much open.[351]

ii. Independent Counsel Act Interpretation

Radek next turned to the Department's application and interpretation of the Independent Counsel Act. He took issue with the "evidence" versus "information" distinction pointed out by La Bella. The Act itself refers to the specificity of the *information* and the credibility of the source.[352] However, the PIS and Attorney General consistently referred to the "specific and credible evidence" needed to initiate a preliminary investigation. Radek insisted that he used the words evidence and information interchangeably, and did not mean for a higher threshold to apply.[353] In response, La Bella argued that the wording of the Act itself was crucial as it could make a difference in whether the Act was triggered.[354]

As described above, in his memorandum, La Bella criticized the Department for having two standards for investigation, a higher one for covered persons and a lower threshold for all others. Radek argued that the Act itself imposed this higher standard.[355] He discussed how Congress, in contrast to La Bella's argument, was worried that the threshold for investigation might be too low, and therefore used the specific and credible language to normalize the threshold.[356] Radek concluded that "[t]he Report's conclusion that this minimal standard should be set aside in this case has no support in the Act, and indeed appears to us to be the very sort of strained, result-oriented analysis of which it accuses those who disagree with the authors."[357] According to La Bella, the 1987 and 1994 amendments to the Independent Counsel Act rebutted Radek's arguments which were based on the 1982 amendments.[358] He argued that after the 1982 amendments, it became clear that the Justice Department was applying a higher threshold for the Act rather than applying it too loosely.[359] Therefore, Congress

[348] Id. La Bella acknowledged that the core group investigation was closed before he arrived at the Task Force, and he had therefore relied upon the representations of others who were present.
[349] Id. at 2.
[350] Id.
[351] Id.
[352] 28 U.S.C. § 591(d)(1).
[353] Exhibit 6 at 5.
[354] Exhibit 5 at 8.
[355] Exhibit 6 at 5.
[356] Id.
[357] Id.
[358] Exhibit 5 at 9. See section C.2.b.iii. for La Bella's analysis of the legislative history.
[359] Id.

changed the language to allow the Justice Department to take into account its own established policies in making decisions under the Act.

iii. Harold Ickes

Radek disagreed with La Bella's analysis of Ickes under the Independent Counsel Act. Radek insisted that the law did not permit the Attorney General to consider whether an individual was a "de facto" officer of a campaign committee, as La Bella argued that Harold Ickes was.[360] However, he did acknowledge that the argument that the Attorney General should consider Ickes under the discretionary provision was persuasive.[361] La Bella defended the "de facto" analysis, comparing it to liability in corporate law.[362] For instance, Ickes would have been considered an "agent" of Clinton/Gore '96 based on that committee's own admissions. Therefore, Clinton/Gore '96 could have been held liable for Ickes' actions, making him a de facto officer in La Bella's view.

The issue relating to Charlie Trie's PLET contributions encompassed Harold Ickes and the First Lady, as well as several other individuals in La Bella's memorandum. Radek stated that he could find no basis upon which to hold Ickes and the First Lady, criminally liable for failing to warn the DNC and Clinton/Gore about Trie's questionable fundraising.[363] La Bella responded that in Ickes' case, there was support in basic agency law and statutes 18 U.S.C. sections 371 and 1341, among others.[364] As for the First Lady, La Bella stated that, "[h]er *potential* criminal involvement tracks the conduct set forth relating to the PLET incident."[365] Therefore, he concluded that her conduct warranted further inquiry. La Bella made a novel legal argument that the Justice Department would have to determine whether it could support. It should be noted that the Task Force prosecuted several DNC fundraisers under a similarly novel legal argument regarding causing false statements to be made to the DNC. Those arguments were upheld on appeal.

iv. President Clinton

Radek also disagreed with the issues raised in the La Bella memorandum regarding the President. First, he stated that there was no evidence of a *quid pro quo* in which the President appointed Charlie Trie to the Presidential Commission in exchange for con-

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[360] Exhibit 6 at 9.

[361] Id. at 10. Radek quibbled with the manner in which La Bella made his argument, stating that La Bella presumed to make the decision for the Attorney General, whereas, the decision is discretionary. Id. La Bella's response was that:

> While we gather that it is Public Integrity's policy not to give advice as to invocation of the discretionary clause, [] we believe that as supervisors of the Task Force, it is our responsibility to address this important issue. To do otherwise is to ignore the facts and fail to provide a framework in which they should be considered. After hearing the various viewpoints, the decision, of course, is entirely the Attorney General's to make." Exhibit 5 at 9.

[362] Exhibit 6 at 11.

[363] Id.

[364] Exhibit 5 at 13. Section 317 deals with a conspiracy to defraud the United States, and was discussed at great length in the La Bella memorandum. 18 U.S.C. § 371. Section 1341 relates to frauds and swindles involving the mails. 18 U.S.C. § 1341.

[365] Exhibit 5 at 16.

tributions to the PLET.[366] Second, he states that there is no evidence that the President knew any contributions to the campaign were foreign.[367] However, he does not take into account the fact that it was nearly impossible for the Task Force to develop any evidence on covered individuals under the standards set by the Department of Justice.

Although La Bella raised numerous questions about the President's actions, Radek asserted that "there is absolutely no specific and credible information suggesting that the president committed a crime with respect to any of these matters; the Report identifies none, but rather lists a series of provocative and speculative hypothetical questions it asserts should be answered."[368] Radek added that La Bella had fallen back on his argument that there should be one standard for initiating an investigation, which was not possible to do while still adhering to the standard of the Independent Counsel Act.[369] Radek seems to prove La Bella's point through his argument. There are two standards for investigating, as Radek acknowledges, and the Task Force was prohibited from investigating the President or any other covered person unless they uncovered a specific piece of evidence that implicated a covered person in a violation of criminal law.

v. The Vice President

Radek also rebuffed the arguments regarding the investigation of Vice President Gore. However, by the time La Bella wrote his reply, the Task Force had received a memorandum of a White House "money meeting" with David Strauss' handwritten notes referencing what was discussed at the meeting and the comments of the Vice President.[370] The notes showed that hard and soft money splits required to pay for the media fund were discussed, although the Vice President previously stated that he had no knowledge that hard money would be used for the media fund.[371] Therefore, as noted by La Bella, the discovery of the Strauss memo yet again raised the question of the Vice President's knowledge.[372] In fact, after the Strauss memo came to light, the Attorney General did initiate a preliminary investigation.[373] However, she ultimately declined to appoint an independent counsel.[374]

vi. The DNC and Its Officials

The La Bella memorandum also reintroduced the argument that the Attorney General had a political conflict of interest in investigating the DNC. The individuals involved were fundraiser John Huang, Finance Chairman Marvin Rosen, and Deputy Finance Director David Mercer, among others.[375] Radek summarily dismissed La Bella's arguments as having been rejected by the Attorney Gen-

[366] Exhibit 6 at 12.
[367] Id. at 13.
[368] Id. at 12.
[369] Id. at 12.
[370] Exhibit 5 at 15.
[371] Id.
[372] Id.
[373] See in re Albert Gore, Jr., notification to the court pursuant to 28 U.S.C. § 592(b) of results of preliminary investigation (Special Div. DC Cir. 1998).
[374] Id.
[375] Exhibit 6 at 16.

eral long ago.[376] As long as no new information or developments had arisen relating to a covered person, Radek rejected the idea of an independent counsel.[377] However, La Bella again pointed out that the DNC had been under the control of the White House and was used almost exclusively to re-elect the President.[378] Therefore, he concluded that the matter, and the individuals being investigated, posed a political conflict of interest.[379]

vii. The Common Cause Allegations

The Common Cause allegations were central to both Freeh and La Bella's theories of the overall campaign finance investigation, yet the Department of Justice refused to investigate them. When La Bella was brought in to supervise the Task Force, he assigned one attorney, Steve Clark, to work solely on Common Cause. In late December 1997, Clark left the Task Force out of frustration over the Department's handling of Common Cause. Prior to his departure, Clark wrote in a December 23, 1997, memorandum:

> That, to date, we have been unable to investigate the Common Cause allegations in a straightforward way has been a great personal and professional disappointment. But, I believe the public has been most dis-served [sic] by the way in which the "whether to investigate" issue has been approached, debated, and resolved. Never did I dream that the Task Force's effort to air this issue would be met with so much behind the scenes maneuvering, personal animosity, distortions of fact, and contortions of law. (It also is my impression that many involved have not read the pertinent cases.) All this, not to forestall an ill-conceived indictment, not to foreclose a report making an independent counsel referral, but to prevent *any* investigation of a matter involving a potential loss of over $180 million to the Federal treasury.[380]

It was not at all clear that Clark was referring to Radek in the passage, in fact, more than one individual would appear to be implicated. However, Radek's opinions match those that were disputed by Clark. Furthermore, Radek stooped to pure fabrication when he claimed that the Attorney General had decided that it did not warrant the appointment of an independent counsel. He was surely aware that there was never any closing memo on the Common Cause allegations that was approved by either the Attorney General or Director Freeh.[381]

After insisting that the matter had been closed, Radek went on to address the merits of the allegations. He claimed that the FEC had primary responsibility for investigating and interpreting the election laws and, under longstanding agreements between the FEC and Department of Justice, it would be inappropriate for Jus-

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[376] Id.
[377] Id.
[378] Exhibit 5 at 16.
[379] Id.
[380] Memorandum from (name redacted), Assistant U.S. Attorney, to Chuck La Bella, Supervising Attorney, Campaign Financing Task Force (Dec. 23, 1997). (Exhibit 7). It has been made public that the author of the memorandum was Steve Clark, AUSA.
[381] Exhibit 6 at 16.

tice to investigate. Long before Radek wrote his memo, Clark rebutted the arguments Radek put forward. In his December 1997 memorandum, Clark stated:

> While I recognize that there have been legitimate disagreements, some positions urged in support of avoiding any investigation have been so plainly wrong as to be disheartening (e.g., the suggested referral to the FEC, on the misapplication of the MOU with that agency, with the claim that the FEC could refer the case back after it checked out the ad content, but with the unspoken reality that no criminal investigation would ever happen—certainly not within the three year statute of limitations; or the contention that an independent counsel referral must be made immediately if any investigation is even authorized).[382]

La Bella agreed with Clark, stating that "the MOU does not mandate that initial responsibility be placed with the FEC. It is clear that the Department can investigate independently."[383]

Radek rejected the theory that the Common Cause allegations could establish a section 371 conspiracy to defraud the United States. He stated, "[t]o the contrary, the Attorney General has addressed the ultimate issue here squarely. She has decided that no amount of coordination between the candidates and the party can, by itself, constitute a violation. Only the content of the ads can establish a civil violation of the FECA."[384] In his memorandum, Clark had a better perspective on the allegations generally. He pointed out that the Department could not possibly know, without investigating further, whether or not they could initiate criminal prosecutions.[385]

In response, La Bella directly addressed the criminal conspiracy argument, citing to the recent findings of a FEC audit report stating that the payments made by the DNC for the media campaign were in-kind contributions to either the primary or general campaign.[386] The FEC audit also found that the ads contained an electioneering message.[387] La Bella asserted that the audit report added "considerable, credible, and *new* information supporting the Common Cause allegations."[388] The finding specifically supported the allegations that the President directed and controlled ads that were paid for by the DNC pursuant to the President's request and that were intended to effect the President's election.[389] In addition, because the auditors found "electioneering content," meaning there was some type of violation of the campaign laws, the theory of a section 371 conspiracy was bolstered. Clinton/Gore's exclusion of the funds used to pay for the media campaign from its spending

[382] Exhibit 7.
[383] Exhibit 5 at 5.
[384] Exhibit 6 at 19.
[385] Exhibit 7.
[386] Exhibit 5 at 5.
[387] Id.
[388] Id. at 6.
[389] Id. at 7.

figures was therefore a potential criminal violation of the Federal campaign financing laws, according to La Bella.[390]

After the Task Force received the FEC Audit memorandum referred to by La Bella, the Attorney General could no longer ignore the matter, and was forced to open a preliminary investigation on the Common Cause allegations. Three months after his stinging memorandum ridiculing the Common Cause allegations, Radek, along with the new Task Force Supervising Attorney David Vicinanzo, finally acknowledged that those allegations were credible. Radek stated:

> To the extent that these advertising expenditures did constitute contributions to and expenditures by the campaign committees, they were unlawful, in that they would have violated among other things, (1) the FECA's limits on contributions to candidates by multicandidate political parties like the DNC, and (2) the PPMPAA's and PECFA's expenditure limits on publicly financed elections. Any such violations made knowingly and willfully would potentially be criminal.[391]

Radek stated that he would take the FEC's findings at face value for the purposes of the preliminary investigation. He determined that the main focus of the preliminary investigation was whether the President and Vice President had the requisite intent, knowing and willful, to be criminally liable.[392] It is important to remember at this point that, as a check on the Attorney General's discretion under the Independent Counsel Act, she was not permitted to make a determination that "no further investigation was warranted" based on a finding that Clinton or Gore lacked the state of mind required for the violation, unless there was "clear and convincing evidence."[393] When drafting the Act, Congress believed that the Attorney General would rarely base a determination on state of mind, noting that "due to the subjective judgments required and the limited role accorded the Attorney General in the independent counsel process."[394] Nevertheless, Radek, accepting all of the other arguments that a criminal act transpired, focused in on intent as a way to avoid invoking the Independent Counsel Act. In fact, Radek concluded that the President and Vice President met this extremely high standard set by Congress, stating, "in our view these facts establish that the President and Vice President lacked the requisite specific intent to violate the law."[395]

Radek determined that the President and Vice President did not have the specific intent based upon their reliance on the advice of

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[390] Id.

[391] Memorandum from Lee J. Radek, Chief, Public Integrity Section, U.S. Department of Justice, and David A. Vicinanzo, Supervising Attorney, Campaign Financing Task Force, to James K. Robinson, Assistant Attorney General, U.S. Department of Justice, at 2 (Nov. 20, 1998).

[392] Memorandum from Lee J. Radek, Chief, Public Integrity Section, U.S. Department of Justice, and David A. Vicinanzo, Supervising Attorney, Campaign Financing Task Force, to James K. Robinson, Assistant Attorney General, U.S. Department of Justice, at 2 (Nov. 20, 1998).

[393] 28 U.S.C. § 592(a)(2)(B)(ii).

[394] "Independent Counsel Provisions: An Overview of the Operation of the Law," CRS Rept. No. 98–283, at FN 22 (Mar. 20, 1998) (citing H. Rept. No. 103–511, at 11 (1994)).

[395] Memorandum from Lee J. Radek, Chief, Public Integrity Section, U.S. Department of Justice, and David A. Vicinanzo, Supervising Attorney, Campaign Financing Task Force, to James K. Robinson, Assistant Attorney General, U.S. Department of Justice, at 4 (Nov. 20, 1998).

counsel.[396] That is, they relied upon the advice of the DNC and Clinton/Gore attorneys who advised them. The attorneys, Joe Sandler and Lyn Utrecht, reviewed all of the ads before they were released and provided their opinion that the ads did not contain an electioneering message.[397] Radek concludes that there was no evidence showing that the President and Vice President had independent knowledge of the electioneering standard or whether they might be violating it.[398] However, he had to determine whether no further investigation was warranted. In this case, it is not at all clear that there was clear and convincing evidence of a lack of intent sufficient enough to overcome the need for further investigation, certainly without having conducted a grand jury investigation.

The FBI found that the "advice of counsel" defense relied upon by Radek and Vicinanzo was "not strong enough to satisfy the 'clear and convincing' standard under the Independent Counsel Act."[399] FBI General Counsel Larry Parkinson indicated in a memorandum to Director Freeh that there were several reasons why the standard had not been met. First, while relying on the advice of counsel defense, the President and Vice President had no direct contact with the attorneys providing the advice.[400] Parkinson points out that all of the advice was filtered through intermediaries and raised serious questions as to whether the actual legal advice was provided to the President and Vice President.[401] In addition, the attorneys in question, Sandler and Utrecht, were not disinterested parties, both had a vested interest in ensuring the re-election of Clinton and Gore. As Parkinson stated, had they wanted a truly disinterested opinion they could have gone to the FEC for advice.[402]

Perhaps most important to whether further investigation was warranted was that Sandler, one of the attorneys upon whom Clinton and Gore were relying, wrote a memorandum indicating he had doubts about whether the media campaign was violating election law.[403] The memo stated, "Under [the FEC's legal] test, the DNC is bumping up right against (*and maybe a little bit over*) the line in running our media campaign about the federal budget debate, praising the President's plan and criticizing Dole by name."[404] The Sandler memo was somehow rewritten to soften the language by the time it was sent to the White House.[405] Sandler was interviewed about the memoranda, and Parkinson stated that, "Sandler gave a contorted explanation which led our agents to believe he was lying."[406] In addition, the FBI believed that the White House

[396] Memorandum from Lee J. Radek, Chief, Public Integrity Section, U.S. Department of Justice, and David A. Vicinanzo, Supervising Attorney, Campaign Financing Task Force, to James K. Robinson, Assistant Attorney General, U.S. Department of Justice, at 37 (Nov. 20, 1998).
[397] Id.
[398] Id. at 40.
[399] Memorandum from Larry Parkinson, general counsel, Federal Bureau of Investigation, to Louis J. Freeh, Director, Federal Bureau of Investigation, at 3 (Dec. 4, 1998) (exhibit 8).
[400] Id.
[401] Id.
[402] Id. at 5.
[403] Id.
[404] Id. (quoting memorandum written by Joe Sandler, general counsel, DNC).
[405] Id.
[406] Id.

had not produced all documents relevant to the preliminary investigation.[407]

Parkinson also took issue generally with Radek's application of the clear and convincing standard in the Vice President's case. He pointed out that Congress intended to set a very high threshold for the Attorney General to close a case based on lack of intent to commit the crime.[408] He cited to the legislative history of the Act, wherein Congress stated that, "[t]he Justice Department's demand for proof of intent to justify continuing independent counsel cases is disturbing, because criminal intent is extremely difficult to assess, especially in the early stages of an investigation. Further, it often requires subjective judgments, which should ideally be left to an independent decisionmaker."[409] Parkinson framed the question as whether the Attorney General could reasonably conclude that the Vice President's case was one of those "rare cases" in which she could reach the threshold of the clear and convincing standard. Parkinson clearly concluded that it would not be reasonable for the Attorney General to make that determination.[410]

The Parkinson memorandum should have been sufficient to convince the Attorney General that further investigation into the Common Cause allegations was warranted. Parkinson raised numerous issues that were not addressed by the preliminary investigation. In fact, Parkinson stated that the preliminary investigation, "consisted primarily (but not exclusively) of an examination of an advice of counsel defense."[411] That is hardly a ringing endorsement of the Public Integrity Section's preliminary investigation. Nevertheless, Attorney General Reno embraced the advice of counsel defense, disregarded the glaring problems with the investigation, and declined to appoint an independent counsel.

F. DEPARTMENT OF JUSTICE'S BAD FAITH IN ITS APPLICATION OF THE INDEPENDENT COUNSEL ACT

1. The Chief of the Public Integrity Section Was Predisposed Against the Act

The memoranda written by Freeh and La Bella made it clear that they believed that an independent counsel should have been appointed to investigate the campaign finance matter. However, the Justice Department's legal interpretation and application of the Act all but ensured that an independent counsel would not be appointed. Even the head of the Criminal Division, James Robinson, agreed that the Department had been applying too high of a threshold to trigger the appointment of an independent counsel in the case of the Common Cause allegations. He stated:

> It occurs to me that Public Integrity, in insisting upon a "may have violated the law" standard which includes a consideration of the "state of the law" at the time of the conduct in question, and which also addresses the issue of

[407] Id. at 6.
[408] Memorandum from Larry Parkinson, general counsel, Federal Bureau of Investigation, to James K. Robinson, Assistant Attorney General, U.S. Department of Justice, at 7 (Nov. 20, 1998).
[409] Id. (citing to 1987 U.S.C.C.A.N. at 2159–60).
[410] Id. at 8.
[411] Exhibit 8 at 8.

> "willfulness," is applying a higher trigger standard than the one called for by the ICA.[412]

However, it should have come as no surprise to anyone that Public Integrity would avoid the application of the independent counsel statute. The Chief of the Public Integrity Section made his views of the Act very clear when he told the New York Times, "[i]nstitutionally, the Independent Counsel statute is an insult. It's a clear enunciation by the legislative branch that we cannot be trusted on certain species of cases."[413] Obviously, Radek, who was in charge of the application of the statute, had a bias against the Act. He also had an additional impetus for rejecting the Act early in the investigation, to protect Reno's position at the Department. He told the Deputy Director of the FBI that he was under pressure because of the campaign finance investigation and that the Attorney General's job might depend on the decisions he made in the investigation.[414]

Radek's subsequent recommendations regarding the initiation of preliminary investigations or appointments of an independent counsel demonstrate that he interpreted the Act as narrowly as possible, or even misinterpreted the Act, in order to avoid its invocation. In their memoranda, Director Freeh and Supervising Attorney La Bella exhaustively analyzed the Public Integrity Section's thresholds and standards of investigation. They both came to the conclusion that PIS was applying a higher standard of investigation for individuals covered by the Independent Counsel Act.

2. The Chief of the Public Integrity Section Misrepresented Facts

There have been numerous other examples of problems with Radek's interpretation of the Independent Counsel Act, some already cited. One of the most egregious examples, according to both the Freeh and La Bella memoranda, was Radek's refusal to consider a preliminary investigation of the Common Cause allegations until forced to do so by the FEC audit report. However, Radek was also criticized for misleading statements he made regarding the various investigations and the contortions he sometimes went through to avoid invoking the Act. In one instance, the Acting Assistant Attorney General for the Office of Legal Counsel Dawn Johnsen rebuked Radek for misrepresenting the opinions of her office in a memorandum to the head of the Criminal Division. She stated:

> [T]o the extent that the [Radek] memorandum attempts to report remarks made by OLC lawyers at the meeting, it does so incorrectly and incompletely. Thus, not only did the memorandum leave the mistaken impression that "OLC positions" were expressed, it also mischaracterized

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[412] Memorandum from James K. Robinson, Assistant Attorney General, U.S. Department of Justice, to Janet Reno, Attorney General, U.S. Department of Justice, at 4 (Aug. 25, 1998). Robinson disagreed with Lee Radek's analysis of the Common Cause allegations in Radek's response to the La Bella memo, and recommended that the Attorney General initiate a preliminary investigation. Id. at 11.

[413] Jeffrey Goldberg, "What Is Janet Reno Thinking?," NY Times Magazine, July 6, 1997, at 30.

[414] "The Justice Department's Implementation of the Independent Counsel Act," hearing before the House Committee on Government Reform, 106th Cong. 38 (2000) (testimony of William J. Esposito) (preliminary transcript).

> the comments that individual lawyers offered in [sic] during the meeting.[415]

In another example, Radek wrote an August 24, 1998, memorandum recommending that the Attorney General not pursue a preliminary inquiry into whether the Vice President may have provided false statements regarding his fundraising telephone calls from the White House.[416] A line attorney, Judy Feigin, took issue with many of the factual assertions made by Radek in his recommendation, and wrote a memorandum clarifying the facts.[417] She stated that FBI agents' notes and recollections of witness interviews were significantly different from what Radek had written in his memorandum.[418] In particular, Radek characterized White House Chief of Staff Leon Panetta as having an "evolving memory," implying that he was not a credible witness.[419] Feigin stated that the agents viewed Panetta as a very credible witness. Feigin cited numerous examples of Radek's factual inaccuracies and blatant misrepresentations, including:

- The memo (p. 11) says Panetta's "impression" was that the Vice President was following the hard money discussion. The agents' notes reflect that Panetta said the Vice President was listening attentively.
- Page 10, fn. 11 suggests that the media fund was not an item in the DNC budget during the Spring and Summer of 1995. However Watson recalled the agenda of the June 8, 1995 meeting included the media fund.
- Page 11, fn. 12 says that Panetta may have contradicted himself. The agents' notes do not support this. Panetta recalled the general topic discussed though not the specific details.
- Page 12: The memo suggests that Rosen recalled the focus of the fundraising proposals presented to the President and Vice President during the November meeting was on raising soft money. The agents' notes indicate that Rosen had no recall whether the events were intended to raise soft or hard money.
- Page 14, n. 15: The footnote concludes that Panetta, among others, did not understand the statement made by Pastrick at the top of the footnote. In fact, Panetta understood clearly the first part of the statement, i.e., that every DNC expenditure during a federal campaign is required to have a hard money component. The only thing Panetta did not know was the $20,000 limit.

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[415] Memorandum from Dawn Johnsen, Acting Assistant Attorney General, U.S. Department of Justice, to Lee J. Radek, Chief, Public Integrity Section, U.S. Department of Justice, at 1 (Oct. 2, 1997).

[416] Memorandum from Lee J. Radek, Chief, Public Integrity Section, to James K. Robinson, Assistant Attorney General, U.S. Department of Justice (Aug. 24, 1998) (transmitted to the Attorney General by Robinson).

[417] Memorandum from (name redacted), Assistant U.S. Attorney, U.S. Department of Justice, to James K. Robinson, Assistant Attorney General, U.S. Department of Justice (Aug. 25, 1998). (Exhibit 9). The name of the Attorney, Judy Feigin, has been made public since the Justice Department's production of the memorandum.

[418] Id. at 2.

[419] Id.

- Page 15, n. 16: The memo quotes Ickes' statement that Strauss was very sophisticated in matters of soft money/hard money, and therefore may have written notes of greater detail than actually discussed. However, the memo does not mention Strauss' own statement (reflected in agents' notes) that he was not familiar with these issues as they pertained to the White House and the DNC. Strauss was adamant that those notations reflected comments made at the meeting.
- Page 16: The memo says that Gore stated he and the President did not often attend DNC budget meetings like that held on Nov. 21. In fact, the agents report that most witnesses indicated that the President and Vice President generally did attend the DNC budget meetings.
- The memorandum at least twice refers to the fact that the Vice President might well have left the meeting at the point in which the hard money media fund discussion took place. Not only is there no evidence that this occurred (*i.e.,* no witness recalls his leaving) but the agents' notes reflect that Ickes told them that when he conducted meetings (and he was conducting the meeting on November 21), he would halt the proceedings if the President or Vice President stepped out of the room; the meeting would resume when they returned. Therefore, rather than presume the Vice President was not present, the presumption must be that he was.[420]

The information mischaracterized or left out by Radek was absolutely crucial to determining whether to initiate a preliminary investigation of Vice President Gore. At issue was whether the Vice President believed the media fund was financed exclusively with soft money, as Gore originally stated during the first investigation of his fundraising phone calls. What was discussed and recalled by other individuals present at the meeting would be a strong indication of the Vice President's knowledge. In Feigin's memorandum, she points out that there was specific evidence from a credible source suggesting that the Vice President did know that the DNC media fund had a hard money component, and that the only evidence to the contrary were self-serving statements by the Vice President and his counsel. Radek's flawed memorandum, on the other hand, intentionally or unintentionally had the effect of tipping the scales in Gore's favor and avoiding the initiation of a preliminary investigation under the Independent Counsel Act.

A further example of Radek's tendency to discriminate against the Act occurred during the initial November 1997, investigation of the allegations that Gore made solicitations for campaign contributions from his White House office. La Bella raised a troubling issue regarding Radek's recommendation against the appointment of an independent counsel, stating, "[m]y overall concern is that at every point where two inferences could be drawn from a set of facts, the

[420] Id.

inference consistent with a lack of criminal intent/conduct was always chosen."[421] He added:

> By routinely embracing the most innocent inference at every turn, *even if the inferences are factually defensible,* the memorandum creates an appearance that the Department is straining to avoid the appointment of an Independent Counsel and foreclose what many would characterize as an impartial review of the allegations. When you look at the facts, the memos, the meetings, and the DNC practice, it is hard to say, as the memorandum does, that there is only one conclusion to be reached.[422]

Perhaps if Radek had weighed the facts in favor of declining to initiate a preliminary investigation or appoint an independent counsel only on this one occasion, he would be more credible. However, it appears to have been his pattern and practice in nearly every Task Force investigation.[423] This leads the committee to believe that Radek was intentionally avoiding the application of the Independent Counsel Act.

3. The Attorney General Avoided the Invocation of the Independent Counsel Act

In the end, the decisions on independent counsels were left to the Attorney General alone. She consistently failed to apply the Act in the campaign finance investigation, and the blame falls squarely on her. Although Public Integrity Chief Lee Radek developed many of the theories upon which Reno relied, it was the Attorney General who chose not to apply the Act responsibly.

In defense of herself, Attorney General Reno often invoked the numerous previous independent counsels she had appointed as proof that she was doing the right thing. However, none of the other independent counsels were a direct referral based on the President or First Lady except for Whitewater. In the Whitewater case, the Attorney General adamantly refused to appoint a special prosecutor[424] until the President ordered her to do so.

Task force attorneys and FBI officials wrote numerous memoranda to the Attorney General regarding her interpretation of the statute or practical application of it. They often explained why the standard she was applying was too high, or the analysis was flawed. By intentionally ignoring the advice given to her by people like Director Freeh and Supervising Attorney La Bella, who were

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[421] Memorandum from Charles G. La Bella, Supervising Attorney, Campaign Financing Task Force, to Janet Reno, Attorney General, U.S. Department of Justice, at 2 (Nov. 30, 1997).

[422] Id.at 7.

[423] On one occasion, Radek recommended that the Attorney General initiate a preliminary investigation. In a Sept. 29, 1997, memorandum, Radek concluded that, with regard to the allegations that Vice President Gore may have solicited campaign contributions from his White House office in violation of 18 U.S.C. section 607, there was information sufficiently specific and credible to warrant further investigation. Radek had to come to this conclusion given the Vice President admitted he made the fundraising telephone calls from his office. Memorandum from Lee J. Radek, Chief, Public Integrity Section, U.S. Department of Justice, to Mark M. Richard, Acting Assistant Attorney General, U.S. Department of Justice (Sept. 29, 1997). After the preliminary investigation, Radek concluded that there was insufficient evidence that the Vice President may have violated section 607 to warrant further investigation. Therefore, he recommended against the appointment of an independent counsel. Memorandum from Lee J. Radek, Chief, Public Integrity Section, U.S. Department of Justice, to Mark M. Richard, Acting Assitant Attorney General, U.S. Department of Justice, at 41 (Nov. 21, 1997).

[424] At the time, the Independent Counsel Act had expired, and had not yet been reauthorized.

familiar with both the facts and the law, Attorney General Reno crippled the campaign fundraising investigation. It appeared from her actions throughout the investigation, that that was her intent all along.

G. THE FAILURE TO APPOINT A SPECIAL COUNSEL FOR VICE PRESIDENT GORE

The committee learned in December 1999 that the President and Vice President had never been interviewed about the vast majority of their activities relating to the 1996 campaign fundraising scandal. Shortly thereafter, in April 2000, the head of the Campaign Financing Task Force, Robert Conrad, requested interviews with President Clinton and Vice President Gore. In these interviews, Conrad covered many of the subjects that had been neglected by the Justice Department for the preceding 3 years.

After his interview with Vice President Gore, Conrad made a recommendation to the Attorney General that a special counsel be appointed to investigate the Vice President for possible false statements made during the course of the April 18, 2000, interview. The details of Conrad's recommendation are not available to the committee, given the Justice Department's refusal to produce the Conrad memo to the committee.[425] However, the facts that have been made public make it clear that Conrad's recommendation was based in part on his opinion that the Vice President may have made false statements about the Hsi Lai Temple fundraiser and the White House coffees.[426]

The central dispute in the Vice President's interview about the Hsi Lai Temple event was whether or not the Vice President knew that the event was a fundraiser. During his testimony, the Vice President stated that:

> There was no solicitation of money. I did not see any money or checks change hands. I never heard it discussed. Nor do I believe it took place, incidentally. Perhaps you know that some money changed hands there. But to this day, I don't think any did.
>
> * * * * *
>
> And subsequent disclosures in the press and subsequent production of memoranda that I never saw at the time showed that—showed what they showed. And the very fact, for me, the very fact that the members of a finance-related event were present at the event was the only connection that I had to the possibility that it was finance-related.
>
> But I did not know that it was a fundraiser. And I do not to this day know that it was a fundraiser.[427]

After the Vice President made this statement, Conrad presented him with a number of pieces of evidence suggesting that the Hsi Lai Temple event was considered to be a fundraiser by the Vice

[425] The Attorney General's refusal to produce the Conrad memorandum to the committee is discussed in detail later in this report.
[426] News conference with Attorney General Reno, Washington, DC. (Aug. 23, 2000).
[427] Interview of Vice President Gore 68–69 (Apr. 18, 2000).

President's staff and the DNC staff. Nevertheless, the Vice President continued to assert that the event was not a fundraiser.

Conrad also asked the Vice President his understanding of the nature of White House coffees. Again, the Vice President insisted that the coffees were not intended to raise funds:

> Mr. CONRAD. What was the purpose of the coffees?
>
> Vice President GORE. Well, they were for the President to meet with people who were interested in supporting his policies and his politics. But that was more or less on his side of the house and I'm not the best source of information about that.
>
> Mr. CONRAD. In terms of a fund-raising tool, what was the purpose of the coffees?
>
> Vice President GORE. I don't know. They were on his side of the house. And I will give you my understanding of what I thought they were. I thought they were events that allowed the President to spend time with influential people who wanted to talk about policy, who would at some later time possibly be asked to financially support the DNC. It was certainly not my understanding that they were fundraising events.
>
> Mr. CONRAD. Did you have any understanding, or do you have any understanding that there was a price tag associated with the coffees?
>
> Vice President GORE. No, I do not and did not.[428]

Conrad then presented to the Vice President the evidence that the coffees were used to raise funds for the DNC, but the Vice President did not change his belief that the coffees were not fundraisers.

On August 23, 2000, after a lengthy period of deliberation, the Attorney General decided not to appoint a special counsel to investigate false statements made by the Vice President. The Attorney General explained her reasoning at a press conference:

> Because further investigation is not likely to result in a prosecutable case under applicable criminal law and principles of federal prosecution, I have concluded that a special counsel is not warranted.
>
> The transcript reflects neither false statements nor perjury, each of which requires proof of a willfully false statement about a material matter. Rather, the transcript reflects disagreements about labels. I have concluded that there is no reasonable possibility that further investigation could develop evidence that would support the filing of charges for making a willful false statement.
>
> The Task Force will, of course, continue its ongoing investigation into illegal fundraising activity and will be free to pursue all avenues of investigation, wherever they may lead.[429]

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[428] Id. at 52–53.
[429] News conference with Attorney General Reno, Washington, DC. (Aug. 23, 2000).

In her statement, the Attorney General said more than that she simply would not appoint a special counsel. She stated that there was no reasonable possibility of developing evidence which could lead to charges that the Vice President made a false statement during his interview. This definitive statement effectively closed the door to any further investigation of issues arising out of the Vice President's interview.

During the period leading up to the Attorney General's announcement, a Justice Department source had leaked information making it appear that Conrad was alone in recommending a special counsel to the Attorney General, being quoted in the New York Times as saying that "no other prosecutor in this matter thought that there should be a need for a special counsel."[430] At her press conference, Attorney General Reno made it clear that the Justice Department leak was false: "today Bob Conrad has been tagged with being the only person in the Justice Department who thought I should appoint a special counsel. Although I'm not going to get into who recommended what, I can tell you that that is not correct."[431] Later, Reno confirmed that at least two other advisors of hers supported the appointment of a special counsel for Vice President Gore.[432] A false leak from a Justice Department official about the level of support for Conrad's special counsel decision should have given the Attorney General pause. It appears that certain Justice Department officials are willing to both leak information about ongoing cases, and to lie about those cases, in order to create a public perception that is favorable to the Vice President. If these types of individuals are advising the Attorney General, how can she possibly receive unbiased advice?

Unsurprisingly, the Attorney General's broad decision not to appoint a special counsel was not supported by the law, or the facts of the Task Force investigation. In those respects, it closely resembled the Attorney General's earlier decisions not to appoint independent counsels. The Attorney General's decision had a number of serious flaws.

The Attorney General did not have all of the relevant evidence before her. In late August, when the Attorney General made her decision, the Justice Department and FBI were in the process of reconstructing the first batch of "missing" e-mail which had not been produced to investigators by the White House. When she made her decision on August 23, 2000, the Attorney General had reviewed "some of the e-mails, not all of them."[433] The e-mail reconstructed by the FBI had direct relevance to the decisionmaking process that the Attorney General was undertaking. One e-mail, from Gore's Political Director, stated "[t]hese are FR coffees right?"[434] Given the fact that the e-mail reconstruction process was turning up evidence relevant to the special counsel decision, it is peculiar that the Attorney General would reach her decision before having all of the evidence. In addition, the author of the e-mail was Vice President

[430] Neil A. Lewis and Don Van Natta, Jr., "Reno, Rejecting Aide's Recommendation, Declines to Name Counsel on Gore Fund-Raising," the New York Times at A19 (Aug. 23, 2000).
[431] News conference with Attorney General Reno, Washington, DC. (Aug. 23, 2000).
[432] Id.
[433] Interview of Attorney General Janet Reno 34 (Oct. 5, 2000) (preliminary transcript).
[434] E-mail message from Karen Skelton to Ellen Ochs (Apr. 23, 1996) (exhibit 10).

Gore's former Political Director, and she has yet to be interviewed by the Justice Department.

In fact, it appears that the Attorney General did not believe that there could be any evidence which would undermine the Vice President's statements. In her interview with the committee on October 5, 2000, the Attorney General stated "I don't think that there is a reasonable possibility of finding an e-mail or evidence that says, yes, I did it."[435] Of course, it would not be necessary for the Justice Department to find an e-mail where the Vice President says "yes, I did it" in order to support the filing of false statements charges. Rather, it would only be necessary to find an e-mail message indicating that the Vice President contemporaneously believed that the White House coffees or the Hsi Lai Temple event were fundraisers. It is difficult to believe that the Attorney General concluded that there was not a reasonable possibility of uncovering such evidence through the e-mail reconstruction process. While it might be appropriate for the Vice President's lawyers or staff to have blind faith in his credibility, it is unseemly and disturbing when the Attorney General makes a leap of faith to clear the Vice President of wrongdoing.

The Attorney General also based her decision on her belief that "the transcript reflects disagreements about labels." The Attorney General reiterated this belief in her October 5 interview:

> The Vice President defined what he meant by fund-raiser, and there is no information at this time that there were funds raised that he knew about at the Temple. Based on his definition of what a fund-raiser was and what he said, I would not be able to prove, based on that, that he believed it to be a fund-raiser and testified falsely.
>
> * * * * *
>
> And if a man says this is my definition of a fund-raiser and this is not my definition of a fund-raiser, I've got to look at that and take it within the four corners of this transcript and judge based on his definition as to whether there is a false statement.
>
> * * * * *
>
> I think the whole statement clearly reflects what the Vice President understood a fund-raiser to be, and within his definition, I think he made it clear that the statement was not inaccurate.[436]

It is remarkable that the Attorney General would base her decision not to appoint a special counsel on the fact that the Vice President defined "fundraiser" in such a way as to exclude all of the evidence suggesting that the Hsi Lai Temple event and the White House coffees were fundraisers. The Vice President's definition, which requires funds to actually change hands at the event, differs from the definition used by the DNC, under which the DNC assigned the Hsi Lai Temple event and the White House coffees to raise certain amounts of money for the DNC. The Vice President's definition also

[435] Interview of Attorney General Janet Reno 39 (Oct. 5, 2000) (preliminary transcript).

[436] Interview of Attorney General Janet Reno 42–43, 46–47 (Oct. 5, 2000) (preliminary transcript).

differs from that of his staff, who considered both events to be fundraisers. Given these facts, the Attorney General would be entitled, and in fact, obligated, to consider whether the Vice President's definition of "fundraiser" was reasonable and not simply a post hoc defense to avoid prosecution.

The Attorney General's decision not to appoint a special counsel to investigate Vice President Gore is, unfortunately, consistent with her earlier decisions not to appoint independent counsels to investigate the fundraising scandal. The Attorney General ignored the facts and the law to reach a strained conclusion which was favorable to the Vice President. Unlike her other decisions, this one was made in the middle of the Presidential election campaign, and provided the Vice President with a valuable boost. Yet again, the Attorney General placed politics over impartial enforcement of the laws.

II. Failures of the Justice Department Investigation

The Attorney General's failure to appoint an independent counsel to head the campaign fundraising investigation had unfortunate practical consequences. The investigation was inadequate in many ways. Key documents were never subpoenaed. Key witnesses were never interviewed. Guilty parties have yet to be indicted. The Justice Department failed to pursue evidence aggressively. The Department's investigation has been extraordinarily passive, and appears designed more to provide political cover to the administration than to find out what happened in the 1996 elections.

The Justice Department did prosecute important individuals whose actions were central to the scandal, namely John Huang and Charlie Trie. Even in those prosecutions, however, where the Justice Department gained the cooperation of Trie and Huang, the Justice Department failed to follow significant leads. Other individuals, particularly those at the White House and the DNC, received a free pass from the Justice Department regardless of the evidence against them. The end result was a good cover story for an investigation derailed. The Justice Department could point to 25 prosecutions as evidence of its commitment to get to the truth. The White House and the DNC could rest assured that they would not be next.

A. The Justice Department Failed to Pursue the December 15, 1995, Coffee Videotape

1. The White House Production of Fundraising Videotapes

On March 4, 1997, the committee served a subpoena on the White House for records, including any "video or audio recording," on various named individuals central to the campaign finance investigation.[437] In response, the White House produced documents, but not videotapes. The Senate Committee on Governmental Affairs specifically asked the White House about recordings of fundraising events in August 1997. However, the White House claimed

[437] Committee on Government Reform and Oversight subpoena to the Executive Office of the President, Mar. 4, 1997, at 1, 3–4.

that there were no video recordings.[438] Nevertheless, the Senate continued to question whether the recordings existed. Finally, the White House revealed in October 1997 that videotapes showing President Clinton and Vice President Gore with many individuals then under criminal investigation did indeed exist.[439]

Although the White House discovered the videotapes on October 1, 1997, White House Counsel Charles Ruff did not immediately inform the Justice Department about their existence immediately. Despite the fact that he attended his weekly meeting with Attorney General Janet Reno on October 2, 1997, Ruff did not mention the videotapes. At the time of the meeting, Ruff was aware that Reno would be making a decision on whether or not to appoint an independent counsel within days. The videotapes were important pieces of evidence showing who attended and what occurred at numerous events. The next day, October 3, 1997, Special Counsel to the President Lanny Breuer informed the Senate of the existence of the videotapes, but neglected to inform the Justice Department. Reno announced her decision not to appoint an independent counsel on October 3.[440] When Breuer informed the Justice Department of the videotapes on October 4, 1997, it appeared as though the White House had purposefully withheld the tapes until after Reno made her decision.

Once the Attorney General learned what had occurred, she said: "I was mad at the people responsible, but what I think what's important now is that we move on."[441] Despite her anger, Reno quickly jumped to the defense of the White House. Based on what could only have been a cursory review of the tapes, Reno fully exonerated the White House of any wrongdoing when she said "we do not have any indication of criminal activity by people covered under the Independent Counsel Act, including the President."[442]

2. The December 15, 1995, White House Coffee

The videotapes showed a number of events where the President and Vice President were raising funds for the DNC. One of the events, a December 15, 1995, coffee, was especially relevant because the President and Vice President attended along with Arief Wiriadinata, an Indonesian citizen living in the United States. Wiriadinata and his wife, Soraya, contributed $455,000 to the DNC after they received a $500,000 wire transfer from Indonesia from Soraya's father, Hashim Ning. Ning was a former business partner of the Riady family. The initial review of this tape showed that Arief Wiriadinata greeted President Clinton and said "James Riady

[438] S. Rept. No. 105–167, at 4284–4285 (1998).

[439] The White House's assertion that there were no responsive videotapes was based on the fact that the White House Communications Agency (WHCA) produced only six documents, and no videotapes, pursuant to the White House Counsel Office's request for records to be searched. However, the White House claimed that a proper search was not conducted by WHCA. Steven Smith, WHCA's chief of operations, said that his office was never asked for any videotapes or documents about the coffees until around October 1997. George Lardner, Jr., "Aide Says Agency Didn't Get Request For Coffee Tapes," Washington Post, Oct. 13, 1997, at A1. The committee received the first White House videotapes on Oct. 5, 1997.

[440] Letter from Attorney General Janet Reno to Chairman Henry Hyde, Oct. 3, 1997.

[441] Jim Abrams, "Reno Says She Will Not Resign, Will Not Stop Investigation," Associated Press, quoting Meet the Press (NBC television broadcast, Oct. 12, 1997).

[442] Id.

sent me."[443] When the committee analyzed the tape further, it became apparent that the Vice President may have spoken with Wiriadinata as well. Vice President Gore appears to say:

> We oughta, we oughta, we oughta show Mr. Riady the tapes, some of the ad tapes.[444]

Another voice then adds:

> I'll see if I can do that.[445]

Vice President Gore was apparently referring to DNC issue advertisements that were televised across the country from the fall of 1995 until the election in 1996. President Clinton and Vice President Gore had agreed to help raise millions of dollars to finance the DNC's unprecedented advertisement blitz. According to the Vice President, the ads were shown to "individuals who would be willing to contribute to the DNC media fund."[446] The Vice President traveled to San Francisco on October 13, 1995, to show a group of potential contributors the DNC issue ads. Then, on December 11, 1995, 4 days prior to the coffee, Vice President Gore was in an airport hangar in Chicago again showing the DNC issue ads to potential donors in order to solicit contributions. Therefore, it was clear that in December 1995, the Vice President was using the presentation of the DNC issue ads as a fundraising tool. Four days after the Chicago fundraiser, Vice President Gore attended the December 15, 1995, White House coffee. Therefore, it is reasonable to believe that the Vice President was thinking about obtaining financial support from donors when he apparently suggested that the DNC issue ads be shown to James Riady.[447]

3. The December 15, 1995, Videotape is Relevant to the Investigation of Vice President Gore

If Vice President Gore said that DNC advertisement tapes should be shown to James Riady in December 1995, his comment has far-reaching implications that could demonstrate the Vice President's direct knowledge of criminal activity in the 1996 Presidential campaign. For the Vice President to have made the comment, he would have to be aware of two significant facts: (1) the Vice President understood that Arief Wiriadinata had a connection to James Riady; and (2) the Vice President had to know that James Riady was either raising or funneling contributions into the 1996 campaign, or that he was important enough to receive preferential treatment.

The Vice President first would have to know who Arief Wiriadinata was and that Wiriadinata was connected to James Riady. Arief Wiriadinata and his wife, Soraya, were Indonesians

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[443] White House Communications Agency videotape, Dec. 15, 1995. The committee subpoenaed the original WHCA Betacam tape of the event from the White House.

[444] Id.

[445] Two DNC officials, DNC Finance Chairman Marvin Rosen and DNC Finance Director Richard Sullivan, were in the vicinity of the Vice President when the comments were made. However, it is unclear who made the follow-up statement.

[446] FBI interview of Vice President Gore, at 10 (Nov. 11, 1997).

[447] Vice President Gore was scheduled to hold his own coffee for DNC contributors in the Old Executive Office Building on Dec. 15, 1995. The Vice President was not included on the guest list for the coffee President Clinton held for DNC contributors in the Roosevelt Room of the White House on the same day. Guest list for Dec. 15, 1995, White House coffee (exhibit 11). It should also be noted that the Roosevelt Room is an official room in the White House and political solicitations there are illegal.

who settled in Springfield, VA, where Arief was employed as a gardener. The Wiriadinatas were able to become prominent DNC donors enjoying the attention of the President and Vice President because of Soraya's father, Hashim Ning. Ning was a former business partner of the Riady family and a co-founder of the Lippo Group. When Ning became ill during a visit to the United States in June 1995, James Riady had his representative, John Huang, visit Ning in the hospital.[448] During Ning's hospital stay, Riady and Huang arranged a "get well" card from President Clinton and a visit from Mark Middleton, who had worked in the White House chief of staff's office.[449]

By November 1995, while still employed by the Commerce Department, Huang began soliciting contributions from Arief and Soraya Wiriadinata on Riady's recommendation.[450] Over the next 6 months, the Wiriadinatas would give $455,000 to the DNC. The Wiriadinatas' contributions all came from a $500,000 wire transfer sent to them on November 7, 1995, by Hashim Ning. By the time of the White House coffee on December 15, 1995, the Wiriadinatas had already contributed $130,000. John Huang's testimony before the committee in December 1999 revealed the close link between the contributions and the Lippo Group. First, Riady told Huang that he should ask the Wiriadinatas to give. Second, the money given by the Wiriadinatas came from one of the Riadys' long-time associates. Finally, and perhaps most striking, Huang testified that when Ning died in late 1995 or early 1996 and the Wiriadinatas had to return to Indonesia, they gave him a series of blank checks to fulfill their contribution commitment to him.[451] Huang kept the blank checks in his desk and used them as needed to make contributions to the DNC on the Wiriadinatas' behalf.

On November 2, 1995, Arief and Soraya Wiriadinata attended their first DNC fundraiser with Vice President Gore. At the event, John Huang introduced the couple to the Vice President. By this time, the Vice President had already begun the solicitation of contributors for the DNC issue ad campaign. The next known meeting between the Vice President and Arief Wiriadinata occurred at the White House coffee on December 15, 1995.

The Vice President's comment to Wiriadinata begs the question: why did the Vice President refer to James Riady? Was the Vice President aware that Riady was the source of the Wiriadinata contributions? Two possible explanations are apparent: either the Vice President heard Wiriadinata say "James Riady sent me" to the President or the DNC officials near the Vice President prompted his remark about the ad tapes. The Vice President knew that Riady was an Indonesian businessman.[452] Therefore, the Vice President's comment is troubling, as the showing of advertisement tapes to do-

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[448] The visit at the hospital was the first time Huang met Arief and Soraya Wiriadinata. "The Role of John Huang and the Riady Family in Political Fundraising," hearings before the House Committee on Government Reform, 106th Cong., 247 (Dec. 16, 1999) (preliminary transcript).

[449] Letter from President Clinton to Hasjim [sic] Ning, June 19, 1995, F 0033816 (exhibit 12).

[450] "The Role of John Huang and the Riady Family in Political Fundraising," hearings before the House Committee on Government Reform, 106th Cong., 252 (Dec. 16, 1999) (preliminary transcript).

[451] "The Role of John Huang and the Riady Family in Political Fundraising," hearings before the House Committee on Government Reform, 106th Cong., 13 (Dec. 17, 1999) (preliminary transcript).

[452] Testimony of Vice President Albert Gore Jr., at 111 (April 18, 2000).

nors appears to have been a device to encourage further contributions and provide thanks for past contributions.

Clearly, it would have been illegal for Riady to contribute money to the 1996 Presidential campaign.[453] Even John Huang, the DNC fundraiser responsible for many of the illegal contributions to the DNC in 1995 and 1996, acknowledged that it would have been illegal for Riady to contribute:

> Mr. SHAYS. Would it have been illegal for you to raise money from the Riadys when you worked for the DNC?
>
> Mr. HUANG. I'm sorry, sir?
>
> Mr. SHAYS. Would it have been illegal for you to have raised money from the Riadys? You seem to want to make clear to me that somehow during that time while you worked at the DNC you did not raise money from the Riadys but you raised money from people who had business acquaintances and agreements with the Riadys.
>
> Mr. HUANG. Because I had the knowledge at that time Mr. Riady has relinquished his green card status back to the United States and he was no longer holding the PR, so-called permanent resident status in the United States, he was not eligible to take care of any further.[454]

Vice President Gore's statement about Riady is troubling in light of his testimony concerning James Riady in his April 18, 2000, interview with the Task Force. In that testimony, the Vice President created the impression he did not know Riady well, and was not politically involved with Riady:

> Mr. CONRAD. When is the first time you ever met James Riady?
>
> Vice President GORE. To my knowledge, I have only seen him twice in my life. I may be wrong about this. There may be other times that I'm not thinking, that I'm not remembering.
>
> But the only times—I think the only times I've met him were once when he was in Betty Currie's office preparing to go in to see the President with a couple of other people.
>
> Mr. CONRAD. Did you know who those people were?
>
> Vice President GORE. No, I did not. I was on the way out. And either he introduced himself or somebody introduced him to me. The only other time I—
>
> Mr. CONRAD. Before you get to the other time, do you recall the substance of any conversation with him at that time?

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[453] The DNC's last officially recorded contribution from James Riady occurred October 1992. The reason was because Riady had been permanently moved back to Indonesia in 1990 at the latest, and therefore, was ineligible even to make any political contributions in 1992.

[454] "The Role of John Huang and the Riady Family in Political Fundraising," hearings before the House Committee on Government Reform, 106th Cong., 111 (Dec. 15, 1999) (preliminary transcript).

Vice President GORE. Hello, how are you. I said, you know, I've heard your name. That was it. The door was open. It was one of those deals.

Mr. CONRAD. What about the second time?

Vice President GORE. The second time was in Malaysia. I filled in for the President at the last minute for a trip to Kuala Lumpur for a meeting for the Asian Pacific—

Mr. CONRAD. Economic Council?

Vice President GORE. Yes, APEC.

Mr. CONRAD. Right.

Vice President GORE. And in conjunction with that event, which was hosted by Mahathir, the leader of Malaysia, there was a cultural event where all of the heads of state and their stand-in—of which I think I was the only stand-in—all went to this big dinner and they had a dance, kind of a show. And he came up to me during that and said, introduced himself again, and said, hello, how are you. I said, fine, hello, how are you. It was just—that was the substance of it[.]

Mr. CONRAD. Any substantive conversation with Mr. Riady?

Vice President GORE. No.

Mr. CONRAD. And no other meetings that you remember?

Vice President GORE. No, not that I remember?[455]

In his testimony, the only personal information the Vice President knew about James Riady was that Riady was a businessman in Indonesia.[456] The Vice President said he did not learn of Riady's relationship to President Clinton until after the scandal became public.[457] The Vice President also indicated that he had no direct knowledge of Riady's involvement in politics or campaign contributions:

Mr. CONRAD. Mr. Riady has been fairly active, some would say aggressive, in his courting of other political people. But I take it from your testimony that you've provided today that you weren't one of them?

Vice President GORE. No. I think that—no. Unless you count his role evidently in the background of organizing that trip to Taiwan, but I never saw him or talked to him there.

* * * * *

Mr. CONRAD. At least based on your previous testimony, you had no knowledge of any financial sponsorship by Mr. Riady of a portion of the '89 trip to Asia?

[455] Testimony of Vice President Albert Gore, Jr., at 109–111 (Apr. 18, 2000).
[456] Id. at 111.
[457] Id. at 114.

Vice President GORE. I don't think so . . .

* * * * *

Mr. CONRAD. Also in August of 1992, Mr. Riady made certain financial fund-raising commitments to the President. Did you ever have any discussions with the President about the fund-raising role of Mr. Riady in—

Vice President GORE. No.

Mr. CONRAD. —The 1992 election cycle?

Vice President GORE. No.[458]

If the Vice President told Arief Wiriadinata that the DNC issue advertisements should be shown to James Riady, it would dramatically undermine the testimony given by Vice President Gore to the Justice Department. The Vice President testified that he was unaware of Riady's fundraising or contributions in the 1992 election, and Riady was clearly unable to participate in the 1996 election. Ostensibly, the only reason Vice President Gore was showing the ad tapes was to solicit a contribution, or to provide thanks for past contributions.

4. The Justice Department Failed to Obtain the Original Videotape After the Apparent Remarks by Vice President Gore to Wiriadinata Became Public

The Justice Department has had a copy of the videotape for the December 15, 1995, White House coffee since October 5, 1997. Yet in five interviews with the Vice President, the Justice Department did not ask any questions about Wiriadinata or that particular White House coffee. Either the Justice Department has not seriously examined the videotapes or they are unwilling to ask Vice President Gore what he said.

The committee highlighted Vice President Gore's remarks at the coffee on previous occasions. The Justice Department has chosen not to take notice any of these times. On December 17, 1999, at a committee hearing, Congressman Souder asked John Huang about the videotape:

Mr. SOUDER. And then so at one point Mr. Wiriadinata says James Riady sent me, and then if you keep listening to the tape, as he speaks to the President, a voice can be heard saying we should show tapes of the advertisements to Mr. Riady. This sounds like Vice President Gore.

* * * * *

Mr. SOUDER. Thanks. Why would the Vice President have said we should show tapes of the advertisements to Mr. Riady?

Mr. HUANG. I really don't know, Congressman, no.[459]

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[458] Id. at 113–114.

[459] "The Role of John Huang and the Riady Family in Political Fundraising," hearings before the House Committee on Government Reform, 106th Cong., 9–11 (Dec. 17, 1999) (preliminary transcript).

Representatives of the Justice Department were present throughout the 3 days of hearings with John Huang in December 1999. Nevertheless, the Justice Department did not follow up on this issue after the committee's hearing.

After the Vice President released his April 18, 2000, interview with the Task Force, the committee once again asked the Justice Department why the Vice President was not questioned about the Wiriadinata coffee.[460] The Justice Department was also informed that the committee had possession of the original tape of the December 15, 1995, coffee, the best possible source of the information. The Justice Department did not respond.

At a hearing on July 20, 2000, the committee directly questioned four top-level Justice Department officials about the Vice President's comments at the December 15, 1995, coffee.[461] The Justice Department officials refused to comment on any aspect of the tape:

> Mr. BARR. I ask again, is this tape, is this coffee, are these individuals, is this language, of interest to the Department of Justice?
>
> Mr. ROBINSON. I cannot comment on the investigative matter but obviously we are here, we have heard it and we receive lots of information from Congress and other sources. Whenever we get information, we look at it carefully as a general proposition, but I can't comment on the specifics of our investigations. It would be inappropriate.[462]

In an attempt to assess how carefully the Justice Department has reviewed this evidence, if at all, the committee wrote to the Justice Department on August 1, 2000, and asked if Justice Department lawyers had ever listened to the original White House tape of the Wiriadinata coffee.[463] The Justice Department refused to answer the question, stating:

> [I]t would be inappropriate for this Department to provide such information concerning an ongoing investigation, both in terms of the ethical responsibilities of federal prosecutors, and in terms of our duty to avoid any appearance of undue external influence on our investigations.[464]

Apparently, the high-minded ideal which prevented the Justice Department from discussing basic facts about the videotape with the Congress does not apply to its relationship with the media. On July 19, 2000, an unnamed Justice Department source leaked the Department's interpretation of the substance of the tape by telling the

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[460] Letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (July 18, 2000) (correspondence between the committee and the Justice Department is contained in appendix 1).

[461] The Justice Department witnesses were James Robinson, Assistant Attorney General, Criminal Division; Alan Gershel, Deputy Assistant Attorney General, Criminal Division; Robert Raben, Assistant Attorney General, Office of Legislative Affairs; and Robert Conrad, Supervising Attorney, Campaign Financing Task Force.

[462] "Has the Department of Justice Given Preferential Treatment to the President and Vice President," hearing before the House Committee on Government Reform, 106th Cong., 41 (July 20, 2000) (preliminary transcript).

[463] Letter from James C. Wilson, chief counsel, Committee on Government Reform, to Robert Raben, Assistant Attorney General (Aug. 1, 2000).

[464] Letter from Robert Raben, Assistant Attorney General, to James C. Wilson, chief counsel, Committee on Government Reform (Aug. 4, 2000).

press that it was unclear what was said on the tape because of "poor audio."[465]

Vice President Gore and his White House surrogates have been unwilling to explain the Vice President's remarks. The Vice President himself admitted it was his voice, but deflected questions by saying it was a political attack using news that had been available for years.[466] The White House offered, off-the-record only, that the Vice President may have said "Godfrey," rather than "Riady," a reference to H. Lee Godfrey, who also attended the December 15 coffee. Even the White House refused to go on the record with this defense, and the Vice President did not embrace it.[467]

If the Vice President told Arief Wiriadinata that the DNC issue advertisements should be shown to James Riady, it would constitute a significant piece of evidence that top White House officials may have been aware of illegalities in the 1996 Presidential campaign. The Justice Department's purposeful refusal to examine the evidence or to question the Vice President on this matter clearly demonstrates its unwillingness to pursue an honest and thorough investigation.

On September 25, 2000, 9 months after the committee first highlighted the December 15, 1995, coffee tape, the Justice Department finally informed the committee it would ask for the videotape. As of October 10, 2000, though, it still had not made a written request for the videotape.[468]

B. THE JUSTICE DEPARTMENT HAS FAILED TO QUESTION THE PRESIDENT AND VICE PRESIDENT EFFECTIVELY

1. Delay in Asking Relevant Questions

From the beginning of the campaign finance scandal, it was clear that President Clinton and Vice President Gore were knowledgeable witnesses and possible participants in a scheme to bring illegal money into the DNC to finance their re-election. Accordingly, it was important for the Justice Department to interview the President and Vice President—both thoroughly and expeditiously. However, the Justice Department waited over 3 years before asking the President or Vice President about most aspects of the fundraising scandal.

The Justice Department interviewed President Clinton two times and Vice President Gore four times in 1997 and 1998.[469] The Justice Department purposefully restricted the topics covered in the six interviews to the DNC issue advertisements and telephone solicitations from the White House. The justification for limiting the

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[465] "Justice Says White House Coffee Tape Unclear; Hearings Scheduled Tuesday" [sic] (viewed July 19, 2000) http://www.cnn.com/2000/ALLPOLITICS/stories/07/19/burton.gore/index.html.

[466] "Congressman Focuses on Gore Videotape Comment," Associated Press, July 19, 2000.

[467] Don Van Natta Jr., "Questions Raised by House Panel About Gore Remark at a 1995 Fund-Raiser," New York Times, July 19, 2000, at A21.

[468] Letter from Robert Raben, Assistant Attorney General, Department of Justice, to Dan Burton, chairman, Committee on Government Reform (Sept. 25, 2000). Several days after the Sept. 25, 2000, letter, an FBI agent called the committee staff and requested the videotape. Committee staff informed the FBI agent that the committee would like to receive a written request before it turned over the original evidence to the FBI. The agent agreed to ask a Justice Department lawyer to send a written request to the committee. As of Oct. 10, 2000, the committee has not received the request.

[469] President Clinton was interviewed on Nov. 11, 1997, and Nov. 9, 1998. Vice President Gore was interviewed on Nov. 11, 1997, June 10, 1998, Aug. 8, 1998, and Nov. 11, 1998.

interviews to those two issues was because they were the subjects of preliminary investigations under the Independent Counsel Act. This rationale, however, fails to explain why they could not have been asked about other pertinent subjects.

Under the Justice Department's self-imposed restriction, the President and Vice President would not be interviewed about their interaction with various criminals and questionable individuals because those investigations were not part of a preliminary investigation under the Independent Counsel Act. However, the Justice Department ignored evidence that the President and Vice President were possibly aware of illegal activity. In addition, the Justice Department ignored the fact that the President and Vice President were significant witnesses in the investigation. In some instances, President Clinton and Vice President Gore were the only available witnesses. Thus, there was no acceptable investigative reason for the failure to ask questions about important subjects. It appears, moreover, that the President and Vice President received preferential treatment at the expense of the campaign finance investigation.

On April 25, 1999, due to concerns that the President and Vice President were receiving preferential treatment, the committee subpoenaed all Task Force interviews with President Clinton and Vice President Gore. In response to the committee's subpoena, the Justice Department, which previously supplied interview summaries to the Congress, announced a new policy of refusing to provide such summaries. The purported basis for the new Justice Department policy was that the public release of the interview summaries would have a chilling effect on future witnesses' cooperation, thereby harming law enforcement efforts.[470]

In December 1999, the Justice Department finally allowed the committee to review the interview summaries of the President and Vice President, but not to have copies.[471] The committee's review in December 1999 found that the Justice Department had questioned the President and Vice President only about DNC issue advertisements and telephone solicitations at the White House. After 3 years of investigation, the Justice Department had not asked President Clinton *one question* on the following issues:

- The President's relationship with James Riady.
- John Huang's placement at the DNC.
- White House coffees and other perks offered in exchange for contributions.
- The President's interactions with Johnny Chung and the reasons Chung was given access to the White House.
- Charlie Trie's contributions to the Presidential Legal Expense Trust.
- Charlie Trie's appointment to the Bingaman Commission.

[470] Letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (Dec. 14, 1999).

[471] The Justice Department's attempt to withhold these interview summaries from the committee is discussed in detail later in this report.

- The President's attendance at the July 30, 1996, fundraiser with James Riady and three of his Asian business associates.
- The February 6, 1996, White House coffee with Charlie Trie and Wang Jun.
- The June 18, 1996, White House coffee with Huang, Pauline Kanchanalak and the CP Group from Thailand.
- The President's attendance at the February 19, 1996, May 13, 1996, and July 22, 1996, fundraisers, where numerous foreign nationals attended and contributed.
- The President's 5-minute meeting with John K.H. Lee, a Korean national, in exchange for $250,000.

Similarly, the Vice President was not questioned for 3 years about the following topics:

- The Hsi Lai Temple.
- The Vice President's relationship with Maria Hsia.
- The Vice President's relationship with John Huang.
- The Vice President's relationship with Howard Glicken.
- White House coffees.
- Senator Gore's 1990 trip to Asia with Hsia and Huang.
- The September 27, 1993, fundraiser with Huang and China Resources Chairman Shen Jueren.
- The February 19, 1996, fundraiser at the Hay Adams.

On December 15, 1999, the Justice Department finally produced the interview summaries of President Clinton and Vice President Gore. The committee publicly announced the deficiencies of the interviews on December 16, 1999. The Justice Department's last interviews with the President and Vice President were in November 1998, and there was no evidence that the Justice Department intended to question them again. Since the Justice Department unreasonably withheld the interview summaries from the committee, the Justice Department would not have publicly revealed them voluntarily. However, once the committee announced the Justice Department's complete failure to ask a single question of the President or Vice President about foreign money or their knowledge of various criminals in the campaign finance investigation, the President and Vice President were re-interviewed in April 2000.

2. Favorable Circumstances of the April 2000 Interviews

The April 2000 interviews were conducted differently than the previous six interviews with the President and Vice President. This time, the President and Vice President were both under oath and the interviews were transcribed. This provided the Justice Department with the benefit of having a clear record of what was discussed, but it also put the President and Vice President in a position where they could publicly release their interviews, theoretically compromising the Department's investigation. In addition, the Task Force afforded the President and Vice President an extraor-

dinary courtesy by supplying the exhibits that were to be used in the interviews beforehand.[472]

By prior agreement with the Task Force, both President Clinton and Vice President Gore were given copies of their April 2000 interview transcripts. The committee is unaware of the President and Vice President or any other witness receiving copies of any of their previous interviews. Task Force Chief Robert Conrad explained that they were provided with a copy of the transcripts as a result of negotiations with the President and Vice President's counsels.[473]

The Justice Department had consistently told the committee that any release of interview summaries or transcripts would harm ongoing investigations. However, by allowing the President and Vice President to have copies of the transcripts, they contradicted their own argument. Again, it appears the President and Vice President were accorded preferential treatment. At the committee's July 20, 2000, hearing, all of the Justice Department officials present agreed with Attorney General Reno's statement to the committee that, "significant harm to ongoing investigations would result from the disclosure of the records of the recent interviews."[474] Disregarding any harm that might come to the Justice Department's investigation, Vice President Gore released his interview transcript to blunt media reports that the Task Force had once again recommended an outside prosecutor to investigate the Vice President.[475] President Clinton followed suit and released his testimony on July 24, 2000.[476]

C. THE JUSTICE DEPARTMENT FAILED TO PURSUE RELEVANT DOCUMENTS

1. Failure to Subpoena Relevant Records

The committee was concerned about the Justice Department's ability to conduct a fair and impartial investigation, particularly in light of its numerous missteps and failures. In order to carry out its oversight investigation of the Justice Department, the committee decided review document requests and subpoenas sent by the Justice Department to the White House, the Commerce Department, the State Department, and the DNC so that it could determine how thorough the Justice Department investigation had been.

After the committee obtained records from the White House and Commerce Department which revealed how incomplete and incompetent the Justice Department investigation had been, the Justice

[472] The Department was also under a time limit in its interview of President Clinton. President Clinton and his attorneys agreed to an interview with Robert Conrad by Apr. 7, 2000. However, 2 days before the scheduled interview, and the day after the Vice President's contentious interview with the Task Force, the President rescheduled his weekly Saturday radio address to Friday, Apr. 21, 2000, the day of the Task Force interview. Mr. Conrad, who had previously been given as much time as necessary to complete the interview, then had to cover 43 topics in less than 4 hours. Letter from Robert J. Conrad, Jr., to Beth Nolan, et al., Apr. 11, 2000; letter from Robert J. Conrad, Jr., to Beth Nolan, et al., Apr. 20, 2000.

[473] "Has the Department of Justice Given Preferential Treatment to the President and Vice President," hearing before the House Committee on Government Reform, 106th Cong., 49 (July 20, 2000) (preliminary transcript).

[474] Id. at 112–113 (2000).

[475] Id. at 107–109.

[476] The committee subpoenaed the transcript of the President's Apr. 21, 2000, interview after the Vice President publicly released his transcript. When the President produced a copy of his transcript to the committee, he also gave a copy to the media.

Department began a concerted effort to keep the committee from obtaining the subpoenas served upon both public and private entities by the Justice Department. As a result of the Justice Department's efforts, which are described in detail below, the Justice Department has limited the committee's oversight of the Justice Department investigation, and covered up the Department's biased investigation from any further public scrutiny.

a. The White House

On March 16, 2000, the committee subpoenaed the White House to produce subpoenas and document requests it had received from the Task Force. These records were received nearly 5 months later on August 10, 2000. The White House obviously had thousands of documents relating to numerous individuals involved in the campaign finance investigation, and the Justice Department subpoenaed many documents from the White House. However, in certain crucial cases—Maria Hsia, Ernest Green, and Mark Middleton—the Justice Department either failed to ask the White House for documents or they requested the documents only very recently, years after the individual's involvement in the scandal became known.

The Task Force *never* asked the White House for records concerning Maria Hsia. Hsia had a close relationship with Vice President Gore spanning 10 years. The Justice Department prosecuted Hsia for funneling illegal contributions to the DNC in support of Vice President Gore's visit to the Hsi Lai Temple in April 1996. Yet, the Justice Department never subpoenaed the White House for records relating to Hsia. This failure meant that the Justice Department brought a case against Hsia without a full understanding of Hsia's interactions with White House officials.[477] The Justice Department did subpoena records on Maria Hsia from Ann Lewis, the White House Communications Director.[478] However, that subpoena, sent to Lewis in her personal capacity, in no way obligated the White House to produce any records regarding Hsia.[479]

The Justice Department did not subpoena the White House for records on Ernest Green or Mark Middleton until March 2000. Both Green and Middleton were key players in the campaign finance scandal in that each could provide substantial amounts of information about the fundraising activities of Charlie Trie, John Huang, and their interaction with the Clinton administration.

Green and Charlie Trie were fundraising and business partners from 1994 to 1996. Green and Trie were frequent visitors to the White House and each were friends of President Clinton. Green used his influence in the DNC and Clinton administration to help Trie, and Trie in return tried to find business opportunities for Green in Asia. In 1998, Green became the focus of a Justice Department investigation for perjury relating to his testimony before Congress on Charlie Trie.

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[477] The Vice President also was not questioned about his relationship and interaction with Hsia until after her conviction.

[478] Justice Department subpoena for documents to Ann Frank Lewis, Aug. 13, 1997 (exhibit 13).

[479] The subpoena was sent to Lewis on Aug. 15, 1997, immediately after the Task Force interviewed Lewis, even though Lewis had no substantive knowledge of the individuals or the White House's involvement in campaign finance improprieties or illegalities.

Unlike Green, Middleton invoked the fifth amendment against self-incrimination and has refused to cooperate with the committee. Mark Middleton is a key figure in the campaign finance scandal. Middleton served as the principal White House contact for both John Huang and Charlie Trie. Once Middleton left the White House, he traveled to Asia with Trie and courted many foreign businessmen. Middleton frequently brought his foreign business clients to the White House. The White House had numerous records of Middleton bringing his foreign business clients to the White House, at times to meet the President, First Lady, or the White House staff. Middleton's extensive involvement in the campaign finance scandal all centers around the White House. There cannot be any investigation of Middleton, much less a serious one, without his White House records.

In 1999, the committee obtained a document from the Justice Department that indicated that the Department's investigation of Middleton was "reinvigorated" in light of Charlie Trie's cooperation with the Justice Department.[480] In fact, when Charlie Trie testified before the committee in March 2000, the Justice Department requested that the committee refrain from asking any questions about Middleton or Green because they were part of ongoing investigations.

The Justice Department's subpoenas to the White House reveal a great deal about the Department's investigation. While the Attorney General has frequently stated that the Task Force is free to follow any evidence, it is obvious that the Task Force is avoiding gathering critical evidence. It is difficult to believe that Justice Department prosecutors simply forgot to ask for this crucial evidence. Rather, it is possible that the Attorney General and her staff felt hesitant to pressure the White House which they serve to produce documents. Furthermore, as has become abundantly clear in the Justice Department investigation of the e-mails that have been withheld by the White House, it seems that the Justice Department is subordinate to the White House where document requests are concerned. An independent counsel would not experience this same conflict, and likely would have obtained the necessary documents.

b. The State Department

On August 4, 2000, the committee sent a subpoena to the State Department for any requests or subpoenas it received from the Justice Department in the course of the campaign finance investigation. The Justice Department's requests to the State Department were particularly critical due to the numerous foreign nationals involved in the investigation and allegations of foreign governments funneling illegal contributions into the DNC. If the Justice Department was serious about its investigation, it would ask the State Department to pressure foreign governments to provide access to the necessary documents and witnesses.

Rather than comply with the committee's subpoena, the State Department turned to the Justice Department, to see whether it should comply. The Justice Department directed the State Depart-

[480] Listing of Task Force cases, June 4, 1999 (exhibit 14).

ment to redact from their submission to the committee any information that related to ongoing investigations. The Justice Department's position was more fully explained in a September 25, 2000, letter from Assistant Attorney General Robert Raben, which claimed that the Justice Department had a right to redact information that related to ongoing investigations from State Department documents.[481]

The Justice Department's position is legally groundless, and moreover, has in practice, been abused by the Justice Department. When the committee did finally receive documents from the State Department, they were redacted so that almost every substantive piece of information was taken out. It is difficult to believe that the Justice Department still has so many ongoing investigations. If the Department's investigation is as far-flung as its redactions suggest, it is not equipped to handle such an investigation, having, as of December 31, 1999, only 13 attorneys and 12 agents, down from 24 attorneys and 67 agents in 1997.[482]

Moreover, one specific redaction by the Justice Department suggests that the Department is acting in bad faith, and that it is redacting material that does not relate to ongoing investigations. The committee has been able to determine, by comparison with the same subpoena from the White House that was not redacted, at least two names redacted by the State Department at the Justice Department's insistence: Liu Chao-Ying and her father, General Liu Huaqing.[483] Liu Chao-Ying, a colonel in the Chinese military, gave $80,000 to the DNC through DNC fundraiser Johnny Chung. Liu Chao-Ying also introduced Chung to General Ji Shengde, the head of Chinese military intelligence, who gave Chung an additional $300,000 to funnel into the DNC. General Liu Huaqing, was the vice chairman of the Central Military Commission, and reportedly oversaw the Chinese army's modernization program. He was also a member of the Standing Committee of the Politburo of the Communist party.

As late as June 4, 1999, the Task Force had already listed Liu Chao-Ying as a "Pending Inactive Investigation."[484] The Task Force had not listed any investigation of General Liu Huaqing as of June 1999. Both Liu Chao-Ying and General Liu Huaqing are Chinese nationals living in China, and the committee is unaware of any Justice Department or State Department efforts to have Liu Chao-Ying or her father extradited. Furthermore, the Justice Department presented no objections to the committee's public hearings with Johnny Chung where he extensively discussed his interactions with Liu. It is troubling that they would allow their star witness against Liu to testify publicly about his dealings with her, and then claim that peripheral documents relating to her are part of an ongoing investigation. The facts suggest that it is highly unlikely Liu Chao-Ying or Liu Huaqing are the subjects of active Justice Department investigations. Rather, it appears that once again,

[481] Letter from Robert Raben to Chairman Dan Burton, Sept. 25, 2000.

[482] Briefing report by the U.S. General Accounting Office, "Campaign Finance Task Force: Problems and Disagreements Initially Hampered Justice's Investigation," May 2000, at 48.

[483] Subpoena to the Custodian of Records, Executive Office of the President, May 26, 1998.

[484] Listing of Task Force cases, June 4, 1999 (exhibit 14).

the Justice Department is making a bad faith effort to shield itself from congressional oversight.

c. The DNC

On August 3, 2000, the committee subpoenaed the DNC to produce the subpoenas and document requests it received from the Justice Department. For the next 6 weeks, the DNC failed to comply with the subpoena. During this period of time, counsel for the DNC informed the committee that they had concerns about complying with the subpoena, based on warnings accompanying a number of the subpoenas that they were not to be publicly disclosed. Counsel for the DNC attempted to contact the Justice Department during this 6 week period to determine whether the Justice Department objected to the DNC's compliance with the committee subpoena. DNC counsel claims that despite a number of contacts with the Justice Department, he was unable to obtain a definitive answer from the Department. Accordingly, as of September 26, 2000, the committee's subpoena had still not been satisfied. Therefore, when Deputy Assistant Attorney General Alan Gershel appeared before the committee, he was asked about the DNC subpoena:

> Committee COUNSEL. We also subpoenaed the DNC. We asked the DNC for subpoenas served upon it by the Task Force. Now, despite the fact that the subpoena was served over 6 weeks ago, the DNC has failed to comply because the Department of Justice has prevented it from doing so. This was communicated to us today. The DNC, however, is either a witness or a target of the Department in this investigation.
>
> Now I am going to read some words that your immediate superior, Assistant Attorney General Robinson, spoke at our last hearing. He testified under oath: "although a prosecutor may prefer that a witness not disclose information about a pending case, the government does not have any right to dictate who a witness can or cannot talk to. Witnesses do not belong to either side of a matter. As a matter of due process and prosecutorial ethics, the government cannot threaten or intimidate a witness for the purpose of preventing a witness from talking to a subject or a target of investigation or from exercising their First Amendment rights."
>
> Now, isn't that what the Department of Justice is doing now in terms of preventing the DNC from complying with the congressional subpoena?
>
> Mr. GERSHEL. Absolutely not. The DNC has never been told not to comply with this committee's subpoena. To the contrary, it's not my understanding. I have not had contact with them. It's my understanding they were told to fully comply with the subpoena.[485]

[485] "Contacts Between Northrop Grumman Corporation and the White House Regarding Missing White House E-Mails," hearing before the Committee on Government Reform, 106th Cong., 111–12 (Sept. 26, 2000) (preliminary transcript).

Shortly after the hearing, Mr. Gershel attempted to clarify his statement in a letter:

> Some members of the committee had the misimpression that the Department was preventing the DNC from complying with its subpoena. I also may have contributed to the confusion by offering my mistaken understanding that the DNC had been told by the Department to fully comply with the subpoena.
>
> I want to clarify that the Department takes no position on the issue of the DNC's rights and obligations concerning compliance with a congressional subpoena. That is an issue between the DNC and the congressional committee. It certainly has never been the Department's intent to prevent or discourage compliance with a congressional subpoena.[486]

Leaving aside the dramatic difference between Gershel's initial testimony that the DNC was told to "fully comply" with the subpoena, and his later statement that the Department "took no position" on the DNC's compliance, the effect of the Department's actions was clear.[487] Two months have passed since the committee issued its subpoena, and the DNC has not complied with the subpoena.

After the September 26, 2000, hearing, DNC counsel called and then wrote to the committee to express their "concern" regarding committee's counsel's representations at the hearing. DNC counsel took the position that the DNC was never "prevented" from complying with the committee's subpoena. Rather, in their mind, the Justice Department had protested the committee subpoena, and had raised "admonitions" with the DNC about disclosing the subpoena.[488] The DNC tried to resolve these issues prior to the committee's hearing, and was unsuccessful. In the mind of DNC counsel, such conduct by the Justice Department did not "prevent" the DNC from complying the with the committee's subpoena.

However, there is ample evidence that the Justice Department's actions have prevented timely compliance with the committee's subpoena:

- A number of Justice Department subpoenas to the DNC warned the DNC that "[b]ecause this subpoena relates to an ongoing official criminal investigation being conducted by the Federal Bureau of Investigation, it is requested that you not disclose the existence of the subpoena for an indefinite period of time. Disclosure may impede the investigation and interfere with the enforcement of the law."[489] Such directions are, however, contrary to the ethical standards of

[486] Letter from Alan Gershel, Deputy Assistant Attorney General, to Judah Best, Debevoise & Plimpton (Sept. 29, 2000) (exhibit 15).

[487] The Justice Department's position with respect to the DNC's compliance with a lawful congressional subpoena—that it can take no position—gives an indication of the Department's lack of respect for Congress. Given this position, it is difficult to see how the Department could prosecute any party for obstructing or failing to comply with a congressional subpoena.

[488] These comments were made by Judah Best, counsel for the DNC, during a telephone conversation on Oct. 4, 2000.

[489] See, e.g., letter from Daniel O'Brien, Assistant U.S. Attorney, to Custodian of Records, Democratic National Committee (Jan. 21, 2000) (exhibit 16).

prosecutors outlined by Assistant Attorney General Robinson before the committee.

- In a letter to the committee, which was copied to the DNC, Assistant Attorney General Raben expressed concern about the committee's subpoena to the DNC. In that letter, Raben stated that "I am writing to express the Department's serious concern about the committee's recent practice of subpoenaing public and *private sector* entities to produce copies of grand jury subpoenas and other documents relating to evidence gathered by the Campaign Financing Task Force, including subpoenas and documents relating to ongoing criminal investigations."[490] The only private sector entity to which the committee directed such a subpoena was the DNC. The Justice Department's expression of "serious concern" about the DNC subpoena was in conflict with the Department's official position that it could take no position on whether the DNC should comply with the subpoena.

Indeed, these protests had their intended effect, as on October 6, 2000, the DNC informed the committee that it would not comply with the committee's subpoena.[491] In his letter to the committee, DNC counsel repeatedly cited the fact that the Justice Department had "protested" the committee's subpoena, and that the Department had concerns about the effect of compliance with the subpoena on ongoing investigations. Claiming that it wanted to protect these ongoing investigations, as well as the reputations of individuals named in the subpoenaed documents, the DNC refused to comply with the committee's subpoena.[492]

At the conclusion of this matter, it is clear that both the DNC and the Justice Department have worked together to keep the committee from obtaining information which might be extremely embarrassing to the Department of Justice and which might expose the DNC to additional investigation, as happened to the White House when it became clear the Justice Department had failed to ask the President and Vice President so many important questions. The Justice Department's admonitions and protests regarding the committee's subpoena sent the clear message to the DNC that it should not comply with the committee's subpoena. At the same time, in his letter of September 29, 2000, Mr. Gershel did state that the Department took no position on the committee's subpoena. Therefore, in the final analysis, it is the DNC that has decided to willfully disobey a lawful congressional subpoena.[493]

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[490] Letter from Robert Raben, Assistant Attorney General, to Dan Burton, chairman, Committee on Government Reform (Sept. 25, 2000) (emphasis added).

[491] Letter from Judah Best, Debevoise & Plimpton, to Dan Burton, chairman, Committee on Government Reform (Oct. 6, 2000) (exhibit 17).

[492] The mere fact that the DNC shows such interest in protecting the integrity of the Justice Department investigation speaks volumes. The DNC is at the center of the campaign fundraising scandal. The fact that the DNC is working in tandem with the Justice Department to keep information about the investigation out of Congress' hands suggests that the DNC is trying to hide something about the investigation. If the subpoenas to the DNC are anything like the subpoenas to the White House, it is likely trying to hide the fact that the Justice Department has conducted a weak and politically biased investigation.

[493] The DNC and their counsel have a long history of misrepresentations to the committee. These are detailed in chapter II of the committee's interim report on the campaign fundraising investigation.

2. The Justice Department Failed to Obtain a Timely Search Warrant for Charlie Trie's Residence

In 1997, a serious dispute arose between Justice Department attorneys and FBI agents regarding decisions made by the Justice Department in the investigation of Charlie Trie. The dispute concerned whether the Justice Department justifiably rejected a FBI request for a search warrant for Trie's residence after the FBI found documents discarded in the trash that were responsive to a subpoena.[494]

On March 7, 1997, Maria Mapili, Charlie Trie's bookkeeper, was served with a subpoena for documents by the Senate Committee on Governmental Affairs.[495] Mapili contacted Trie in Asia and informed him that she had been served with a subpoena from the Congress. According to Mapili, Trie told her to throw away certain documents called for in the subpoena.[496] Mapili began to destroy documents specified by Trie, but at some point, Mapili became nervous and hid documents instead of destroying them. The FBI found in Trie and Mapili's garbage a number of documents relevant to the fundraising investigation, and which were responsive to the Senate subpoena.

FBI Special Agent Roberta Parker and her partner, FBI Special Agent Kevin Sheridan requested search warrants for Trie's residence because they believed that Mapili was obstructing justice by destroying evidence. The agents were told by Task Force chief, Laura Ingersoll, that grand jury subpoenas had to be served before probable cause for search warrants would exist.[497] A grand jury subpoena was served on Mapili on June 27, 1997.[498]

In the search of the trash after the grand jury subpoena was served, the FBI found discarded financial statements and a check register for Daihatsu, along with a fax cover sheet to Antonio Pan. Agent Sheridan's understanding from Laura Ingersoll was that finding additional discarded documents after the grand jury subpoena was served would be sufficient evidence to allow the FBI to obtain the search warrant.[499] Agents Parker and Sheridan began drafting an affidavit for search warrants for the residences of Trie and Mapili on July 1, 1997, and gave a copy to the Justice Depart-

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[494] Around 1996, Trie began to use his residence in Little Rock as the office for his Arkansas companies, consequently most of his business records were at that location.

[495] The committee requested records from Trie in a letter to Trie's attorneys on Jan. 20, 1997. Trie's attorney said that because of the Justice Department's criminal investigation, they would not comply with the committee's document request. In February 1997, the committee attempted to serve a subpoena on Trie's attorneys in Washington, DC, but the attorneys refused to accept service.

[496] Testimony of Maria Mapili at 21, *U.S.* v. *Yah Lin "Charlie" Trie*, No. LR–CR–98–239 (D. AR, May 18, 1999). Mapili received immunity and testified against Trie during his trial in Little Rock, AR on obstruction of justice charges in April 1999. Before the trial was completed, Trie reached a plea agreement with the government.

[497] Id.

[498] The FBI charged that the timing of the grand jury subpoena cost them a valuable investigative lead. The Justice Department and the FBI had already agreed to place a pen register on Mapili's telephones to record the telephone numbers of incoming and outgoing calls made after Mapili was served with the grand jury subpoena. Before the pen register was in place, FBI Special Agent Daniel Wehr, in Little Rock, AR, was ordered to serve the grand jury subpoena on Mapili. Both Agent Wehr and FBI Special Agent in Charge in Arkansas Ivian Smith complained that the decision to prematurely serve the subpoena before the pen register was installed cost them a valuable lead. "The Justice Department's Handling of the Yah Lin "Charlie" Trie Case," hearing before the Senate Committee on Governmental Affairs, 106th Cong., 52–53 (Sept. 22, 1999).

[499] Interview of Kevin Sheridan, Committee on Government Reform, at 2–3 (Sept. 13, 1999).

ment attorneys. Agents Parker and Sheridan had not heard of any opposition to the search warrants up to this point.[500]

On July 2, 1997, Justice Department Attorneys Jonathan Biran and William Corcoran had a telephone conference with Lee Radek, and during this discussion, the three Department lawyers decided that there was no probable cause for the warrants.[501] This decision contradicted everything the FBI had been told up to this point. While Ingersoll conceded that the discarded documents were relevant, she said that before a warrant could be obtained, there also needed to be proof that Mapili was knowingly destroying the documents to avoid producing them.[502]

Ingersoll told FBI agents Kevin Sheridan and Laura Laughlin that the search warrants were rejected, but she could not give a good answer as to why there was no probable cause.[503] Ingersoll sent an e-mail to her superiors on July 7, 1997, stating that the "case agent" and Laughlin conceded that there was no probable cause for the search warrants.[504] In her testimony before the Senate, Ingersoll admitted she was referring to Agent Sheridan, but Agent Sheridan denied that he ever conceded that there was no probable cause for the warrants.[505] Both Agents Parker and Sheridan found the refusal to pursue search warrants in this case to be abnormal compared to their other experiences.[506]

The Justice Department imposed a higher standard than necessary for a search warrant. A search warrant needs to be supported by probable cause. Probable cause exists "where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found."[507] The question was simply whether it was reasonable to believe, given the known facts and circumstances, that Mapili was obstructing the subpoenas, not whether it could be proven.

After the search warrant request was denied, the FBI agents continued to investigate the matter. Agent Parker spoke with Agent Daniel Wehr in Little Rock and they listed documents found in the trash covers that were not produced pursuant to the grand

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[500] Interview of Roberta Parker, Committee on Government Reform, 4 (Aug. 27, 1999); interview of Kevin Sheridan, Committee on Government Reform, at 3 (Sept. 13, 1999).

[501] During the telephone conference, Lee Radek acknowledged the deteriorating relationship between the Task Force and the FBI when he advised William Corcoran that they were not to seek a search warrant in Little Rock without his personal approval. Radek's purpose behind this decision was to inject himself between the FBI and Ingersoll, who was a frequent target of FBI attacks and criticisms. Interview of Lee Radek, Committee on Government Reform, at 2 (Sept. 17, 1999). Radek's move added another bureaucratic layer to an already cumbersome process and required the approval of the Chief of the Public Integrity Section on routine matters.

[502] Interview of Laura Ingersoll, Committee on Government Reform, at 6 (Sept. 17, 1999).

[503] Interview of Kevin Sheridan, Committee on Government Reform, at 3 (Sept. 13, 1999). Ingersoll met with Agents Sheridan and Laughlin in the afternoon of July 2, 1997, after the telephone conference with Lee Radek. Ingersoll did not specifically recall meeting with Sheridan and Laughlin, while Laughlin recalled the meeting, but could not remember what was said. Interview of Laura Ingersoll, Committee on Government Reform, at 5 (Sept. 17, 1999); interview of Laura Laughlin, Committee on Government Reform, at 2 (Oct. 1, 1999).

[504] Ingersoll e-mail to Mark Richard, Bob Litt, and Lee Radek, July 7, 1997 (exhibit 18).

[505] "The Justice Department's Handling of the Yah Lin "Charlie" Trie Case," hearing before the Senate Committee on Governmental Affairs, 106th Cong., 1st Sess., 78 (Sept. 22, 1999); interview of Kevin Sheridan, Committee on Government Reform, at 3 (Sept. 13, 1999).

[506] Sheridan said they had done searches before with a lot less probable cause than there was in the Trie case. Interview of Kevin Sheridan, Committee on Government Reform, at 5 (Sept. 13, 1999); Parker said she had never seen a warrant be rejected like this. Interview of Roberta Parker, Committee on Government Reform, at 8 (Aug. 27, 1999).

[507] See *Illinois* v. *Gates,* 462 U.S. 213, 238 (1983); *Beck* v. *Ohio,* 379 U.S. 89, 91(1964); *Brinegar* v. *U.S.*, 338 U.S. 160, 176 (1949); *Wong Sun* v. *U.S.*, 371 U.S. 471, 479 (1963).

jury subpoena.[508] Task Force Attorney Jonathan Biran and Agent Parker then traveled to Little Rock to compare the documents recovered in the trash with the documents produced pursuant to the grand jury subpoena. After the review, Biran advised Ingersoll that there was no basis for an obstruction prosecution against Mapili.[509] Agent Parker had a different assessment of the document review. It was clear to Agent Parker that folders marked "President Clinton" and "Vice President Gore" that contained only one or two documents were not complete as was a fax cover sheet indicating five pages when only one was produced.[510]

The FBI agents were proven correct. On October 21 and 22, 1997, Mapili was interviewed by the Task Force and FBI agents in anticipation of her testimony before the grand jury. During the interviews, Mapili admitted that she had destroyed documents and stashed other documents that still remained hidden. Mapili had not informed her attorney or Trie's attorneys about the hidden documents. In addition, Mapili admitted that she did this at the direction of Charlie Trie, who told her to destroy certain documents after she received the Senate subpoena in March 1997. On October 23, 1997, the FBI conducted simultaneous searches of Trie's residence and office in Little Rock and his office at the Watergate in Washington, DC, uncovering many responsive documents that had never been produced to investigators. On November 9, 1998, Charlie Trie was indicted in Arkansas for obstructing the campaign finance investigation of the Senate Committee on Governmental Affairs.[511]

The Senate was not informed that Mapili was destroying records in response to their March 1997 subpoena. The FBI agents were told not to have contact with the Senate investigation.[512] Although Agents Parker and Sheridan were under the impression that Ingersoll could contact the Senate should the need arise, Ingersoll denied it was her responsibility. Ingersoll's superior, Lee Radek, said Ingersoll was free to contact the Senate with any pertinent information.[513] The explanation given by Ingersoll and Corcoran for not contacting the Senate was that since they had not seen the Senate subpoena, they did not know what it subpoenaed, and thus they were not in a position to determine if the documents found in the trash were responsive to it.[514]

Although Justice Department attorneys and FBI agents differed on their recollection of the facts and the application of the law, one

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[508] Roberta Parker memorandum to "Criminal Investigative", July 25, 1997.

[509] Interview of Laura Ingersoll, Committee on Government Reform, at 7 (Sept. 17, 1999). Biran told Ingersoll that some of the documents were produced pursuant to the grand jury subpoena were incriminating and some other documents that were destroyed were copies of documents that had been produced.

[510] Interview of Roberta Parker, Committee on Government Reform, 7–8 (Aug. 27, 1999).

[511] Indictment of Yah Lin "Charlie" Trie, *U.S.* v. *Trie,* No. LR–CR–98–239 (D. AR., Nov. 9, 1998).

[512] Sheridan said they were told in writing not to contact the Senate. Interview of Kevin Sheridan, Committee on Government Reform, at 4 (Sept. 13, 1999). Parker said Ingersoll told them she would handle all liaison with the Senate, and Parker took that to mean they should not contact the Senate. Interview of Roberta Parker, Committee on Government Reform, at 8 (Aug. 27, 1999).

[513] Radek said there were no special restrictions on Task Force attorneys, but the usual procedures were to be followed—informing superiors after the fact or going through the Congressional Affairs Office. Interview of Lee Radek, Committee on Government Reform, at 3 (Sept. 17, 1999).

[514] Corcoran memos, attachment to memorandum of Sept. 29, 1997, at A–046; interview of Laura Ingersoll, Committee on Government Reform, at 3 (Sept. 17, 1999).

area of general agreement was the degree of control top-level Justice Department officials exercised over the campaign finance investigation. Lee Radek, Chief of the Public Integrity Section and a 28-year veteran of the Justice Department, stated: "we had the Attorney General regularly wanting to know how the investigation was progressing. We had supervision of the Acting Assistant Attorney General on a daily basis, something that usually does not happen."[515] Laura Ingersoll, former chief of the Task Force and a 11-year veteran of the Justice Department, said the degree of control exercised by the Justice Department was "unprecedented."[516] For the FBI agents in the field, the Justice Department's control of the investigation caused, "problems of aggressiveness and timeliness of investigative avenues [and] . . . investigative decisionmaking [that] was slow, if at all."[517]

The Justice Department's decisionmaking process caused a substantial delay in the Charlie Trie investigation. Even when it did finally issue a grand jury subpoena to Mapili, its purpose was to scare Mapili into preserving the documents and not to investigate Trie's criminal activity, even though many of Trie's illegal activities had been publicly documented. Without the FBI's insistence that something be done to preserve evidence, there was no indication that the Justice Department intended to subpoena documents that proved very useful in the investigation of Trie.[518]

D. THE JUSTICE DEPARTMENT FAILED TO PURSUE KEY INDIVIDUALS AND ENTITIES

1. Failure to Pursue the DNC

While the White House was the focal point for favors and access, the DNC served as the collection point for the illegal foreign and conduit contributions. In that capacity, officials at the DNC worked closely with the individuals bringing in foreign conduit contributions, John Huang and Charlie Trie. Huang and Trie both began their associations with the DNC as outsiders, giving illegal foreign and conduit contributions in exchange for favors and access. By 1996, the DNC had brought Huang and Trie inside the operation. Huang was a fundraiser working for the DNC and Trie spent a large amount of time soliciting contributions for Huang's events. No one voiced any concerns about allowing Huang or Trie to work on the DNC's behalf.

There is evidence, however, that at least four officials at the DNC may have known of, encouraged or even participated in, illegal activities by Huang and Trie. Their knowledge of illegal acts by Huang and Trie began at the very early stages of Huang and Trie's association with the DNC. In interviews and depositions with the Justice Department and Congress, the DNC officials gave very mis-

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[515] "The Justice Department's Handling of the Yah Lin "Charlie" Trie Case," hearing before the Senate Committee on Governmental Affairs, 106th Cong., 99 (1999).

[516] Id. at 98. Ingersoll was the first chief of the Task Force. She was appointed to head the Task Force by Lee Radek on Nov. 1, 1996. When it became apparent that the Task Force was not doing its job properly, Attorney General Reno replaced Ingersoll with Charles LaBella in September 1997.

[517] Id. at 12 (statement of Special Agent-in-Charge Ivian Smith). Agent Smith is a 25-year veteran of the FBI.

[518] The Justice Department collected 13 boxes worth of documents from Trie. The committee examined the documents and found a great deal of significant information that could not have been obtained from any other source.

leading and potentially perjurious testimony to protect the DNC and to cover up their own involvement in the illegal activity.

Despite the fact that the Justice Department has all of the information about the DNC officials' involvement in the fundraising scandal, the committee is not aware of any DNC official who has been under serious scrutiny by the Task Force. In several instances, DNC officials were questioned about their knowledge or participation in Huang and Trie's illegal acts, but there is no evidence that the Justice Department intended to investigate thoroughly or prosecute possible criminal acts by officials of the DNC. At other times, the Justice Department completely ignored evidence of wrongdoing by DNC officials.

a. Melinda Yee, DNC Director of Constituencies

Melinda Yee was a key figure in the campaign fundraising investigation, as she had contacts with John Huang and the Riadys in the 1992 election all the way through the 1996 election. Yee met Huang in the late 1980s when she worked as the executive director of the Organization for Chinese Americans, and Huang was just beginning his political involvement. Melinda Yee joined the DNC in 1990 as the Director of Constituencies. When Yee worked for both the DNC and Clinton/Gore '92 during the 1992 campaign, she would occasionally see Huang in Los Angeles. After the election, Yee worked briefly for the Office of Presidential Personnel before joining the Commerce Department in May 1993.[519]

In deposition testimony before the Senate, Yee was asked to recite the times she saw Huang between their initial meeting and his employment with the Commerce Department in July 1994. Yee stated that she saw him whenever the 1992 campaign went to Los Angeles, but she could not recall any other specific meetings.[520] Yee failed to mention her interaction with Huang in relation to the DNC's trip to Asia between December 4–13, 1991, for DNC Chairman Ron Brown. To ensure that the fundraising portion of the trip was successful, Yee recruited John Huang to raise money in Hong Kong. Yee also explained Huang's role on the trip to Chairman Ron Brown:

> John Huang is our key to Hong Kong. He is also interested in renewing his trusteeship to us on this trip through his Asian banking connections. He has agreed to host a high dollar event for us in Hong Kong with wealthy Asian bankers who are either U.S. permanent residents or with U.S. corporate ties. He will make sure that all of the hotel accommodations, meals, and transportation are paid for by his bank. He should be invited to be part of our delegation.[521]

Yee said John Huang agreed to host an event in Hong Kong with a goal of $50,000.[522] The schedule for Chairman Brown shows dol-

[519] Deposition of Melinda Yee, Senate Committee on Governmental Affairs, May 9, 1997, at 14.

[520] Id. at 198.

[521] Memorandum from Melinda Yee to RHB [Ronald H. Brown], Oct. 15, 1991, DNC 0828866–67 (exhibit 19).

[522] Memorandum from Melinda Yee to RHB [Ronald H. Brown], Oct. 22, 1991, DNC 0828865 (exhibit 20).

lar signs next to a lunch and a dinner on December 10, 1991, hosted by the Lippo Group.[523]

Huang testified that Yee invited him to go on the trip and that he did arrange for Lippo to pay the DNC's expenses. Huang gathered individuals together for a lunch and dinner hosted by Lippo, but he flatly denied that he ever promised to raise money or did raise any money in Hong Kong:

> Mr. BURTON. Exhibit No. 109. That exhibit is a memo from Melinda Yee to DNC Chairman Ron Brown. Ms. Yee said you offered to host an event in Hong Kong with a goal of $50,000; is that correct?
>
> Mr. HUANG. The memo indicated that way. I did not really offer that $50,000.
>
> * * * * *
>
> Mr. BURTON. You never promised that. Did you say that you would consider it? Did you say you would do it?
>
> Mr. HUANG. She has proposed that I could do that.[524]

Less than 1 year later, Huang and Yee were again discussing fundraising for the DNC. In August 1992, Huang asked Yee to arrange a private limousine ride between James Riady and then-Governor Clinton.[525] Yee made the arrangements and drafted a briefing memo to Clinton. Huang provided her with the information for the memo. Yee wrote that Riady gave $100,000 for the August 14, 1992, fundraiser and that he had, "the potential to give much more."[526] Although Huang denied talking to Yee about future contributions, after Riady's limousine ride with Governor Clinton, Riady funneled over $640,000 to the 1992 campaign through his employees.

Yee invoked her fifth amendment right against self-incrimination with the committee and refused to appear at a deposition.[527] She had previously given deposition testimony to the Senate Committee on Governmental Affairs in May 1997. In her testimony to the Senate, Yee directly contradicted her own DNC documents and Huang's testimony on the subject of fundraising with Huang:

> Q. Did you ever talk to John Huang about fundraising?
>
> A. *No.*
>
> Q. When I say ever, I mean at any time. Did you talk to John Huang about fund raising, political or campaign fund raising?
>
> A. Well, I know he did fundraising, but I was, again, in the political division and he worked with the finance people on fundraising matters, specific fundraising.

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[523] Memorandum from Melinda Yee to Alexis Herman, et al., Dec. 2, 1991, DNC 0828853–58 (exhibit 21).

[524] "The Role of John Huang and the Riady Family in Political Fundraising," hearings before the Committee on Government Reform, 106th Cong., 192–195 (Dec. 17, 1999) (preliminary transcript).

[525] Id. at part I, 73.

[526] Memorandum from Melinda Yee to Governor Clinton, Aug. 14, 1992, CG92B–00543 (exhibit 22).

[527] Letter from Nancy Luque to Barbara Comstock, chief counsel, Committee on Government Reform and Oversight, July 17, 1998 (exhibit 23).

> Q. Did you discuss fund raising matters with him?
>
> A. Not—I was working—I talked to him about political issues. I mean, if he had a fund raising, it could have been mentioned, but if he ad [sic] to actually do fund raising, he worked with finance. I mean, I just didn't, I wasn't—that wasn't my job.
>
> Q. When are you talking about? You said, you talked to John Huang when he worked with finance at DNC.
>
> A. No, no, I'm saying he worked with—I'm not staff forwarding. I'm just saying, when I was at the DNC or during the campaign, I would work with him on these issues and campaign organizing. *If he had finance issues, he didn't work with me. He worked with whoever he worked with and I don't know who in the finance division.* This was in 1992. I'm not talking about when he actually worked there.[528]

Yee's testimony before the Senate cannot be reconciled with documents or the testimony of John Huang. Yee asked Huang to raise $50,000 for the DNC in Hong Kong and they discussed Riady's $100,000 and "potential to give much more" during the 1992 campaign.

The Justice Department should investigate Melinda Yee about her relationship with John Huang, her interaction with Huang for the DNC's 1991 trip to Asia, the 1992 limousine ride, and the contributions that resulted from the ride.[529] There is evidence that Yee may have misled the Senate about the nature of her relationship with Huang. Despite this evidence, the committee has seen no indication that Yee is under active investigation.

b. David Mercer, DNC Deputy Finance Director

There is substantial evidence that DNC fundraiser David Mercer conspired with John Huang to violate the Hatch Act, and then lied about his actions when questioned by this committee. While he worked as a Commerce Department employee, Huang was constrained in the political activities he could perform. Although Mercer was "mindful of the Hatch Act," it did not stop him from asking Huang repeatedly to violate the statute.[530] Mercer placed numerous calls to Huang at the Commerce Department and asked at least once to meet him across the street from the Commerce Department so Mercer could ask Huang to solicit contributions. At one point, Huang even asked Mercer not to get him involved in fundraising while he worked at the Commerce Department.[531] Mercer did not stop.

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[528] Deposition of Melinda Yee, Senate Committee on Governmental Affairs, May 9, 1997, at 198–99 (emphasis added).

[529] The Justice Department should also investigate Yee's statements about APAC-Vote, an Asian American organization set up for the 1992 campaign by Nora Lum. Yee denied that APAC-Vote was affiliated with the DNC, but Yee wrote to Lum stating that APAC-Vote was very important to the DNC and the DNC agreed to fund the organization. In addition, Yee wrote a letter authorizing Nora Lum of the "DNC's APAC-Vote Project to open an account under the name of 'DNC/APAC'."

[530] FBI interview of David Lawrence Mercer, at 9 (Apr. 27, 1998).

[531] FBI interview of John Huang, at 57 (Jan. 19–Feb. 10, 1999).

In June 1995, Mi Ryu Ahn contributed $10,000 to the DNC. Ahn made the contribution after she received four or five telephone calls from John Huang, who was working at the Commerce Department.[532] Although Huang stated that he did not solicit Ahn for her contribution, Huang clearly referred her to Mercer.[533] Four days before receiving Ahn's $10,000, Mercer left a message for Huang at the Commerce Department that read: "Have talked to Mi. Thank you very much."[534] On the check tracking form used by the DNC to record both internal and required information for the FEC, Mercer listed Jane Huang, John Huang's wife, as the solicitor of the contribution from Ahn.[535] Mercer stated that he listed Jane Huang as the solicitor because she was an active trustee and there was a connection between the Huangs and Ahn.[536] Statements from both John Huang and Mi Ryu Ahn contradict Mercer's contention. Huang stated that Jane Huang most likely did not know Ahn and that Jane did not solicit contributions while John worked at the Commerce Department.[537] Ahn could not recall ever talking to Jane Huang, but she did remember that John Huang asked her to get involved with the DNC.[538]

John Huang also introduced Mercer to Arief and Soraya Wiriadinata. In November 1995, while Huang still worked at the Commerce Department, Arief and Soraya Wiriadinata each contributed $15,000 to the DNC. David Mercer was the DNC contact for those two contributions and he filled out their check tracking forms for the DNC. Mercer again recorded Jane Huang, John's wife, as the solicitor of the contributions.[539] Mercer was asked why he listed Jane Huang, instead of John Huang, as the solicitor the contributions from the Wiriadinatas:

> Q. How did you know to credit this to Jane Huang as solicitor?
>
> A. Through an understanding prior of the Wiriadinatas having association with the Huangs.
>
> Q. How did that understanding come about?
>
> A. I don't know.
>
> Q. But you understood that the Wiriadinatas and the Huangs were associated. How did you understand they were associated?
>
> A. I don't recall.
>
> Q. Why didn't you put John Huang down as solicitor?
>
> A. I don't recall why I—you know, I don't recall. I didn't, you know—I don't . . . I don't recall. Jane could have—I

[532] S. Rept. No. 105–167, at 1189 (1998).
[533] FBI interview of John Huang, at 26 (Feb. 23–Mar. 26, 1999).
[534] S. Rept. No. 105–167, at 1189 (1998).
[535] Id. at 1189–1190.
[536] FBI interview of David Lawrence Mercer, at 7 (Apr. 27, 1998).
[537] FBI interview of John Huang, at 27 (Feb. 23–Mar. 26, 1999).
[538] S. Rept. No. 105–167, at 1190 (1998).
[539] DNC check tracking forms for Arief Wiriadinata and Soraya Wiriadinata, DNC 1276337 and DNC 1276338.

> could have been told that Jane was the one that brought these checks in. I don't know.[540]

Mercer could not explain his own actions because to do so would uncover Mercer's role in encouraging Huang to violate the Hatch Act.

John Huang and Arief and Soraya Wiriadinata all directly contradict Mercer's testimony. Not only did Arief say that John Huang solicited the November 1995 contributions, but both Arief and Soraya denied ever speaking to or meeting with Jane Huang.[541] Huang also stated that Mercer testified falsely:

> Mr. WILSON. But you do recall, and I may be wrong on the complete number, but on some of the DNC check tracking forms your wife was listed as the solicitor of contributions from the Wiriadinatas.
>
> Mr. HUANG. I've learned that since I saw the documents.
>
> Mr. WILSON. Now, that was not correct you've testified, is that right?
>
> Mr. HUANG. That was not correct. My wife did not solicit those contributions, no.[542]

The Justice Department should investigate David Mercer for knowingly giving false testimony to the Congress by stating that Jane Huang solicited the contributions from Mi Ryu Ahn and the Wiriadinatas. Mercer's fundraising activities with Huang, while Huang was at the Commerce Department, points to a greater concern: Mercer knew that the DNC was hiring someone who was willing to break the law in return for contributions to the DNC.

c. Richard Sullivan, DNC Finance Director

In 1994, Charlie Trie and his foreign financier, Ng Lap Seng, contributed $15,000 to the DNC in illegal foreign money through the San Kin Yip International Trading Co. Documents show that DNC officials knew the money came from Ng Lap Seng and may have attempted to hide that fact. There is no evidence that the Justice Department has pursued these issues.

On October 10, 1994, Charlie Trie received a fundraising letter from Richard Sullivan, Director of the BLF, and Tim Collins of the Business Leadership Forum (BLF), a DNC donor council for business leaders to interact with officials in the Clinton administration and the Democratic party.[543] Trie was invited to recruit a guest to join the BLF and attend a small October 20, 1994, BLF event with Vice President Gore and senior administration officials in Washington, DC. Trie recruited his foreign benefactor Ng Lap Seng to join the BLF.[544]

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[540] Deposition of David L. Mercer, Senate Committee on Governmental Affairs, May 27, 1997, at 33–34.

[541] S. Rept. No. 105–167, at 1191 (1998).

[542] "The Role of John Huang and the Riady Family in Political Fundraising," hearings before the House Committee on Government Reform, 106th Cong., 280 (Dec. 17, 1999) (preliminary transcript).

[543] Letter from Richard Sullivan, director, Business Leadership Forum, and Timothy C. Collins, chairman, Business Leadership Forum, to Charlie Trie, Oct. 10, 1994 (exhibit 24).

[544] Interview of Yah Lin "Charlie" Trie, Committee on Government Reform, at 2–3 (Feb. 29, 2000).

To pay for Ng's membership in the BLF, a company newly incorporated by Trie, San Kin Yip International Trading Co., gave a $15,000 check to the DNC. Sullivan filled out the DNC check tracking form for the $15,000 San Kin Yip contribution. The check was signed by Ng Lap Seng in Chinese.[545] On the check tracking form, Sullivan listed Charlie Trie as the contact for the contribution. Following the event, though, Sullivan sent a letter to Ng Lap Seng, not Trie, thanking him for his contribution and for joining the BLF.[546] There was no documentary evidence other than the Chinese signature that would have told Sullivan that the contribution came from Ng and not Trie, who Sullivan listed on the check tracking form.

In deposition testimony, Sullivan distanced himself from Trie. In fact, Sullivan said that he specifically told David Mercer to instruct Trie that conduit contributions were unacceptable.[547] Sullivan said he also gave a general warning to DNC fundraisers that if there was any chance of illegal contributions, Trie might be involved.[548] Sullivan stated he did not solicit any contributions from Trie and that Deputy Finance Director David Mercer was Trie's primary contact.[549] Sullivan did describe to the Justice Department a September 1994 event Trie attended at Mercer's invitation where Trie agreed to serve as a chairman of the DNC Business Council.[550] Sullivan said about 30 people attended and they went to hear the Vice President speak at the Old Executive Office Building. However, Sullivan neglected to tell the Justice Department about his involvement with Trie and Ng at the October 20, 1994, event and Ng's contribution to the DNC.

The Justice Department did not confront Sullivan with the documents evidencing his own involvement with the illegal contribution from Ng. The Justice Department has had possession of Richard Sullivan's thank you letter to Ng Lap Seng since October 1997.[551] The Justice Department interviewed Sullivan seven times after it seized the letter from Charlie Trie's residence in Little Rock and not once did the Justice Department ask Sullivan about it.[552] The Justice Department did manage to ask Trie whether he sponsored Ng for membership in the BLF. When Trie could not recall, there were no further questions on the subject.[553]

d. Fran Wakem, Deputy Director, DNC Business Leadership Forum

Fran Wakem was the Deputy Director of the Business Leadership Forum. In late 1994, Wakem arranged for an invitation to Lin

[545] Id. at 3.
[546] Letter from Richard Sullivan to Ng Lap Seng, Oct. 24, 1994 (exhibit 25).
[547] FBI interview of Richard Lyles Sullivan, at 14 (Aug. 13, 1997).
[548] FBI interview of Richard Lyles Sullivan, at 14 (Aug. 13, 1997).
[549] Deposition of Richard Sullivan, Senate Committee on Governmental Affairs, June 4, 1997, at 101–102.
[550] FBI interview of Richard Sullivan, at 2 (Nov. 21, 1997). The Business Council was the earlier name for the BLF.
[551] The only known copy of Sullivan's letter was seized by the Justice Department and the FBI after a search warrant was executed on Charlie Trie's residence in Little Rock in October 1997.
[552] Sullivan was interviewed by the Justice Department two times prior to the search warrant in October 1997. After the letter was seized, the Justice Department interviewed Sullivan Nov. 21, 1997, Dec. 1, 1997, May 14, 1998, Sept. 17, 1998, Sept. 18, 1998, Nov. 23, 1998, and Mar. 15, 1999.
[553] FBI interview of Charlie Trie, at 7 (June-October 1999).

Ruo Qing, a former colonel in the People's Liberation Army who was associated with Charlie Trie, to come to the United States and attend a DNC fundraiser.

In 1994, Trie was introduced to Lin Ruo Qing when she served as the chairwoman of the San You Scientific and Technology Industry Group in Beijing, which was a Chinese Government-controlled entity. Trie started his own company called Sanyou Science & Technology Enterprises USA, Inc. in hopes of creating a joint venture with Lin's company in Beijing.

As part of his efforts to enter a joint venture with Lin, Trie invited Lin to attend a DNC fundraiser in December 1994. Trie's employee, Jennifer Russell, contacted Richard Sullivan, Director of the DNC's Business Leadership Forum, and was told that a new member needs to pay $10,000 in order to attend a BLF event.[554] Since Trie was already a member of the BLF, Sullivan's reference applied to Trie's efforts to get Lin into the BLF event.

In order to facilitate Lin's entry into the United States, Trie, through his employee Jennifer Russell, asked Fran Wakem, deputy director of the BLF, to invite Lin to a BLF event in the United States. In a letter dated November 9, 1994, Fran Wakem invited Lin to join the BLF and attend one of several upcoming BLF events.[555] Wakem signed the letter and addressed it to Lin's business address in Beijing. Wakem's letter apparently was not specific enough to enable Lin to receive a United States entry visa. On November 16, 1994, Russell sent a copy of the letter back to Wakem with suggested revisions.[556] Wakem quickly changed the letter, signed it, and sent the revised letter, still with the Beijing address, back to Russell.[557]

The FBI interviewed Wakem about her involvement in inviting a former military officer from Beijing to join the BLF and attend a BLF event. Although Wakem verified her signatures, Wakem had no recollection of her letters to Lin.[558] Wakem knew that foreign nationals could not join the BLF because they could not contribute, and she could not think of any situation where a foreign national was invited to join the BLF.[559] Richard Sullivan, director of the BLF, said that Wakem's letters to Lin were prepared at Charlie Trie's request.[560] Sullivan, though, said he authorized Wakem to invite Lin to attend BLF events, but not to invite Lin to join the BLF.[561] Sullivan surmised that Wakem sent letters inviting Lin to join the BLF because it was easier than drafting a new letter.[562] Wakem's letter to Lin contained two references about traveling to the United States. Wakem admitted that such references were not contained in BLF form letters inviting someone to join the donor program.[563]

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[554] Note from Jennifer Russell to Charlie Trie (exhibit 26). Attached to the letter is the committee's translation of the letter.

[555] Letter from Francessa Wakem to Miss Lin Rou Qing, Nov. 9, 1994 (exhibit 27).

[556] Facsimile from Jennifer Russell to Fran Wakem, Nov. 16, 1994 (exhibit 28). The draft letter from Fran Wakem to Lin Ruo Qing is attached.

[557] Letter from Fran Wakem to Lin Ruo Qing, Nov. 16, 1994 (exhibit 29).

[558] FBI interview of Francessa J. Wakem, at 2 (Oct. 6, 1998).

[559] Id.

[560] FBI interview of Richard Sullivan, at 2 (Sept. 18, 1998).

[561] Id.

[562] Id.

[563] Interview of Fran Wakem, Committee on Government Reform, at 3 (Sept. 13, 2000).

In an interview with the committee, Wakem stated that she did not recall any of her dealings with Russell or the Lin letters. Wakem did admit, though, that the letters she signed to Lin were not "form letters."[564] As such, they were required to be approved by the DNC's general counsel's office before being sent out, but Wakem could not specifically recall whether the letter to Lin was approved by the general counsel's office.[565] In addition, since the letters referencing visits to the United States were clearly not form letters, Sullivan's speculation that Wakem sent out a form letter inviting Lin to join cannot be correct. Wakem could not explain why it would not have occurred to her that the letters were inappropriate when she added two sentences inviting Lin to the United States. In her interview with the committee, Wakem characterized her letter as "wacky" and asked rhetorically, "why in the hell was I doing that?"[566] Wakem's memory loss this year in no way effects the fact that in 1994, she knowingly invited a foreign national living in Beijing to join the BLF.

2. Failure to Pursue Foreign Kingpins

The campaign finance investigation revealed that three major participants in the scandal—John Huang, Charlie Trie, and Johnny Chung—each had wealthy and powerful foreign patrons. Documentary and testimonial evidence revealed that the foreign patrons had indeed funneled illegal foreign contributions into the DNC. Four foreign nationals in particular attracted investigative scrutiny: James Riady, Ng Lap Seng, General Ji Shengde, and Tomy Winata. These foreign nationals attracted attention not just because of the hundreds of thousands of dollars they provided in illegal political contributions, but also because they all had strong ties to the People's Republic of China (PRC) and other foreign governments. In March 1997, it was reported that United States intelligence had learned in 1996 that the PRC had discussed a plan to influence United States policy through lobbying and funding.[567] Despite these alarming allegations, it appears that the Justice Department has done little to investigate or prosecute the foreign kingpins who were the source of much of the illegal money in the 1996 elections.

a. James Riady

James Riady's family runs the Lippo Group, a $12 billion business empire based in Jakarta, Indonesia. Although the ethnic Chinese Riady family had close ties to the regime of President Soeharto in Indonesia, it also maintained very close business relationships with PRC Government interests and participated in major investments in China. One Lippo link in particular merits scrutiny—its multiple partnerships with China Resources. China Resources was owned entirely by the PRC Government and has been identified as an intelligence-gathering arm of the People's Liberation Army (PLA). According to John Huang, China Resources' parent company is the Ministry of Foreign Trade and Economic Co-

[564] Id. at 3.
[565] Id. at 3.
[566] Id. at 4.
[567] Brian Duffy and Bob Woodward, "FBI Warned 6 on Hill About China Money; Officials Say Lawmakers, Others Targeted in $2 Million Plan to Buy Influence," Washington Post, Mar. 9, 1997, at A1.

operation (MOFTEC).[568] MOFTEC is responsible for ensuring MFN status for China and reducing or eliminating United States-imposed restrictions on technical exports.[569]

The Justice Department and the committee received extensive evidence and testimony documenting James Riady's involvement in funneling illegal contributions to the DNC and State Democratic parties. In August 1992, Huang arranged for Riady to have a private limousine ride with then-Governor Bill Clinton, so Riady could tell Governor Clinton that he would raise $1 million for the Governor's Presidential campaign. Riady and Huang then identified Lippo employees and their spouses who could contribute to fulfill Riady's promise. At least $750,000 in illegal contributions from Lippo Group employees and their spouses were sent to the DNC in the 1992 election.[570] Huang gave Riady a detailed listing of Lippo employees' contributions and some of the employees bank accounts numbers so they could be reimbursed.[571] Huang was personally told by some of the Lippo employees that they received reimbursements.[572] The committee has bank records which show that the Lippo employees received reimbursements from various companies in amounts equaling their political contributions.

After the 1992 election, Riady continued to remain involved in U.S. politics. In 1995, he appealed directly to President Clinton to have his long-time aide John Huang hired at the DNC. During his year at the DNC, Huang would raise at least $1.6 million in illegal contributions, a substantial amount of it from individuals with ties to the Lippo Group. For example, Huang raised over $450,000 from Arief and Soraya Wiriadinata, an Indonesian gardener and his wife, who received the entire sum that they gave to the DNC from Hashim Ning, a long-time Indonesian business partner of the Riadys.

Despite the ample documentary and testimonial evidence implicating James Riady in illegal conduct, the Justice Department has failed to indict Riady. The department obtained John Huang's cooperation over a year ago, and gave Huang a reduced sentence in exchange for his testimony against Riady. Yet a year later, the Department still has not brought charges against Riady.

The Justice Department's failure to bring charges against Riady certainly does not spring from any lack of evidence against Riady. It is possible that the Department has been dissuaded from pursuing Riady because of his close relationship with President Clinton. President Clinton has never denounced James Riady since his role in the fundraising scandal was uncovered, and he has never demanded that Riady return to the United States to face charges. Rather, he has continued to embrace a man who has been caught trying to illegally subvert U.S. elections.

In September 1999, shortly after Huang finished providing evidence against Riady to the Justice Department, President Clinton saw Riady at an APEC conference in New Zealand. After he finished giving a speech, the President went down a ropeline, where

[568] FBI interview of John Huang, at 133 (Feb. 23–Mar. 26, 1999).
[569] Id.
[570] At the direction of the DNC, some of the Lippo contributions were sent to State Democratic parties.
[571] FBI interview of John Huang, at 20 (Oct. 25–26, 1999).
[572] FBI interview of John Huang, at 22–25 (Jan. 19–Feb. 10, 1999).

Riady was prominently placed. When he saw Riady, the President stopped, and they exchanged extended pleasantries.[573] The President apparently expressed little hesitation about meeting with Riady, who was a central target of one of the largest investigations in the history of the Justice Department.[574]

Recent news reports suggest that the relationship between James Riady and Bill Clinton is alive and well, and not limited to one friendly handshake in New Zealand. The Far Eastern Economic Review reported on October 5, 2000, that Riady has been telling associates that he has invited President Clinton to join the Lippo Board of Directors after he leaves office in 2001, and expects the President to accept his offer. While this report has not been confirmed, it would be a shocking development if the President went to work for a man who is the target of a massive Federal investigation, who has close ties to the PRC, and who has been caught trying to funnel illegal foreign money to United States political campaigns. It would be a sad commentary on the Attorney General's judgment if she clung to her supervision of the investigation of the President and Riady while, at the same time, Riady was planning to involve the President in business ventures—as he had done with Webster Hubbell and Jim Guy Tucker after both came under investigation.[575]

President Clinton's continued warm relationship with James Riady sends the wrong message to the Justice Department. When one looks at the videotape of President Clinton and Riady exchanging warm greetings in September 1999, it is easy to see why the Justice Department has not indicted him. This problem provides a clear example of why the Justice Department is entirely unsuited to conduct this investigation, and why an independent counsel was necessary.[576]

b. General Ji Shengde and Colonel Liu Chao-Ying

For almost 2 years, the committee's critics claimed that there was no evidence of a Chinese plan to influence United States elections. For these critics, it was not enough to show that John Huang and Charlie Trie had funneled hundreds of thousands of dollars into the elections from foreign businessmen with close ties to China. However, in May 1999, when Johnny Chung testified before the committee, he provided clear evidence that Chinese military of-

[573] After learning of the Clinton-Riady encounter, the committee requested any WHCA videotapes of the New Zealand event. Two WHCA videotapes filmed the event, but remarkably, both missed the encounter between the President and Riady. One camera stopped filming as soon as the President reached Riady's place in line. The other WHCA cameraman was focused on his WHCA colleague rather than the President meeting Riady. The committee obtained a third tape of the event from a private source which captured the entire encounter between Riady and Clinton. This tape showed that the President greeted Riady warmly.

[574] Notwithstanding the President's warm embrace of Riady, the White House refuses to produce any documents related to recent contacts between Riady and the White House. The committee asked the White House to produce documents about this meeting on Oct. 5, 1999, but the White House has failed to produce any such records.

[575] It should be noted that Riady has a history of providing money and jobs to his allies and the allies of President Clinton when they are under investigation. He provided $100,000 to Webster Hubbell when he was under investigation by the Office of the Independent Counsel, he has hired former Arkansas Governor Jim Guy Tucker to work for him in Jakarta, and he provided John Huang with $20,000 in cash during the same period of time that Huang was "cooperating" with the Justice Department.

[576] Attorney General Reno appointed an independent counsel for Whitewater because Jim McDougal was involved. There is every indication that Riady is just as close to President Clinton as McDougal. Why did the Attorney General not employ the same rationale in this case?

ficers had funneled money into United States elections. Despite this clear evidence, the Justice Department has also failed to bring charges against either Chinese military officer involved.

When he appeared before the committee, Chung testified that in August 1996, a business associate, Colonel Liu Chao-Ying, introduced him to General Ji Shengde, the head of Chinese military intelligence. Chung testified that General Ji told him:

> We like your President very much. We would like to see him reelected. I will give you $300,000 U.S. dollars. You can give it to the President and the Democrat party.[577]

Shortly after this meeting, General Ji provided Chung with $300,000 through his subordinate, Liu Chao-Ying. Chung funneled $35,000 of this money to the DNC.[578]

If the Justice Department was interested in determining the scope of the effort by the PRC to influence United States elections, the obvious first step would be to pursue General Ji Shengde and Colonel Liu Chao-Ying. However, there is little evidence that the Department has taken any firm steps to prosecute them. A list of Justice Department Task Force cases as of June 4, 1999, listed Liu Chao-Ying as a "Pending Inactive Investigation."[579] Consistent with the inactive state of the Department's investigation is that the administration has never called upon the Chinese Government to provide Liu or Ji to United States law enforcement.

Johnny Chung was one of the only witnesses to provide full and honest cooperation to the committee after he pled guilty. Chung provided clear evidence implicating high-level Chinese Government officials in illegal activity. It is inexplicable that the Department has not actively pursued this evidence. The failure, while one of many, is one of the most serious, and it sends a dangerous message China, and other governments that might seek to exercise improper influence in the United States electoral process.

c. Ng Lap Seng

Ng Lap Seng is an ethnic Chinese businessman who became wealthy through real estate ventures in Macau. According to one of Ng's business partners, Ng's success was due to the fact that he was chosen to be a "front man" in different investment projects for city and provincial governments in China.[580] Ng was also a member of the Chinese People's Political Consultative Conference (CPPCC), a Communist political group populated by some of the most powerful people in Asia, including Stanley Ho, Li Ka Shing, Henry Fok, and Hong Kong's Chief Executive Tung Chee Hua.[581] Ng also conducts business with Wang Jun, chairman of CITIC, and son of the former Vice President of China, Wang Zhen. Ng's largest project is the Nam Van Lakes development, a $600 million hotel

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[577] "Johnny Chung: Foreign Connections, Foreign Contributions," hearing before the House Committee on Government Reform, 106th Cong., 283 (May 11, 1999).

[578] Id.

[579] Listing of Task Force cases, June 4, 1999 (exhibit 14). It should be noted that the Justice Department recently attempted to withhold documents relating to Liu from the committee, claiming that she was part of an active investigation.

[580] Interview of George Johnson, Committee on Government Reform, at 2 (Feb. 13, 1998).

[581] Li Ka Shing is one of the wealthiest individuals in Asia. Henry Fok, who is very wealthy, endeared himself to the Communist Chinese by running guns into China during the Korean War.

and casino development co-owned by Edmund Ho Wah Hau, chosen by Beijing as the first chief executive of Macau, and Stanley Ho Hung Sun, who holds the monopoly on gambling rights in Macau. Barry Gold, senior vice president and head of the Asian project finance group in Hong Kong for Lehman Brothers, when told of details of the project by Trie, said it consisted of casinos and "well-known Chinese interests."[582]

In 1994, Ng and Trie formed a partnership in which Ng would give Trie money, and Trie would find investors for the Nam Van Lakes development. Over the next 2 years, Ng wired over $1 million to Trie. Trie used the money for all of his expenses, including making illegal contributions to the DNC and reimbursing the contributions of others. Ng obviously understood that Trie was using the wire transfers for political contributions because Ng attended a number of fundraising events with Trie. In October 1994, Ng was even credited by the DNC for giving a contribution, even though he was ineligible to give and he signed the check in Chinese. In October 1995, Ng had Charlie Trie and Ernie Green set up a dinner with Commerce Secretary Ron Brown and Ng's Asian business colleagues in Hong Kong. At the dinner, Secretary Brown told the crowd that they should do business with Trie in the United States and that Trie had a close relationship with President Clinton. Trie told the Asian businessmen to help the Democratic party with contributions.[583]

There was not even a pretense of an investigation of Ng Lap Seng by the Justice Department. In January 1998, the Justice Department indicted Charlie Trie and Antonio Pan, while both were hiding in Asia, for funneling Ng's money into the DNC. If the Justice Department was truly following a "bottom up" approach to the campaign finance investigation, Ng would naturally be the next target after Trie and Pan. However, in June 1999, the Task Force identified all of its investigations and Ng Lap Seng was not even mentioned. However, there is no indication that the Justice Department is actively pursuing Ng.[584] The fact that a foreign national could knowingly provide hundreds of thousands of dollars for illegal contributions in a U.S. Presidential campaign and completely escape scrutiny is unconscionable.

There is no excuse for the Justice Department's failure to investigate or indict Ng Lap Seng. Ng is in the same situation as James Riady. Both were wealthy overseas businessmen who used individuals in President Clinton's inner circle to funnel hundreds of thousands of dollars in illegal campaign contributions to the DNC. Press reports indicate that the Justice Department is at least working on an investigation of James Riady. There has been no indication that the Justice Department will ever investigate Ng Lap Seng for his illegal actions.

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[582] Interview of Barry Gold, Committee on Government Reform and Oversight, at 1–2 (Mar. 26, 1998).

[583] Interview of Yah Lin "Charlie" Trie, Committee on Government Reform, at 6 (Feb. 29, 2000).

[584] When Trie testified before the committee, the Department identified three active investigations relating to Trie: Ernie Green, Mark Middleton, and Jude Kearney. The committee was prevented from questioning Trie about these matters. The committee questioned Trie extensively about his dealings with Ng.

d. Tomy Winata

Tomy Winata is a fourth foreign national who illegally funneled money into U.S. elections, but there has not been any indication that the Justice Department intends to pursue his illegal conduct. Winata is an Indonesian billionaire with close ties to both the Chinese and Indonesian Governments. Winata served as the main business partner of the PLA and the largest shareholder in Satelindo, a major Indonesian telecommunications company. Winata was also a former business partner of the Riady family and Colonel Liu Chao-Ying. Winata gave Trie a total of $120,000 in wire transfers and between $10,000 and $20,000 in cash each time Winata visited the United States.

In late 1995, Winata told Trie he wanted a private, one-on-one meeting with President Clinton. Trie could not obtain a private meeting, but as an alternative, Trie invited Winata to sit next to President Clinton at the February 19, 1996, fundraiser at the Hay Adams Hotel in Washington, DC. Winata declined the invitation but sent two of his employees instead. Trie requested that Winata send money for the event, so Winata sent $200,000 in Bank Central Asia travelers checks with his employees.[585] Trie used a portion of the $200,000 to reimburse contributors illegally for the February 19, 1996, event.[586] Trie testified that Winata knew he was going to use the travelers checks to pay for tickets to the fundraiser.[587]

Although Winata's true involvement in illegal political contributions was not known until Trie began cooperating, Winata's name had already surfaced through the wire transfers sent to Trie's bank accounts. Despite Trie's testimony, though, there is no indication that the Justice Department intends to indict Winata for knowingly funneling illegal contributions to the DNC.

3. Mark Middleton, Assistant to the White House Chief of Staff

Mark Middleton is the highest-ranking Clinton administration official to invoke his fifth amendment right against self-incrimination in the fundraising scandal. The committee found that Middleton was heavily involved with several of the central figures under investigation. No other White House official had as much contact with John Huang, James Riady, and Charlie Trie as Mark Middleton. Their contacts continued after Middleton left the White House. While on his own, Middleton courted wealthy foreign businessmen and offered access to the White House and the DNC.

During the time Middleton worked in the White House, he served as a key contact with Huang and Riady. White House records showed numerous visits and telephone calls between Huang, Riady, and Middleton. Middleton also served as a conduit of information between the White House and Huang and Riady. Middleton met with Huang and Riady three times in the week before Riady paid Hubbell $100,000. Middleton also hand-delivered a "get well" note from President Clinton to Hashim Ning when he fell

[585] Hearing on "The Role of Yah Lin "Charlie" Trie in Illegal Political Fundraising, Part I," hearing before the Committee on Government Reform, 106th Cong., 37–39 (Mar. 1, 2000) (preliminary transcript).
[586] Id. at 39–40.
[587] Id. at 39.

ill in the United States. In gratitude, Ning's daughter, Soraya Wiriadinata, and her husband Arief gave $455,000 to the DNC. After leaving the White House, Middleton was paid $12,500 a month by a Riady company.

Middleton also served as Charlie Trie's main White House contact. Trie and Ng Lap Seng would regularly meet with Middleton in the White House when they came to Washington. When Middleton left the White House, he traveled to Asia twice with Trie. Middleton openly used his former position in the White House to impress potential Asian clients. During the second trip with Trie, Middleton discussed getting $15 million for President Clinton's reelection with the treasurer of Taiwan's ruling party.[588]

After leaving the White House, Middleton amassed an impressive array of wealthy foreign clients. However, there is no evidence that Middleton provided any work for his clients beyond facilitating White House visits, meetings with Clinton administration officials, or meetings with the chairman of the DNC. On several occasions, Middleton made it blatantly clear to White House and DNC officials that his foreign clients were prepared to make substantial political contributions or trade access for cash.

The Justice Department has been investigating Middleton for 4 years. It has had Charlie Trie's cooperation with the investigation for over a year. Nevertheless, it has still failed to bring charges against Mark Middleton, one of the central figures in the scandal. Moreover, there is every indication that the Department is not even conducting a thorough or aggressive investigation of Middleton.[589] Such failures indicate that the Department is not interested in learning what happened in the 1996 elections.

4. Ernie Green

The committee's investigation of the activities of Charlie Trie involved a review of Trie's relationship with Ernest G. Green, who is also a close friend of President Clinton. Green and Trie had a close personal and business relationship, and they used their political contacts in order to further their business goals. They also made two trips to Asia, ostensibly for business reasons, to court prospective clients with invitations to events and fundraisers with top administration officials. In October 1995, in Hong Kong, Green, Trie, and Ng Lap Seng hosted a dinner of Asian businessmen with Commerce Secretary Ron Brown.[590] In February 1996, Trie accompanied Wang Jun, one of the most prominent Chinese businessmen, to a White House coffee.[591] On the same day, Green contributed $50,000 to the DNC, the precise amount Trie was instructed to pay to attend a coffee.[592] Green and Trie accompanied Wang to meetings in Washington and New York. Green also used his White

[588] John Huang said Middleton told him about the $15 million offer and Huang told Middleton to be "very careful." FBI interview of John Huang, at 30 (Feb. 23–Mar. 26, 1999).

[589] As explained above, the Department did not even obtain the records on Middleton from the White House, where he worked for 2 years, until March 2000.

[590] See H. Rept. No. 105–829, at 1370–1373.

[591] Guest list for Feb. 6, 1996, White House coffee.

[592] DNC check tracking form for Ernie Green, DNC 3064259; hearing on "The Role of Yah Lin "Charlie" Trie in Illegal Political Fundraising, Part I," hearing before the House Committee on Government Reform, 106th Cong., 266 (2000) (preliminary transcript).

House contacts to help Trie land a Presidential appointment on an international trade commission.[593]

Green was deposed by the House Government Reform Committee and the Senate Committee on Governmental Affairs. When new evidence contradicting Green's testimony was discovered, Green was deposed a second time by this committee. On March 12, 1999, the committee referred Green's case to the Justice Department, asking the Department to determine whether Green perjured himself in his depositions.

In his depositions, Green attempted to minimize his relationship with Trie. Green also denied that he made any conduit contributions or that his $50,000 contribution was connected in any way to Trie and Wang Jun's attendance at the White House coffee.[594] Perhaps more significantly, Green claimed that he never received any money from Trie.[595] The committee discovered irrefutable evidence that Green did receive at least $2,000 in travelers checks from Trie. In addition, Green's bank records showed numerous cash deposits into separate bank accounts at the time of Green's major contributions to the DNC.[596] Green could not explain the source for the over $30,000 in cash he deposited.[597] Green also denied that two cash deposits of $3,500 and $2,500 were connected to his $6,000 contribution to the DNC around the same time.[598] The committee's referral clearly spelled out that, at a minimum, Green gave false statements about whether he received any money from Trie, and perhaps, misled the committee about his other contributions to the DNC.

Shortly after the committee's referral, around May 1999, Trie began cooperating with the Justice Department. The Justice Department attempted to shield from the committee or the public any information Trie gave about Green under the guise that Green was the subject or target of an ongoing criminal investigation. In November 1999, the committee immunized Trie, but was told by the Justice Department that questions relating to Green, along with Mark Middleton and Jude Kearney, were off limits. The basis for the Department's decision was that their investigation of Green was very serious and would be resolved in the near future. The committee was told that if Trie testified publicly about Green, it could jeopardize any case against Green.

Through disclosures by the Justice Department and Trie, the committee subsequently learned that Trie did indeed provide incriminating information about Green. Not only did Trie's statements affirm the validity of the committee's referral against Green, but Trie also provided additional information that contradicted other sworn statements by Green regarding both his political con-

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[593] Memorandum for the President from Bob J. Nash, Nov. 22, 1995, EOP 002216–002223. Ernie Green was listed as Trie's sponsor for appointment to the Commission.

[594] Deposition of Ernest G. Green, Committee on Government Reform and Oversight, Dec. 17, 1997, at 210–214.

[595] Deposition of Ernest Green, Senate Committee on Governmental Affairs, June 18, 1997, at 191–192.

[596] In fact, the $2,000 in travelers checks that Green received from Trie was right in the middle of the time that Green was making all of these cash deposits, February and March 1996.

[597] Deposition of Ernest G. Green, Committee on Government Reform and Oversight, Sept. 25, 1998, at 20–30.

[598] Id. at 12–14.

tributions and his role in arranging high-level political meetings for Trie.

The committee recently discovered that the Justice Department had not even requested Green's records from either the White House or the Commerce Department until March 24, 2000, 1 full year after the committee's referral.[599] Therefore, in February 2000, when the Justice Department told the committee that it was about to take action on Green, and prevented the committee from questioning Trie about Green, it had not even taken the basic first step of getting Green's documents from the White House or the Commerce Department. At a hearing on July 20, 2000, the Justice Department was asked to explain the anomaly between their words and their actions:

> Mr. LATOURETTE. Let me ask you this, and I think I already know the answer, but you know what? I'm going to ask it anyway. Are Mark Middleton and Ernie Green under active investigation by the Department of Justice?
>
> Mr. CONRAD. I couldn't comment on that.
>
> Mr. LATOURETTE. Well, the reason I ask you that question, we were specifically asked by the Department of Justice to avoid talking about Ernie Green during the Charlie Trie hearing, if I remember correctly. Because we were advised that there was an ongoing criminal investigation that the Justice Department was very excited about.
>
> But I have to tell you that the level of excitement is puzzling to me, and I assume to my colleagues, when we find out that what you're so excited about you're not even requesting records about from the White House. And again, I don't like this backseat driving business. It makes me very uncomfortable, because I'm sure as career prosecutors, you do an excellent job . . . Mr. Robinson, do you want to say something?
>
> Mr. ROBINSON. I would like to make one comment that I hope will continue to be the case in our interaction on parallel matters with the Congress. To the extent that we have conversations with counsel for committees about the appropriate scope of inquiry into witnesses, we don't make those, we don't have those conversations with the expectation that they will be publicly disseminated. And the Code of Professional Responsibility prohibits us from doing that.
>
> Mr. LATOURETTE. Yes, and I appreciate that chastisement, but I will tell you that the committee also has an oversight responsibility. And what you're asking us to do is say, trust us. But then when we get documents from the White House, we find out that stuff we gave you a year and a half ago, you haven't acted on[.][600]

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[599] Subpoena to the Custodian of Records, Executive Office of the President, Mar. 24, 2000 (exhibit 30); subpoena to the Custodian of Records, U.S. Department of Commerce, Mar. 24, 2000 (exhibit 31).

[600] "Has the Justice Department Given Preferential Treatment to the President and Vice President," hearing before the House Committee on Government Reform, 106th Cong., 121–123 (July 20, 2000) (preliminary transcript).

The comments by Congressman LaTourette summarize the committee's conclusions about the Justice Department's handling of the Green case. The committee referred the matter to the Justice Department in March 1999, and it is clear that the Justice Department took little action on the referral, failing to subpoena records on Green from the White House or the Commerce Department until the following year. The Department's failure to act quickly on the referral is puzzling, given the clear evidence of perjury prepared by the committee. Even more puzzling though, is the fact that the Justice Department continued to delay action on Green, even after Charlie Trie presented them with substantial evidence of perjury and other crimes committed by Green. The Justice Department's failure to pursue the case against Green vigorously creates the appearance that the Justice Department is hesitant to pursue ever the clearest criminal case against individuals who are prominent Democrats and friends of President Clinton.

5. Keshi Zhan

The Justice Department lost another investigative opportunity by failing to do a thorough investigation of Keshi Zhan, an associate of Charlie Trie. Zhan was initially thought to have been merely Trie's assistant and hostess in Washington, DC. She initially gained notoriety in the campaign fundraising investigation for having made a $12,500 contribution to the DNC on her annual salary of $22,408 as an Arlington County records clerk. However, as the investigation developed, it became clear that Zhan had a serious role in illegal activity.

As the committee developed documentary and testimonial evidence, it became clear that Zhan was close to Ng Lap Seng, Charlie Trie's benefactor, who provided Trie with over $1 million, much of which was directed into political campaigns. In addition, Zhan's father was a high-ranking professor of linguistics at a Chinese university, suggesting that her family had some political influence in China. Finally, Zhan was implicated in facilitating conduit contributions on behalf of Trie.[601] This activity was significant, because the Justice Department has a policy of refusing to prosecute mere conduit contributors. However, it does prosecute individuals who facilitate conduit contributions.

The Justice Department has failed to prosecute Zhan, despite a surfeit of evidence against her. The Senate Committee on Governmental Affairs immunized Zhan in 1997, and attempted to take her deposition. However, it soon became clear that Zhan was lying about even the simplest matters. Therefore, the committee closed her deposition. Zhan could be prosecuted for false statements made during the course of this deposition. However, the Department has declined to do so. Moreover, it appears that the Justice Department is failing to pursue Zhan for any of her illegal activities. A list of the status of Justice Department campaign fundraising investigations, which was inadvertently released by the Justice Department,

[601] In his interview with committee staff and his testimony before the committee, Trie cited a number of cases where Zhan arranged conduit contributions with individuals he did not even know.

listed the following information about Zhan: "Keshi Zhan (subfile of Trie, not being actively pursued)."[602]

By failing to pursue the Zhan investigation, the Justice Department has missed an opportunity to uncover valuable information about the campaign fundraising scandal. There is ample evidence to prosecute Zhan for a number of felonies, but the Department has simply decided, without explanation, not to investigate her.

6. The Justice Department Failed to Ask Key Questions of John Huang

The Justice Department approved plea agreements with John Huang and Charlie Trie in 1999. The plea agreements allowed Huang and Trie to plead guilty to lesser offenses than their conduct warranted in return for full cooperation with the Task Force's investigation. The benefit to the Justice Department was to learn the details of Huang and Trie's activities and to gain information about the involvement of others, particularly those above Huang and Trie.

By obtaining the summaries of the Justice Department interviews of Huang and Trie, and by questioning them extensively, the committee has learned that the Justice Department failed to question Huang and Trie about a number of significant matters. Most importantly, the Justice Department failed to question either Huang or Trie extensively about a number of connections between Trie, Huang, Riady, and Lippo Group employees. By failing to examine sufficiently the ties between them, the Justice Department allowed Huang and Trie to both claim that they were ignorant of each other's criminal activities.

a. The Justice Department Did Not Investigate Ties Between Trie, Huang, and the Lippo Group

Trie and Huang both state that they met around the summer of 1994.[603] When Huang moved to the DNC in late 1995, Huang and Trie began working together to solicit contributions. Both claim that since they had met after both were established with the Democratic party, they did not discuss the rules of fundraising.[604] Their claims are difficult to believe, in light of the evidence to the contrary. There is substantial evidence linking Trie to the Lippo Group and James Riady. This evidence may suggest that Trie was not acting on his own in funneling money to the DNC, but rather, like John Huang, was acting as an agent of the Lippo Group.

The money for Trie's first illegal contributions to the DNC in May 1994 came from Lucky Port Investments Ltd.[605] The owner of Lucky Port, Peter Chen, was a longtime Lippo employee and good friend of the Riady family patriarch, Mochtar Riady.[606] While at Lucky Port, the Riadys accepted Chen's offer to invest in a shop-

[602] Listing of Task Force cases, June 4, 1999 (exhibit 14).

[603] FBI interview of John Huang, at 41 (Jan. 19–Feb. 10, 1999); FBI interview of Charlie Trie, at 50 (June–October 1999).

[604] FBI interview of John Huang, at 4 (Feb. 5, 1999); FBI interview of Charlie Trie, at 51 (June–October 1999).

[605] Wire transfer from Lucky Port Investments Ltd. to Yah Lin or Wang Mei Trie, May 6, 1994.

[606] Interview of Yah Lin "Charlie" Trie, Committee on Government Reform, at 13 (Feb. 29, 2000).

ping mall in China with a former member of the PLA.[607] At the time of the wire transfer, Chen was still a Lippo employee as well. Antonio Pan, another longtime Lippo employee and future Trie assistant also worked at Lucky Port. Trie testified that this was the only money he received from either Lippo or anyone associated with the Riadys.[608] The Justice Department did not question Trie about the $100,000 from Lucky Port. While he admitted that this money came from the Lippo Group, Trie could not explain why he received this money, and denied that he was acting on behalf of the Lippo Group when he funneled the $100,000 from Lucky Port into the U.S. elections. In failing to question Trie about the $100,000 from Lucky Port, the Justice Department missed a valuable piece of evidence linking Trie and the Lippo Group.

The Justice Department missed other important leads linking Trie and Lippo. In documents seized from Trie's home by the FBI, one undated document, in Chinese, was entitled, "Cooperation Opportunities with James Riady." The document lists five separate business ventures involving Lippo and the Riadys. Trie strongly denied his own involvement in any of the projects listed in the document, which he said was authored by either Peter Chen or Antonio Pan.[609] However, Trie admitted that one of the Lippo business projects in the documents did involve him:

> 5. L.A. Bank Stocks: Maybe a part of the L.A. bank stock can be sold to Wang Jun. Knowing you have good relations with Wang Jun, hoping you can be the intermediary. Proposing that Wang Jun buy the Lippo bank stocks with money as reinforcement to enter the U.S. market. You may also plan to get a part of the stocks and a director position. James is a fair person. He knows especially the long-term strategy and the advantage of using business partners. He knows you have good relations with China. Hope you may be able to help realize the above suggestions. He agrees with my proposal and is willing to work with you on the above items.[610]

Trie admitted that Lippo was asking him to contact Wang Jun, CITIC chairman, to invest with Lippo.[611] Although Trie denied any involvement with Lippo, he was clearly involved in negotiations of various business deals with James Riady. The Justice Department did not ask Trie about this document.

These pieces of evidence are important in determining the extent and nature of the relationship between John Huang and Charlie Trie. Considering Huang's claim that he was unaware of the fact that most of the contributions raised by Trie were illegal, it is important to obtain independent proof of the nature of the relationship between Huang and Trie. These pieces of evidence, which the

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[607] Interview of Carol Pan, Committee on Government Reform, at 1 (Dec. 1, 1998). Carol Pan, Antonio's ex-wife, worked at Lucky Port with Antonio and Chen.

[608] Hearing on "The Role of Yah Lin "Charlie" Trie in Illegal Political Fundraising, Part I," hearing before the House Committee on Government Reform, 106th Cong., 236 (Mar. 1, 2000) (preliminary transcript).

[609] Id. at 228–235.

[610] Undated document entitled, "Cooperation Opportunities with James Riady" (exhibit 32).

[611] Hearing on "The Role of Yah Lin "Charlie" Trie in Illegal Political Fundraising, Part I," hearing before the Committee on Government Reform, 106th Cong., 231–235 (Mar. 1, 2000) (preliminary transcript).

Department did not question Trie about, suggest that the relationship between Trie and Huang was close, and raise the possibility that they were working together to raise illegal funds in 1996.

b. The Justice Department Did Not Investigate the 1991 DNC Trip to Asia

The Justice Department did not ask Huang any questions about a DNC trip to Asia in December 1991. This was an important area to explore because in 1996, the DNC claimed the two main fundraisers on the 1991 Asia trip, John Huang and Maria Hsia, duped them in 1996 by funneling illegal conduit and foreign contributions into the DNC. But in 1991, the DNC asked both Huang and Hsia to solicit political contributions in Asia.

A review of the DNC documents for the trip show that the only purpose of the trip was fundraising. DNC documents about the trip focus almost exclusively on fundraising and whether enough money would be raised to justify the trip. Melinda Yee, who asserted her fifth amendment privilege against self-incrimination before the committee, wrote, "our goal is to bring $100,000 out of Taiwan and thus far, $50,000 is pledged."[612] Chairman Ron Brown commented that the planning for the trip, "looked good pending confirmation ($) from Waihee, Hsia, Huang."[613] Linda Rotunno, from the Finance Division of the DNC, summed up the DNC's view by saying, "as far as our goals are concerned, it would be a wasted trip if we could not finesse these new relationships into real money."[614]

The DNC recruited two fundraisers whose later tactics would haunt the DNC, John Huang and Maria Hsia, to bring in the money from Asia.[615] Maria Hsia's job was to identify contributors who were going to give the money to the DNC while they were in Taiwan.[616] John Huang agreed to host a high dollar event for the DNC where $50,000 would be collected from wealthy Asian bankers in Hong Kong who were either United States permanent residents or with United States corporate ties and even more money would be received when they returned to the United States.[617] According to Huang's resume, however, his only contacts with wealthy Asian bankers were the Salim Group and the Riady family, both of which were ineligible to contribute to the DNC.[618] The DNC noted Huang's commitment with dollar sign notations next to a lunch and dinner sponsored by the Lippo Group in Hong Kong.[619]

The DNC and its officials have not been forthcoming about what happened on the 1991 Asia trip. Although the DNC was able to produce many documents on planning the trip, it could not produce a single document detailing what actually occurred in Asia. The DNC officials involved in the trip refused to cooperate. Maria Hsia and Melinda Yee exercised their fifth amendment privilege against

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[612] Memo from Melinda Yee to Brian Foucart, Nov. 15, 1991, DNC 0828876 (exhibit 33).

[613] Memo from Melinda Yee to RHB [Ronald H. Brown], Oct. 22, 1991, DNC 0828865 (exhibit 20).

[614] Memo from Linda Rotunno to Cheri Carter, Oct. 25, 1991 (exhibit 34).

[615] It should be noted that the DNC was very familiar with Huang, Hsia, and James Riady by this point because of their high-profile as fundraisers in California for the DSCC.

[616] Id.

[617] Id.; memo from Melinda Yee to RHB [Ronald H. Brown], Oct. 15, 1991 (exhibit 19).

[618] The Riady family also paid all of the DNC's hotel, meal, and transportation expenses in Hong Kong.

[619] Schedule for Asia/Hawaii, DNC 0828853–58 (exhibit 21).

self-incrimination and have refused to cooperate with the committee. Alexis Herman, who documents show was very involved in the trip, cannot even recall it happening.[620] Linda Rotunno does not recall writing the memorandum which stated that the trip would be a waste unless the DNC got contributions from it.[621] John Huang disavowed any involvement in the DNC's expectation that he would solicit contributions in Hong Kong. Huang testified before the committee that despite all of the DNC documents showing that he committed to raising money in Hong Kong, he did not ask for any money or contributions from anyone. Huang did admit that Melinda Yee proposed that Huang would raise $50,000 in Hong Kong, but Huang denied he did so.[622] Huang claimed that he told the DNC that he could gather businessmen to greet Chairman Brown in Hong Kong, but Huang denied that the dollar signs next to the Lippo Group lunch and dinner signified a fundraising event.[623]

The 1991 DNC trip to Asia was the first chapter in the DNC's long and sordid relationship with foreign money. By investigating this trip, the Justice Department could have learned more about the relationship between Huang, Maria Hsia, and the DNC. However, it apparently failed to ask Huang any questions about this matter. This failure cannot be explained.

c. The Justice Department Did Not Investigate Huang's Demands for Political Jobs in Exchange for Contributions

The Justice Department did not question Huang about his role in a September 27, 1993, fundraiser in Los Angeles with Vice President Gore. By 1993, Huang had established himself as one of the dominant players in the California Asian American fundraising community. The DNC, cognizant of Huang's importance, arranged to meet with Huang, who was described as the Chair of the local fundraising committee.[624] DNC staff went to Huang's office at the Lippobank, and Huang agreed to raise $200,000 for the September fundraiser with Vice President Gore.[625] During the meeting, several others on Huang's fundraising committee stated that they felt hesitant about committing to contribute without a guarantee that there would be political appointments of Asian Americans by the time of the fundraiser.[626] For example, the DNC was told that March Fong Eu, who was later appointed Ambassador to Micronesia, was concerned that she had not yet been contacted about her appointment.

After the meeting, Huang contacted the DNC with a compromise offer and the reasons for his concessions in exchange for his cooperation with the fundraiser:

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[620] Interrogatories to Secretary Alexis Herman, May 7, 1998.

[621] Deposition of Linda Rotunno, Mar. 19, 1998, at 70.

[622] "The Role of John Huang and the Riady Family in Political Fundraising," hearings before Committee on Government Reform, 106th Cong., 194 (Dec. 17, 1999) (preliminary transcript).

[623] Id. at 194–197.

[624] Undated memorandum from Vida Benavides to Laura Hartigan (exhibit 35).

[625] Id.; interview of Darius Anderson, Committee on Government Reform, Jan. 21, 2000, at 1.

[626] Undated memorandum from Vida Benavides to Laura Hartigan (exhibit 35).

John Huang's Proposal

(1) downpayment commitment of $100,000.

* * * * *

(3) commit 300–400,000 dollars at a later event once significant appointments are named and if the administration are useful of APA's during the APEC Conference in Seattle.

* * * * *

Reasons:

* * * * *

(3) Since John Huang himself is up for an appointment, his early commitment of 200,000 would be perceived as a buy-off.

(4) These fundraisers would like to help in the future by going back to their fundraising base but would look foolish if they themselves commit to give without a guarantee of a possible appointment. Their own credibility will be questioned . . . regardless if their [sic] "activist" or not. WE should not assume that APA fundraisers lack political integrity.

SOLUTIONS

(1) Accept John Huang's proposal, on the condition that the next fundraiser will raise $900,000 to a total of $1 million dollars when Clinton comes to LA in December

* * * * *

These must happen:

(1) appointments by December.[627]

One month after Huang laid out his proposal, the White House signaled their acceptance of his terms. March Fong Eu wrote Huang to inform him that she learned the White House was set to announce her ambassadorship to Micronesia.[628] On the top of the letter, it says, "copy to JTR," meaning James Tjahaja Riady. Huang admitted that this was the sign he was waiting for from the administration.[629]

Huang kept his promise and funneled over $120,000 in illegal foreign and conduit contributions through Lippo employees and Lippo companies to the September 27, 1993, fundraiser after receiving March Fong Eu's letter. In December 1993, Huang funneled another $156,000 to the DNC for a fundraiser with President Clinton in furtherance of Huang's promise for additional money.

The Justice Department never asked Huang about his negotiations with the DNC for the September 27, 1993, fundraiser. In his testimony before the committee, Huang admitted that he offered to exchange contributions for political appointments with the DNC,

[627] Undated memorandum from Vida Benavides to Martha Phipps, et al., (exhibit 36).

[628] Letter from March Fong Eu to John Huang, Sept. 23, 1993, HHH 3164 (exhibit 37).

[629] "The Role of John Huang and the Riady Family in Political Fundraising," hearings before the House Committee on Government Reform, 106th Cong., 208–209 (Dec. 17, 1999) (preliminary transcript).

although Huang denied that he said his commitment of $200,000 could be perceived as a payoff for his own appointment.[630]

E. THE JUSTICE DEPARTMENT FAILED TO PURSUE THE KANSAS CONDUIT CONTRIBUTION SCHEME

> I believe there was a very orchestrated campaign from a high level to move money from Washington to Topeka.[631]—*Henry Helgerson,* D–Wichita.

One of the more interesting episodes in the 1996 election cycle involved an apparently illegal conduit contribution scheme by the Democratic National Committee to funnel more than a third of a million dollars to the Kansas Democratic party.[632] The motivating factor for this scheme appears to have been a Kansas statute that limited the amount of out-of-state non-Federal (soft) money that could legally be contributed to Kansas political parties.[633] In order for the national party to contribute large amounts of soft money to influence the two Senate and four House races in 1996, the Kansas statute had to be circumvented. This resulted in a particularly clever—but relatively transparent—effort to funnel money to the State Democratic party through a number of State political parties, Kansas County parties, and individual Kansas legislators. According to then-DNC General Counsel Joseph Sandler, "[p]robably people from the White House would have been involved[.]"[634]

Although these apparent violations of law[635] by the DNC were reported in the media, and although the committee brought these violations to the attention of the Department of Justice, the Attorney General made no effort to look into the allegations. It is troubling that while Attorney General Reno's Justice Department conducted a 3 year investigation of contributions to Republicans in Kansas that originated with the Triad organization,[636] she took no steps to look at the obvious pattern of conduit contributions that originated with the DNC and that ended up in Topeka. This uneven enforcement of the law provides further indication that Attorney General Reno should not have retained supervision of the in-

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[630] Id. at 207–208 (1999).

[631] Dave Seaton, "Local Demos say they felt need to repay state party: Legality of transfers questioned," Winfield Daily Courier, Oct. 9, 1997 at 39 (exhibit 38).

[632] The chart at the end of this section provides a one-page overview of the DNC's conduit contribution scheme.

[633] Kan Stat. Ann. § 25–4153 (1999).

[634] Transcript of deposition of Joseph E. Sandler, former general counsel, Democratic National Committee, by Committee on Government Reform at 150 (May 14, 1998) (deposition on file with committee). Sandler also indicates that "Harold Ickes, Doug Sosnik, Karen Hancox would have reviewed the budget." Id.

[635] Under Federal law, the treasurer of a political committee is required to file reports that disclose "the total amount of all disbursements, and all disbursements [including] . . . transfers to affiliated committees and, where the reporting committee is a political party committee, transfers to other political party committees, regardless of whether they are affiliated[.]" See 2 U.S.C. § 434(b)(4)(C). National party committees are further required under 11 CFR 104.9(e) to "report in a memo Schedule B each transfer from their non-federal account(s) to the non-federal account(s) of a state or local party committee." In other words, non-Federal or "soft" money is clearly covered by the Federal regulations governing disclosure. Also, 18 U.S.C. § 1001 prohibits false reports to the Federal Election Commission.

[636] The committee was provided a list of Justice Department campaign finance cases. As of the date of the list, June 4, 1999, the Triad investigation was listed as "ongoing," even though there appears to be no serious suggestion that the Triad organization did anything illegal with respect to Kansas political contributions. The Justice Department list contains no reference to the DNC scheme to funnel soft money to Kansas, and the witnesses interviewed by this committee had not been contacted by the Justice Department at the time of their interview. See listing of Task Force cases (June 4, 1999) (exhibit 14).

vestigation of her own political party. Her failure to conduct even a cursory investigation pursuant to laws currently on the books also provides support to political efforts to make campaign finance reform more of an issue than it might otherwise be.

The decision by the Justice Department not to investigate the Kansas matter is particularly troubling because a line appears to have been drawn by the Attorney General and her staff: conduit schemes involving the likes of Charlie Trie, John Huang and Johnny Chung were to be investigated, but a conduit scheme involving the Democratic party was to be ignored. In many respects, one would think that a scheme to circumvent campaign financing laws by one of the two major political parties would be accorded at least as much—if not more—importance than efforts by individuals who might be acting at their own behest. The Justice Department's decision is even more curious because the individual who appeared to be the DNC's liaison in Kansas came to Washington immediately after the 1996 election and was given a job on the staff of Democratic Senate Minority Leader Tom Daschle.[637]

1. The Elements of the Conduit Contribution Scheme

In a 2 month period prior to the 1996 election, the Kansas Democratic party or its affiliates received over a third of a million dollars in contributions that appear to have originated in Washington, DC, with the DNC or affiliated organizations. The contributions were derived from the following sources:

- A total of $254,950 was received during the months of September and October from 17 State political parties. Each State gave either $14,990 or $15,000, the limit permitted according to Kansas statute. Prior to making these contributions, many of these States had an influx of funds from the national Democratic party in Washington, DC.
- A total of $56,900 was contributed to the State Democratic party or its affiliates by Kansas County Democratic parties. On September 30, 1998, 17 county parties were sent $5,000 by the Democratic Congressional Campaign Committee in Washington, DC. Within a matter of days, 13 of these counties had passed along most of this money to the State party.
- Kansas State Senate and House candidates also received money from the Democratic National Committee or its affiliates in Washington, DC and passed much of the money on to the State party. During the first week of August, for example, State Senate candidate Donald Biggs received a check for $1,000 from the Democratic Senatorial Campaign Committee in Washington, DC.[638] Biggs later received a memorandum dated September 3, 1996, from the Office of the Senate Democratic Leader in Kansas, Jerry Karr. It stated:

[637] The Justice Department appears to have provided great deference to Senator Daschle. Not only did they avoid investigating the Kansas matter when it was clear that a member of his staff would need to be questioned, they also avoided referring to the conduit contributions made to him in the Charlie Trie indictment. There appeared to be no rationale for the omission of these particular contributions.

[638] Letter from the Honorable J. Robert Kerrey, chairman, Democratic Senatorial Campaign Committee, to Donald Biggs, Kansas State Senate candidate (Aug. 1, 1996) (exhibit 39).

> The DSCC, in an effort to support state senate candidates, the Democratic Party, and their own candidates, will contribute $1,000 to each state Senate campaign our office designates. You may keep $200 *but then must turn around and contribute $800 to the Senate Victory Fund,* P.O. Box 1811, Topeka, KS 66601.
>
> * * * * *
>
> This money will help you (the $200) and it will help the Kansas Coordinated Campaign and all Democratic candidates as well.[639]

As this instruction indicates, there was a very clear and specific intent to use Kansas citizens as conduits to funnel money from Washington, DC to the State party.

a. Contributions from the DSCC Using States as Conduits

Why did States—particularly traditionally campaign cash-poor States like Maine, New Hampshire, Idaho, Wyoming and South Dakota—make large political contributions to Kansas? Tino Monaldo, who in 1996 was a lawyer for the Kansas Democratic party, would have the public believe Kansas "attracted these contributions from other DSPs [Democratic State Parties] because of the excellence of its coordinated campaign efforts, and the quality of its candidates."[640] The more honest answer, however, was provided by then-DNC General Counsel: "I'm aware that the DSCC requested State parties to make—other State parties to make political contributions to the Kansas Democratic Party."[641] Thus it was not the effectiveness of the Kansas Democratic party that drew unsolicited contributions; rather, it was on order from Washington, DC.

The following chart provides an overview of which States contributed to Kansas, when they received funds from Washington, and when the money was sent on to Kansas:[642]

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[639] Memorandum from Tressie Hurley to Donald Biggs, Kansas State Senate candidate (Sept. 3, 1996) (exhibit 40) (emphasis added).

[640] Letter from Tino Monaldo to Carol Williams, executive director, Kansas Commission on Governmental Standards and Conduct (Nov. 13, 1997) (exhibit 41).

[641] Transcript of deposition of Joseph E. Sandler, former general counsel, Democratic National Committee, by Committee on Government Reform at 152 (May 14, 1998) (deposition on file with committee).

[642] Appendix 2 provides supporting documentation for the charts that follow.

States responsible for sending $15,000 or $14,990 to Kansas	Date State received money from DSCC and date received by Kansas	Amount sent by the DSCC to States near in time to the contribution to Kansas	Entity
Idaho	9/10/96 → 9/17/96	$64,464	DSCC
Florida	9/29/96 → 9/27/96	40,000	DSCC
Nebraska	10/8/96 → 9/30/96	50,000	DSCC
Arkansas	[643] → 10/3/96		
Maine	10/2/96 → 10/4/96	15,000	DSCC
Colorado	[644] → 10/4/96		
Georgia	[645] → 10/7/96		
Louisiana	[646] → 10/16/96		
Alabama	10/15/96 → 10/16/96	15,000	DSCC
Wyoming	10/15/96 → 10/18/96	15,000	DSCC
South Carolina	[647] → 10/18/96		
California	10/18/96 → 10/18/96	35,000	DSCC
South Dakota	[648] → 10/18/96		
New Hampshire	10/17/96 → 10/21/96	18,750	DSCC
Minnesota	10/23/96 → 10/25/96	17,500	DSCC
Michigan	10/29/96 → 10/25/96	16,500	DSCC
Montana	10/25/96 → 10/30/96	25,000	DSCC

As seems fairly clear from the above chart, it would be very surprising indeed if the contributions to Kansas were not coordinated. It takes a significant suspension of credulity to conclude that 17 States suddenly took it upon themselves to make large contributions to Kansas.

Furthermore, there are other indications that these contributions were unusual. For example, the Maine Democratic party amended an earlier financial disclosure report required by Maine and communicated the following to the State Commission on Government Ethics: "The committee mistakenly did not report a contribution to the Kansas Democratic party. The disbursement was made from an account that is normally inactive. In fact, this was the only disbursement from the account this year." [649]

b. Contributions from the DCCC Using Kansas Counties as Conduits

Seventeen county parties were sent $5,000 by the Democratic Congressional Campaign Committee (DCCC) on September 31, 1996. Within days, 13 of the recipients made substantial contributions to the Kansas Democratic party. Most of these contributions were for the same amount. This is remarkable, given that the average total annual receipt for the 13 counties was $19,816. The following chart provides an overview of which Kansas counties received contributions from Washington, and what they did with the money:

[643] Arkansas reporting requirements are such that this information was not recorded.
[644] The committee was unable to obtain information for Colorado filings after June 28, 1996.
[645] The committee was unable to obtain information for Georgia filings after May 9, 1996.
[646] There were numerous large donations from the DNC during the relevant time period.
[647] Records show that South Carolina received only $1,140 from the DNC in 1996.
[648] South Dakota's records provided no dates for contributions received from the DNC.
[649] Letter from Kevin J. Mattson, executive director, the Maine Democratic party, to Marilyn Canavan, Commission on Governmental Ethics (Nov. 4, 1996) (exhibit 42).

County*	Amount sent to State party	Date sent to State party	Total county receipts for 1996 & percentage of income derived from the DCCC	
			Receipts	Percentage
Cowley	$4,750	10/8/96	$6,001	83
Douglas	$4,500	10/7/96	$28,081	17
Ellis	$4,500	10/4/96	$18,387.27	27
Harvey	$4,500	10/13/96	$7,463	70
Leavenworth	$4,500	10/9/96	$7,322	68
Marshall	$4,750	10/9/96	$5,590	89
Miami	$4,500	10/17/96	$5,500	91
Osage	$4,750	10/7/96	$5,200.98	96
Reno	$4,500	10/3/96	$18,435	27
Riley	$4,500	10/2/96	$10,216	49
Sedgwick	$4,250	10/4/96	$98,208	5
Shawnee	$4,500	10/3/96	$34,182	14
Wyandotte	$2,400	10/30/96	$13,031	38

*Thirteen county parties were sent $5,000 by the DCCC on September 31, 1996, and passed money on.

It is interesting to note that at least one of the counties appears not to have even asked for money from Washington. When asked why the Democratic Congressional Campaign Committee contributed $5,000 to Sedgwick county, former chairman of the Sedgwick County Democratic Central Committee Jim Lawing answered: "No we never solicited that gift . . . it never occurred to me or anybody else with the Sedgwick County Democratic Central Committee to go look for that source of funding at the national level.[650] In fact, prior to the 1996 election, records indicate that county parties provided almost no money to the State party. In 1992, $1,924.88 was passed along to the State party by all county parties combined. In 1994, $1,200 was passed along. In 1996, $60,650 was passed from county parties to the State party.

An invoice prepared by the Reno County Democratic Committee is illustrative of the close coordination between Washington and Kansas:

> 9–30–96 (Monday)—DCCC sends Reno County $5,000[651]
>
> Date Unknown—$5,000 arrives
>
> 10–3–96 (Thursday)—KCCC bills Reno County for $4,500[652]
>
> 10–3–96 (Thursday)—Reno sends check to Kansas Dem. party for $4,500[653]

Other Kansas Counties had so few financial transactions in 1996 that the DCCC contribution provided most of the county's annual revenue. For example, Osage County received a $5,000 check on September 30, 1996, and 7 days later sent $4,750 to the State party. Interestingly enough, Osage County revenue for the entire year—excluding the $5,000 from Washington—was $200.98. Miami County revenue for the entire year, excluding the $5,000 from Washington, was $500, and it passed $4,500 to the State party. But

[650] Transcript of deposition of Jim Lawing, former chairman, Sedgwick County Democratic Central Committee by Committee on Government Reform at 22–23 (Feb. 18, 1998) (deposition on file with committee).

[651] Reno County Democratic Central Committee's disclosure forms of disbursements (schedule C) (Aug. 10, 1996–Oct. 8, 1996) (exhibit 43).

[652] "KCCC" is the Kansas Coordinated Campaign Committee. See Invoice from Reno County Democratic Committee to KCCC (exhibit 44).

[653] Check from Reno County Democratic Central Committee to Kansas Democratic party (exhibit 45).

for the out-of-State benevolence, Marshall County revenue was only $590 for 1996, and Marshall County passed almost all of its windfall on to the State party. Although the DNC's then-General Counsel was aware that States were being asked to give money to Kansas, he was unaware of the arrangements with the counties. Indeed, in 1998 he testified "that comes as a surprise to me even today."[654]

c. Contributions from Washington Using Kansas Citizens as Conduits

In addition to the Memorandum from Tressie Hurley to Don Biggs that explains "[y]ou may keep $200 but then must turn around and contribute $800 to the Senate Victory Fund," the committee obtained a document titled, "Contribution Plan from DSCC in Washington." It states: "The DSCC, in an effort to support state senate candidates, the Democratic Party, and their own candidates, will contribute $500 to each state Senate campaign we designate. The campaign may keep $100 but then must turn around and contribute $400 to either the Kansas Coordinated Campaign or the Senate Victory Fund. . . . It will help the candidate ($100) but it will help the Kansas Coordinated Campaign and all Democratic candidates as well."[655]

The following chart details contributions received from Washington by State candidates and the amount they in turn forwarded to the State party:

	Received	Amount passed on	Date received and date disbursed
Senate Candidate:			
Don Biggs	$1,000	$800	8/5/96 → 9/5/96
Glenn Braun	$1,000	$800	8/1/96 → 8/6/96
Micheline Burger	$1,000	$800	8/5/96 → 8/29/96
Bill Campsey	$1,000	$500	8/1/96 → 8/5/96
Dana Crietz	$1,000	$800	8/8/96 → 8/8/96
Larry Daniels	$1,000	$800	8/1/96 → 8/9/96
Diana Dierks	$1,000	$800	8/6/96 → 8/6/96
Christine Downey	$1,000	$800	8/5/96 → 8/20/96
Paul Feliciano	$1,000	$800	8/3/96 → 8/12/96
Wade Garrett	$1,000	$800	8/6/96 → 8/9/96
Rip Gooch	$1,000	$800	7/30/96 → 9/11/96
Greta Goodwin	$1,000	$800	8/6/96 → 8/9/96
Richard Hazell	$1,000	$800	8/1/96 → 8/22/96
Anthony Hensley	$1,000	$800	8/20/96 → 9/24/96
Gerald Karr	$1,000	$800	8/6/96 → 8/13/96
Janis Lee	$1,000	$800	8/1/96 → 8/13/96
Janice McIntyre	$1,000	$800	8/30/96 → 8/5/96
Marge Petty	$1,000	$800	8/1/96 → 8/6/96
Pat Huggins Pettey	$1,000	$800	8/5/96 → 8/7/96
John Sears	$1,000	$800	8/1/96 → 9/1/96
Chris Steineger	$1,000	$800	8/12/96 → 8/12/96
Arthur Tannahill	$1,000	$800	8/1/96 → 8/5/96
Doug Walker	$1,000	$800	8/1/96 → 8/9/96
Allan White	$1,000	$800	8/1/96 → 9/8/96

[654] Transcript of deposition of Joseph E. Sandler, former general counsel, Democratic National Committee, by Committee on Government Reform at 155 (May 14, 1998) (deposition on file with committee).

[655] Document entitled, "Contribution Plan from DSCC in Washington—July 22, 1996" (exhibit 46).

	Received	Amount passed on	Date received and date disbursed
Sherman Jones (In his Schedule C Expenditures and Disbursements, it is clear that Jones gave the money on the day he received it. He also sent the money to the Kansas Senate Victory Fund, care of the "DSCC." The address is Topeka, but it is strange that DSCC is mentioned.).	$1,000	$800	8/5/96 → 8/5/96
Total Senate	$25,000	$19,700	
House Candidate:			
Judy Showalter	$500	$400	8/7/96 → 8/9/96
Joe Shriver	$500	$250	8/6/96 → 10/16/96
Troy Findley	$500	$400	8/5/96 → 8/14/96
Chris Gallaway	$500	$400	8/5/96 → 8/8/96
Jim Garner	$500	$250	8/6/96 → 8/8/96
Bob Grant	$500	$400	8/5/96 → 8/13/96
Jerry Henry	$500	$250	8/1/96 → 8/9/96
Tom Platis	$500	$250	8/5/96 → 8/20/96
Harry Stephens	$500	$375	8/6/96 → 8/20/96
Vince Wetta	$500	$500	8/1/96 → 8/14/96
Total House	$5,000	$3,475	
Total Senate and House	$30,000	$23,175	

One recipient of a check from Washington provided a rather odd answer to a relatively straightforward question. When asked: "[i]s it fair to say that no one told you that your receipt of this money was conditioned on your sending part or all of it to the Kansas Democratic Party or an affiliate," State senate candidate Doug Walker replied: "I'm not sure if the answer is yes or no."[656]

When State Representative Henry Helgerson was deposed by this committee, he indicated that his initial concern arose because "I was asked to accept money and then pass it on."[657] He testified: "I was asked to receive the check and to give $400 prior to receiving the check. That occurred before I received it. And then I received the check shortly after that."[658] When it was first suggested that he would receive money, and that he should pass it on after it arrived, Helgerson told the committee that he said to staff at the State legislature: "I think that's illegal, because I helped write the campaign finance law a few years ago. And I said that it sounded to me like it violated state law."[659] The concern over the legality of the contribution scheme was also expressed in a local Kansas newspaper:

> Brad Russell, an Olathe attorney who also ran for a Kansas Senate seat in 1996, confirmed that he was asked to pass part of a DNC donation along for use by the state party. Russell said he was contacted by a staffer in the Kansas Senate Minority Leader's Office, who indicated he

[656] Transcript of deposition of Douglas Walker, former Kansas State Senator, by the Committee on Government Reform at 40 (Feb. 23, 1998) (deposition on file with committee).
[657] Transcript of deposition of Henry Helgerson, member, Kansas State House, by the Committee on Government Reform at 22 (Feb. 19, 1998) (deposition on file with committee).
[658] Id. at 54–55.
[659] Id. at 22–23.

> would be receiving a check from the Democratic Senatorial Campaign Committee. Russell said the staffer encouraged him to send 20 percent of the donation along to the state party. "It sounded to me like that would be running afoul of the spirit, if not the out and out letter of the law," Russell said.[660]

As Helgerson and Russell's statements make clear, there were contemporaneous concerns about the instructions to act as a conduit for money that originated in Washington and was intended to go to the State party. When all the contributions are considered together, it is clear that the DNC and its affiliates were attempting to avoid Federal disclosure requirements.

2. By Funneling Money to the State Party, the DNC in Washington Was Able to Benefit Statewide Candidates and Get More for Each Dollar than if it had Simply Contributed to Candidates

Conduit contribution schemes are generally designed to circumvent disclosure requirements. The ultimate goals are usually to enable contributions in excess of those legally permitted, or to hide the true identity of the contributor. Often, these two goals coexist. In Kansas, State statute prohibited contributions of out-of-state soft money above certain levels. Therefore, a conduit scheme was necessary to allow any one donor to make sizable soft money contributions.

The purpose of the Kansas conduit scheme appeared to be twofold: (1) when re-directed to the State party, the money could be used for statewide candidates; and (2) by effecting an economy of scale at the State level, more could be obtained for a lesser expenditure.

a. The Money from Washington Benefited Statewide Candidates

Unfortunately, most Kansas Democratic party officials would not cooperate with the committee's investigation. Therefore, it was difficult to obtain straight answers to questions about how money that originated in Washington was used. However, it appears that once the money was funneled to the State party, it was not used exclusively for the benefit of the original recipient. For example, the State disclosure of the Reno County Democratic Central Committee stated that it was contributing $4,500 to the State party for "electoral targeting data, Voter data base and software survey research—Voter contact services GOTV."[661]

Another statewide Democratic party official provided an additional rationale for why it was important for the money from Washington to be redirected to the State party. He suggested:

> As you are aware, the Kansas Democratic Party through the KCCC is providing generic voter contact/GOTV activities on behalf of Democratic candidates all the way down

[660] Phil LaCerte, "Democrat party chair doubts any role in fund-raising scheme," Johnson County Sun, Sept. 26, 1997, at 69 (exhibit 47).

[661] Reno County Democratic Central Committee's disclosure forms of receipts and disbursements (schedules A and C) (Aug. 10, 1996–Oct. 8, 1996) (exhibit 48).

> the ticket. In addition we have provided field organizers and a state wide voter file.[662]

As this communication makes clear, if money sent to the county by the DNC in Washington was re-directed to the State party, the State party would be able to undertake initiatives that would be of benefit to candidates outside of the particular county that had initially received the money.

It is interesting to follow the paper trail that accompanied some of the individual contributions. For example, on September 30, 1996, DCCC Chairman Martin Frost sent $5,000 to Sedgwick County and said that he was pleased to support "your 1996 non-federal general election activities in the state of Kansas."[663] Two days after the check is dated, the County Chair thanked Representative Frost, remarking "please let the members of the DCCC know how helpful the $5,000 contribution will be in getting our base of support to the polls."[664] Four days after the DCCC check was dated in Washington, the Sedgwick County Democratic Central Committee sent a check for $4,250 to the Kansas Coordinated Campaign.[665] The person who signed the letter is the same person who recognized that the money would go further if spent by the State party, as opposed to the county party. The only possible conclusion that follows from this tortured series of exchanges is that the conduit scheme had been set up to achieve something that would not have been legal if the money had been initially sent to its ultimate destination.

b. The Kansas State Party Could Obtain a Greater Level of Services for the Same Expenditure than if Individual Counties or Candidates Spent the Money that They Received from Washington

One Kansas county official provided an insight into why there was benefit attached to taking the money sent by Washington to counties and individuals and funneling it to the State party. He suggested that the State party would be able to take care of responsibilities for mailing campaign-related information, and "do so on the state's mailing permit which apparently allowed for a little cheaper rate than we would get here."[666] State party executives refused to cooperate with the committee, and therefore did not answer questions about the precise benefits derived from bundling smaller sums of money for use in larger spending campaigns. Nevertheless, it is reasonable to infer that the very type on conduct ref-

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[662] Memorandum from Tom Beal, Democratic Coordination Campaign, to Doug Johnston (Sept. 24, 1996) (exhibit 49).

[663] Letter from the Honorable Martin Frost, chairman, Democratic Congressional Campaign Committee, to treasurer, Sedgwick County Democratic Committee (Sept. 30, 1996) (exhibit 50).

[664] Letter from Jim Lawing, county chair, Sedgwick County Democratic Central Committee, to the Honorable Martin Frost, chairman, Democratic Congressional Campaign Committee (Oct. 2, 1996) (exhibit 51).

[665] Letter from Jim Lawing, county chair, Sedgwick County Democratic Central Committee, to Tom Beal, Democratic Coordination Campaign (Oct. 4, 1996) (exhibit 52).

[666] Transcript of deposition of Jim Lawing, former chairman, Sedgwick County Democratic Central Committee by Committee on Government Reform at 30 (Feb. 18, 1998) (deposition on file with committee). There was also a suggestion that the "State Committee would do all of the necessary printing . . . at its own expense" Id. This, too, would permit an economy of scale unavailable without the subterfuge of the conduit contribution scheme.

erenced by Mr. Lawing is in fact the type of conduct that did take place.

Kansas State Democratic Party—Contributions Originating with the Democratic National Committee or its Affiliates in Washington, DC

State parties (Democratic parties in 17 states gave to the Kansas Democratic Party.)	County parties (Seventeen county parties were sent $5,000 on 9/30/98 by the DCCC. Thirteen sent the following amounts to the State party.)	Local candidates (29 candidates for the Kansas Senate received $1,000 each. 41 candidates for the Kansas House received $500 each.)
Idaho: $15,000	Cowley: $4,750	Senate
Florida: $15,000	Douglas: $4,500	24 Senate candidates sent $800 on.
Nebraska: $14,990	Ellis: $4,500	1 Senate candidate sent $500 on.
Arkansas: $15,000	Harvey: $4,500	
Maine: $15,000	Leavenworth: $4,500	House
Colorado: $14,990	Marshall: $4,750	10 House candidates sent a total of $3,475 to the State Dem. Party.
Georgia: $15,000	Miami: $4,500	
Louisiana: $15,000	Osage: $4,750	
Alabama: $14,990	Reno: $4,500	
Wyoming: $14,990	Riley: $4,500	
South Carolina: $15,000	Sedgwick: $4,250	
California: $14,990	Shawnee: $4,500	
South Dakota: $15,000	Wyandotte: $2,400	
New Hampshire: $15,000		
Minnesota: $15,000		
Michigan: $15,000		
Montana: $15,000		
Total: $254,950	Total: $56,900	Total: $23,175
	Total = $335,025	

F. THE JUSTICE DEPARTMENT FAILED TO INVESTIGATE LEAKS HARMFUL TO THE CAMPAIGN FUNDRAISING INVESTIGATION

The Justice Department's frequent and harmful leaks about the campaign fundraising investigation provided another clear sign of the investigation's failure. These leaks, which were often made at strategic times, greatly harmed the Justice Department's investigation, and strongly suggested that certain officials in the Justice Department did not want the investigation to succeed. The Attorney General has failed to investigate the vast majority of these leaks, and they have continued unabated, up to the present time. These leaks provide a clear example of why the Attorney General should have appointed an independent counsel—to remove the investigation from the politically biased officials at the Justice Department.

1. Leaks Regarding DNC Issue Ads

The day after Justice Department lawyers interviewed President Clinton regarding his role in crafting DNC "issue ads" promoting his Presidency, a senior official in the Justice Department leaked information relating to that interview. Judging from the quote provided to the Washington Post, that senior official clearly gave the reporter the impression that it was unlikely that the Attorney General would appoint an independent counsel:

> "Because this involves political speech, which clearly falls under the protection of the First Amendment, there is a relatively high threshold for determining what constitutes

> criminal behavior," said a senior Justice Department official. "There are not a lot of mysteries surrounding how the DNC ads were produced and financed, but whether anything crossed that threshold is another matter."[667]

The willingness of Justice Department staff to discuss ongoing investigations with the press should be contrasted to the Attorney General's repeated refusals to answer questions from this body—which is Constitutionally charged with overseeing the Justice Department. These types of leaks demonstrate that the Justice Department relies on the "open case" justification to keep damaging information from Congress, but casts that rationale aside when it wants to spread information favorable to the administration in the press.

2. Leaks Regarding the La Bella Memorandum

In July 1998, shortly after Charles La Bella, the head of the Campaign Finance Task Force, gave the Attorney General his memorandum concluding that she was required by law to appoint an independent counsel, details of that memorandum were leaked to the press. Again, unnamed "senior Justice Department officials" released sensitive investigative materials to several newspapers:

> Government sources, even those speaking anonymously, declined to provide specifics on La Bella's report, which runs more than 100 pages. But one source who had read the report said it represents "a fresh approach to everything he [La Bella] has seen" and called for legal conclusions and steps that had not been advanced earlier.[668]

> Officials familiar with Freeh's memo last winter and La Bella's current report said that La Bella's includes a much more extensive review of the evidence and makes a firmer conclusion that there are sufficient indications of wrongdoing by top officials to oblige Reno to seek an outside prosecutor. As with the Freeh memo, the basic argument is that top Democratic and White House officials conducted a systematic and deliberate effort to circumvent campaign finance laws setting limits on fund-raising and defining what constitutes a legal contribution.[669]

Another leak of the La Bella memorandum occurred in the pages of the Wall Street Journal. There, it was reported that the La Bella memorandum focused on potential wrongdoing by Harold Ickes:

> Charles La Bella's findings, presented in a lengthy memorandum to Ms. Reno, focus sharply on the fund-raising efforts of Harold Ickes, the former deputy White House chief of staff. They form the basis of Mr. La Bella's rec-

[667] John F. Harris and Roberto Suro, "Clinton: 1996 'Issue Ads' Passed Legal Test," the Washington Post, Nov. 10, 1998, at A6.

[668] Ronald J. Ostrow, "Report to Reno Urges Independent Counsel on Fund-Raising," Los Angeles Times, July 24, 1998, at A6.

[669] Roberto Suro and Michael Grunwald, "Independent Probe of '96 Funds Urged; Reno Noncommittal on Campaign Report," the Washington Post, July 24, 1998, at A21.

> ommendation that Ms. Reno seek the appointment of an independent counsel.[670]

While the Attorney General apparently tolerated public release of details from the La Bella memorandum by her senior staff, for almost 2 years she refused to provide the same memorandum to Members of Congress charged with oversight of the Justice Department.

3. Leaks Regarding the Gore Independent Counsel Decision

The Attorney General was also steadfast in refusing to comment on her decisionmaking process in concluding that an independent counsel was not necessary to investigate the fundraising scandal. However, her aides did not show similar reticence. Before the Attorney General reached a decision on appointing an independent counsel to investigate Vice President Gore's fundraising telephone calls, her aides were discussing her decisionmaking process with reporters, saying "they believe the Attorney General will reject accusations that there is specific and credible evidence of criminal wrongdoing[.]"[671] These types of leaks again show that Department officials did not hesitate to spread information favorable to the administration in the press.

4. Leaks Regarding the Huang Investigation

Justice Department staff also leaked information regarding the investigation of former DNC Finance vice-chair and Presidential appointee John Huang. On October 2, 1998, the Washington Post reported that the Justice Department was no longer seeking to prosecute John Huang:

> Now, instead of pressuring Huang to say what he knows about White House officials in exchange for immunity from prosecution, federal prosecutors are bargaining to get his testimony against Maria Hsia, a California fundraiser already under indictment who played a minor though controversial role in 1996, according to lawyers close to the case.
>
> * * * * *
>
> And a senior Justice Department official said that some investigators have concluded that Huang does not have information that would support the prosecution of the Democratic officials who received and spent the funds he raised or the White House officials who promoted his career in Washington.
>
> As a result, attention has turned to the possibility that Huang might be able to bolster the endangered case against Hsia.[672]

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[670] Brian Duffy, "Campaign Probe Looked at Ickes, Says La Bella," the Wall Street Journal, Aug. 3, 1998.

[671] Jerry Seper, "No Outside Counsel Likely in Probe of Gore Campaign Calls," the Washington Times, Nov. 24, 1998, at A3. See also David Johnston, "Reno's Aides Split on Merits of Need for Gore Prosecutor," the New York Times, Nov. 24, 1998, at A1.

[672] Roberto Suro, "Prosecutors' Approach to Huang Signals Shift in Campaign Probe," the Washington Post, Oct. 2, 1998, at A17.

This leak must be contrasted with the Attorney General's refusal to produce subpoenaed documents to this committee because she feared that the members of the committee would publicly disclose a "roadmap" to the investigation. Justice Department staff, however, felt free to disclose the Department's investigative roadmap regarding John Huang.

5. Leaks Regarding Johnny Chung

One of the most disturbing leaks to come from the Justice Department concerned the testimony of DNC fundraiser Johnny Chung. After Mr. Chung pled guilty to criminal charges and began cooperating with the Justice Department, details of his testimony were on the pages of the New York Times:

> A Democratic fund-raiser has told Federal investigators he funneled tens of thousands of dollars from a Chinese military officer to the Democrats during President Clinton's 1996 re-election campaign, according to lawyers and officials with knowledge of the Justice Department's campaign finance inquiry.
>
> The fund-raiser, Johnny Chung, told investigators that a large part of the nearly $100,000 he gave to Democratic causes in the summer of 1996—including $80,000 to the Democratic National Committee—came from China's People's Liberation Army through a Chinese lieutenant colonel and aerospace executive whose father was Gen. Liu Huaqing, the official and lawyers said.
>
> * * * * *
>
> A lawyer for Mr. Chung, Brian A. Sun, declined to comment on his client's conversations with investigators, citing his client's sealed plea agreement with the Justice Department. "I'm shocked that sources at the Justice Department would attribute anything like that to my client."[673]

Similar leaks appeared in the Washington Post:

> Democratic fund-raiser Johnny Chung has told Justice Department investigators that a Chinese military officer who is an executive with a state-owned aerospace company gave him $300,000 to donate to the Democrats' 1996 campaign, according to federal officials[.][674]

These leaks proved extraordinarily harmful to Johnny Chung. First, they were used by certain members of the Committee on Government Reform to attack Chung, and undermine his credibility at the very time that he was offering evidence tying senior Chinese officials to efforts to influence United States elections.

Second, and more importantly, these leaks led to threats to Chung's life. In May 1998, when these articles appeared, Chung was cooperating with the Justice Department investigation, and had recently been contacted by Robert Luu. Luu claimed to be an associate of Liu Chao-Ying, and suggested to Chung that if he re-

[673] Jeff Gerth, "Democrat Fund-Raiser Said to Detail China Tie," the New York Times, May 15, 1998, at A1.

[674] Roberto Suro and Bob Woodward, "Chung Ties China Money to DNC," the Washington Post, May 16, 1998, at A1.

fused to cooperate with the Justice Department, he and Liu would compensate Chung. Luu also subtly suggested that if Chung did cooperate with the Justice Department, Chung and his family could be in danger. Chung cooperated with the FBI in an effort to get a tape of Luu offering money in exchange for Chung's silence. The investigation was at its most delicate phase at the time the leaks appeared in the New York Times. Chung described the events that followed in his testimony before the committee:

> In the first week of May, I learned that the New York Times was doing a story that involved Liu Chao Ying and the $300,000. The FBI and I were very concerned that the news story would scare Mr. Luu off. My attorney and I tried to get the New York Times to kill the story. They refused. On the day before the story came out (May 15, 1998), I ended up going forward with a meeting with Luu and his attorney. I consulted with the FBI before I proceeded.[675]

After the article appeared, though, Chung and the FBI were not able to get Luu on tape threatening Chung, and it appeared that Luu had grown more cautious, and tried to distance himself from his earlier statements to Chung. However, Chung made it clear that the leaks from the Justice Department posed a serious threat to him:

> Mr. BARR. Do you consider that your life was in danger in 1998 because of the leaked story that appeared in the New York Times?
>
> Mr. CHUNG. That is correct, and I am still looking out my back every day.
>
> Mr. BARR. Did you leak that information in any way, shape or form to the New York Times?
>
> Mr. CHUNG. No. I don't leak that information to the New York Times.
>
> Mr. BARR. And would it also be accurate that your attorneys didn't leak that information to the New York Times?
>
> Mr. CHUNG. We tried to stop them.
>
> * * * * *
>
> Mr. BARR. Well, we would like the Department of Justice to find that out. It would be very interesting to find out, one, if they are concerned about it, because this is a very damaging leak that endangered a very important witness, yourself; and it may very well have come from the Department of Justice. So we would be very interested in that, as I am sure you would be.
>
> Mr. CHUNG. Mr. Congressman, that night, I had to go to a meeting with those people. My attorney told me, don't go. Maybe you are in trouble, in danger. I talked to my

[675] "Johnny Chung: Foreign Connections, Foreign Contributions," hearing Before the House Committee on Government Reform, 106th Cong. 266 (May 11, 1999) (statement of Johnny Chung).

> wife, I talked to my attorney again, and I talked to the FBI. I want to go forward because I want the truth to come out.[676]

The seriousness of this leak was apparent to the Justice Department as soon as it happened. However, it appears that the Justice Department has not undertaken any steps to determine where this information came from. Committee staff interviewed staff of the Justice Department Office of Professional Responsibility, who confirmed that as of October 27, 1999, this leak had not come under investigation by the Department.[677] While most of the leaks from the Justice Department simply send the message that the Department is politically biased and not interested in a thorough investigation, this leak sent an even more dangerous message. This leak showed that someone involved in the Chung investigation thought that press coverage in the New York Times was more important than Chung's well-being, or the success of a significant sting operation. It is deeply disturbing that the Justice Department has not investigated this leak.

6. Leaks Regarding the December 15, 1995, White House Coffee Videotape

In July 2000, the committee brought the December 15, 1995, White House coffee videotape to the attention of the Justice Department. The committee had subpoenaed the original White House videotape of the event, and with the superior audio quality of that tape, was able to confirm that on the tape Vice President Gore said "we oughta, we oughta, we oughta show Mr. Riady the tapes, some of the ad tapes." In a letter dated July 18, 2000, the chairman asked the Attorney General to investigate these statements by the Vice President. A CNN article the following day captured the response of the Justice Department: "a Justice Department source said it was unclear what was on the tape because of poor audio."[678]

This particular leak was troubling for two reasons. First, it constituted a comment on an ongoing investigation by a Justice Department staffer. When the committee called a number of Justice Department officials before the committee, and asked them questions about the tape, they refused to comment in any way. It is troubling that Justice Department staff would observe Departmental policy when called before Congress and presented with serious evidence, and then disregard that same policy when denigrating the evidence in the press. But even more telling, is that the leak makes the very point the committee was trying to impress upon the Justice Department. The committee possessed the original White House tape of the event, and only using that original

[676] Id. at 319–20.

[677] In December 1998, and again in August 1999, the committee drew the attention of the Justice Department to many of the leaks discussed in this section of the report. Committee staff met with Justice Department staff on Oct. 27, 1999, to discuss the Justice Department leak investigations. In that meeting, the Justice Department confirmed that of all of the leaks brought to their attention, they had only investigated the leaks of the Freeh memo and the decision-making relating to John Huang. In addition, the Department disclosed a leak of information relating to Charlie Trie.

[678] "Justice Says White House Coffee Tape Unclear; Hearings Scheduled Tuesday" (published July 19, 2000) <http://www.cnn.com/2000/ALLPOLITICS/stories/07/19/burton.gore/index.html>.

tape could the Justice Department reach a justifiable conclusion about the contents of the tape.

7. Leaks Regarding the Vice President Gore Special Counsel Decision

The most recent leak in the Justice Department's campaign fundraising investigation came in August 2000, when the Attorney General was considering whether to appoint a special counsel to investigate Vice President Gore. The day of the Attorney General's announcement, the New York Times reported that "[o]ne Justice Department official said that Mr. Conrad was alone in his recommendation. 'No other prosecutor in this matter thought that there should be a special counsel,' said the official, who spoke on the condition of anonymity."[679] However, just hours later, the Attorney General came forward to state that the "Justice Department official" cited in the Times had been lying: "today Bob Conrad has been tagged with being the only person in the Justice Department who thought that I should appoint a special counsel. Although I'm not going to get into who recommended what, I can tell you that that is not correct."[680]

The false leak regarding Robert Conrad's recommendation follows the pattern of Justice Department leaks. Information was spread by Justice Department staff, in contravention of Department policy, to minimize the seriousness of the investigation and to benefit the Clinton-Gore administration. The Attorney General did take the unusual step of making it clear that the leak was untrue. However, there is no sign that the Justice Department has taken any steps to find the source of this leak.

The leaks from the Justice Department's campaign fundraising investigation are harmful on many levels. First, they harm the Department's investigation. The leak of information about Johnny Chung endangered the investigation and Chung's life. The leak of information about John Huang provided him a signal that he was not a serious target of the Department's investigation. Second, the leaks have been made to minimize the investigation and support the Clinton administration. Recommendations for independent and special counsels have been trivialized, as has evidence of potential wrongdoing. Finally, these leaks have proven that the Justice Department cannot be trusted to carry out the campaign fundraising investigation. By keeping the investigation in the Department, where political appointees have had tight control over the investigation, the Attorney General has created an atmosphere where Department officials have the opportunity to undermine the case. By failing to investigate and punish the individuals responsible for the leaks, the Attorney General has sent the message that these kinds of leaks are permissible.

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[679] Neil A. Lewis and Don Van Natta, Jr., "Reno, Rejecting Aide's Recommendation, Declines to Name Counsel on Gore Fund-Raising," the New York Times, Aug. 23, 2000, at A19.

[680] News conference with Attorney General Janet Reno, Washington, DC, (Aug. 23, 2000).

III. The Justice Department's Political Interference with Congressional Oversight

A. Failure to Comply with the Committee's Subpoena for the Freeh and La Bella Memoranda

For 2½ years, the committee struggled to obtain copies of the Freeh and La Bella memoranda from the Justice Department. During that period of time, the committee issued four different subpoenas for the memos, in addition to a number of additional formal requests for the documents. Throughout the process, the Justice Department raised countless objections to complying with the committee's demands. The Justice Department's recalcitrance culminated in the committee's August 6, 1998, vote to hold the Attorney General in contempt of Congress. In May 2000, the Justice Department finally relented, and provided copies of the Freeh and La Bella memos, and a number of other memoranda relating to the Attorney General's independent counsel decisionmaking process, to the committee. The committee released those documents to the public a short time later, on June 6, 2000.

When the committee subpoenaed the Freeh and La Bella memoranda, the Justice Department raised a number of different objections to complying with the subpoenas. First, the Department claimed that the committee's demand would harm the campaign fundraising investigation. Then it claimed that the committee's action would harm the effective functioning of the Justice Department. Finally, it claimed that there was no legal precedent for the committee's action. However, when the Justice Department finally turned the documents over to the committee, it was clear that the Justice Department's objections had been utterly false and baseless. Indeed, the fact that the Campaign Financing Task Force supervisor Robert Conrad later wrote a memorandum suggesting a special counsel to investigate whether the Vice President committed perjury, lays to rest the argument that honestly held opinion is "chilled" by congressional oversight.[681]

The contents of the Freeh and La Bella memoranda were highly informative, and pointed out a number of shortcomings in the Task Force's investigation. However, almost as revealing as the memoranda was the way that the Justice Department handled the committee's demands for the memoranda. When the Justice Department was faced with a situation that was embarrassing and that pointed out the Attorney General's abysmal handling of the campaign fundraising investigation, it turned to mistruths, obfuscation, and outright obstruction of the committee's demands.

1. Why the Committee Needed the Freeh and La Bella Memoranda

In December 1997, the committee learned from press reports that the Director of the FBI had drafted a memorandum to the Attorney General recommending the appointment of an independent counsel to investigate potential violations of law relating to the 1996 Demo-

[681] The Attorney General, in her opposition to disclosure of the Freeh and La Bella memoranda, fails to understand that the only recommendations chilled by oversight are dishonest or malicious recommendations. A review of honestly held opinions will never prevent anyone from acting in good faith in the future.

cratic election campaign.[682] Similarly, in July 1998, the committee learned from press reports that Charles La Bella, the Supervising Attorney of the Justice Department Campaign Financing Task Force, had recommended that the Attorney General appoint an independent counsel to lead the investigation.[683] In both cases, it appeared that the investigators with the greatest knowledge of the campaign fundraising scandal had decided that the Justice Department could not conduct the investigation without a conflict of interest.

The failure of the Attorney General to follow the advice of her advisors to appoint an independent counsel was a strange departure for the Attorney General. Indeed, she had appointed independent counsels for a number of cabinet officials, and had strongly supported the reauthorization of the Independent Counsel Act in 1994. At a hearing in 1994, the Attorney General stated:

> The Independent Counsel Act was designed to avoid even the appearance of impropriety in the consideration of allegations of misconduct by high-level Executive Branch officials and to prevent, as I have said, the actual or perceived conflicts of interest. The Act thus served as a vehicle to further the public's perception of fairness and thoroughness in such matters, and to avert even the most subtle influences that may appear in an investigation of highly placed Executive officials.[684]

As the Attorney General correctly observed in 1994, the proper application of the Independent Counsel Act was crucial in assuring American citizens that allegations of wrongdoing by senior government officials were being investigated thoroughly and free of political bias. Yet, when the time came that the Attorney General was faced with allegations of criminal wrongdoing by the President, Vice President, and senior officials of her political party that went to the heart of the Nation's political process, she steadfastly refused to appoint an independent investigator.

Fueling the committee's concern that the Justice Department simply was not able to investigate the President, Vice President, and senior DNC officials were the Justice Department's numerous fumbles and failures in the investigation by that point. By December 1997, the time that word of Director Freeh's memorandum first leaked to the press, the Justice Department had already began to lose control of its investigation:

- The first lead prosecutor in charge of the investigation, Laura Ingersoll, had to be removed by Attorney General Reno, and replaced with Charles La Bella.
- The White House delayed the production of a number of records to the Justice Department, including crucial videotapes of Presidential fundraising events. In addition, the

[682] See, e.g., David Johnston, "F.B.I.'s Chief Tries to Influence Reno, Memo Argues for Appointment of Independent Prosecutor," N.Y. Times, Dec. 2, 1997, at A1.

[683] See, e.g., David Johnston, "Report to Reno urges a Counsel Over Donations," N.Y. Times, July 23, 1998, at A1.

[684] "S. 24, the Independent Counsel Reauthorization Act of 1993," hearing before the Senate Committee on Governmental Affairs, 103d Cong., 12 (1993).

White House often preceded document productions with Friday night "document dumps" to the media.

- Specific and credible allegations of criminal wrongdoing had already been made against senior DNC and administration officials, and yet, no independent counsel had been appointed, and few indictments had been brought.

In addition, a number of other problems had developed inside the investigation, and had not yet become known to the outside world. For example, at the beginning of the investigation, Lee Radek, who was then in charge of the investigation, told William Esposito, a senior FBI official, that he felt "that there was a lot of pressure on him, and the Attorney General's job could hang in the balance based on the decision that he would make."[685] Several months later, FBI agents discovered Charlie Trie's employees destroying documents responsive to congressional and Justice Department subpoenas. They asked for a search warrant to stop the destruction, and to determine what documents Trie had in his possession that he had not yet turned over. Laura Ingersoll, the head of the Task Force, refused to let the Task Force agents get the search warrant, claiming that they did not have adequate probable cause. Also, by December 1997, despite the fact that the fundraising investigation had been underway for over a year, the Justice Department had failed to subpoena critical documents from the White House, including documents relating to Maria Hsia.

By the time that word of Charles La Bella's recommendation leaked in July 1998, the committee's skepticism of the Justice Department investigation had grown. Despite 19 months of investigation, the Justice Department still had not taken any significant action against the foreign kingpins of the fundraising scandal, like James Riady or Ng Lap Seng. Similarly, the Task Force had failed to take any action against officials in the administration and DNC who had made the scandal possible, like Harold Ickes, Richard Sullivan, or David Mercer. Rather, the Task Force had brought charges only against the low-level fundraisers who had solicited much of the illegal money, like Charlie Trie, John Huang, and Maria Hsia.

Accordingly, when the committee demanded the Freeh and La Bella memoranda, it was attempting to discover the reasons why the Attorney General was failing to trigger the Independent Counsel Act, and whether the inherent conflict of the Attorney General's investigation of the President, Vice President, and her own political party, had adversely impacted even-handed enforcement of the law. In each case, it appeared to the committee that there was significant cause to trigger the Act, and that the Attorney General had not explained her failure to do so. Moreover, it appeared at the time that the failure of the Attorney General to trigger the Act was causing significant, irreversible harm to the investigation.

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[685] "The Justice Department's Implementation of the Independent Counsel Act," hearing before the House Committee on Government Reform, 106th Cong., 39 (2000) (preliminary transcript).

2. The Committee's December 1997 Subpoena for the Freeh Memorandum

On December 2, 1997, press reports emerged indicating that FBI Director Louis Freeh had drafted a memorandum to the Attorney General asking her to appoint an independent counsel to conduct the campaign fundraising investigation.[686] The reports indicated that Director Freeh believed that the Justice Department had a political conflict of interest which prohibited it from conducting an investigation of the Clinton administration.[687] That same day, the committee scheduled a hearing into the matter, and sent Director Freeh a letter requesting him to produce his memorandum to the committee by December 4, 1997.[688] On December 4, 1997, Attorney General Reno wrote to the chairman, explaining why she would not comply with the chairman's request. In her letter, the Attorney General identified two reasons for her refusal to comply with the chairman's request: first, that longstanding Justice Department policy prohibited the Department from sharing with Congress deliberative material relating to open criminal cases; and second, that to provide this kind of deliberative material to Congress would chill Justice Department personnel from providing their frank advice to the Attorney General in future investigations.[689]

As the Attorney General refused to produce the memorandum voluntarily, on December 5, 1997, Chairman Burton issued a subpoena to the Justice Department, requiring the production of the Freeh memorandum.[690] In a letter accompanying the subpoena, Chairman Burton pointed out that it was critical to the committee's oversight responsibility to review the Freeh memorandum.[691] He also pointed out that the committee's demand was consistent with a number of subpoenas and requests issued by congressional committees over the past decade.[692] In those cases, the Justice Department complied with congressional requests.

On December 8, 1997, Attorney General Reno and Director Freeh responded to the subpoena, again refusing to comply. The Attorney General and Director Freeh reiterated the two reasons that Ms. Reno gave for refusing to comply in her December 4, 1997, letter.[693] In addition, they enunciated several new reasons for refusing to comply: first, that public and judicial confidence in the Department's investigation would be undermined by congressional intrusion into the investigative process; second, that disclosure of the memorandum would provide a "road map" of the Department's investigation; and third, that the reputations of individuals men-

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[686] David Johnston, "F.B.I.'s Chief Tries to Influence Reno, Memo Argues for Appointment of Independent Prosecutor," N.Y. Times, Dec. 2, 1997, at A1.

[687] Id.

[688] Letter from Dan Burton, chairman, Committee on Government Reform and Oversight, to Louis Freeh, Director, Federal Bureau of Investigation (Dec. 2, 1997) (all committee correspondence with and subpoenas to the Justice Department are printed in the appendix accompanying this report).

[689] Letter from Janet Reno, Attorney General, to Dan Burton, chairman, Committee on Government Reform and Oversight 1–2 (Dec. 4, 1997).

[690] Subpoena duces tecum issued by the Committee on Government Reform and Oversight (Dec. 5, 1997).

[691] Letter from Dan Burton, chairman, Committee on Government Reform and Oversight, to Janet Reno, Attorney General 1 (Dec. 5, 1997).

[692] Id. at 2.

[693] Letter from Janet Reno, Attorney General, and Louis Freeh, Director, Federal Bureau of Investigation, to Dan Burton, chairman, Committee on Government Reform and Oversight (Dec. 8, 1997).

tioned in the memorandum could be damaged by the disclosure of the memorandum.[694] In addition, Attorney General Reno and Director Freeh claimed that the precedents for the committee's action, which had been cited in the chairman's letter of December 5, 1997, were inapplicable to this case.

The committee accepted at face value a number of the arguments that had been forwarded by the Justice Department. The committee hoped that the Attorney General was operating in good faith when she made these points, and that she was not using these arguments simply as pretext to avoid compliance with the committee's subpoena. Accordingly, the committee sought to reach an accommodation with the Justice Department to avoid enforcement of the committee's subpoena. Such an accommodation was reached in December 1997, when the Department agreed to allow Chairman Burton, Congressman Waxman, and three committee staff to review a heavily-redacted copy of the Freeh memorandum. The small portion of the memo that the chairman was allowed to review confirmed the committee's view that the law required the Attorney General to appoint an independent counsel to investigate the campaign fundraising scandal.

3. The Committee's July 1998 Subpoena for the La Bella Memorandum

On July 23, 1998, a number of newspapers reported that the supervising attorney of the Campaign Financing Task Force, Charles La Bella, had drafted a report to the Attorney General recommending that she appoint an independent counsel to take over the investigation.[695] According to these press reports, like Director Freeh, Mr. La Bella had concluded that the law required the appointment of an independent counsel, both because of the high-level administration officials who were being investigated, as well as the conflict of interest that the Attorney General had in conducting the investigation.

That same day, July 23, 1998, Chairman Burton sent a formal request to the Attorney General, asking her to produce to the committee both the Freeh and La Bella memoranda.[696] The following day, committee staff were informed by telephone that the Justice Department would not comply with the chairman's request. Accordingly, on July 24, 1998, the chairman issued a subpoena to the Justice Department, requiring the production of the Freeh and La Bella memoranda.[697] On July 28, 1998, Attorney General Reno and Director Freeh wrote to the chairman, informing him that they would not comply with the committee's subpoena.[698] In the letter, the Attorney General and the Director repeated many of the arguments made when they refused to comply with the committee's subpoena for the Freeh memorandum in December 1997. The At-

[694] Id. at 1–2.

[695] David Johnston, "Report to Reno urges a Counsel Over Donations," N.Y. Times, July 23, 1998, at A1.

[696] Letter from Dan Burton, chairman, Committee on Government Reform and Oversight, to Janet Reno, Attorney General 1 (July 23, 1998).

[697] Subpoena duces tecum issued by the Committee on Government Reform and Oversight (July 24, 1998).

[698] Letter from Janet Reno, Attorney General, and Louis Freeh, Director, Federal Bureau of Investigation, to Dan Burton, chairman, Committee on Government Reform and Oversight 1 (July 28, 1998).

torney General and Director laid out five arguments against compliance with the committee's subpoena: (1) that longstanding Justice Department policy prohibited the Department from sharing open law enforcement files with Congress; (2) that disclosure of the memoranda could provide a "road map" of the Department's investigation; (3) the reputations of individuals mentioned in the memoranda could be harmed by public disclosure of the documents; (4) that disclosure of the memoranda would create the perception that Congress was putting political pressure on the Justice Department, and consequently, would undermine public confidence in the results of the investigation; and (5) the memoranda reflected the personal view of their authors, and the public disclosure of the memoranda could create a "chilling effect" on candid advice in the future.[699]

The chairman responded on August 3, 1998, to inform the Attorney General that he would not accept her explanation, and would move to enforce the committee's subpoena.[700] In this letter, and throughout his correspondence with the Justice Department on this matter, the chairman explained why the objections raised by the Department had no merit:

- First, the "longstanding policy" of refusing to share open law enforcement files with Congress, referred to by Attorney General Reno, was never intended to be used as a way of refusing to comply with a congressional subpoena. Rather, the only valid basis for refusing to comply with the committee's subpoena would be to cite executive privilege, or some other constitutional privilege. The committee provided the Attorney General with a number of precedents for the committee's action, where Congress obtained records relating to open Justice Department cases.[701]
- Second, the Attorney General's claim that the memoranda provided a "road map" that would harm the Task Force's investigation was misleading. Much of the content of the memoranda had already been leaked to the press. In addition, the facts discussed in the memoranda were all publicly known through the investigations conducted by the Government Reform Committee and the Senate Committee on Governmental Affairs.
- Third, the complaint that the reputations of innocent persons could be harmed by disclosure of the memoranda was similarly hollow. The vast majority of individuals discussed in the memoranda were individuals who had been discussed extensively in the public record, been deposed, or testified at public hearings.
- Fourth, the Attorney General's complaint that the disclosure of the memoranda would create the impression that Congress was placing political pressure on the Justice Department to prosecute certain matters was completely untenable. In the summer of 1998, there was already a wide-

[699] Id. at 1–3.
[700] Letter from Dan Burton, chairman, Committee on Government Reform and Oversight, to Janet Reno, Attorney General (Aug. 3, 1998).
[701] Id. at 3–4.

spread perception that the Attorney General was refusing to investigate certain matters because of her political bias. This committee was simply calling on the Attorney General to appoint an independent counsel, not to indict certain individuals. It is a testament to the doublespeak of this Attorney General that she can claim to be acting in an apolitical and principled fashion by conducting an investigation of her boss and political party, and that it would be "politically motivated" if she turned the investigation over to an independent counsel.

- Finally, the Attorney General's claims that the release of the memoranda would create a chilling effect was similarly baseless. As previously noted, many of the memoranda's conclusions had already been shared with the press by Justice Department personnel.

Despite the overwhelming weight of the committee's arguments, the Attorney General refused to comply with the committee's subpoena. Accordingly, the chairman scheduled a vote on a report citing the Attorney General for contempt of Congress. The members of the committee were subjected to an intensive lobbying campaign by the Justice Department to vote against the report. Two members of the committee were even invited by President Clinton to attend a ceremony at the White House at the time that the report was scheduled for a vote. Despite the lobbying campaign, the committee's Republican members voted unanimously in favor of the report. On August 6, 1998, the Attorney General was cited for contempt of Congress.[702] However, the contempt report was not taken up on the House floor prior to the end of the 105th Congress.

4. The Committee's October 1999 Request to Review the Freeh and La Bella Memoranda

Despite the committee's contempt vote, the Justice Department still made no effort to accommodate the committee's interests. Committee staff were allowed only several opportunities to review heavily-redacted copies of the lengthy memoranda. In the summer of 1999, a new ruling from the Court of Appeals for the District of Columbia Circuit narrowed an earlier interpretation of Rule 6(e) of the Federal Rules of Criminal Procedure.[703] This new ruling cleared the way for the Justice Department to share a great deal of information with the committee that was previously thought to be covered by Federal grand jury secrecy rules. Accordingly, on September 17, 1999, committee staff asked Justice Department staff to make the Freeh and La Bella memoranda available for review by committee staff, in light of the new 6(e) ruling.[704] By October 12, 1999, the Justice Department had still failed to reply to the committee's request. On October 12, Chairman Burton wrote to the

[702] See H. Rept. No. 105–728 (1998).
[703] Rule 6(e) establishes the secrecy of grand jury proceedings.
[704] See letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General 3 (Oct. 12, 1999). The request to review the memoranda was made by the committee's chief counsel, James C. Wilson, to Craig Iscoe, Associate Deputy Attorney General, at the conclusion of a staff interview of Lee Radek.

Attorney General and formally requested that she make the memoranda available for review in their less-redacted format.[705]

The Justice Department never responded to the chairman's October 12, 1999, request to provide the memoranda for the committee's review in the less-redacted format. On March 21, 2000, in a letter responding to a later subpoena for the memoranda, the Attorney General stated "as a result of the Court decision, a large portion of the previously redacted information was no longer subject to redaction. We advised the Committee staff last fall that the memorandum with reduced redactions was available for review."[706] The Attorney General's statement was patently false. At no time in 1999 did Justice Department personnel make the Freeh or La Bella memoranda available for the committee's review.[707] The statement in the Attorney General's letter is typical of the deceptive, self-serving statements made by the Justice Department throughout the debate on the Freeh and La Bella memoranda.

5. The Committee's March 2000 Subpoena for the Freeh and La Bella Memoranda

On March 10, 2000, the Los Angeles Times published an article on the La Bella memorandum which included extensive quotes from the memorandum.[708] The Los Angeles Times apparently obtained a copy of the memoranda, despite the fact that it had never been provided to the committee, which had subpoenaed it almost 2 years earlier. Therefore, on March 10, 2000, the committee subpoenaed the Freeh and La Bella memoranda, as well as all other Justice Department memoranda responding to the Freeh and La Bella memoranda.[709] In a letter accompanying the subpoena, the chairman noted that the leak of the La Bella memorandum undermined all of the arguments that the Attorney General had made to the committee in the preceding year and a half.[710] The Attorney General had argued that the release of the memoranda would give the targets of the investigation a "road map" of the prosecutors' plans; she said that the release of the documents would create a "chilling effect" on her senior advisors; and she stated that the memoranda were so sensitive that she could not even let all of the members of the committee look at them. However, while she was using these arguments to avoid complying with a lawful subpoena, she was careless enough to let her staff leak the La Bella memorandum to the Los Angeles Times. Given the fact that the entire memorandum was in the possession of the Los Angeles Times, and that large portions of it had been reported, the chairman again asked the Attorney General to now comply with the subpoena by March 14, 2000.

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[705] Id.

[706] Letter from Janet Reno, Attorney General, to Dan Burton, chairman, Committee on Government Reform 3 (Mar. 21, 2000).

[707] If such an offer had been made, the committee would have accepted the offer, as it accepted the offer when it was made in March 2000.

[708] William C. Rempel and Alan C. Miller, "Funds Probe Unfairly Spared White House, '98 Report Says; Donations: Revelations from Long-Sealed Report Show Internal Dissension on Reno's Refusal to Appoint Counsel," L.A. Times, Mar. 10, 2000, A1.

[709] Subpoena duces tecum issued by the Committee on Government Reform (Mar. 10, 2000).

[710] Letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (Mar. 10, 2000).

Amazingly, the Attorney General still refused to comply. In a letter dated March 21, 2000, she recited many of the arguments that she made in previous letters to the committee.[711] She also acknowledged that the Justice Department had leaked the La Bella memorandum to the Los Angeles Times:

> There have apparently been disclosures from one or more memoranda to the media. It is not clear whether the entire memoranda or only portions were disclosed to the media, or whether additional materials were disclosed as well. In any event, whatever disclosure was made was wholly unauthorized.[712]

While it was comforting to know that the Attorney General did not authorize the release of the La Bella memorandum to the press, the endless parade of leaks of information relating to the campaign fundraising investigation was disturbing. By March 2000, the chairman had repeatedly brought the Attorney General's attention to the fact that her subordinates were leaking highly sensitive information relating to the investigation. Yet, she apparently took no action to identify and discipline these individuals. Nor did she understand the appearance problems derived from her refusal to endorse an independent investigation while her subordinates were undermining the Department's own efforts.

Despite the leak of the memorandum to the press, the Attorney General still refused to provide the memorandum to the committee. She did offer to allow committee staff to review the Freeh and La Bella memoranda, in their less-redacted form.[713] However, as a condition of that review, staff were not allowed to take any notes. The Attorney General's conditions were somewhat troubling, given that she had allowed the staff of another committee to review the memoranda while taking notes.[714] In addition, the Attorney General's condition rendered a review of the memoranda difficult, given the fact that the major memoranda (including the reply memorandum of Lee Radek, the response of Charles La Bella, and the summary memorandum of James Robinson) totaled over 180 pages.[715]

a. The Committee's Attempts to Reach Agreement with the Justice Department

Despite the Attorney General's unsatisfactory response to the committee's March 10 subpoena, committee staff began to review the responsive memoranda on March 31, 2000. Over the next 2 months, committee staff reviewed the memoranda a number of times. During this period, the committee also negotiated with the

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[711] Letter from Janet Reno, Attorney General, to Dan Burton, chairman, Committee on Government Reform (Mar. 21, 2000).

[712] Id. at 2.

[713] Id. at 3–4.

[714] Committee staff learned that staff of the House Judiciary Committee were allowed to take extensive notes while reviewing the La Bella memorandum.

[715] On May 3, 2000, the committee issued a new subpoena to the Justice Department for all "formal memoranda that were sent to the Attorney General or senior Justice Department officials in connection with decisions involving the application of the Independent Counsel Act to campaign finance-related matters, including memos that address the Independent Counsel Act-related aspects of the Freeh and La Bella memoranda." Subpoena duces tecum issued by the Committee on Government Reform (May 3, 2000). The Justice Department's production of the various campaign fundraising memoranda was formally made in response to this subpoena.

Justice Department regarding the Department's refusal to comply with the committee's subpoena. The Department repeatedly asked the committee to agree to a "protocol" under which the committee would receive and handle the subpoenaed memoranda. While the Department was never specific about how it wanted the committee to handle the memoranda, it identified two major concerns: (1) protecting the identity of line attorneys mentioned in the memoranda; and (2) "keeping internal, deliberative documents out of the campaign season."[716]

The Justice Department's candor on this point was refreshing, but it revealed the central motive in the Justice Department's actions throughout the debate over the Freeh and La Bella memoranda—protecting the Clinton administration from political embarrassment. It is illustrative that at the end of the day, after all of the posturing, the Justice Department identified only these two concerns when turning the documents over to the committee. No longer did the Department raise arguments about "chilling effects" or "prosecutorial roadmaps." Rather, now it was focused on the negative political impact that the release of the documents would have on the Democratic party. Indeed, the Freeh and La Bella memoranda overwhelming discuss potentially illegal conduct by Democratic officials and donors.[717] Therefore, when the Justice Department stated that it wanted to keep these documents out of the campaign season, it was saying that it did not want documents embarrassing to Democrats to come out during the campaign.

b. The Justice Department's Production of the Memoranda to the Committee

Other developments quickly superseded the committee's negotiations with the Justice Department. On May 18, 2000, the Associated Press reported that in December 1996, Lee Radek, the head of the Public Integrity Section, which was then conducting the campaign fundraising investigation, told William Esposito, the Deputy FBI Director, that Radek felt "a lot of pressure" and that the Attorney General's job might "hang in the balance" with respect to the campaign fundraising investigation.[718] This report reinforced the committee's long-held view that the Attorney General had a political conflict of interest in trying to investigate the fundraising of the President, Vice President and Democratic party. Therefore, on May 19, the chairman wrote to the Attorney General informing her that the committee had scheduled a hearing on this matter, and requesting the production of the Freeh, La Bella, and related memoranda before that hearing.[719] On May 23, the chairman wrote again, demanding production of the memoranda, and informing the

[716] This statement was made initially by John Tanner of the Justice Department's Office of Legislative Affairs at a meeting on May 16, 2000, between Mr. Tanner, Alan Gershel, Deputy Assistant Attorney General, James C. Wilson, majority chief counsel, Committee on Government Reform, David A. Kass, majority deputy counsel, Committee on Government Reform, Phil Schiliro, minority staff director, Committee on Government Reform, and Phil Barnett, minority chief counsel, Committee on Government Reform.

[717] Indeed, approximately 65 pages of the La Bella memorandum are devoted to discussions of Democrat wrongdoing, while approximately 2 pages are devoted to Republican wrongdoing.

[718] John Solomon, "Freeh: Justice Felt Pressure Not to Proceed with Probe to Save Reno," Associated Press, (May 18, 2000).

[719] Letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (May 19, 2000).

Attorney General that the memoranda would be treated as any other committee record, subject to release by a vote of the committee.[720]

On May 24, 2000, Robert Raben, the Assistant Attorney General for Legislative Affairs responded to the chairman, stating that the Justice Department was "pleased to agree to your Committee's proposal as set forth in your May 23 letter and as elaborated in subsequent discussions with your staff."[721] Under the agreement reached with the Justice Department, all of the memoranda responsive to the committee's May 3 subpoena were to be produced to the committee. The documents were to be kept in a secured facility, and access was to be restricted to six staff from each side of the committee. In addition, the committee was to provide the Department with notice of any plan to release the documents, and also gave the Justice Department the opportunity to explain why the release should not take place.[722]

On May 31, 2000, the chairman wrote to the Attorney General and informed her of the plan to release the Freeh and La Bella memoranda, as well as other related memoranda, at the committee's June 6, 2000, hearing.[723] On June 2, 2000, the Justice Department wrote to object to the committee's release of the documents.[724] In this, the final objection prior to the release of the documents, the Justice Department only identified two concerns: first, the chilling effect that the release of the memoranda might have on the ability of Justice Department lawyers to render full and frank advice; and second, the way that the memos infringed upon the "privacy interests" of individuals mentioned in the memoranda.[725]

On June 6, 2000, at a hearing of the committee on the Department's implementation of the Independent Counsel Act, the chairman asked unanimous consent to release the Freeh, La Bella, and a number of related memoranda.[726] Representative Lantos then amended the unanimous consent request to release all of the documents received from the Justice Department in response to the May 3, 2000, subpoena.[727] All of the records were then released by unanimous consent.

6. The Justice Department's Misleading Arguments

It is understandable that the Justice Department resisted giving the committee the Freeh and La Bella memoranda. The Justice Department did have legitimate institutional interests at stake that it was entitled to protect. However, once the committee served its subpoena upon the Justice Department, it was legally obligated to

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[720] Letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (May 23, 2000).

[721] Letter from Robert Raben, Assistant Attorney General, to Dan Burton, chairman, Committee on Government Reform (May 24, 2000).

[722] Id. at 1.

[723] Letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (May 31, 2000).

[724] Letter from Robert Raben, Assistant Attorney General, to Dan Burton, chairman, Committee on Government Reform (June 2, 2000).

[725] Id.

[726] "The Justice Department's Implementation of the Independent Counsel Act," hearing before the Committee on Government Reform, 106th Cong. 5, (June 6, 2000) (preliminary transcript).

[727] Id. at 9.

produce the memoranda to the committee. Rather than follow the legally obligated course of action, the Justice Department used misleading arguments for over 2 years to avoid complying with its legal duty. Few of the arguments were true, and none constituted a valid basis for a subpoena. Now that the Justice Department has complied with the committee's subpoenas, it appears that the Justice Department did not even believe the arguments that it was making.

a. The Justice Department's Shifting Arguments

When the committee first subpoenaed the Freeh memorandum in December 1997, the Justice Department presented four main arguments: (1) the Justice Department had a policy against discussing investigative strategies of open cases (and that it was unprecedented for a congressional committee to demand such records); (2) the release of the memoranda could create a "chilling effect" on Justice Department employees; (3) the memorandum could provide a "road map" of the investigation; and (4) the reputations of individuals mentioned in the memoranda could be harmed by the release of the documents.[728]

When the committee subpoenaed the Freeh and La Bella memoranda in July 1998, the Department reiterated its earlier concerns, and made an additional argument, that compliance with the committee's demand would create the perception of political influence in the prosecutorial process, undermining public confidence in the investigation.[729]

When the committee subpoenaed the memoranda in March 2000, the Attorney General made only three arguments: (1) the campaign fundraising investigation remained open, and therefore, the release of the memoranda could have an impact on the investigation; (2) the release of the memoranda could create a chilling effect inside the Justice Department; and (3) the memoranda were available for review by committee staff, and therefore, it was unnecessary to provide the memoranda to the committee.[730] As explained above, the Attorney General's statement in the March 21, 2000, letter that committee staff were offered the opportunity to review the memoranda in the fall of 1999 was false.

However, when the committee actually received the memoranda in May 2000, the Justice Department made four arguments, two of which were made in the three earlier rounds of discussion: (1) the release of the memoranda would create a chilling effect; (2) the memoranda would infringe privacy interests of individuals mentioned in the documents, and (3) the memoranda contained the identity of line attorneys; and (4) the memoranda should not be released during the campaign season.

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[728] Letter from Janet Reno, Attorney General, to Dan Burton, chairman, Committee on Government Reform and Oversight (Dec. 4, 1997); letter from Janet Reno, Attorney General, and Louis Freeh, Director, Federal Bureau of Investigation, to Dan Burton, chairman, Committee on Government Reform and Oversight (Dec. 8, 1997).

[729] Letter from Janet Reno, Attorney General, and Louis Freeh, Director, Federal Bureau of Investigation, to Dan Burton, chairman, Committee on Government Reform (July 28, 1998).

[730] Letter from Janet Reno, Attorney General, to Dan Burton, chairman, Committee on Government Reform (Mar. 21, 2000).

b. The Justice Department's False Arguments

i. The Justice Department's Nonexistent "Policy" Against Providing Deliberative Documents

The argument repeated most often by the Justice Department throughout the debate on the Freeh and La Bella memoranda was that the Justice Department had a longstanding policy against providing deliberative documents about ongoing investigations to Congress. In fact, in a December 8, 1997, letter to Chairman Burton, Attorney General Reno and FBI Director Freeh stated that "[i]t is unprecedented for a congressional committee to demand internal decisionmaking memoranda generated during an ongoing criminal investigation."[731] As was pointed out by the committee in its correspondence with the Justice Department, this claim was not true: congressional committees had demanded and received internal decisionmaking memoranda and other investigative materials during ongoing investigations.

Palmer Raids Investigation: In the early 1920s, the Senate and the House held hearings into the raids and arrests of suspected communists conducted by the Department of Justice under Attorney General A. Mitchell Palmer. During the course of their investigation, the committees received a number of Department records relating to the raids. Included in the documents provided to the committees was a "memorandum of comments and analysis" prepared by a Department lawyer, responding to a District Court opinion, which was under appeal, and which criticized the Department's actions.[732] This document was provided to the committee even though it contained facts and the Department's legal reasoning regarding an open case.

Teapot Dome Scandal: Later in the 1920s, the Senate conducted an investigation into the Department of Justice's handling of the Teapot Dome scandal, specifically, charges of "misfeasance and nonfeasance in the Department of Justice."[733] The Senate committee heard from Justice Department attorneys and agents who offered extensive testimony about the Department's failure to pursue cases. Likewise, the Senate committee also received documentary evidence from the Department about its nonfeasance. Testimony and documents were received from a number of cases, some of which were still open.[734] In one notable example, the Attorney General permitted an accountant with the Department to testify and produce documents relating to an investigation that he conducted. The accountant produced his confidential reports in which he had described his factual findings and made recommendations for further action. The Department had failed to act upon his recommendations, although the case was still open.[735] In a letter to the committee on March 12, 1999, Acting Assistant Attorney General Dennis Burke acknowledged that this case did provide a prece-

[731] Letter from Janet Reno, Attorney General, and Louis Freeh, Director, Federal Bureau of Investigation, to Dan Burton, chairman, Committee on Government Reform and Oversight 2 (Dec. 8, 1997).

[732] "Charges of Illegal Practices of the Department of Justice," hearings before a subcommittee of the Senate Committee on the Judiciary, 66th Cong. 484–538 (1921).

[733] *McGrain* v. *Daugherty*, 273 U.S. 135, 151 (1927).

[734] See, e.g., hearings before the Senate Select Committee on "Investigation of the Attorney General," vols. 1–3, 68th Cong. 1495–1503, 1529–30, 2295–96 (1924).

[735] Id. at 1495–1547.

dent for the committee's request, but attempted to distinguish the case because the Senate committee was not asking for a prosecutorial decisionmaking document like the Freeh or La Bella memoranda.

White Collar Crime in the Oil Industry: In 1979, the House Committee on Interstate and Foreign Commerce and the House Committee on the Judiciary held joint hearings on allegations of fraudulent pricing in the oil industry. As part of that inquiry, the committees examined the failure of the Justice Department to investigate properly and prosecute related cases. As part of their hearings, the committees held closed sessions where they received evidence regarding open cases in which indictments were pending.[736] In open session, the committees called a Justice Department staff attorney who testified as to the reasons for not proceeding with a certain criminal case, despite the fact that a civil prosecution of the same case was pending. The Department similarly provided the committees with documentary evidence relating to this case.[737]

Gorsuch/EPA Investigation: In the early 1980's the Subcommittee on Oversight and Investigations of the House Committee on Public Works and Transportation investigated the enforcement policy of the Environmental Protection Agency (EPA) with regard to the Superfund program. The subcommittee investigated the EPA's enforcement policy with respect to both criminal and civil matters.[738] In response to the committee's document requests, the EPA, with the advice and assistance of the Justice Department, objected to the request on the basis that "[i]nternal enforcement documents which form the basis for ongoing or anticipated civil or criminal prosecutions are extremely sensitive. These documents include, for example, memoranda by Agency or Department of Justice attorneys containing litigation and negotiation strategy, settlement positions, names of informants in criminal cases, and other similar material." [739] After the committee's issuance of a subpoena for the documents, President Reagan asserted executive privilege over the documents, stating that "a controversy has arisen . . . over the EPA's unwillingness to permit copying of a number of documents generated by attorneys and other enforcement personnel within the EPA in the development of potential civil or criminal enforcement actions against private parties." [740] The Department of Justice took the position in the case that the policy against providing Congress with access to open law enforcement files applied to both civil and criminal matters.[741] Despite the President's invocation of executive privilege in the Gorsuch matter, the committee and the House of Representatives voted to hold Administrator Gorsuch in contempt of Congress for refusing to produce the subpoenaed documents. Ul-

[736] See "White Collar Crime in the Oil Industry," joint hearings before the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce and the Subcommittee on Crime of the House Committee on the Judiciary, 96th Cong. (1979).

[737] Id. at 156–57.

[738] "Contempt of Congress," report of the Committee on Public Works and Transportation, H. Rept. No. 97–968 at 10 (1982).

[739] Id. at 28 (letter from Robert M. Perry, associate administrator and general counsel to Chairman Elliott H. Levitas, Oct. 7, 1982).

[740] Id. at 42 (memorandum from President Ronald Reagan to the Administrator of the Environmental Protection Agency).

[741] Id. at 87–88 (memorandum from Assistant Attorney General Theodore B. Olson to Attorney General William French Smith).

timately the documents were produced, and the contempt citation was withdrawn.

Iran-Contra: The most well-known example of congressional oversight of the Justice Department involving the demand and receipt of information from open case files in the investigation of the Iran-Contra affair. As part of their work, the Iran-Contra committees investigated the nature of the Department of Justice's initial inquiry into the affair. The investigating committees demanded the production of the Department's files regarding their initial inquiry. The House committee requested, inter alia:

> (b) All records relating to Justice Department consideration of, or action in response to, the request of October 17, 1986, by members of the House Committee on the Judiciary for an application for appointment of an independent counsel.
>
> (c) All records relating to the consideration of, and ultimate preparation and submission of, an application for appointment of an Independent Counsel on the Iran matter.
>
> (d) All records from January 1, 1984, to December 15, 1986, relating to requests to, by, or through the Department of Justice to stop or delay ongoing investigations relating to the anti-government forces in Nicaragua and assistance being provided to them[.][742]

The Department resisted, making claims similar to those Attorney General Reno is making now. The Department claimed that the production of documents to the committees would prejudice the upcoming prosecutions by the independent counsel. The committees overruled this objection, and received all requested documents, despite the fact that the independent counsel was pursuing the prosecution of a number of open cases. The committees obtained both documentary evidence and the testimonial evidence of a number of high-level Department officials, including Attorney General Meese.[743]

Other Cases: In other cases where congressional oversight committees sought access to Department of Justice records relating to prosecution of cases, the cases at issue were closed. However, those committees were investigating the fact that the cases were closed, because they were closed through alleged malfeasance on the part of the Department. For example, in the Rocky Flats case, and in the case of Congressman Dingell's investigation of the Department's environmental crimes prosecutions, there were allegations that the Department was allowing guilty parties out of criminal prosecutions with only minimal punishment. In the Rocky Flats matter, Congressman Dingell described the Department's objections to disclosure, which are similar to those asserted here, as "misguided and legally unjustifiable." Ultimately, over the objection of the Department, investigating committees obtained a number of sensitive internal documents. In the Rocky Flats case, the committee even obtained testimony from line attorneys at the Depart-

[742] Letter from Chairman Lee Hamilton to Attorney General Edwin Meese III, Jan. 14, 1987.

[743] See "Report of the Congressional Committees Investigating the Iran-Contra Affair," H. Rept. No. 433 and S. Rept. No. 216, 100th Cong. 310, 317, 314, 647 (1987).

ment. It also obtained documents, witness interviews, and other records submitted to the grand jury, but not subject to Rule 6(e).[744]

Shortly after he signed a letter claiming that the committee's subpoena was "unprecedented,"[745] FBI director Louis Freeh reversed course, and admitted that "your subpoena is not an unprecedented one, but it is an extraordinary one."[746] However, the Attorney General persisted in claiming that the committee's subpoena was unprecedented until the following year. In March 1999, after the threat of contempt had subsided, Acting Assistant Attorney General Dennis Burke admitted that the committee's subpoena was not unprecedented.[747] While this admission would have greatly harmed the Justice Department's political position in August 1998, during the contempt debate, by March 1999, few in the public cared.

ii. The Chilling Effect of the Release of the Memoranda

The Attorney General claimed that if the Justice Department complied with the committee's subpoena, it would create a "chilling effect" that would discourage Justice Department personnel from providing the Attorney General with candid and thorough advice. By its very nature, the Attorney General's argument was highly speculative, and difficult to prove. There is no evidence that the

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[744] Another notable example of the scope and need for congressional oversight of the Justice Department can be found in Watergate. In his testimony in the House Judiciary Committee's INSLAW hearings, House Counsel Steven R. Ross addressed the nature of congressional oversight in the Watergate scandal:

> The Impeachment Report concluded, "Unknown to Congress, the efforts of the President, through Dean, his counsel"—specifically, having the Assistant Attorney General tell Congress to hold off its investigation because of pending proceedings—"had effectively cut off the investigation."
>
> Of course, the excuse of pending proceedings did not keep Congress out of investigating Watergate forever; it only delayed that Congressional investigation. By Spring of 1973, Congressional committees were no longer accepting the claim of parallel proceedings as an excuse for withholding evidence. Ultimately, Watergate and its cover-up, including the role of Attorney General Mitchell, the role of Attorney General Kleindienst in related matters, and the manipulation of the Justice Department and the FBI, were thoroughly probed by the Senate Watergate Committee and the House Judiciary Committee. This probing occurred at the same time as the pending investigations and proceedings of Special Prosecutors Cox and Jaworski.
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> * * * * * * *
>
> Watergate was a dramatic instance where the House and Senate investigations had to overcome, not mere claims of pendency of civil proceedings—let alone, as here, mere pendency of the appeal from such proceedings—but claims of impact on soon-to-be-tried criminal cases. It was up to the committees to determine what evidence they needed, not to the Justice Department to measure whether to block those committees. *History reflects that it was only because this Committee insisted on obtaining all the documents and other evidence from the Justice Department, despite any claims about pending proceedings, that the depths of the scandal were ultimately plumbed.*
>
> It is an appropriate note to this period that two Attorneys General—Kleindienst and Mitchell—were eventually convicted of perjury before Congressional investigations.

"The Attorney General's Refusal to Provide Congressional Access to "Privileged" INSLAW Documents," hearing before the House Committee on the Judiciary, 101st Congress 88–90 (Dec. 5, 1990) (statement of Steven R. Ross) (emphasis added). Based on his review of this and the other precedents discussed above, Ross concluded that the Justice Department's policy of refusing access to open civil or criminal law enforcement files has been consistently rejected by the courts and by Congress. Id. at 84, 94.

[745] Letter from Janet Reno, Attorney General, and Louis Freeh, Director, Federal Bureau of Investigation, to Dan Burton, chairman, Committee on Government Reform and Oversight (Dec. 8, 1997).

[746] "The Need for an Independent Counsel in the Campaign Finance Investigation," hearing before the Committee on Government Reform and Oversight, 105th Cong. 70 (Aug. 4, 1998).

[747] Letter from Dennis K. Burke, Acting Assistant Attorney General, to Dan Burton, chairman, Committee on Government Reform 2–3 (Mar. 12, 1999).

public release of the Freeh and La Bella memoranda has had any such chilling effect. Indeed, the evidence shows that the Attorney General's advisors continue to offer their candid, written advice, despite the intense public scrutiny given to the Freeh and La Bella memoranda. Charles La Bella drafted his memorandum after all of the attention given to the Freeh memorandum in December 1997. In the middle of the debate over whether to hold the Attorney General in contempt for her failure to turn over the Freeh and La Bella memoranda, her advisors continued to draft lengthy reports reviewing the evidence in the campaign fundraising investigation. This practice continued even after the Justice Department turned the memoranda over to the committee in May 2000. In the spring of 2000, the new head of the Task Force, Robert Conrad, prepared a report recommending the appointment of a special counsel to investigate Vice President Gore. Indeed, the only practical consequence of the committee's release of the Freeh and La Bella memoranda is probably the message that one should not commit dishonest views to paper. The committee does not feel the need to protect dishonest or malign advice.

Also undermining the Attorney General's claim of a chilling effect was the fact that some of her advisors contemplated the publication of their memoranda. In addition, once the memoranda were turned over to the committee, it became clear that at least one Charles La Bella's critics, Lee Radek, contemplated that the memos would be made public: "[i]t is inexcusable, and I believe clearly calculated, that they [La Bella and De Sarno] have chosen to communicate their views about others within the Department in a memorandum that is the subject of such intense public interest, and is therefore likely to be leaked or become public through some other route." [748]

It appears that this committee's interest in the Freeh and La Bella memoranda has not had any chilling effect on Justice Department personnel. The more serious chilling effect on those personnel may come from the Attorney General's apparent disinterest in the advice of her advisors. She disregarded calls from seven different career law enforcement professionals to appoint an independent or special counsel to investigate Democratic fundraising in 1996. At the same time she appeared to be oblivious to failures to ask important questions and interview significant witnesses, and the reality that subordinates were leaking material in a way that undermined the Justice Department investigations. It is surprising that advisors like Robert Conrad still make recommendations to appoint a special counsel when the Attorney General routinely disregards such recommendations.

Another more likely source of a chilling effect upon the Attorney General's advisors is the fact that their recommendations are selectively leaked to the media after they are made. The recommendations of Director Freeh, Charles La Bella, and Robert Conrad were all leaked to the press shortly after they were made. Often, these leaks were made in such a way to disparage the authors of the documents. For example, as one ABC reporter noted:

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[748] Memorandum from Lee J. Radek, Chief, Public Integrity Section, to James K. Robinson, Assistant Attorney General 2 (Aug. 6, 1998) (exhibit 6).

> I vividly recall talking to officials back then who were amazed at the language employed in the report. This week, they remembered their shock. One senior aide who is no fan of Public Integrity and had generally supported La Bella's efforts, said in his report La Bella had gone "over the top" and "out of bounds."
>
> He said La Bella had become "too emotionally involved to be able to present a cogent legal argument;" it was more a rant, a tirade, than an argument. The so-called evidence was really just new wine in old bottles. And this official noted that in ensuing days the vitriol became remarkable on both sides. He recalled that some people were actually wondering whether La Bella had a "deep-seated psychiatric problem," or whether he was unstable.
>
> * * * * *
>
> I asked, well, did his argument make sense? "It made sense, it was just wrong." He said parts of it contained "horrendous inferences" and were "not persuasive."[749]

Similarly, when Robert Conrad recommended that a special counsel be appointed to investigate Vice President Gore, senior "Justice Department officials" disparaged his conclusions:

> One Justice Department official said that Mr. Conrad was alone in his recommendation. "No other prosecutor in this matter thought that there should be a need for a special counsel," said the official, who spoke on the condition of anonymity.[750]

The following day, the Attorney General was forced to admit that this statement, given by one of her own Justice Department staff, was false, and that Mr. Conrad had been supported in his recommendation by two other Task Force prosecutors.[751]

Even worse than the criticism in the press aimed at Justice Department officials who dared speak their mind was the treatment that Director Freeh received at the hands of the White House after his recommendation that an independent counsel be appointed. The New York Times reported the White House's reaction to his recommendation in December 1997:

> Although Mr. Clinton had pointedly avoided answering questions about Mr. Freeh's disagreement with Ms. Reno's decision, White House aides were not so circumspect. They privately ripped into Mr. Freeh—once lauded by the President as one of his best appointees—and called him a disloyal subordinate.[752]

It is difficult to believe that the committee's subpoena for the Freeh memorandum could have had a greater chilling effect upon Director Freeh's actions than criticism leveled at him by staff of the

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[749] Beverly Lumpkin, "Waco, Yet Again," (published Mar. 17, 2000) <http://www.abcnews.go.com/sections/us/hallsofjustice/hallsofjustice28.html>.

[750] Neil A. Lewis and Don Van Natta, Jr., "Reno, Rejecting Aide's Recommendation, Declines to Name Counsel on Gore Fund-Raising," N.Y. Times (Aug. 23, 2000) at A19.

[751] Attorney General Reno, remarks at press conference, Washington, DC (Aug. 23, 2000).

[752] David Johnston, "Reno Decision Bares Rifts on Clinton Team," N.Y. Times (Dec. 4, 1997) at A28.

President of the United States. Yet, while Attorney General Reno defended Director Freeh against the committee's advances, she did not afford him the same protection from the White House.

iii. The Memoranda Did Not Contain a "Road Map" of the Investigation

The Attorney General claimed that the subpoenaed memoranda contained a "road map" of her investigation, and that the information in the documents, if it came into the possession of the targets of the investigation, could seriously prejudice the investigation. Now that the committee has received the documents, we can see that the Attorney General's claim was not true. None of the matters discussed in these memoranda was ever prosecuted. As Chairman Burton observed when the committee released the memoranda, "if this is a road map, it's a road map of a car going around in circles."[753]

The Freeh memorandum discusses only seven substantive investigative matters: (1) the "Common Cause Allegations;" (2) Vice President Gore's fundraising phone calls; (3) President Clinton's fundraising phone calls; (4) allegations made against Secretary O'Leary by Johnny Chung; (5) White House coffees and overnights; (6) solicitation of money from foreign nationals; (7) the White House Database. Of these investigative areas, the Justice Department brought charges in only one area—solicitation of funds from foreign nationals. This section of Director Freeh's memorandum is four paragraphs long, and discusses only general legal issues, and does not even name any of the individuals under investigation. Given these facts, it is difficult to understand the Attorney General's reference to a "road map." There is no information in the Freeh memorandum that related to any criminal charges ever brought in the campaign fundraising investigation.

The La Bella memorandum discussed a wide range of subject areas, six in all: (1) Harold Ickes; (2) President Clinton; (3) Vice President Gore; (4) First Lady Hillary Clinton; (5) John Huang, Marvin Rosen, David Mercer and the DNC; and (6) Loral. Of all of these individuals and entities, charges were brought only against one individual, John Huang, and for conduct not discussed in the La Bella memorandum.

iv. The Memoranda Did Not Infringe on Privacy Interests

On several occasions, the Attorney General asserted that the release of the memoranda would infringe upon the privacy interests of individuals who were named in the documents, but who were never charged with any crimes. This argument, like the others, was specious. Once the committee received the memoranda, it was able to see that there were very few facts discussed in the documents that had not already been extensively discussed in public.[754] In-

[753] "The Justice Department's Implementation of the Independent Counsel Act," hearing before the Committee on Government Reform, 106th Cong. 15 (June 6, 2000) (preliminary transcript).

[754] One example of an issue in the La Bella memorandum that was not public prior to the release of the La Bella memorandum was the role of Robert Litt, a senior Department staffer, in the Loral investigation. In his memorandum, Charles La Bella took issue with what he saw as Mr. Litt assisting the White House with its "damage control" at the same time that the De-

Continued

deed, when the committee was releasing the memoranda, the Justice Department was given an opportunity to protect privacy interests by suggesting redactions. It failed to identify one substantive area, or the name of any suspect or witness that should be redacted from the documents prepared for release by the majority staff.[755]

v. The Release of the Memoranda Does Not Create the Perception of Political Influence in the Task Force Investigation

The Attorney General's claim that the release of the memorandum would create the perception that her investigation was politically influenced is, like many other of her claims, speculative. However, the committee's interest in this matter, from the beginning, has not been to dictate any certain outcome in the campaign fundraising investigation, but rather, to ensure that a thorough and unbiased investigation is conducted. It has been the Attorney General's continued refusal to appoint an outside investigator to conduct the investigation, not the efforts of this committee, that have undermined public trust in the Attorney General's investigation. The editorial board of the New York Times observed that:

> [The memoranda] are further evidence of Ms. Reno's politicized handling of the campaign fund-raising issue and of her dedication to protecting Democratic Party interests from start to finish. . . . These latest documents, however, cast further doubt on her wisdom and add to the evidence that she has run a Justice Department that often puts politics ahead of impartial law enforcement.[756]

Given observations like that, and from a number of other editorial boards, it may be that the release of the memoranda did undermine confidence in the Justice Department's investigation—not because it raised some specter of political influence—but because it showed how political the Department's investigation had been.

vi. The Justice Department's Request to Keep the Memoranda Out of the Campaign Season

Shortly before the Justice Department produced the subpoenaed memoranda to the committee, Justice Department staff and committee staff negotiated terms for the handling of the documents. During those negotiations, Justice Department staff identified one of their central concerns as "keeping the memoranda out of the campaign season." This request had never been raised in the earlier debates over the Freeh and La Bella memoranda. Indeed, one

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partment was investigating the White House's handling of the Loral matter. As Mr. Litt was a senior Justice Department official, it is difficult to believe he has a strong privacy interest in keeping this matter out of the public record.

[755] At one point, Justice Department staff recommended that the committee redact from the La Bella memorandum the discussion of the "Gina Ratliff" incident, wherein Johnny Chung alleged that he was threatened by the First Lady's Chief of Staff, Margaret Williams, to repay debts he owed to a former employee, Gina Ratliff.

In addition, when the chairman proposed releasing the binders of selected memoranda, Representative Lantos amended the unanimous consent request to release all of the documents received by the committee in response to its May 3 subpoena. Among these documents was a memorandum referring to an investigation of CIA Director Tenet which contained various personal information about the Director. This information was redacted from the memorandum, and in addition, that memorandum was never released or disseminated by the committee majority.

[756] "The Justice Department Memos," N.Y. Times (Mar. 11, 2000) at A14.

can only imagine the reaction if the Attorney General had stated in a letter that she was refusing to comply with the committee's subpoena because she feared that the memoranda would be used to attack Vice President Gore. However, that is precisely what her subordinates suggested in their negotiations with committee staff. Again, it is understandable that the Attorney General wanted these memoranda out of the public's hands. The documents do not portray the subjects of the Justice Department's investigation in a positive light. However, the Attorney General is not entitled to use political fallout as a reason to avoid complying with a congressional subpoena. That her staff even recommended such a thing speaks volumes about the Justice Department's motives throughout this matter.

B. THE JUSTICE DEPARTMENT'S FAILURE TO PRODUCE THE CONRAD MEMORANDUM

The committee had hoped that the Justice Department's damaging, and ultimately unsuccessful experience in trying to keep the Freeh and La Bella memoranda from the committee would keep it from repeating such efforts in the future. The Justice Department's misleading arguments and bad faith in trying keep the Freeh and La Bella memoranda from the committee were fully exposed when the committee obtained the documents in May 2000. However, the committee's recent efforts in trying to obtain the Conrad memorandum has shown that the Justice Department has learned nothing from its experiences. It has continued to deal with the committee in bad faith, trying to keep information embarrassing to the administration from becoming public.

After the Attorney General announced her decision not to seek a special counsel for Vice President Gore on August 23, 2000, the committee subpoenaed the Conrad memorandum and all related memoranda, from the Justice Department. The committee believed that Attorney General Reno's announcement on August 23, 2000, gave every indication that the investigation of false statements by Vice President Gore had been closed, and accordingly, that the Conrad memorandum could be produced to the committee:

> The transcript reflects neither false statements nor perjury, each of which requires proof of a willfully false statement about a material matter. Rather, the transcript reflects disagreements about labels. I have concluded that there is no reasonable possibility that further investigation could develop evidence that would support the filing of charges for making a willful false statement.
>
> The Task Force will, of course, continue its ongoing investigation into illegal fundraising activity and will be free to pursue all avenues of investigation, wherever they may lead.[757]

In this statement, the Attorney General clearly indicated that there was no reasonable possibility that the Justice Department would ever turn up evidence supporting the filing of charges against Vice President Gore for making a false statement. Given

[757] News conference with Attorney General Reno, Washington, DC (Aug. 23, 2000).

the basis of the Attorney General's efforts to frustrate congressional oversight of the Justice Department—that she did not want to interfere with ongoing investigations—she would hardly have made such a pronouncement unless she believed this matter to be closed. Therefore, she should not flout a valid congressional subpoena. Her willingness to do so, given her strong conclusion, is indicative of the extreme bad faith currently being exercised by the Justice Department.

The deadline for compliance with the subpoena, August 31, 2000, passed without any action by the Justice Department. On September 6, 2000, committee staff discussed the subpoena with Justice Department staff.[758] During that discussion, Justice Department staff could not provide a cogent explanation for the failure to produce the Conrad memorandum. The Department did suggest that it was possible that the Conrad memorandum did still pertain to an open case. However, the discussion gave every indication that the Justice Department had decided that it was not going to produce the Conrad memorandum to the committee, but was still groping for the rationale for its refusal. As the experience with the Freeh and La Bella memoranda had shown, it was not unusual for the Reno Justice Department to reach its conclusion first, and attempt to develop a rationale later.

The Justice Department refused to provide any further information regarding its refusal to comply with the committee's subpoena for the Conrad memorandum until the committee's October 5, 2000, interview with the Attorney General. During that interview, the Attorney General was questioned about her failure to comply with the committee's subpoena:

> Committee COUNSEL. Moving on to the Conrad—Mr. Conrad's recommendation to appoint a special counsel. Is it fair to say that you have absolutely refused to comply with the Committee's subpoena for us to receive Mr. Conrad's recommendation to you to appoint a special counsel?
>
> Attorney General RENO. I don't think Mr. Conrad's memo should be produced. I think it is part of a pending investigation.
>
> Chairman BURTON. Is that—that is pretty much the same reason you gave for not giving us the La Bella memo?
>
> Attorney General RENO. What I indicated for the La Bella memo was that it was—been a part of the investigation. Much of it has been made public now, and the matter is behind. The issues in the Conrad memo, as I told them, could still be pursued, any lead could be followed; and I want to make sure that we don't do anything that interferes with that.
>
> * * * * *
>
> Chairman BURTON. It is not a matter of whether the issues in the Conrad memo can be pursued. It is whether

[758] See letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (Sept. 7, 2000).

> they are being pursued. Are the issues raised in the Conrad memo still under active investigation?
>
> Attorney General RENO. I cannot comment.
>
> Chairman BURTON: You can't tell us whether or not they are under active investigation? The reason we can't see the memo, according to you, is because there is an ongoing criminal investigation. If there is no investigation going on, then there should be no reason why we can't see the memo. And so all we are asking is, simply, are the issues raised in his memo still under investigation?
>
> Attorney General RENO. I can't tell you that.
>
> Chairman BURTON. You are not telling us about any specific investigation; you are not talking about anything like that. All we are asking generically is, are the issues raised in his memo—and you don't have to go into the specifics—are those being pursued in an investigation, criminal investigation?
>
> Attorney General RENO. Mr. Chairman, I respectfully suggest to you that if I start answering questions like that, I am going to continue to run into the situation that I am faced with now where people are beginning to question whether we are being pushed around by Congress inappropriately in pending criminal matters.[759]

The Attorney General's responses to Chairman Burton are facially absurd. In her announcement on August 23, 2000, she stated that she was not appointing a special counsel to investigate the Vice President because there was no reasonable possibility that further investigation would produce evidence that would support the filing of charges. This statement sent the clear message that Vice President Gore had been cleared, and that he was no longer under investigation for making false statements. This message was warmly welcomed by the Gore campaign. However, when the committee subpoenaed the Conrad memorandum, the Attorney General tried to manufacture a reason why the committee could not receive the document. When she was squarely asked whether Conrad was still investigating false statement charges against Vice President Gore, Attorney General Reno refused to answer the question. In the past, the Justice Department has rarely hesitated to tell the committee that it could not receive certain documents because they pertained to an open case. The fact that the Attorney General refused to state whether the Conrad investigation of Vice President Gore is still open suggests one of two possibilities: (1) that the case is in fact closed, or (2) that the Attorney General's statement that there was "no reasonable possibility that further investigation could develop evidence" was made to benefit the Vice President. If the former is true, the Attorney General is withholding the Conrad memo from the committee with no proper justification. If the latter is true, the Attorney General has misled the public about the nature of the Task Force's investigation to benefit the Presidential nominee of her political party.

[759] Interview of Attorney General Reno 47–50 (Oct. 5, 2000) (preliminary transcript).

The Justice Department has also refused to provide the committee with any opportunity to review the Conrad memorandum. When asked why the Justice Department had not provided the committee the opportunity to review the memorandum, Reno provided the following answer:

> I think it is important, based on the experience that we are having now and the questions that have been raised, that we do everything we can to ensure that there is not an inappropriate outside influence on a pending matter.[760]

However, the refusal to provide any review of the Conrad memorandum stands in contrast to the Department's willingness to allow the committee to review the Freeh and La Bella memoranda. The Department allowed the committee to review those memos in 1998, despite the fact that information in those documents still conceivably was linked to open cases.

The Justice Department's refusal to provide the Conrad memorandum to the committee provides further evidence of the politicization of the Justice Department. Without any legal or factual basis, the Justice Department has refused to comply with a lawful congressional subpoena. It appears that the Justice Department's motive for keeping the Conrad memo out of Congress' hands is the same motive that has guided it for the past 4 years—protecting the Clinton-Gore administration from criminal jeopardy and public embarrassment.

C. THE JUSTICE DEPARTMENT'S POLITICAL GAMESMANSHIP

The Justice Department's refusal to cooperate with the committee was also manifested in its willingness to engage in political gamesmanship to try to embarrass the administration's critics. There were two notable instances of this behavior during the campaign fundraising investigation: first, the release of the FBI interview summary of former Congressman Gerald Solomon; and second, the attempted release of investigative material relating to Chairman Burton.

1. The Release of the Solomon Interview Summary

a. The Justice Department Refuses to Provide the Clinton and Gore Interview Summaries

On November 9, 1999, the committee subpoenaed the FBI interview summaries of President Clinton and Harold Ickes.[761] The committee was seeking the records as part of its oversight of the Justice Department's campaign fundraising investigation, to ensure that the Justice Department conducted thorough interviews of Mr. Ickes and Mr. Clinton before declining to appoint an independent counsel to investigate their fundraising activities. The committee did not expect to receive any resistance to this subpoena, as it had already received FBI interview summaries for John Huang. Before the committee received a response to the subpoena from the Justice

[760] Interview of Attorney General Reno 53 (Oct. 5, 2000) (preliminary transcript).

[761] Subpoena duces tecum issued by the Committee on Government Reform (Nov. 9, 1999) (all committee correspondence with and subpoenas to the Justice Department are printed in the appendix accompanying this report).

Department, the chairman sent another request to the Department on November 17, 1999, requesting 25 additional FBI interview summaries relating to the campaign fundraising investigation, including the interview summaries for Vice President Gore.[762]

Committee staff asked Justice Department staff about the production of these interview summaries on a number of occasions during the following weeks. As Chairman Burton noted in a November 30, 1999, letter to the Attorney General, the Justice Department failed to produce the records, and provided no explanation for the failure to produce them.[763] At the time, the committee was planning to hold a major hearing on John Huang from December 15–17, 1999. On December 10, 1999, the committee finally received an answer to its requests. In a letter to Chairman Burton, Assistant Attorney General Robert Raben explained that the Justice Department was formulating a new policy against the release of FBI interview summaries to Congress:

> The decision by the Department and its FBI component to permit the Committee to review the 302s, but not to provide copies, is based upon the chilling effect that public disclosure of the 302s can have on law enforcement. Historically, witnesses who have been interviewed by the FBI have understood that their interviews, and the information that they provided, would not be made public unless the witness were to testify at a public trial or the prosecutor were to use the information as the factual basis for a guilty plea. . . . A witness who believes that it is likely that his or her interview will become public may become less willing to cooperate fully with the FBI.
>
> The Department has observed what appears to be an increasing incidence of public release of 302s. The widespread public disclosure of 302s is likely to make it more difficult for the FBI to conduct its investigations in the future, especially in cases in which witnesses may become reluctant to cooperate out of a desire to avoid becoming publicly involved in a high-profile matter.[764]

The Justice Department's position was further elaborated by Craig Iscoe, Associate Deputy Attorney General, and Larry Parkinson, General Counsel of the FBI, in a meeting on December 13, 1999. In that meeting, Mr. Iscoe and Mr. Parkinson expounded on the Justice Department's concern that the release of FBI interview summaries to the committee would harm the Department's ability to conduct investigations in the future. Committee staff pointed out to Mr. Iscoe and Mr. Parkinson that the Department had produced interview summaries on a number of other occasions, and had never expressed this concern until the committee sought the inter-

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[762] Letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (Nov. 17, 1999). This request was made pursuant to the committee's subpoena of July 29, 1999, which required the Justice Department to produce all records relating to the investigations of John Huang and Yah Lin "Charlie" Trie. On several occasions, the chairman sent specific narrow requests to the Department for records covered by this subpoena.

[763] Letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (Nov. 30, 1999).

[764] Letter from Robert Raben, Assistant Attorney General, to Dan Burton, chairman, Committee on Government Reform 1–2 (Dec. 10, 1999).

view summaries of President Clinton, Vice President Gore, and Harold Ickes.

The chairman protested the Department's decision not to provide the interview summaries in a letter on December 14, 1999.[765] First, the chairman pointed out the suspicious timing of the Department's decision. The Department was subpoenaed to produce the interview summaries of President Clinton and Harold Ickes over a month earlier, and was requested to produce Vice President Gore summaries almost a month earlier.[766] Despite numerous requests during that period of time, the Department announced its decision not to provide the documents to the committee only several days before the John Huang hearing. The subpoenaed documents were needed for the hearing, and indeed, ended up being discussed extensively at the hearing.

The chairman also pointed out the Justice Department's apparent double standard. In the 103rd Congress, Chairman Don Riegle requested a number of FBI interview summaries, which he received, and subsequently published in a Senate report.[767] In the 104th Congress, the Department provided Chairman Bill Clinger with 183 FBI interview summaries pertaining to the White House Travel Office investigation.[768] In addition, throughout the fall and winter of 1999, the Justice Department was producing scores of interview summaries pertaining to the Waco investigation, even as it was trying to prevent the committee from obtaining interview summaries from the fundraising investigation. Moreover, by December 10, the committee had received three FBI 302s relating to the campaign fundraising investigation—John Huang, Charlie Trie, and Johnny Chung—without the committee even requesting the 302 for Johnny Chung. Therefore, the Justice Department's newly-found hesitance seemed to be linked to the fact that the committee was now requesting the 302s for the President, Vice President and Harold Ickes.

Finally, the chairman took issue with the statement by Assistant Attorney General Raben in his December 10, 1999, letter in which he stated that "[t]he Department has observed what appears to be an increasing incidence of public release of 302s."[769] The chairman then pointed out that Chairman Riegle released 84 FBI interview summaries in a Democrat-controlled Congress in 1994, and that the Government Reform Committee had released just 1 such interview summary in the preceding 3 years.[770] The chairman also noted the fact that the Department's concerns about the release of 302s harming ongoing investigations seemed to be misplaced. When the committee received the 302s for Charlie Trie, they had supposedly redacted all information from the summary that could harm ongoing investigations. However, the Department failed to redact from the Trie 302 information relating to Ernest Green, information which strongly indicated that Green had perjured himself

[765] Letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (Dec. 14, 1999).
[766] Id. at 1.
[767] Id.
[768] Id.
[769] Letter from Robert Raben, Assistant Attorney General, to Dan Burton, chairman, Committee on Government Reform 1–2 (Dec. 10, 1999).
[770] Letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (Dec. 14, 1999).

in a committee deposition.[771] At the time, Green was under active investigation by the Justice Department for perjury, and the release of this information could have theoretically harmed the Department's investigation. The committee identified the Justice Department's error, and on its own initiative, redacted the information relating to Green.[772]

After receiving the chairman's letter, the Department finally relented, and provided the requested 302s for President Clinton, Vice President Gore, and Harold Ickes on December 15, 1999. When the committee was able to review these 302s, it learned that the Justice Department had failed to ask the President and Vice President about central matters involved in the campaign fundraising scandal: the President had not been asked about James Riady or Charlie Trie; and the Vice President had not been asked about the Hsi Lai Temple fundraiser or Maria Hsia. Once the committee received these 302s, it became evident why the Justice Department had gone through such contortions to keep them out of the public domain. However, if the content of the 302s was not enough to confirm that the Justice Department's posturing of the past month had been purely political, the Department's actions in the following 2 days would confirm that fact.

b. The Justice Department Releases the Interview Summary of Representative Gerald Solomon

When John Huang appeared before the committee on December 15, 1999, he made the following statement:

> People seeking publicity have lied about me repeatedly in the press and even before this committee without consequence. For example, a former Member of this body, Mr. Solomon, in attacking the administration, accused me of economic espionage on the basis of what I am advised was an anonymous source at a cocktail party, with whom, it turned out, did not even mention my name or do anything other than perpetuate a rumor against an unidentified Asian-American, a rumor which Mr. Solomon was only too eager to embrace and capitalize upon.[773]

At the time that Mr. Huang made his statement, it was unclear where he had obtained this information. Therefore, Chairman Burton asked John Huang to identify the source of his knowledge about Representative Solomon's comments.[774] Huang told the chairman that he had been told this by his attorneys.[775] Chairman Burton then asked Ty Cobb, Huang's counsel, where he had obtained this information, and Mr. Cobb stated that he had learned this information from one of the prosecutors on the Campaign Financing Task Force.[776] As Chairman Burton noted in a letter to the Justice Department after the Huang hearing, it was highly irregular that the Department would share this kind of information

[771] Id. at 2.
[772] Id.
[773] "The Role of John Huang and the Riady Family in Political Fundraising," hearings before the House Committee on Government Reform, 106th Cong., 55 (1999) (preliminary transcript).
[774] Id. at 166.
[775] Id.
[776] Id. at 167.

with the target of a criminal investigation.[777] As the chairman noted, the disclosure to Huang's attorneys "could have no legitimate investigative purpose, and seemed to be designed only to give Mr. Huang a sympathetic anecdote for his opening statement."[778] Moreover, the Department's willingness to provide details from FBI interview summaries certainly undermined the arguments it had so forcefully made just days earlier, when it claimed that releasing 302s would chill witnesses from giving interviews to law enforcement, or that it would jeopardize investigations. Indeed, it is hard to conceive of a situation that would chill a witness from giving an interview more than turning the details of the interview over to an admitted felon who then used that information to attack the witness in the press and on national television.

However, the Justice Department's hypocrisy was only beginning to emerge. During the first day of the Huang hearing, in response to Huang's opening statement, Congressman Waxman asked Chairman Burton to request the FBI interview summary of Congressman Solomon from the Justice Department.[779] Chairman Burton agreed that he would do so.[780] The following day, Associate Deputy Attorney General Craig Iscoe appeared at the committee offices with a copy of the Solomon 302. The chairman had not even formally requested the Solomon 302, but the Justice Department had produced it nonetheless in under 24 hours. There were several facts about this chronology that were especially troubling:

- The Justice Department produced the 302 without a formal request of any type, much less a subpoena. Justice Department staff explained that it views an oral request made by a chairman during a committee hearing the same way that it would view a written request or a subpoena.[781] This was the first time that this policy was ever enunciated for this committee, and it seemed to be a post hoc justification for the Department's actions.
- The Justice Department produced the Solomon 302 in under 24 hours. Craig Iscoe, the Associate Deputy Attorney General who brought the 302 to the committee, explained that the 302 was relatively short, and was easy to prepare for production.[782] However, when the Reno Justice Department's track record of document productions is closely scrutinized, the rapid production of the Solomon 302 appears suspicious. During the committee's investigation, there were occasions where the Justice Department: lost committee document requests; failed to produce documents for days because they could not find a messenger to bring the documents to committee offices; failed to produce documents for days because they had to be personally Bates-stamped by

[777] Letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General 2 (Apr. 18, 2000).
[778] Id.
[779] "The Role of John Huang and the Riady Family in Political Fundraising," hearings before the House Committee on Government Reform, 106th Cong., 97 (1999) (preliminary transcript).
[780] Id. at 97–98.
[781] This information was related by Craig Iscoe, Associate Deputy Attorney General, to committee staff when he brought the Solomon 302 to committee offices on Dec. 16, 1999.
[782] This information was related by Craig Iscoe, Associate Deputy Attorney General, to committee staff when he brought the Solomon 302 to committee offices on Dec. 16, 1999.

the Associate Deputy Attorney General; or simply took months to produce documents because of vacations, illness, or difficulty in locating responsive documents.[783] Yet, when the Department had a 302 that was potentially embarrassing to Representative Solomon, a critic of the Justice Department, they produced it in less than 24 hours.

- The Solomon 302 was produced rapidly, and without a formal request, despite the Justice Department's impassioned arguments of several days earlier. The Department had been arguing that the committee was receiving and releasing too many 302s. The Department was even willing to argue that it should not obey a congressional subpoena because of the harm that the committee was doing by requesting and releasing 302s. Yet, scarcely days after those arguments had been made, the Department provided a 302 to the committee without a formal request. Moreover, Department staff had made the information in that 302 available to a convicted felon so that he could paint himself in a more favorable light in his congressional testimony. The speed with which this document was produced made a mockery of the apparently earnest entreaties made just days earlier by Associate Deputy Attorney General Iscoe and FBI General Counsel Parkinson.[784]

The Department's release of the Solomon 302 served as a stark example of the politicization of the Justice Department. The Department was willing to disobey lawful subpoenas when the committee was seeking information pertaining to the President and Vice President that was embarrassing to the Justice Department because it indicated a serious failure in the campaign fundraising investigation. Yet, when the Justice Department had the opportunity to spread information that harmed a widely respected Republican Member of Congress, it abandoned all of its principled arguments and seized the opportunity. Faced with an example like this, it is difficult to believe that the actions of the Reno Justice Department were motivated by anything other than crass political self-interest.

2. Attempted Release of Information Relating to Chairman Burton

Six months later, the Justice Department again tried to release information that was harmful to one of its critics. This time, on the eve of the committee's release of the Freeh and La Bella memoranda, the Justice Department attempted to force the committee to release information relating to the Justice Department's investigation of Chairman Burton.[785]

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[783] See, e.g., letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (Feb. 11, 1999) (regarding failure of Justice Department to respond in timely fashion to requests for documents relating to Orlando Castro); letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (June 14, 1999) (regarding failure of Justice Department to respond in timely fashion to requests for documents relating to search warrant of Trie residence).

[784] It is only fair to point out that Mr. Parkinson did not appear to be involved in the Justice Department's efforts to get the Solomon 302 out to the committee and the media.

[785] Shortly after Chairman Burton announced his plans to conduct an investigation of the 1996 campaign fundraising scandal, Mark Siegel, a former DNC officer and active DNC fund-

Continued

Throughout the month of May 2000, the Justice Department located and made available to the committee various memoranda responsive to the committee's May 3, 2000, subpoena for the Freeh and La Bella memoranda, as well as other memoranda written in response to those two reports. After the responsive documents were produced to the committee on May 24, 2000, the committee continued to receive additional documents. In most cases, these were memoranda that were missed in earlier searches. In most of these cases, these documents pertained to the Attorney General's decision not to appoint an independent counsel to investigate the 1996 campaign fundraising scandal.

In late May, the committee scheduled a hearing to take place on June 6, 2000. At this hearing, the committee was scheduled to release the Freeh and La Bella memoranda and related documents, and it was also scheduled to question Public Integrity Section Chief Lee Radek about those documents. However, on the evening of June 5, 2000, a staff attorney in the Department's Office of Legislative Affairs contacted committee staff to tell them that the Department would be producing to the committee that evening a document relating to the investigation of Chairman Burton. Chairman Burton responded almost immediately with a letter refusing to accept production of the records, and questioning the Department's attempt to send the documents to the committee.[786] The Department's attempted production of records relating to Chairman Burton raised several troubling questions: (1) how were the Burton records related to the committee's subpoena; (2) why did the Justice Department attempt to produce records relating to what purported to be an open investigation; and (3) why did the Justice Department attempt to provide these records to the committee at 5:10 p.m., on the evening before a hearing.

First, the committee's May 3, 2000, subpoena called for "[a]ll formal memoranda that were sent to the Attorney General or senior Justice Department officials in connection with decisions involving the application of the Independent Counsel Act to campaign finance-related matters, including memos that address the Independent Counsel Act-related aspects of the Freeh and La Bella memoranda."[787] When they told committee staff that they intended to produce the documents relating to the Burton investigation, Justice Department staff were unable to provide any explanation of how the records related to the committee's subpoena. While there was a provision of the Independent Counsel Act that allowed the Attorney General to request an independent counsel for Members of Congress, there had been no indication that such a request had been made for Chairman Burton. Indeed, the Justice Department has investigated many Members of Congress in the past several

raiser, alleged that he had been "shaken down" to make political contributions by Chairman Burton. Given Mr. Siegel's political affiliation, and the timing of his charges, his allegations could scarcely be taken seriously. Nevertheless, the Justice Department launched a grand jury investigation of the allegations, issuing subpoenas to the Burton campaign shortly after the Government Reform Committee issued its first subpoena to the Justice Department.

[786] Letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (June 6, 2000).

[787] Subpoena duces tecum issued by the Committee on Government Reform (May 3, 2000).

years, and of all of those investigations, the Department proposed producing documents only from the Burton investigation.[788]

Second, the Justice Department had frequently refused to produce records to the committee on the basis that the subpoenaed records related to an open investigation. A memorandum improperly released by a senior Justice Department staffer in 1999 listed the allegation against Chairman Burton as "not yet closed, but likely to be shortly."[789] Despite this designation in June 1999, neither Chairman Burton nor his private counsel have ever been informed that the investigation against him was closed. Therefore, it appears that as of the Department's attempted release of the information regarding Chairman Burton in June 2000, the investigation of Chairman Burton was still technically open. Leaving aside the significant issue of why the Burton investigation was left open for so long after all investigative work had ceased,[790] the Justice Department appeared to be deviating from its policy of refusing to release records relating to open cases, so that it could release records relating to Chairman Burton.

Third, the timing of the Department's decision was especially suspicious. The Department had had over 2 months to locate records responsive to the committee's subpoena. Yet, it waited until the evening before the committee's release of the Freeh and La Bella memoranda to attempt to produce these records to the committee. When committee staff asked Justice Department staff to describe the process that led to this document being discovered, Justice Department staff described it as "people rooting through boxes and pulling out documents."[791] As part of an effort to better understand this process, and identify the staffer who was "rooting through" boxes relating to the Burton investigation, the chairman asked the Justice Department to identify the staffers responsible for proposing the production of the Burton records.[792] The Department never responded to this request.

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[788] After the committee refused to accept records relating to the investigation of Chairman Burton, the Justice Department did attempt to explain the production of records relating to Chairman Burton. In a letter dated June 9, 2000, Robert Raben, the Assistant Attorney General, stated that "[w]e have confirmed that the allegations that are discussed in the memorandum were the subject of a decision under the Independent Counsel Act and therefore that the memorandum is responsive to your subpoena. We have further confirmed that production of the memorandum would not harm any pending investigation—which is the standard we have applied to all other documents responsive to the Committee's subpoena for Independent Counsel-related memoranda." Letter from Robert Raben, Assistant Attorney General, to Dan Burton, chairman, Committee on Government Reform (June 9, 2000). Taking the significant step of accepting all of these representations as true, the timing of the Department's decision still raises serious questions about the Department's motivations. The Department attempted to produce the memorandum to the committee on the eve of the release of the Freeh and La Bella memoranda (and the wholesale release of all independent counsel memoranda, which was proposed by the committee minority).

[789] Memorandum titled Task Force cases (June 4, 1999) (exhibit 14).

[790] Chairman Burton has often questioned the apparent Justice Department practice of leaving cases open long after investigative activity in that case has ceased. The Justice Department has often refused to produce records about a matter to the committee, claiming that the matter is open. However, in many of these cases, it is apparent that all activity in the case has stopped. The June 4, 1999, list of Task Force cases seems to confirm the chairman's criticisms. For example, there are 27 cases listed under the heading "Investigations Which FBI and the Task Force have closed (awaiting AG determination)." Id. There are another 14 cases listed under the heading "Investigations Not yet Closed but Likely to be Shortly." Id. Chairman Burton's case is listed under this heading, with the additional notation "closing memo sent to Public Integrity." Id.

[791] Letter from Dan Burton, chairman, Committee on Government Reform, to Janet Reno, Attorney General (June 6, 2000).

[792] Id.

The Justice Department's attempt to produce records relating to the investigation of Chairman Burton appeared to be a maneuver, much like the release of the Solomon 302, designed to draw attention away from committee hearings which were embarrassing to the Clinton administration. It also appeared to be designed to intimidate Chairman Burton, and to discourage him from subpoenaing documents from the Justice Department. Like the Department's release of the Solomon 302, the Department's attempted release of information about Chairman Burton was done in contravention of Department policy, and under highly irregular circumstances.

IV. Favorable Treatment of the Attorney General's Friends

A. The Justice Department's Handling of the Soka Gakkai Matter

The committee investigated the efforts of Rebekah Poston, a prominent Miami lawyer and a friend of the Attorney General, to obtain confidential law enforcement information from the Justice Department. The committee has learned the following:

- Rebekah Poston was hired by Soka Gakkai, a large Japanese Buddhist sect, to obtain criminal justice records on a man named Nobuo Abe, the head of a rival Buddhist sect. Soka Gakkai hoped to use these records in a defamation lawsuit against Abe.
- Poston hired private investigators who illegally obtained confidential National Crime Information Center (NCIC) records on Nobuo Abe.
- Poston then filed a Freedom of Information Act (FOIA) request to legally obtain this same information on Abe. Long-standing Justice Department policy prohibited the Department from releasing this type of information pursuant to a FOIA request. Moreover, long-standing Department policy prohibited even confirming or denying the existence of a criminal record. Accordingly, Poston's FOIA request was rejected, as was her appeal.
- Poston used her influence with the Attorney General's Chief of Staff to obtain a reversal of the Justice Department's position. Poston had at least 22 contacts with senior Justice Department staff regarding her FOIA request. Her contacts resulted in a meeting between her and Associate Attorney General John Schmidt, the third-ranking official in the Justice Department. Schmidt reversed the earlier decision of Richard Huff, the head of the Office of Information and Privacy, who had rejected Poston's FOIA appeal. Huff could recall no other meetings like this in his 25 year career.
- When the Department of Justice responded to Poston's FOIA request, it stated that it had no records on Nobuo Abe. Poston's investigators believed that the record they had earlier obtained had been deleted by government officials. This deletion, as well as other evidence regarding the record, led a number of individuals involved in the case to

speculate that the Abe record had been planted in the NCIC system by individuals associated with Soka Gakkai.

- The evidence that Abe's NCIC record was illegally accessed was provided to lawyers at the FBI's Office of Professional Responsibility on at least four different occasions. Yet, the FBI and the Justice Department failed to conduct a thorough investigation of these allegations.

There are two deeply troubling aspects to the facts uncovered by the committee. First, a prominent Florida attorney, a close friend of the Attorney General, was involved in criminal activity. This criminal activity has gone without any investigation or punishment for nearly 6 years. Now that the committee has brought these facts to light, Rebekah Poston has refused to answer any questions regarding her activities. Poston refused to answer a number of questions in a private interview, citing both attorney-client privilege, and concerns regarding possible criminal exposure. Then, when called to a public hearing, Poston repeatedly cited attorney-client privilege.[793] Second, this same friend of the Attorney General used her influence within the Justice Department to obtain a one-time reversal of long-standing Department policy. The implications of the Justice Department's failures in this case are severe: (1) it appears that the Department does not want to investigate allegations of improper access to its law enforcement databases; (2) it appears that the Department does not want to investigate allegations of wrongdoing by a friend of the Attorney General; (3) it appears that the Department applies a more lenient legal standard to FOIA requests made by a friend of the Attorney General than other FOIA requesters; and (4) the long-standing Justice Department policy of neither confirming nor denying the existence of criminal records relating to non-citizens is in doubt.

1. Background

a. Background on Soka Gakkai

Soka Gakkai was formed in 1930 as an organization espousing the reform of Japanese schools. After World War II, Soka Gakkai became affiliated with the Nichiren Shoshu Buddhist sect. Between 1951 and 1991, Soka Gakkai operated as a lay organization affiliated with the Nichiren Shoshu Buddhist sect. During that period of time, Soka Gakkai grew to have approximately 10 million members and assets over $100 billion.[794] Soka Gakkai also controls Komeito, which is the fourth-largest political party in Japan.

In 1991, after years of tension between Nobuo Abe (also known as Nikken Abe), leader of Nichiren Shoshu, and Daisaku Ikeda, leader of Soka Gakkai, the leaders of Nichiren Shoshu expelled

[793] Both during and after the committee's July 27, 2000, hearing, Ms. Poston and her counsel denied that she ever intended to invoke her fifth amendment rights. However, during the committee's interview of Ms. Poston on June 29, 2000, Ms. Poston's counsel, Eduardo Palmer, informed committee staff that Ms. Poston would not answer any questions about her efforts to obtain information through private investigators because of attorney-client privilege issues and because of her possible criminal exposure. These issues were raised in a letter to Chairman Burton after the committee's hearing. See letter from C. Boyden Gray, Wilmer Cutler & Pickering, to Chairman Dan Burton (Sept. 21, 2000) (exhibit 53). Ms. Poston's—and her counsel's—expressions that she would be unable to answer questions because of "possible criminal exposure," and her baseless invocation of attorney-client privilege are discussed in detail below.

[794] Bob Whitby, "The Buddha Brotherhood," Miami New Times (Nov. 11, 1999).

Soka Gakkai members from their sect, and severed all ties between the groups. This action sparked extended litigation between the groups that continues to this day. This litigation reached American shores, as Nichiren Shoshu and Soka Gakkai both had extensive United States assets and membership.

In June 1992, two Soka Gakkai publications published a controversial allegation by Hiroe Clow, a Soka Gakkai member. Clow stated that in 1963, she traveled to the United States with Nobuo Abe, and was called by Mr. Abe late at night after he was detained by the Seattle police for being involved in an altercation with prostitutes. Ms. Clow stated that she picked Mr. Abe up at the police station, and that no charges were filed against Abe. Clow's charges against Abe were a major embarrassment for Abe and Nichiren Shoshu, and they responded by filing a lawsuit for libel against Clow and Soka Gakkai in Japan. This lawsuit, as well as counterclaims, and related litigation in the United States, was pursued by both sides with little regard for expense, and both sides employed large teams of lawyers and investigators in the United States and Japan.

Soka Gakkai International-USA had extensive real estate holdings in the United States, including a 120-acre compound outside of Miami, FL. Steel Hector & Davis, a leading Miami law firm, represented Soka Gakkai in connection with its Florida real estate projects, and considered Soka Gakkai a major client.[795] In late 1994, Soka Gakkai apparently asked Steel Hector if it could assist in connection with the Abe lawsuit.

b. Background on Steel Hector & Davis

Steel Hector & Davis was formed in 1925, and is now one of Florida's largest and best known law firms. The current Attorney General of the United States, Janet Reno, served as a partner at the firm prior to her service as Florida State Attorney. When Soka Gakkai was seeking help in getting information from the Justice Department, Steel Hector was a good choice for other reasons as well. John Edward Smith, a senior partner in the firm, was a longtime friend of the Attorney General, and was one of only two lawyers to help her prepare for her confirmation hearings.[796] Rebekah Poston also made Steel Hector a good choice for Soka Gakkai. Poston had just joined Steel Hector as counsel, but she was an experienced white collar defense lawyer, and more importantly, was also a friend of the Attorney General. Poston's sister, Roberta Forrest, served as the campaign manager for Reno when she ran for State Attorney. Poston's sister also worked as a secretary in the State Attorney's office where both Reno and her future Chief of Staff at the Justice Department, John Hogan, worked.[797] Poston describes herself as a friend of the Attorney General, and describes her sister as a close personal friend of the Attorney General.[798]

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[795] Memorandum from Rich [Lucas] to Phil [Manuel] (Nov. 4, 1994) (exhibit 58).

[796] Interview of John Hogan at 2 (June 23, 2000) (Hogan interview).

[797] Interview of Rebekah Poston at 1 (June 29, 2000) (Poston interview); Hogan interview at 1.

[798] Poston interview at 1.

2. Rebekah Poston Illegally Obtains Information from the Department of Justice

In 1992, Soka Gakkai printed the account of Hiroe Clow, a member of Soka Gakkai. Clow stated that in 1963, she witnessed the arrest of Nobuo Abe, the leader of Nichiren Shoshu, for soliciting prostitutes. Litigation in the United States and Japan commenced soon thereafter. Nichiren Shoshu argued that Nobuo Abe, its High Priest, had been defamed by the charges printed by Soka Gakkai. In response, Soka Gakkai argued that Mrs. Clow had been defamed by Abe's repeated statements that Clow's accusations were false. Central to these lawsuits was whether there was any proof that Abe had actually been arrested for soliciting prostitutes in Seattle in 1963. Soka Gakkai's lawyers faced two major problems. First, the incident occurred 30 years earlier, and few records remained, especially since charges were never brought against Mr. Abe. Second, if records did exist, they may have resided in non-public files or databases.

a. Soka Gakkai Illegally Obtains Information on Nobuo Abe Through Jack Palladino

According to one cooperating witness, Soka Gakkai's main lawyer in the United States, Barry Langberg, hired Jack Palladino, a well-known private investigator, to determine whether Abe was arrested in Seattle in 1963.[799] Palladino then apparently contacted a source in the Bureau of Prisons who had access to the National Crime Information Center (NCIC) database. This source accessed the database, and noted the following information:

> 3/63, NCIC-NATF, Complaint by four females of possible pandering and solicitation by a bald Oriental, male, no english at 12:40 AM, taken in for questioning, at 1:30 AM, no english. detained [sic] and released at 3:30 AM, forwarded by teletype.[800]

This information was then apparently provided to other attorneys working on the case. If this information on Abe was taken from the NCIC database and provided to private parties like Langberg or Palladino, the source at the Bureau of Prisons (BOP) broke the law, as did possibly Langberg and Palladino.[801] Federal law prohibits the theft, conversion, or unauthorized conveyance of government records, and individuals have been prosecuted for the theft of NCIC records specifically.[802]

Soka Gakkai would later attempt to confirm this record through other sources, and would have great difficulty in doing so. First, it received confirmation through Rebekah Poston and her investigators that there was a record on Abe in the NCIC system, but that it was different from the record viewed by the source at the Bureau

[799] Interview of Richard Lucas at 1 (July 11, 2000) (Lucas interview).

[800] Memorandum from Rich Lucas to Phil Manuel (Dec. 28, 1994) (exhibit 72).

[801] After the committee's July 27, 2000, hearing regarding this subject, committee staff was contacted by counsel for Mr. Langberg, who denied that Mr. Langberg had hired Palladino to obtain any information on Abe. He also denied that Mr. Langberg was involved in any illegal activity. The committee intends to subpoena information from Mr. Langberg and Mr. Palladino to confirm the extent of their involvement in this matter.

[802] 18 U.S.C. § 641; see also facsimile from John Sebastian to Phillip Manual (sic) (Feb. 15, 1995) (attaching two newspaper articles about prosecutions for theft of NCIC records) (exhibit 80).

of Prisons. Then, subsequently, when Poston tried to access the record through the FOIA process, she was told that no record existed. These later problems, which are discussed in detail below, have led individuals involved in the case to speculate that the NCIC information on Abe was planted there by the initial source at the Bureau of Prisons. This speculation is supported by several factors:

- It is unlikely that a computer record would have existed for Abe if he was detained and released in 1963 on a minor charge.
- Indeed, in his interview with committee staff, Phil Manuel, the main investigator who worked for Poston, noted that he believed that the BOP source was a member of Soka Gakkai, and a friend or associate of Hiroe Clow.[803] If that information is true, she would have had the motive to fabricate evidence against Abe.
- Other private investigators were unable to verify the information provided by the BOP source.
- When conducting a search for records in response to Poston's FOIA request, the Justice Department was unable to find any records on Abe.

If indeed this information on Abe was planted in the NCIC system, it raises serious questions about the stewardship of the NCIC database, and makes the subsequent failure by the Justice Department to investigate this matter even more troublesome.

b. Poston Requests Her Private Investigators to Break the Law

While Soka Gakkai already had gained access to what purported to be Abe's arrest record, they chose to confirm its existence through another source. It is unclear why Soka Gakkai chose to hire another set of lawyers and investigators to access Abe's record a second time. Perhaps they were concerned with the reliability of Mr. Palladino's work, or perhaps they simply wanted a high degree of confidence in their information before they used it in court in Japan.

Billing records subpoenaed by the committee indicate that Poston's work for Soka Gakkai began in early November 1994.[804] Poston was one of a number of lawyers hired by Soka Gakkai through their main California-based lawyer, Barry Langberg. While the circumstances of Poston's hiring are not entirely clear, at least one document prepared by individuals working with Poston states that "Steel Hector was hired due to the relationship with the Attorney General."[805] Indeed, Poston confirmed to investigators working for her that she believed that the only reason Steel Hector & Davis was working on this matter was because of the firm's influence in Washington.[806]

[803] Interview of Philip Manuel at 3 (July 18, 2000) (Manuel interview).
[804] See Steel Hector & Davis billing records at 0000143, 0000154 (exhibit 100).
[805] Memorandum from Mike Wilson to John Gibbons at 1 (Nov. 27, 1996) (exhibit 98).
[806] Lucas interview at 3.

Poston had her initial client meeting on the Abe matter on November 2, 1994.[807] Due to an invocation of privilege by Soka Gakkai, the committee has not learned who met with Poston, or what was discussed. However, immediately after her client meeting, Poston apparently contacted Richard Lucas, a private investigator in Florida who worked with the Philip Manuel Resource Group (PMRG), an investigative firm based in Washington, DC. Poston retained PMRG to work on the case, and specifically, to determine whether Abe had a record in the NCIC system. Lucas explained Poston's request in a memo to Phil Manuel, the principal in PRMG:

> [Poston] called this afternoon asking for assistance on a government inquiry. Her request is unusual and came with the usual promises that it will lead to bigger and better things.
>
> She is attempting to obtain a March 1963 document that substantiates an individual was arrested 30 years ago in Seattle for prostitution. It was confirmed, according to her, through the Federal Bureau of Prisons that they have in there [sic] files a reference of this arrest.[808]

This task, though, proved difficult for Lucas and Manuel to accomplish. Poston's billing records indicate that she had four telephone calls with "investigators" over the next 2 days.[809] On November 4, 1994, Lucas sent another memo to Manuel:

> As you know we received an assignment from Poston and now I am in a precarious position.
>
> * * * * *
>
> It appears the two alternatives are to use a confidential source or tell Poston that we do not want the case. The latter will cause ill feelings since we should have informed her on Wednesday but it is better to be up front now than to incur expenses, not get the information, and burn bridges with the our [sic] only inroad at Steel Hector Davis.[810]

Manuel responded by saying "Poston must realize that SUPERMAN does not exist. There is no confidential source who will give documentary evidence which is not released through proper channels. . . . If the document exists we can get it but it will take time—that's it. She'll have to take it or leave it."[811] After an additional memo from Lucas asking him to reconsider, Manuel wrote "I do not know a confidential source in Seattle which has the authority to hand search criminal files that are not on a computer—remember we have no identifiers like DOB or SSN only a name therefore NCIC sources are useless. Computer files do not go back to 1963. The files must be hand searched by someone with ac-

[807] Steel Hector & Davis billing records at 0000154 (exhibit 100).
[808] Memorandum from Rich Lucas to Phil Manual (Nov. 2, 1994) (exhibit 54).
[809] Steel Hector & Davis billing records at 0000154.
[810] Memorandum from Rich Lucas to Phil Manuel (Nov. 4, 1994) (exhibit 55).
[811] Memorandum from Rich Lucas to Phil Manuel (Nov. 4, 1994), (with handwritten notations of Phil Manuel) (exhibit 56).

cess."[812] Later on November 4, Poston obtained Abe's date of birth, and provided it to Manuel and Lucas to assist them in their search.

c. Poston Obtains the Information

Using the information provided by Poston, Manuel and Lucas each contacted confidential sources to determine whether Abe had an arrest record. Manuel contacted Ben Brewer, the manager of the Program Support Section within the Administration Division at the FBI.[813] According to Richard Lucas, Brewer accessed the NCIC database, and told Manuel the information on Abe contained in the database.[814] Lucas contacted a friend, Tony Gonzalez, a retired IRS investigator, to ask for help in obtaining criminal history information on Abe. Gonzalez in turn contacted a confidential source who provided him with information regarding Abe's purported 1963 arrest in Seattle.[815] Several days later, on November 11, 1994, Lucas sent a memo to Poston containing the information that Manuel and Lucas had been able to obtain from their confidential law enforcement sources:

> A source was contacted and provided the following information:
>
> 1. The source was provided with the identifiers of Nobuo Abe and Noburo Abbe, and the date of birth of December 19, 1922. The source was also told there was no social security number due to the subject not being a U.S. citizen.
>
> 2. The source relayed that under the data provided there was a reference to "Solicitation of Prostitution, Seattle Police Department, March 1963". The charge was abbreviated and not spelled out.[816]

The memo then contained a detailed explanation of the NCIC database, as well as an explanation of why information like this would be in the NCIC:

> 6. The source theorized that if Abe was a Japanese citizen with no U.S. residence or forms of identification, other than a passport, an inquiry might have been made with NCIC to determine if he was wanted on other charges or had previous encounters with law enforcement.[817]

After receiving this information, Poston and Soka Gakkai came back with a number of questions. George Odano, the Soka Gakkai representative dealing with Poston, posed a number of questions to Poston, seeking more detail on the information that the investigators had obtained, as well as confirmation that the information ob-

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[812] Memorandum from Rich [Lucas] to Phil [Manuel] (with handwritten notations by Phil Manuel) (exhibit 57).

[813] Lucas interview at 1. In an interview with committee staff, Philip Manuel denied that he ever obtained NCIC information, or any other proprietary government information on Abe. Manuel interview at 2–3. However, Manuel's interview statement is contradicted not only by Lucas, but also by Manuel's own sworn affidavit, in which he states "I contacted a confidential and highly reliable source" and "my source told me that there was a federal government record for Nobuo Abe which referred to 'Suspicion of Solicitation of Prostitution, Seattle Police Department, March 1963.'"

[814] Lucas interview at 1.

[815] Id.

[816] Memorandum from Richard Lucas to Rebekah Poston (Nov. 11, 1994) (exhibit 61).

[817] Id.

tained by Manuel and Lucas was accurate.[818] Apparently, one concern was that the information that Soka Gakkai had previously obtained from the Federal Bureau of Prisons was more detailed than the information obtained by Manuel and Lucas. Poston forwarded these questions to Lucas, ordering him to "please get answers to as many of these as you can and be specific. This is a matter of serious importance."[819]

Lucas provided these follow-up questions to Phil Manuel, and Manuel worked to obtain the requested information. Six days later, on November 17, 1994, Lucas wrote another memo to Poston to address Odano's follow-up questions:

> A source within the U.S. government in Washington D.C. was contacted and provided the following information:
>
> 1. There is no record or information on Hiroe Clow.
>
> 2. There is a record for Nobuo Abe. The record refers to "Suspicion of Solicitation of Prostitution, Seattle Police Department, March 1963". There is no reference to Abe's date of birth nor the exact date of the incident. There was no other significant date as to the facts and circumstances surrounding the incident.
>
> 3. The confidential source stated that the information on Mr. Abe was an inquiry for information by the Seattle Police Dept. not a recording of an arrest or conviction.
>
> 4. The source in Washington D.C. has access to any inquiries made by third parties on Mr. Abe. According to the computer tracking system there have been more than six inquiries on Mr. Abe from various U.S. cities over the last two weeks.
>
> 5. The various inquiries by the different government entities has caused concern in the Washington D.C. central office. The source stated the recorded information should never have been entered on Mr. Abe. The source also stated that if Mr. Abe made an official request, the entry under his name would be removed from the record. In addition, it is under consideration that the entire record be removed due to the obvious recent interest by numerous third parties, the date of the alleged incident and the fact it is a "questionable entry".
>
> 6. It is our opinion that any effort to obtain the information on Nobuo Abe through an official request be done expeditiously.[820]

Lucas informed committee staff that Manuel obtained this information from Ben Brewer, his confidential source in the FBI.[821]

At this point, both Lucas and Manuel were becoming quite concerned with their involvement in the Soka Gakkai matter. Both

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[818] Facsimile from Rebekah Poston to Richard Lucas (Nov. 11, 1994) (attaching Nov. 10, 1994 letter from George Odano to Rebekah Poston) (exhibit 62).

[819] Id.

[820] Memorandum from Richard Lucas to Rebekah Poston (Nov. 17, 1994) (exhibit 63).

[821] Lucas interview at 2. Again, Manuel denied in his committee interview that he obtained NCIC information on Abe. However, Manuel's denials are contradicted by his own sworn affidavit, and are not credible.

were under the impression that this would be a small project when they accepted it.[822] In fact, the only reason they accepted it was because Poston was a senior lawyer with a prominent firm with close connections to the Justice Department. Otherwise, PMRG never would have accepted a case so small.[823] However, shortly after they started working on the project, Lucas and Manuel realized that the project was more complicated, and exposed them to significant risks. Lucas told the committee that it was clear that "essentially you were breaking the law" by doing what Poston had asked.[824] In sum, Lucas and Manuel became convinced that Poston had asked them to expose themselves to a major risk for very little financial reward.[825]

d. The Information on Abe is Deleted

By December 1994, Manuel and Lucas became concerned that the NCIC record on Abe was going to be deleted. Apparently, Ben Brewer, Manuel's source within the FBI, told Manuel that there was concern in the FBI about the origin of the Abe record, and that it might be deleted.[826] By early December 1994, Lucas was discussing with Poston actions that Soka Gakkai could take to secure the Abe NCIC record before it was deleted. They discussed seeking a court injunction preserving the Abe record, but apparently decided not to.[827]

By late December 1994, Abe's NCIC record had been deleted. On December 22, 1994, Manuel wrote a memo to Poston in which he described his contacts with a confidential source who accessed NCIC on his behalf (Richard Lucas informed the committee that this source was again Ben Brewer of the FBI):

> This is to report that a highly confidential and reliable source has advised as follows regarding the subject of your inquiry:
>
> (1) Whatever files of references, either in data base [sic] form or hard copy form, which were available previously have apparently been purged. There are currently no derogatory references to the subject of your inquiry in any files maintained by or under the control of the Department of Justice or any of its investigative agencies. Specifically, there is no information in NCIC.[828]

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[822] Lucas interview at 2.

[823] Id.

[824] Id. When questioned by minority staff at the committee's July 27, 2000, hearing, Lucas qualified the statement he had given to majority staff on an earlier occasion. When asked if he felt that his actions broke the law, Mr. Lucas first stated that he could not reach a legal conclusion determining whether or not he broke the law. "Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department," 106th Cong. 52 (July 27, 2000) (preliminary transcript). Then, he stated that "I do not believe my contact with Mr. Gonzalez was breaking the law." Id. at 53. Mr. Lucas' conclusion that he was not breaking the law was based upon the fact that he claims that he did not have specific knowledge that Gonzalez would be accessing the NCIC database, and that he did not specifically request Gonzalez to access to NCIC database. The fact that Lucas, and for that matter, Manuel, did not specifically ask their sources to access NCIC is legally irrelevant. Rather, the fact is that they were asked to confirm the existence of information in NCIC, and asked their sources to confirm the existence of the information. Their sources then did so, by accessing NCIC. Such activity is illegal.

[825] Id.

[826] Id.

[827] Memorandum from Richard Lucas to Rebekah Poston (Dec. 9, 1994) (exhibit 67).

[828] Memorandum from Philip R. Manuel to Rebekah Poston (Dec. 22, 1994) (exhibit 71).

Because of the confusion surrounding Abe's NCIC record at this point, Poston apparently went back to the original source of the information on Abe—Jack Palladino's source at the Bureau of Prisons. Poston apparently learned exactly what information the BOP source extracted from the NCIC, and passed this information on to PMRG.[829] Poston asked Lucas and Manuel to determine whether the BOP source's notes were legitimate, and whether that kind of information could have come from databases accessible at the BOP.[830]

It is unclear what, if any, answers Manuel and Lucas were able to provide to Poston. A number of records show that Poston was hiring still more private investigators as late as 1996 to determine what happened to the NCIC records on Abe.[831] It appears that Poston decided that it was crucial to her case to determine where the original BOP source got the information on Abe. It also appears that Poston's desire to get information from the BOP source may have even led her to offer a bribe to the BOP employee. As one memo from 1996 notes:

> Poston stated she was told the Bureau of Prison [sic] employee would not come forward due to her pension may be at risk if she was exposed. She added an offer may have been made as to severance pay by the client if that resulted.[832]

Due to barriers raised by Poston and her attorneys, namely the invocation of the fifth amendment and attorney-client privileges, the committee has not been able to learn whether Poston or Soka Gakkai ever made good on this payment to their confidential source.

e. The Actions Taken Were Illegal

There is no question that the actions taken by Rebekah Poston, Philip Manuel, Richard Lucas, and their confidential sources, were illegal. 18 U.S.C. § 641 provides for felony or misdemeanor penalties for anyone who "embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record . . . or whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted[.]"[833] This statute has been used to prosecute individuals who sell or give away government information.[834] It appears that both Poston and the private investigators at PMRG were aware of their legal exposure. Richard Lucas stated that "in direct conversations with Ms. Poston, she commented about her concern that the activities of the unknown Bureau of Prisons employee and the actions taken by PMRG on her behalf could be illegal[.]"[835] There is also a document indicating that Phil Manuel was aware of the

[829] Memorandum from Rich Lucas to Phil Manuel (exhibit 71).
[830] Id.
[831] Memorandum from Michael Wilson to John Gibbons (Nov. 19, 1996) (exhibit 97).
[832] Memorandum from Michael Wilson to John Gibbons (Nov. 27, 1996) (exhibit 98).
[833] 18 U.S.C. § 641.
[834] See, e.g., *United States* v. *Elefant,* 999 F.2d 674 (2d Cir. 1993).
[835] Letter from John C. Gibbons to David V. Ries, Deputy Chief, Office of Professional Responsibility, Federal Bureau of Investigation, May 28, 1997 (exhibit 103).

risks involved in improperly obtaining NCIC information. On February 15, 1995, an individual named John Sebastian sent Manuel a fax of two newspaper articles with the handwritten note "TITLE: OUT ON THE LIMB." Sebastian then wrote on top of each article a caption stating "THEFT OF NCIC RECORDS."[836] The articles describe police officers prosecuted for selling NCIC printouts.

In addition, the 1996 memo describing Poston's efforts to obtain information from Jack Palladino's source at the BOP raises additional questions about illegal conduct by the Soka Gakkai lawyers and investigators. The memo indicates that Poston may have made an offer that Soka Gakkai would reimburse the BOP source if she lost her pension as a result of coming forward with her confidential information.[837] If these allegations are true, they could constitute a bribe or solicitation for bribery, in violation of 18 U.S.C. § 201.

3. Poston Requests Information on Nobuo Abe Through FOIA

a. Poston Places FOIA Requests for Information on Abe

On November 21, 1994, Poston submitted FOIA requests to the Justice Department, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and a number of other agencies, requesting information on Abe's alleged detention in Seattle. Given the claims of attorney-client privilege made by parties involved in the investigation, all of Poston's reasons for pursuing the information through FOIA are unknown. However, it appears that information obtained through legal means would be easier to use in the ongoing litigation in Japan. In addition, it appears that Poston had a concern that the Abe record might be deleted from the NCIC database, given the concern within the FBI that it was not a legitimate record.

b. Poston Publicly Confirms that She Already Has the Information

While her FOIA requests were still pending, in December 1994 and January 1995, Poston took steps that publicly acknowledged the receipt of confidential NCIC records from Manuel and Lucas. First, on December 9, 1994, Poston wrote a letter to Soka Gakkai confirming that she had obtained the NCIC information on Abe:

> Your organization has requested us to investigate whether the United States government has maintained any records of an investigation concerning an individual known as Nobuo Abe, a foreign national, born December 19, 1922.
>
> Subsequent to this request, we engaged the Philip Manuel Resource Group, Ltd. (PMRG), a highly prestigious private investigations firm based in Washington, D.C[.]
>
> PMRG reported to us on November 17, 1994, that a source within the U.S. government in Washington, D.C. was contacted and the source confirmed to PMRG that there is a record for Nobuo Abe. According to PMRG's report to us, the record refers to:

[836] Facsimile from John Sebastian to Philip Manuel (Feb. 15, 1995) (attaching articles regarding the theft of NCIC records) (exhibit 80).

[837] Memorandum from Michael Wilson to John Gibbons (Nov. 27, 1996) (exhibit 98).

Suspicion of Solicitation of Prostitution
Seattle Police Department
March, 1963

* * * * *

I am able to testify as to the truthfulness and accuracy of my statements in this letter.[838]

Poston repeated the same information in a letter sent to Hiroe Clow on January 4, 1995.[839] Shortly thereafter, in a SGI–USA newsletter dated January 9, 1995, Barry Langberg, Hiroe Clow's lawyer, publicly disclosed Poston's letter to Clow.[840] Langberg included the letter in an interview in which he was explaining the progress of Clow's lawsuit against Abe.

Poston's disclosure of the information that PMRG had obtained for her is surprising, given that her activities had been cloaked in secrecy to that point. Moreover, the disclosure by Poston constitutes a public admission that she had hired individuals who broke the law to obtain Abe's NCIC information, with Poston's apparent knowledge and consent. In addition, Poston's disclosure of the information obtained by PMRG constitutes a waiver of any attorney-client privilege or work product protection that she could invoke over those subjects.

c. Negative Responses to Poston's FOIA Requests

When Poston made her FOIA requests for NCIC information on Nobuo Abe, she was taking on a long-standing Justice Department policy against the release of that kind of information. According to Richard Huff, the Co-Director of the Office of Information and Privacy, the Department has a policy against releasing any criminal justice information to a third party without permission of the party involved.[841] Moreover, in cases where they cannot release records, the Department has a policy against even confirming or denying the existence of criminal justice records within the Department.[842] According to Huff, this policy ensures that individuals who have arrest records, and other records, have those records kept private. As Huff explained to committee staff, if the Department confirmed when individuals did not have arrest records, and simply said "no comment" when they did have records, any person would be able to determine who had arrest records in the Justice Department.[843] Therefore, according to Huff, the Justice Department's policy of refusing to confirm or deny whether criminal justice records exist is integral to a system that attempts to protect the privacy of individuals involved.[844]

Poston apparently recognized the fact that she was attempting to obtain information in the face of long-standing Justice Department policy. She informed the committee that she viewed her FOIA request as a long-shot, because she was requesting information on a

[838] Letter from Rebekah Poston to Soka Gakkai (Dec. 9, 1994) (exhibit 68).
[839] Letter from Rebekah Poston to Hiroe Clow (Jan. 4, 1995) (exhibit 73).
[840] The SGI–USA Newsletter (Jan. 9, 1995) (exhibit 74).
[841] Interview of Richard L. Huff at 1 (June 16, 2000) (Huff interview).
[842] Id.
[843] Id. at 1–2.
[844] Id. at 2.

person that she did not represent.[845] Poston's client, Hiroe Clow, also seemed to recognize that the FOIA request would not be granted, stating in a letter to Janet Reno: "[m]y lawyers tell me that things don't look so good on the F.O.I.A. request if decided in accordance with previous practices."[846] And, as expected, Poston's FOIA requests were rejected. The FBI informed Poston that she could not receive any information on Abe unless she provided either proof of death, or a notarized waiver from Abe.[847] Similarly, the Executive Office of United States Attorneys told Poston that she must provide a notarized waiver by Abe.[848]

Poston met with the FBI to discuss their handling of the FOIA request, and according to Poston, the FBI was receptive to her arguments, but informed her that their general policy was not to release, or even confirm or deny the existence of records about third parties in NCIC without the permission of the third party.[849] According to Poston, the FBI told her that they would like to help her, but that any decision on the release of Abe's NCIC information would have to be made by the Attorney General, not the FBI.[850]

After she received negative responses to her FOIA requests, on February 3, 1995, Poston submitted an appeal to the Justice Department. In her appeal, she argued that the Justice Department should release NCIC records on Abe, based on the fact that there was a significant public interest in whether Abe was arrested in Seattle in 1963; and that as a non-citizen, Abe was not protected by the Privacy Act.[851] However, Poston was aware that her arguments would not likely be accepted by the Justice Department.[852] The Justice Department had an established policy that it would not confirm or deny the existence of the records that Poston was seeking. This policy had been in place for a significant period of time, and Poston's arguments did not change that fact.

4. Rebekah Poston's Lobbying Campaign

After her unsuccessful meeting with the FBI, Poston began a remarkable series of contacts with the Justice Department, in an effort to reverse the existing Justice Department policy, and obtain whatever information existed on Nobuo Abe in the NCIC system. Between January and June 1995, Poston contacted high-level Justice Department officials at least 22 times regarding her FOIA request.[853] These contacts were made with senior staff in the Office of the Attorney General, the Office of the Associate Attorney General, and the Office of Information and Privacy. Poston began this lobbying campaign even before her FOIA appeal had been rejected by the Justice Department. As she explained in her interview with committee staff, she understood that her legal arguments were a

[845] Poston interview at 3.
[846] Letter from Hiroe Clow to Janet Reno, Attorney General, Department of Justice (Mar. 21, 1995) (exhibit 110).
[847] Letter from J. Kevin O'Brien, Chief, Freedom of Information—Privacy Acts Section, Information Resources Division, Federal Bureau of Investigation, to Rebekah Poston (Dec. 8, 1994) (exhibit 66).
[848] Letter from Bonnie L. Gay, Attorney-in-Charge, FOIA/PA Unit, Executive Office for U.S. Attorneys, to Rebekah Poston (Jan. 12, 1995) (exhibit 75).
[849] Poston interview at 2.
[850] Id.
[851] Letter from Rebekah Poston to Attorney General Janet Reno (Feb. 3, 1995) (exhibit 77).
[852] Poston interview at 3.
[853] See Steel Hector & Davis billing records (exhibit 100).

long-shot, and she believed that she needed to raise this matter at the highest levels of the Justice Department.[854]

a. Poston's Contacts with John Hogan

Over the next several months, Poston would be in frequent contact with John Hogan, the Chief of Staff to the Attorney General. According to Poston, Hogan is a good friend of hers, and a great friend of her sister.[855] As an example of her family's friendship with Hogan, Poston informed the committee that at the time of Hurricane Andrew, Hogan invited Poston's sister and Poston to stay with him in his house.[856] Poston initially told Hogan that she was in a "FOIA situation," and wanted to meet with the decision-makers face-to-face to make her case.[857] Poston explained to Hogan that she wanted him to make an introduction to the relevant individuals who could help her.[858] According to Poston, Hogan told her that "he didn't do FOIA, but would be happy to help her," and he told her that he would check into the matter.[859]

Hogan's account differs in some significant respects from Poston's. First, he downplayed his relationship with Poston. He acknowledged that he knows Poston, but did not describe her as a friend.[860] He similarly downplayed Poston's relationship with the Attorney General, merely acknowledging that Roberta Forrest was a secretary for the State Attorney's Office, failing to mention that she managed Ms. Reno's campaigns for office.[861] Hogan acknowledged that he was contacted by Poston, and that Poston asked him for help with her FOIA appeal. However, he stated that he "did not pay much attention to what she was saying after he heard that it was a FOIA case," and that he generally suggested that she needed to talk to people in the DOJ FOIA office.[862]

Hogan informed the committee that he believed that he spoke with Poston on less than five occasions.[863] Similarly, Poston estimated that she spoke with Hogan on two to four occasions.[864] However, records subpoenaed by the committee reveal a remarkable volume of contacts between Poston and Hogan. Between January 26, 1995, and June 2, 1995, Poston contacted John Hogan at least 18 times on the Soka Gakkai matter.[865] While it is possible that some of these contacts were occasions when Poston merely left a message with Hogan, they clearly indicate that Hogan did more than suggest that Poston speak with officials in the Justice Department FOIA office.

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[854] Poston interview at 3.
[855] Id.
[856] Id.
[857] Id.
[858] Id.
[859] Id.
[860] See Hogan interview.
[861] Id. at 1.
[862] Id.
[863] Id.
[864] Poston interview at 3.
[865] See Steel Hector & Davis billing records. A number of the cited pages refer to contact between Poston and the Attorney General's Office. However, in her interview, Poston acknowledged that her sole contact in the Attorney General's Office was Hogan. Similarly, in his interview, Hogan stated that he believed that other than the Attorney General, he was the only person in the Attorney General's Office who knew Poston.

b. Poston's FOIA Appeal is Rejected

During the time that Poston was making these contacts with Hogan, her appeal was rejected by the Justice Department's FOIA office. In a letter dated April 25, 1995, Richard Huff, the Co-Director of the Office of Information and Privacy, rejected Poston's arguments. Huff informed the committee that he did not spend much time deliberating Poston's appeal, and viewed it as a clear-cut decision.[866] In Huff's mind, the Supreme Court directly addressed this issue:

> I find the Supreme Court's holding in *United States Department of Justice* v. *Reporter's Committee for Freedom of the Press*, 489 U.S. 749 (1989) to be controlling in this case. Thus, in the absence of such authorization [from Mr. Abe], and after careful consideration of your appeals from the actions of the EOUSA and the FBI, I have decided to affirm the initial actions of these components in refusing to confirm or deny the existence of records responsive to your request. Lacking an individual's consent, proof of death, official acknowledgment of an investigation, or an overriding public interest, even to acknowledge the existence of law enforcement records pertaining to an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy.[867]

At this point, the Office of Information and Privacy, which served as the highest office deciding FOIA appeals within the Justice Department, had spoken. To obtain a reversal would require the intervention of a high-level appointee at the Justice Department.

c. Attorney General Reno Recuses Herself

On April 28, 1995, only 3 days after Huff rejected Poston's FOIA appeal, the Attorney General recused herself from the Soka Gakkai matter. In a memorandum to her staff, copied to the Associate Attorney General, Ms. Reno stated:

> This is to inform you that I have recused myself from participation in the FOIA appeal made to the Department concerning requests for information relating to Nobuo Abe, a prominent religious leader, on behalf of Mrs. Hiroe Clow.
>
> Apparently, an attorney, who is a close personal friend of mine and participated in my confirmation hearing preparation has requested my intervention in the matter and I want to make it very clear that I have chosen to disqualify myself from any participation and request that no information regarding this matter be brought to my attention.[868]

Poston was asked about the recusal memo, and stated that the memo clearly refers to a contact from John Edward Smith, a close friend of the Attorney General, and a senior partner at Steel Hector who worked on the Abe matter.[869] However, Poston denied hav-

[866] Huff interview at 2.
[867] Letter from Richard L. Huff to Rebekah J. Poston (Apr. 25, 1995) (exhibit 83).
[868] Memorandum from Attorney General Janet Reno to staff of the Attorney General (Apr. 28, 1995) (exhibit 84).
[869] Poston interview at 4.

ing any knowledge that Smith contacted Reno on the Abe matter.[870] In addition, the Steel Hector billing records do not show that Smith billed any time on the Abe matter.[871] John Hogan, the Attorney General's Chief of Staff, similarly believed that the memo referred to Smith.[872] In his interview with committee staff, Hogan claimed that he was unaware that Reno had recused herself from this matter.[873] However, at the committee's July 27, 2000, hearing, Hogan offered a new explanation of Reno's recusal:

> I had a conversation with her [Poston] at one point, and she clearly was frustrated with the fact that her position was not gaining momentum within the Department, and she mentioned to me that she was handling the matter with a man by the name of John Edward Smith. I knew him to be a friend of the Attorney General. Again, I have worked with the Attorney General since 1979 and knew her before that. He had been at Steel Hector & Davis when the Attorney General was there, as opposed to Ms. Poston, who joined the firm after Ms. Reno left. He was someone—when she was nominated to be Attorney General, he took a leave of absence from the firm and actually came up here to Washington to help her prepare for her confirmation hearings. He came up here and helped her prepare for those hearings.
>
> So when Ms. Poston mentioned John Edward Smith's name to me, I became concerned. I went to the Attorney General and said, there is this FOIA matter that Rebekah Poston had called me on, and I sent it off to the career people. And the Attorney General just said, I am recusing myself from the matter. Make sure nothing else comes to me.
>
> Although Ms. Poston I would not characterize as a friend or social acquaintance of the Attorney General, Mr. Smith was, and that was my notice that he was more involved, and so I brought it to her attention.[874]

However, Hogan's hearing testimony is in some tension with the text of Reno's recusal memo, which states that "[a]pparently, an attorney, who is a close personal friend of mine and participated in my confirmation hearing preparation has requested my intervention in the matter[.]" This statement is considerably different from what Hogan supposedly relayed to the Attorney General. Given the fact that Poston is unaware of Smith's contacts with Reno, the two versions of Hogan's recollection, and the text of Reno's own recusal memo, the committee is left with a number of questions:

- Did anyone representing Soka Gakkai contact Attorney General Reno? If it was John Smith, why didn't he either inform Poston, who was overseeing the case, or bill his time?

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[870] Id.
[871] See Steel Hector & Davis billing records (exhibit 100).
[872] Hogan interview at 2.
[873] Id.
[874] "Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department," 106th Cong. 147–48 (July 27, 2000) (preliminary transcript).

- If Smith contacted Reno, why does Rebekah Poston claim to be unaware of the contact? Smith was not the main attorney on the case, and it is difficult to believe that he would contact the Attorney General about the case without informing Poston.
- Why did Reno recuse herself from the case? Richard Huff, who has directed the Office of Information and Privacy for almost 20 years, stated that he has never heard of the Attorney General, Deputy Attorney General, or Associate Attorney General ever recusing themselves from a FOIA appeal.
- The manner of Reno's recusal raises significant questions about the contacts that led to the recusal. What did Smith ask Reno to do? Hogan stated that in his experience, Reno would "not receive it well if [someone like Smith] asked her for special treatment on behalf of a client."[875] that is the case, why did Smith, a long time friend of the Attorney General, contact her?

d. John Hogan Arranges a Meeting with the Associate Attorney General

After the rejection of her FOIA appeal, Rebekah Poston continued her contacts with John Hogan, requesting a meeting with the Associate Attorney General. On May 12, 1995, she wrote to Hogan, and specifically requested a meeting. In a letter marked "PERSONAL AND CONFIDENTIAL," Poston stated that she was "rather disappointed" with the Justice Department's rejection of her FOIA appeal.[876] She then requested the meeting with Schmidt:

> Consequently, John Smith, Russell Bruemmer and I believe we must take one last step before deciding whether to initiate litigation on these issues. Believe me, we do not want to bring unnecessary or senseless litigation. Unfortunately, however, we are lacking an understanding, given our arguments and the failure of anyone in the Office of Information and Privacy to address them head on, as to why our appeal has been denied. If you could assist the three of us in scheduling a meeting with Mr. Schmidt, we would like to address our concerns with him. We have not yet attempted to contact Mr. Schmidt.
>
> We trust that Mr. Schmidt will agree to one final conference on this matter; we will of course work with his schedule on a convenient date and time.
>
> I harken [sic] back to the beginning of this matter when you and I first spoke. You commented that you didn't understand why they could not tell whether they have a record or not. Frankly, we would be satisfied with such a response.[877]

[875] Id.
[876] Letter from Rebekah Poston to John Hogan (May 12, 1995) (exhibit 85).
[877] Id.

Steel Hector & Davis billing records also indicate that Poston called Hogan at least four times in late May and early June, apparently the time when the meeting with Schmidt was scheduled.[878] In her interview with committee staff, Poston stated that she was asking Hogan to help set up the meeting with Schmidt.[879] Poston stated that Hogan was responsive, and said he would contact Schmidt, and help set up the meeting.[880] When he was interviewed by committee staff though, Hogan had a different recollection. He stated that he did not even recall Poston asking for help in setting up a meeting with Schmidt.[881] Hogan stated that "I cannot imagine that I would be so presumptuous as to ask Schmidt to meet with anyone."[882] Hogan did allow that it was possible that he forwarded Poston's May 12 letter to Schmidt's office, but does not believe that he ever spoke with Schmidt about this matter.[883]

Hogan's account of how the Schmidt meeting was arranged is troubling. Poston clearly stated that Hogan helped arrange the meeting. The timing and volume of the telephone calls between Poston and Hogan supports the conclusion that Hogan was involved in scheduling the meeting with Schmidt. Under Hogan's account, the 18 contacts from Rebekah Poston go unexplained. Poston continued to contact him, despite the fact that in their initial conversation, Hogan told her that he did not "do FOIA," and directed her to the Office of Information and Privacy. The fact that there were so many more contacts, including contacts shortly before the meeting with Schmidt, supports the conclusion that Hogan was involved in scheduling the meeting. Finally, common sense supports the conclusion that Poston received some assistance in arranging a meeting with the Associate Attorney General on a matter so small as a FOIA appeal. It would be unlikely that the Associate Attorney General would meet with a party on this kind of matter unless there was some special request.

e. The Justice Department "Reverses its Policy"

Rebekah Poston, John Smith, and Russell Bruemmer met with John Schmidt on June 15, 1995, at 3:30 p.m.[884] Before their meeting with Schmidt, John Smith arranged for the group to visit Attorney General Reno in her office. In her interview, Poston confirmed that John Smith had made this appointment with the Attorney General.[885] Poston stated that this was a social call, and that the group exchanged pleasantries with the Attorney General.[886] For example, Poston stated that the Attorney General asked her how her sister and her children were doing.[887] Poston denied that she, Smith, or Bruemmer discussed the Soka Gakkai matter with the Attorney General.[888] When the Attorney General asked them what

[878] Steel Hector & Davis billing records at 0000146 (exhibit 100).
[879] Poston interview at 3.
[880] Id.
[881] Hogan interview at 1.
[882] Id. at 2.
[883] Id.
[884] Calendar of Rebekah Poston for June 15, 1995, Steel Hector & Davis document 000028 (exhibit 99).
[885] Poston interview at 5.
[886] Id.
[887] Id.
[888] Id.

brought them to the Justice Department, Smith stated that "we have other business in the Department."[889]

After their meeting with the Attorney General, Poston, Smith and Bruemmer met with Schmidt. According to Poston, Schmidt started the meeting by informing them that he had not yet discussed the matter with Richard Huff.[890] Poston took this as a positive sign, because it meant that Schmidt had an open mind on the subject.[891] On the other hand, it is slightly troubling that Schmidt would not take any steps to educate himself on the Department's FOIA policy before he met with a party who was seeking the reversal of long-standing Department policy. Poston commented on another troubling aspect of the meeting with Schmidt—Schmidt had no staff present at the meeting with Poston.[892] It is strange enough that Schmidt, the third-highest official in the Department of Justice, would even attend a meeting on a FOIA request. It is even more odd that he would attend this meeting by himself, and not seek to delegate this matter to a staffer. Due to Schmidt's failure to recall even the most basic facts about this matter, we cannot determine whether Schmidt recognized that Poston's request was irregular, or whether he simply wanted to work on this matter himself.

Poston informed the committee that she, Smith and Bruemmer made their points with Schmidt, and he stated that he would take their arguments under advisement.[893] When he was interviewed by committee staff, Schmidt could recall almost nothing about the entire Soka Gakkai matter. Schmidt did recall that he asked Huff to find out what information the Department had on Abe, and that when he discovered that there were no records, that he decided they could tell that to Poston.[894] According to Schmidt, "it was hard to see the adverse consequences" of confirming that there were no NCIC records on Abe.[895] Schmidt told committee staff that "Dick [Huff] said he would be comfortable with that."[896]

Richard Huff, though, tells a dramatically different story. Huff stated that Schmidt called him in mid-June to ask about the Poston FOIA appeal.[897] They arranged a meeting for June 22, 1995. At the meeting, Schmidt asked Huff what the Department policy was on releasing this kind of information.[898] Huff told Schmidt that Abe, as a foreign national, was not covered by the Privacy Act.[899] Huff also explained, however, that there was a Department policy against even confirming or denying the existence of criminal justice information on third parties, whether they were U.S. citizens or not.[900] Schmidt asked Huff if they could make a disclosure in this case.[901] Huff responded by saying that they

[889] Id.
[890] Id.
[891] Id.
[892] Id.
[893] Id.
[894] Interview of John R. Schmidt (June 16, 2000).
[895] Id.
[896] Id.
[897] Huff interview at 2–3.
[898] Id. at 3.
[899] Id.
[900] Id.
[901] Id.

should not vary Justice Department policy in this case.[902] Huff believes that Schmidt also mentioned the fact that Poston was threatening to litigate if she did not receive the information that she had requested. Huff responded by telling Schmidt that the odds were "spectacular" that the Justice Department would prevail in such litigation, given that the Supreme Court had already addressed this precise issue.[903] Schmidt resolved the meeting by asking Huff to find out whether the Department had any NCIC records on Abe.[904]

After his meeting with Schmidt, Huff requested the FBI and the Executive Office of U.S. Attorneys to search for the requested information on Abe, and they confirmed that they had no information on Abe.[905] Huff communicated this fact to Schmidt.[906] Schmidt asked Huff if the Department could tell Poston that they had no NCIC records on Abe.[907] Huff told Schmidt that they legally could do so.[908] Schmidt then directed Huff to reverse his earlier decision, and confirm in a letter to Poston that they did not have any NCIC records on Abe.[909] Accordingly, on July 11, 1995, Huff wrote to Poston to tell her that:

> After considering your Freedom of Information Act request under Attorney General Reno's policy of undertaking discretionary disclosure of information whenever no foreseeable harm would result, Associate Attorney General John R. Schmidt has determined that it is appropriate to disclose the fact that neither the Federal Bureau of Investigation nor the Executive Office for United States Attorneys maintains, or has any evidence of ever maintaining, any record within the scope of your request.[910]

While Schmidt told committee staff that Huff was "comfortable" with this decision, Huff told a different story, and pointed out a series of remarkable facts about this matter.

- First, Huff made it clear to Schmidt that he disagreed with the decision.[911] He told Schmidt that it wouldn't be illegal to release this information, but that he disagreed with the discretionary disclosure. In addition, Huff characterized Schmidt's decision as "unusual."[912]
- In his 25 years at the Justice Department, Huff had never had any one-on-one meetings with Schmidt, or any other Associate Attorney General.[913]

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[902] Id.
[903] Id.
[904] Id.
[905] Id.
[906] Id.
[907] Id.
[908] Id. Huff informed Schmidt that the Privacy Act did not apply to Nobuo Abe, since he was not a U.S. citizen or permanent resident. Therefore, the Justice Department's confirmation that Abe had no records at DOJ was not a violation of the Privacy Act. Despite the fact that the Privacy Act was inapplicable in this case, Huff still believed that Justice Department policy not to confirm or deny the existence of any criminal justice records should apply.
[909] Id.
[910] Letter from Richard L. Huff to Rebekah J. Poston (July 11, 1995) (exhibit 90).
[911] Huff interview at 3.
[912] Id.
[913] Id.

- When asked how much senior political appointees were involved in FOIA appeals, Huff stated that "typically, there is none."[914]
- Huff is aware of involvement of senior political appointees in FOIA appeals in only two other cases. The first case involved a request for notes taken by a Justice Department lawyer relating to an interview of Sandra Day O'Connor before she was appointed to the Supreme Court. The Office of Information and Privacy initially made a decision to grant the request, and this decision was then overturned by a political appointee.[915] The second case involved a request by Terry Anderson, who had been held captive in Lebanon, for criminal justice information possessed by the government on the individuals who had held him captive. The Office of Information and Privacy had denied his request, consistent with Justice Department policy, and then, after significant media attention, political appointees at the Department directed Huff to reverse the decision.[916] Both cases stand in obvious contrast to this case.
- It is unclear what effect the Schmidt decision had on Justice Department policy. Huff was asked whether this decision was a change of DOJ policy, or whether it was a one-time departure from existing policy. Huff stated that he believed that it was a one-time departure.[917] When asked if Schmidt offered Huff any reason why this case would be treated differently from any other FOIA case coming to the Department, Huff stated that Schmidt offered no such rationale.[918]

5. Aftermath

a. Poston "Wins the Battle, but Loses the War"

When Poston received the July 11, 1995, letter from Huff informing her that Schmidt had decided to disclose the fact DOJ had no NCIC records on Nobuo Abe, she felt like she had "won the battle, but lost the war."[919] When asked to explain why she felt that way, she declined, based on her lawyers' concerns that such an explanation would cause her to disclose the illegal activities conducted on her behalf by PMRG.[920] However, documents obtained by the committee show how disturbed Poston was to find out that the Justice Department did not have any records on Abe. Huff's letter conflicted with the information that Phil Manuel, Richard Lucas, and Jack Palladino had extracted from confidential sources within the Justice Department. On July 19, 1995, shortly after she got the Huff letter, Poston wrote to Manuel and Lucas to ask them to follow up with their confidential sources:

[914] Id. at 1.
[915] Id.
[916] Id.
[917] Id. at 3.
[918] Id.
[919] Poston interview at 5.
[920] Id.

> I need your assistance in helping me explain to my clients the apparent inconsistencies between the letter we received from Richard L. Huff, dated July 11, 1995 and your investigative reports of November 11 and 17, 1994.
>
> Our personal meeting with Deputy [sic] Associate Attorney General John Schmidt resulted in a policy decision by the Attorney General to reverse the original position of the Department of Justice by authorizing the release of the requested record or a statement as to whether it existed in the past. That is a major accomplishment and victory. The result, however, is quite perplexing.
>
> I can only conclude that since a record existed, which your two independent sources verified, the places searched enumerated in Huff's letter must not have been the proper locations. Any other conclusion means that the sources are either not telling the truth or that the record was deleted (a real possibility according to the source in the November 17, 1994 report) without a trace, an impossibility according to former, FBI, S/A Lawler, if the record was ever in NCIC. That is part of the problem.
>
> Our client views this letter as an absolute defeat for them in Japan.
>
> * * * * *
>
> Our client is requesting that each of you ask your sources for an explanation or [sic] where they found the record. The Attorney General's position is clear—its existence and/or its deletion is authorized to be disclosed.
>
> I have the utmost confidence in your reports. We must try our best to resolve this critical issue for our client. Please give this matter your immediate attention. Leave no stone unturned.[921]

Poston and Schmidt were questioned about this letter at the committee's hearing. When questioned about the statement that the Attorney General had decided to reverse the Justice Department's position, Schmidt stated that it was "obviously wrong" and "lawyer's puffery."[922] However, Poston stood by the statement in her letter, saying "it could have been more artfully written to say the 'office of,' but I don't believe it's puffery."[923] Poston's insistence that the Office of the Attorney General was responsible for her success in obtaining the information on Abe continues to raise questions about the involvement of John Hogan in this matter.

Lucas informed the committee that he took no action in response to Poston's requests.[924] He believes that Phil Manuel's confidential source, Ben Brewer, told Manuel that he believed that Abe's NCIC record was erased, and that there was no evidence of its erasure.[925]

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[921] Letter from Rebekah Poston to Philip Manuel and Richard Lucas at 2 (July 19, 1995) (exhibit 92).

[922] "Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department," 106th Cong. 155 (July 27, 2000) (preliminary transcript).

[923] Id.

[924] Lucas interview at 3.

[925] Id.

After Lucas and Manuel failed to produce any further information, Poston threatened to make both of them testify at trial in Japan, where apparently, Poston's earlier representations about the existence of an NCIC record on Abe were coming under considerable scrutiny.[926] Lucas refused to go to Japan and instead, Poston drafted an affidavit for Lucas to sign.[927] Lucas refused to sign the affidavit unless Manuel signed one as well.[928] The surprising result was that in September 1995, Manuel and Lucas both executed sworn affidavits regarding their activities in the Abe case, including their illegal conduct in obtaining the information on Abe. Manuel admitted:

> 11. As part of PMRG's investigation, I contacted a confidential and highly reliable source who I believed would be able to determine whether the federal government had documentary evidence.
>
> 12. My source told me that there was a federal government record for Nobuo Abe which referred to "Suspicion of Solicitation of Prostitution, Seattle Police Department, March 1963."
>
> 13. My source further told me that the record concerning Mr. Abe reflected that the Seattle Police Department had made an inquiry for information.
>
> 14. My source also told me that if Mr. Abe made an official request for the information under his name to be removed from the record, it could be removed.
>
> 15. Sometime later, my source informed me that the record concerning Mr. Abe apparently had been purged.
>
> 16. I am confident that the information provided to me by the source is accurate and reliable.[929]

Lucas made similar admissions in his affidavit:

> 9. As part of my investigation for PMRG, I contacted a highly reliable source and advised the source that I was attempting to confirm the existence and the whereabouts of documents in the possession of the federal government related to Mr. Abe. I told this source that Mr. Abe's name is "Nobuo Abe" and that his date of birth is December 19, 1922. I also told the source that Mr. Abe had no social security number because he was not a U.S. citizen.
>
> 10. The source later reported to me that he had determined that the federal government did have a record regarding a Nobuo Abe which referred to solicitation of prostitution, Seattle Police Department, March 1963.
>
> 11. I am confident that the information provided to me by the source is accurate and reliable.[930]

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[926] Id.
[927] Id.
[928] Id.
[929] Affidavit of Philip R. Manuel at 2–3 (Sept. 20, 1975) (exhibit 95).
[930] Affidavit of Richard Lucas at 2 (Sept. 22, 1995) (exhibit 96).

b. Justice Department Fails to Prosecute Poston or Manuel

One of the committee's greatest concerns is that the Justice Department has shown no interest in prosecuting the clearly illegal conduct evident in this case. The actions by Poston, Manuel, and Lucas clearly implicate 18 U.S.C. § 641. Any case brought against Poston or Manuel would be exceedingly strong, as it would be bolstered by extensive documentary evidence, as well as the testimony of Richard Lucas. Indeed, Poston and Manuel admit to their illegal actions, in writing, and in Manuel's case, even under oath.

The Justice Department has been provided with this information on a number of occasions. In February 1997, counsel for Nichiren Shoshu, John Gibbons, sent a set of documents to the FBI Washington Field Office.[931] Those documents detailed the fact that NCIC information on Abe had been illegally obtained by Poston, Manuel, and Lucas. Those records were forwarded to the FBI Office of Professional Responsibility (OPR). On February 19, 1997, David Ries, the Deputy Chief of OPR, wrote to Gibbons, stating that the charges "have no merit."[932] However, Ries did state that the FBI OPR would consider revisiting the issue if it obtained a detailed statement from Richard Lucas. Gibbons provided a detailed accounting of Lucas's testimony in May 1997.[933] In September 1997, Ries responded, stating that "the allegations presented by you and others have been repeatedly brought to the attention of the FBI by numerous individuals in various communications and in various meetings, for a number of years. . . . This review indicates the allegations remain without merit."[934] Gibbons wrote back on September 26, 1997, to ask Ries to at least interview Lucas before he reached any conclusions that the Abe matter was without merit.[935] Ries wrote back one final time on October 16, 1997, to tell Gibbons that OPR would not conduct any further investigation into the Abe matter, and that his "allegations remain without merit."[936]

In addition to numerous attempts made by counsel for Nichiren Shoshu, the committee has referred this matter to the Justice Department. In 1998, committee staff met with FBI personnel to explain this matter, and request the FBI to investigate the potentially illegal actions taken by Poston and PMRG.

It is astounding that the Justice Department has refused to take action on this matter. The Department has been provided on repeated occasions with clear-cut evidence of illegal activity. There is both documentary and testimonial evidence that Rebekah Poston, Philip Manuel, and Richard Lucas penetrated confidential law enforcement databases to obtain information on Nobuo Abe. However, the Department has concluded on three separate occasions, without explanation, that these charges are "without merit." Apparently, though, they have not attempted to interview any of the witnesses

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[931] See letter from David V. Ries, Deputy Assistant Director, Office of Professional Responsibility, Federal Bureau of Investigation, to the OSO Group, Ltd. (Feb. 19, 1997) (exhibit 102).

[932] Id.

[933] Letter from John C. Gibbons to David V. Ries, Deputy Assistant Director, Office of Professional Responsibility, Federal Bureau of Investigation (May 28, 1997) (exhibit 103).

[934] Letter from David V. Ries, Deputy Assistant Director, Office of Professional Responsibility, Federal Bureau of Investigation, to the OSO Group, Ltd. (Sept. 4, 1997) (exhibit 105).

[935] Letter from John C. Gibbons to David V. Ries, Deputy Assistant Director, Office of Professional Responsibility, Federal Bureau of Investigation (Sept. 26, 1977) (exhibit 106).

[936] Letter from David V. Ries, Deputy Assistant Director, Office of Professional Responsibility, Federal Bureau of Investigation, to the OSO Group, Ltd. (Oct. 16, 1997) (exhibit 107).

in this case, including Richard Lucas, who offered repeatedly to be interviewed, against his own legal interests.[937]

6. Poston's Appearance Before the Committee on July 27, 2000

On July 27, 2000, the committee held a hearing at which Rebekah Poston, Philip Manuel, Richard Lucas, John Schmidt, Richard Huff, and John Hogan testified.

a. Poston Refused to Invoke the Fifth Amendment

When Poston was interviewed by committee staff on June 29, 2000, her counsel informed committee staff that she would not answer questions about her efforts to obtain information about Nobuo Abe through private investigators. Her counsel, Eduardo Palmer, stated that Poston would not answer these questions because of the attorney-client privilege and Poston's possible criminal exposure. Therefore, committee staff asked few questions about those subjects.

When Poston was informed in early July that she would be called to a hearing of the committee, her counsel strenuously objected. In a conference call on July 12, 2000, her counsel, Eduardo Palmer, C. Boyden Gray, and Jane Sherburne, explained the reasons why they believed Poston should not be called to the committee's hearing. During this telephone call, Palmer and Gray repeatedly stated that they believed that Poston would be forced to take the fifth if called to a hearing. Palmer repeatedly stated that he did not want Poston to be forced to take the fifth publicly, and argued that in light of this fact, it would be more appropriate to hold a closed hearing, to spare Poston the embarrassment of taking the fifth publicly.

Once at the hearing, Poston and her counsel did not invoke the fifth amendment, and even attempted to deny that they ever stated that they would if called to a hearing. When asked about her contacts with private investigators, and her requests that they illegally obtain NCIC information, Poston claimed attorney-client privilege. Chairman Burton then questioned her about her counsel's representations:

> Chairman BURTON. Let me just inform Ms. Poston, first of all, that you are directed by the committee to answer the question and you do run the risk of being held in contempt of Congress if you do not.
>
> The second thing is, I'd like to ask the question, when you appeared before Mr. Wilson and his colleague and were discussing these issues, did you indicate that you would take the fifth amendment before this committee?
>
> Ms. POSTON. I did not, nor do I intend to do so.

* * * * *

[937] Although there is no doubt that Richard Lucas' conduct was unlawful, it must be pointed out that he was the only witness involved in the illegal efforts to obtain information on Abe to cooperate fully with the committee. As important, his offer of cooperation to the Justice Department indicates a willingness to atone for his part in improper conduct. By comparison, Poston and Manuel have taken no steps to cooperate with law enforcement.

Chairman BURTON. Did your legal counsel, your lawyers, indicate that you might take the fifth amendment?

* * * * *

Mr. PALMER. I had discussions with a member of your committee who spoke with me about these matters over the course of the last year and a half.

Chairman BURTON. I'm talking about when you were here, what, a few weeks ago.

Mr. PALMER. Three weeks ago.

Chairman BURTON. Yes.

Mr. PALMER. No, sir.

Chairman BURTON. When you discussed with them on the phone the issues in the last week did you indicate that she might take the fifth amendment?

Mr. PALMER. Members of your committee indicated to me that, in their view, the conduct at issue here could constitute a criminal violation; and we discussed all the privileges that would be applicable in that situation. I advised them that if that were the situation that, first and foremost, the information the committee sought would be protected by the attorney-client privilege and the work product doctrine.

I also told them that if they believed that a witness had committed a criminal offense and they knew that from the outset, that it would be improper for—to force the witness to come before this committee merely to assert a fifth amendment privilege.

Chairman BURTON. So you did indicate that Ms. Poston might under these circumstances assert her fifth amendment privilege.

Mr. PALMER. I indicated exactly what I just expressed to you.[938]

Palmer's characterization of his discussions with committee staff varied substantially from reality. Palmer's discussions with staff were not an abstract discussion of the propriety of forcing a witness to invoke the fifth amendment. Rather, he made an extended plea to have Poston appear in a closed session, based upon the fact that it would be improper and embarrassing to force her to take the fifth in public. Indeed, if Palmer never intended to have Poston take the fifth, as he claimed at the hearing, the plea made in his July 12 conference call was highly misleading. In retrospect, it appears as though the positions taken by Poston and her counsel evolved. Initially they believed that they would be compelled by the facts of this particular case to invoke the fifth amendment. Later, they decided—improperly, from the perspective of the committee—to use the attorney-client privilege as an all-purpose prophylactic against appearing to admit guilt to any possible crime.

[938] "Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department," 106th Cong. 39–40 (July 27, 2000) (preliminary transcript).

b. Poston Refused to Answer Questions Which She Was Legally Obligated to Answer

A number of times during the committee's hearing, Poston was asked about her contacts with Philip Manuel Resource Group, and her efforts to obtain criminal history information about Nobuo Abe. Any time that Poston was asked substantive information about those efforts, she invoked attorney-client privilege. Poston invoked the privilege despite the fact that she was informed that the privilege did not apply. As explained to her during the hearing, many of the subjects being discussed in the committee's hearing were not privileged in any way, for the following reasons:

- A number of details about Poston's contacts with PMRG were published by her client in the Soka Gakkai newsletter. The publication of these matters would waive the privilege.
- Many of the contacts between Poston and her investigators took place prior to the establishment of a formal agency relationship between Steel Hector & Davis and PMRG.
- Many of the activities undertaken by PMRG were illegal, and cannot be the subject of a claim of privilege, because of the crime/fraud exception to the privilege.
- Finally, Congress need not recognize the attorney-client privilege, and the committee does not in the Poston case, given the clear indicia that Poston and her investigators were engaged in illegal activity.

Despite a clear instruction from the chairman that she answer questions put to her, Poston refused to answer questions about her attempts to gather criminal history information on Nobuo Abe.[939]

Improper access to law enforcement databases is a serious and pervasive problem. While it is not uncommon for investigators to access databases like NCIC without permission, such activity is illegal. The Department of Justice and FBI should take seriously their responsibility to guard the privacy and integrity of the information in law enforcement databases. When confronted with clear evidence that a team of lawyers, private investigators, and law enforcement personnel were improperly accessing the NCIC record of Nobuo Abe, the Justice Department should have taken action, and prosecuted the responsible parties. By failing to investigate this case, the Justice Department and FBI have sent the clear message that they do not value the sanctity of law enforcement databases.

Similarly, Justice Department's handling of Rebekah Poston's FOIA request raises serious questions. Justice Department policy called for Poston's FOIA request to be rejected, without confirming or denying the existence of any record. However, through her contacts in the Office of the Attorney General, Poston was able to obtain special treatment. While the disclosure made by the Justice Department in response to Poston's FOIA request was not criminal, it was an unseemly favor for a friend of the Attorney General. This

[939] Poston's refusal to comply with the chairman's order should be contrasted with Richard Lucas's compliance with the chairman's order. Lucas answered all questions put to him, understanding that the committee had considered and rejected all claims of privilege. "Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department," 106th Cong. 45–46 (July 27, 2000) (preliminary transcript).

disclosure makes it appear that the Justice Department places the Attorney General's personal friendships above the judgment of career Justice Department staff and long-standing Justice Department policy.

B. ROBERT BRATT

Robert K. Bratt, who had a 21 year career with the Department of Justice, retired on August 1, 2000. From August 1995 to July 2000, he was the Criminal Division Executive Officer for the Office of Administration (OA).[940] From March 1995 until his retirement, Bratt also held the following posts:

- March 1995–August 1996: Acting Director of the International Criminal Investigative Training Assistance Program (ICITAP)[941]
- September 1996–April 1997: Coordinator of ICITAP and Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT)[942]
- April 1997–March 1998: Detailed as Executive Director for Naturalization Operation of the Immigration and Naturalization Service (INS)[943]
- March 1998–July 2000: Detailed as Acting Director of Information Management Narrowband Communications Wireless Offices of Justice Management Division (JMD)[944]

Bratt, a onetime Reno favorite, served as one of the Attorney General's top troubleshooters.[945] In a committee interview, Attorney General Reno stated that "Mr. Bratt was first introduced to me as somebody in the [C]riminal [D]ivision who was a very good administrator, and I saw him in that context."[946]

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[940] "An Investigation of Misconduct and Mismanagement at ICITAP, OPDAT, and the Criminal Division's Office of Administration," U.S. Department of Justice, Office of the Inspector General, at xiii (Sept. 2000).

[941] Created in 1986, ICITAP's mission includes "two principal types of projects: (1) developing police forces in the context of international peacekeeping operations, and (2) enhancing the capabilities of existing policing forces in emerging democracies based on internationally recognized principles of human rights, the rule of law, and modern police practices." Id. at 23.

[942] Created in 1991, OPDAT "works with United States embassies and other United States government agencies to coordinate training for judges and prosecutors in South and Central America, the Caribbean, Russia, other Newly Independent States, and Central and Eastern Europe. The office also serves as the Department of Justice's liaison between private and public agencies that sponsor visits to the United States for foreign officials interested in learning about his country's legal system." Id. at 24–25. In 1997, "OPDAT's mission shifted exclusively to international training issues." Id. at 23 n.1.

[943] "Hearing on the Immigration and Naturalization Service," hearing before the Senate Judiciary Subcommittee on Immigration, 105th Cong. (testimony of Doris Meissner, Commissioner, Immigration and Naturalization Service) (May 1, 1997).

[944] Id. at xiii.

[945] See, e.g., "Hearing on the Immigration and Naturalization Service," hearing before the Senate Judiciary Subcommittee on Immigration, 105th Cong. (testimony of Doris Meissner, Commissioner, Immigration and Naturalization Service) (May 1, 1997); Michael Isikoff, "The Perils of Romance," Newsweek Online (Sept. 12, 2000) <www.msnbc.com/news/459043.asp>; Jerry Seper, "Top Justice Officials Being Probed About Security Violations," the Washington Times, Sept. 22, 2000, at A10; and Jamie Dettmer, "Internal Probe to Embarrass Justice Department," Insight on the News, Jan. 3, 2000, at 6.

[946] Transcript of interview of Attorney General Janet Reno, Department of Justice, in Washington, DC, at 62 (Oct. 5, 2000) (preliminary transcript). Because of Reno's confidence in Bratt, she personally asked him to be detailed to INS. Id. and "Hearing on the Immigration and Naturalization Service," hearing before the Senate Judiciary Subcommittee on Immigration, 105th Cong. (testimony of Doris Meissner, Commissioner, Immigration and Naturalization Service) (May 1, 1997).

In March 1997, the Department of Justice Office of Inspector General (OIG) initiated an investigation into "allegations of misconduct, security violations, financial mismanagement, travel violations, and favoritism in ICITAP, OPDAT, and [OA]."[947] Bratt was one of the main subjects of this investigation. As a safeguard measure, in March 1998, after OIG briefed Attorney General Reno on the ongoing investigation, the Department of Justice suspended Bratt's security clearance.[948] In September 2000, OIG released its findings in the report: An Investigation of Misconduct and Mismanagement at ICITAP, OPDAT, and the Criminal Division's Office of Administration.

In its report, the OIG determined that "Bratt repeatedly engaged in substantial misconduct while serving as the Executive Officer of the Criminal Division and while he was responsible for overseeing ICITAP and OPDAT."[949] In particular, the OIG concluded the following:

- Bratt committed egregious misconduct by using his government position to improperly procure visas for two Russian citizens[.][950]
- Bratt attempted to provide his former assistant "with a false scenario that she would then provide to the OIG" in its investigation.[951]
- Bratt "was engaged in an effort to alert and probe witnesses, to dissemble to them that he had never knowingly done anything wrong, and to seek reassurance from them that they would not say otherwise" to the OIG.[952]
- ICITAP employees under Bratt's supervision failed "to observe fundamental security practices,"[953] failed to "enforce the government's security regulations,"[954] resisted continual "advice and warnings of ICITAP's security officers,"[955] and "violated security regulations by disclosing classified information to uncleared parties and by removing documents."[956]
- Bratt committed serious misconduct in connection with his government travel.[957]
- Bratt "put his staff in a position where following his instructions left them with no other option [but to violate Department of Justice rules.]"[958]

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[947] "An Investigation of Misconduct and Mismanagement at ICITAP, OPDAT, and the Criminal Division's Office of Administration," U.S. Department of Justice, Office of the Inspector General, at 27 (September 2000).
[948] Id. at 27 n.4.
[949] Id. at 401.
[950] Id. at 402.
[951] Id. at 205.
[952] Id.
[953] Id. at 21 (regarding Associate Deputy ICITAP Director Joseph Trincellito's conduct).
[954] Id. at 405 (regarding ICITAP Director Janice Stromsem's conduct).
[955] Id. at 21 (regarding Associate Deputy ICITAP Director Joseph Trincellito's conduct).
[956] Id. (regarding Special Assistant to the ICITAP Director Cary Hoover's conduct).
[957] Id. at 402.
[958] Id. at 180.

- Bratt had a pattern of "blaming his staff for his own misconduct and failures to abide by the rules" during the OIG investigation.[959]
- Bratt was not forthcoming and honest during his interviews with [the OIG].[960]
- Bratt's [romantic] involvement with [a female Russian citizen] also raised significant security concerns.[961]

In the end, Attorney General Reno's "successful, effective troubleshooter and adviser" was found to be "a supervisor who willfully violated government regulations, who was recklessly indifferent to the security interests of the government, who induced subordinates to aid and abet his misconduct, and who made false statements to the OIG."[962]

Building upon the OIG's alarming evidence, this committee is concerned about several instances of possible Department of Justice favoritism toward Bratt and its effects. Despite Bratt's egregious conduct, the Department offered and Bratt accepted early retirement, which included employment benefits and an annuity. The OIG determined that, in effect, this option allowed Bratt to be "no longer subject to discipline by the Department" because he is no longer a Federal employee.[963] Deputy Attorney General Eric Holder testified that "Bratt was not awarded any special arrangements" regarding early retirement.[964] However, the committee believes that Bratt took advantage of this offer to escape discipline. The timing of the OIG's release of a draft copy of its report to Bratt and Bratt's application for early retirement, which comes within a few days of each other, is suspect.[965] Bratt's early retirement took effect 1 month before the OIG released its report.[966]

The committee also believes that Bratt's senior position within the Department of Justice had a chilling effect on whistleblowers. Denise Turcotte, Bratt's former assistant, was co-opted to make improper travel arrangements for Bratt.[967] In her initial interview with OIG, Turcotte denied doing anything improper. Several months after that interview, she voluntarily asked the OIG to reinterview her. During the interview, Turcotte explained that Bratt had tried to influence her testimony, and get her to lie about her activities:

> Ms. TURCOTTE. He said that he had had like a full day of talking with you folks about travel and that he wanted to

[959] Id. at 403.
[960] Id. at 402.
[961] Id. at 403.
[962] Id.
[963] Id. at 402.
[964] Hearing on the Department of Justice Office of the Inspector General's September 2000 report titled: "An Investigation of Misconduct and Mismanagement at ICITAP, OPDAT, and the Criminal Division's Office of Administration," hearing before the House Judiciary Committee, 106th Cong. (testimony of Eric Holder, Deputy Attorney General, Department of Justice) (Sept. 21, 2000).
[965] On July 10, 2000, Bratt was provided a copy of the draft IG report and asked to respond. On July 19, 2000, Bratt submitted an application for early retirement.
[966] On August 1, 2000, Bratt's early retirement took effect. In mid-September, the OIG report was released to Congress. The Judiciary Committee made the report available to the public on its Web site.
[967] The OIG found that Turcotte's conduct did not warrant discipline. "An Investigation of Misconduct and Mismanagement at ICITAP, OPDAT, and the Criminal Division's Office of Administration," U.S. Department of Justice, Office of the Inspector General, at 407 (September 2000).

> talk to me about it, and could we go for a walk, so we went for a walk. We went, he got a bagel and I was very uncomfortable. He started talking about, you know, basically, I turned all the travel over to you and, you know, I—I expressed, you know, you made the final decisions, basically. If I made any preference, you had the final decision.
>
> OIG: Is this Mr. Bratt saying this to you?
>
> Ms. TURCOTTE. This is Mr. Bratt saying this. And I am going—I am in shock, first of all, and I just continued to listen to him because I couldn't quite tell where he was going with it. But he also said that, first of all, he didn't want anyone to know about this conversation. He made that very clear, we never had this conversation. And, again, I didn't say yes or no about keeping any, you know.
>
> He—he said that—something to the effect, and I can't recall the exact words, but I never asked you to juggle my travel hours so that I could qualify for business class, did I?[968]

Also in this interview, Turcotte was asked why she had been afraid of coming forward.

> Ms. TURCOTTE. [Bratt] is a powerful guy, yeah. He knows a lot of high level people. And I was hoping that, gee, if I get bored with this position in the Criminal Division, you know,—am I thinking the OIG had better hire me? I mean I am—you know, I am—there's that part of it, too. You know, please, you know, I can be trusted. I don't know where I—you know, I just don't know.
>
> Mr. NASSIKAS.[969] And he is a powerful, as I understand, personality. I mean there's a——
>
> Ms. TURCOTTE. Yeah, he is very charismatic. He has done a lot of pet projects for Reno. He has been tasked to do the INS thing, for instance. Now it is the wireless thing. Of course, the circumstances are different, but——[970]

It is clear that Turcotte believed she could not come forward because of Bratt's relationship with Attorney General Reno and other high-level Department of Justice officials. Turcotte also indicated that whistleblower protections were not enough to protect her against retaliation.[971]

The actions of another senior Justice Department official may also have had a chilling effect upon whistleblowers. Shortly after the allegations against Bratt surfaced, Stephen Colgate, Assistant Attorney General for Administration, Justice Management Division, who was a close friend of Bratt, told the Legal Times: "Believe

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[968] Transcript of Office of the Inspector General, U.S. Department of Justice, investigative interview of Denise Turcotte (Feb. 24, 1999) at 20.

[969] John Nassikas represented Denise Turcotte as counsel.

[970] Transcript of Office of the Inspector General, U.S. Department of Justice, investigative interview of Denise Turcotte (Feb. 24, 1999) at 47–48.

[971] Id. at 46.

me, when the dust settles, Bratt will be vindicated . . . [the allegations are] an outrage, an absolute outrage."[972]

Colgate's comments are troubling because he is commenting about an open case. More important, such comments by a senior Justice Department official like Colgate condemning whistleblowers' allegations sends a clear message that whistleblowers are not welcome at the Department. Much to the dismay of this committee, when the Attorney General was asked about the effects of Colgate's comment, she only defended his actions and refused to admit the potential negative implications.

> Committee COUNSEL. And it would not be mysterious, I think, but our concern would be that if senior Department of Justice officials are commenting about what is a pending case, something that we have so much communication back and forth with with [sic] the Department, that that communicates to employees in the Department of Justice something very negative. Do you think Mr. Colgate should have made a statement like that back in 1998?
>
> Attorney General RENO. My understanding is that he was recused from this matter and that he feels that the questions and the answer—and that the answer was taken out of context. So I would have to check on that.
>
> Committee COUNSEL. But is it just he feels it was taken out of context or do you think it was appropriate or inappropriate for him to go on the record and make a comment about what was at that point a pending matter that was just starting to be investigated by the Inspector General's office?
>
> Attorney General RENO. I would have to understand the context.
>
> Committee COUNSEL. But even without the context, just the comment on the pending investigation, is that something you would condone or not condone?
>
> Attorney General RENO. I would look at it in terms of the context and how it was said and what was asked and where the occasion took place.
>
> Committee COUNSEL. Do you personally have any reaction to the effect that a statement like that would have on a low level employee like Ms. Turcotte?
>
> Attorney General RENO. Counsel, I may not have—be as far along in my review of the matter to understand all the details I need to properly respond to your question, but I just think it is important before I do that, I understand all the issues and that I don't spout off without being fully informed.[973]

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[972] Sam Skolnik, "Charges of Fraud, Waste Prompt Probe of Justice Department Training Programs," Legal Times, Sept. 21, 1998, at 2.

[973] Transcript of interview with Attorney General Janet Reno, Department of Justice, in Washington, DC at 71–73 (Oct. 5, 2000) (preliminary transcript).

During the October 5, 2000, committee interview, there were many more examples of Attorney General Reno's unwillingness to answer questions about Mr. Bratt. As the transcript shows, Attorney General Reno was either unwilling or unable to answer many of the questions directed to her:

> Committee COUNSEL. Have you read the Office of Inspector General report about Mr. Bratt?
>
> Attorney General RENO. I have read it but not in detail.[974]
>
> * * * * *
>
> Committee COUNSEL. [W]ere you aware the Inspector General concluded Mr. Bratt had asked his former assistant to lie for him?
>
> Attorney General RENO. Because the disciplinary and remedial matters are pending, we are limited, as I am sure the committee understands, in what we can say about them[.][975]
>
> * * * * *
>
> Committee COUNSEL. But my question is, if [Bratt] doesn't work for the Department of Justice, short of a prosecution, is there any avenue of discipline that the Department of Justice can effect at this point?
>
> Attorney General RENO. There are matters relating to a number of issues within the report, and I think it would be inappropriate to comment until all those matters are resolved.[976]
>
> * * * * *
>
> Committee COUNSEL. [D]o you at this point think that Mr. Bratt did receive any preferential treatment by the Department of Justice thus far?
>
> Attorney General RENO. I think the important thing for me, before I answer specific questions, would be to review the whole record. And I think that is something Dr. Hawk Sawyer should do.[977]

These exchanges did nothing to resolve the committee's serious questions about this case.[978]

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[974] Id. at 63
[975] Id. at 64–65.
[976] Id. at 65–66.
[977] Id. at 70–71.
[978] The OIG also concluded that senior level Department of Justice employees were failing to doing their jobs:

> Even if Bratt had been an exemplary manager, ICITAP and OPDAT would have benefited from attention and guidance by senior Criminal Division managers[.] [T]he failure to adequately supervise [Bratt's] conduct added fuel to ICITAP's preexisting problems. We do not believe that all of ICITAP's difficulties and Bratt's and other managers' improprieties could only have been ferreted out by an OIG investigation. Some of them, particularly security and travel issues, should have been apparent to anyone taking the time to look. The fact that the Criminal Division did not follow up to ensure that recommendations from other OIG or internal investigations had been implemented is an example of the lack of adequate oversight.

"An Investigation of Misconduct and Mismanagement at ICITAP, OPDAT, and the Criminal Division's Office of Administration," U.S. Department of Justice, Office of the Inspector General, at 413 (September 2000).

Representative Howard Coble recently expressed concern at a Judiciary Committee hearing about the OIG report that, when it came to security issues, the "fox may be guarding the henhouse down at Justice."[979] Noting the Department of Justice's favorable treatment toward Bratt and inaction toward Colgate's intimidating statements to the press, this committee also must conclude that the Department's embarrassing instances of security breaches by top officials are being contained—not discouraged—with a "fox guarding the henhouse" approach. The Bratt case provides just one more example of an Attorney General more interested in providing unfair advantages to her friends and political allies than in doing her job.

[The exhibits referred to follow:]

[979] Hearing on the Department of Justice Office of the Inspector General's September 2000 report titled: "An Investigation of Misconduct and Mismanagement at ICITAP, OPDAT, and the Criminal Division's Office of Administration," hearing before the House Judiciary Committee, 106th Cong. (statement of Representative Howard Coble) (Sept. 21, 2000).

Memorandum

Dep. Dir. ____
Chief of Staff ____
Off. of Gen. Counsel ____
Asst. Dir.: ____
Cont. Inv. ____
CJIS ____
Finance ____
Info. Res. ____
Insp. ____
Lab. ____
National Sec. ____
Personnel ____
Training ____
Off. of EEOA ____
Off. of Public & Comp. Aff. ____
Director's Office ____

To : MR. ESPOSITO

Date 12/9/96

From : DIRECTOR, FBI

Subject : DEMOCRATIC NATIONAL CAMPAIGN MATTER

As I related to you this morning, I met with the Attorney General on Friday, 12/6/96, to discuss the above-captioned matter.

I stated that DOJ had not yet referred the matter to the FBI to conduct a full, criminal investigation. It was my recommendation that this referral take place as soon as possible.

I also told the Attorney General that since she had declined to refer the matter to an Independent Counsel it was my recommendation that she select a first rate DOJ legal team from outside Main Justice to conduct the inquiry. In fact, I said that these prosecutors should be "junk-yard dogs" and that in my view, PIS was not capable of conducting the thorough, aggressive kind of investigation which was required.

I also advised the Attorney General of Lee Radek's comment to you that there was a lot of "pressure" on him and PIS regarding this case because the "Attorney General's job might hang in the balance" (or words to that effect). I stated that those comments would be enough for me to take him and the Criminal Division off the case completely.

I also stated that it didn't make sense for PIS to call the FBI the "lead agency" in this matter while operating a "task force" with DOC IGs who were conducting interviews of key witnesses without the knowledge or participation of the FBI.

I strongly recommended that the FBI and hand-picked DOJ attorneys from outside Main Justice run this case as we would any matter of such importance and complexity.

We left the conversation on Friday with arrangements to discuss the matter again on Monday. The Attorney General and I spoke today and she asked for a meeting to discuss the "investigative team" and hear our recommendations. The meeting is now scheduled for Wednesday, 12/11/96, which you and Bob Litt will also attend.

LJF:wss (2)

CONTINUED--OVER

Memorandum to Mr. Esposito from Director, FBI
RE: DEMOCRATIC NATIONAL CAMPAIGN MATTER

I intend to repeat my recommendations from Friday's meeting. We should present all of our recommendations for setting up the investigation--both AUSAs and other resources. You and I should also discuss and consider whether on the basis of all the facts and circumstances -- including Huang's recently released letters to the President as well as Radek's comments--whether I should recommend that the Attorney General reconsider referral to an Independent Counsel.

It was unfortunate that DOJ declined to allow the FBI to play any role in the Independent Counsel referral deliberations. I agree with you that based on the DOJ's experience with the Cisneros matter--which was only referred to an Independent Counsel because the FBI and I intervened directly with the Attorney General--it was decided to exclude us from this decision-making process.

Nevertheless, based on information recently reviewed from PIS/DOC, we should determine whether or not an Independent Counsel referral should be made at this time. If so, I will make the recommendation to the Attorney General.

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

November 24, 1997

Honorable Janet Reno
The Attorney General
U.S. Department of Justice
Washington, D.C.

Dear Madame Attorney General:

RE: CAMPAIGN CONTRIBUTIONS (CAMPCON)
AND THE INDEPENDENT COUNSEL STATUTE

In May, 1997, I provided you with an overview of the FBI's investigative strategy in Campcon. This document also included an analysis of the related aspects of the Independent Counsel Statute. At the time, the investigative plan focused on three distinct but inter-related matters: (1) a campaign fund-raising strategy executed by a core group of individuals from the DNC and the White House; (2) an allegation of illegal conduct by a myriad of "opportunists"; and, (3) efforts by the PRC and other countries to gain foreign policy influence through illegal contributions. In conjunction with providing you this document, I recommended that you refer the Campcon matter to an Independent Counsel.

Since May, there have been a number of significant developments in each of the above-three areas. In addition, there have been numerous discussions on issues associated with this overall investigation which impact on the Independent Counsel Statute. Today, I am convinced, now more than ever, that this entire matter should be referred to an Independent Counsel.

I have attached a current overview of an evaluation which I requested, and which I believe will clarify my understanding of the Independent Counsel Statute, as well as the investigative focus and direction of the Campcon Task Force.

Per our conversation this afternoon, a copy of the attached document is only being provided to you and to the Deputy Attorney General.

Honorable Janet Reno

I am available to discuss these matters at your convenience.

Sincerely,

Louis J. Freeh
Director

Enclosure

A. PURPOSE OF THE INDEPENDENT COUNSEL STATUTE

The Independent Counsel Act establishes a system "to investigate and prosecute allegations of criminal wrongdoing by officials who are close to the President. The purpose of this system is to ensure fair and impartial criminal proceedings when an Administration attempts the delicate task of investigating its own top officials."[1] When this legislation was first enacted in 1978, the Senate Governmental Affairs Committee listed a number of reasons for such a system. The top three reasons were:

(1) The Department of Justice has difficulty investigating alleged criminal activity by high-level government officials.

(2) It is too much to ask for any person that he investigate his superior. . . . "[A]s honorable and conscientious as any individual might be, the public could never feel entirely easy about the vigor and thoroughness with which the investigation was pursued. Some outside person is essential." (quoting former Special Prosecutor Cox)

(3) It is a basic tenet of our legal system that a lawyer cannot act in a situation where he has a conflict of interest or the appearance thereof. This is not a question of the integrity of the individual. . . . The appearance of conflict is as dangerous to public confidence in the administration of justice as true conflict itself.[2]

1 - Attorney General Reno (Copy 1 of 6)
2 - Deputy Attorney General Holder (Copy 2 of 6)
3 - Director Freeh (Copy 3 of 6)
4 - Deputy Director Bryant (Copy 4 of 6)
5 - Mr. Gallagher (Copy 5 of 6)
6 - Mr. Parkinson (Copy 6 of 6)

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[1] S. Rep. No. 123, 100th Cong., 1st Sess. 2 (1987), reprinted in 1987 U.S.C.C.A.N. 2150. To simplify, subsequent citations to legislative history will be cited in this shorthand form: "1987 CAN 2150."

[2] 1978 CAN 4216.

Copy 1 of 6 copies

For nearly a year, the Campcon Task Force has been actively investigating a variety of fundraising activities by a core group of White House and DNC officials (as well as others). The Task Force is examining these activities through a variety of traditional investigative techniques, including the use of grand jury subpoenas and testimony. Because this criminal investigation has taken our investigators into the highest reaches of the White House -- including an examination of many specific actions taken by the President and Vice President -- we have had to assess the potential application of the Independent Counsel statute virtually every step of the way.

B. STRUCTURE OF THE INDEPENDENT COUNSEL STATUTE

1. Mandatory and Discretionary Provisions

The Independent Counsel statute can be triggered in one of two ways. First, the Attorney General shall conduct a preliminary investigation under the so-called "mandatory" or "covered persons" provision in the following circumstances:

> whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any ["covered person"] may have violated any federal criminal law other than [certain minor violations].

28 U.S.C. § 591(a). Second, the Attorney General may conduct a preliminary investigation under the following "discretionary" provision:

> When the Attorney General determines that an investigation or prosecution of a [non-covered] person by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person . . . if the Attorney General receives information sufficient to constitute grounds to investigate whether that person may have violated Federal criminal law other than [certain minor violations].

28 U.S.C. § 591(c).[3]

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[3] Section 591(c) was amended in 1994 to give the Attorney General discretionary authority to use the independent counsel process with respect to Members of Congress. It was also reworded for "simplication" purposes, but otherwise made no change from the existing law in the "substantive reach or scope" of the discretionary provision. The Senate bill would have

2. What Triggers the Mandatory Provision?

The independent counsel statute contains three basic requirements for triggering a preliminary investigation under the "mandatory" provision: (a) Specific information, (b) From a credible source, (c) That a covered person may have violated the law.[4]

a. Specific Information. The purpose of the specificity requirement is to weed out "generalized allegations of wrongdoing which contain no factual support [such as] a letter saying that a particular member of the President's cabinet is a 'crook.'" 1982 CAN 3548. Clearly, the specificity threshold is low one, intended simply to weed out "frivolous or totally groundless allegations." Id.; 1978 CAN 4270.

b. From a Credible Source. The credibility requirement was added to the statute in 1983 after Congress concluded that the existing standard (specificity only) was too low. "Public confidence is not served by investigating meritless allegations made by unreliable sources." 1982 CAN 3548. In considering whether a source is credible, the Attorney General is expected to follow "the usual practices of the Department of Justice in determining the reliability of a source." Id.[5]

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authorized the Attorney General to use the independent counsel process to investigate a "matter" as well as a person, but that proposed revision was rejected in conference "because it would in effect substantially lower the threshold for use of the general discretionary provision." 1994 CAN 793.

[4] The statute as originally passed in 1978 required a preliminary inquiry whenever the Attorney General received "specific information that [a covered] person has committed a violation" of federal law. In 1982, Congress decided to add a "credibility" requirement. Unfortunately, instead of simply changing "specific information" to "specific and credible," it replaced "specific information" with "information sufficient to constitute grounds to investigate." To figure out what that means, one must look to § 591(d)(1), which sets forth the specificity and credibility requirements.

[5] One question that has arisen in the course of the Campcon investigation is whether newspaper reports can or should constitute a "credible source." This is a debatable proposition, particularly where reputable news organizations have successfully tracked down witnesses and documents. Early in the investigation, the Public Integrity Section took the position that newspaper articles cannot be a credible source for purposes

It is important to note that the statute permits the Attorney General to consider only the two factors of "specificity" and "credibility" in determining whether there are grounds to investigate. In 1987, Congress added the word "only" to the statutory language of § 591(d)(1) in an effort to curb the Department's "disturbing practice" of conducting lengthy "threshold inquiries" before deciding whether the statute had been triggered. 1987 CAN 2164.

c. That a Covered Person May Have Violated the Law. The Attorney General must conduct a preliminary inquiry if she receives specific and credible information that a covered person may have violated any federal criminal law. In 1987, Congress changed the statute from "has committed" to "may have violated." The legislative history makes very clear that DOJ's role should be limited:

> It cannot be expected, at this first step in the process, that the Attorney General could or should determine that a criminal act has been committed.

1987 CAN 2164; see also 1982 CAN 3549 ("[I]f facts or suspicious circumstances suggesting that a covered person may have engaged in criminal activity come to the attention of the Department of Justice, these would qualify as 'information sufficient to constitute grounds to investigate,' thus triggering a preliminary investigation.")

Congress amended the statute in 1987 in direct response to what it saw as DOJ's "disturbing practice" of conducting extended "threshold inquiries," often lasting months and involving "elaborate factual and legal analyses." As stated in the Senate Report:

> It is not clear why the Department of Justice has adopted this practice. Some have suggested that the Department is conducting preliminary investigations in all but name to avoid statutory reporting requirements that attach only after a 'preliminary investigation' has taken place. Since these reporting requirements are the primary means of ensuring the Attorney General's accountability for decisions not to proceed

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of the statute. That position appeared to change in early September when the Attorney General announced that DOJ had opened a 30-day inquiry regarding the Vice President's telephone solicitations based upon a Washington Post article by Bob Woodward.

under the statute, Congress intended them to attach in all but frivolous cases.[6]

3. Seeking an Independent Counsel

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[6] According to the 1987 Senate Committee report, DOJ reported processing a total of 36 cases under the independent counsel statute between 1982 and 1987. Of the 36 cases, the Department reported closing 25 prior to conducting a preliminary investigation. It reported closing five of these cases because the allegations did not involve a covered official, and 20 others (which did involve covered persons) because a "threshold inquiry" had determined that the information was insufficient to trigger a preliminary investigation. In the 20 cases involving covered officials, DOJ reported spending an average of approximately 75 days before closing the case. 1987 CAN 2155.

The Senate Committee criticized the Department for failing to clearly articulate why, in the 20 cases on covered persons, it found the information insufficient to trigger a preliminary investigation. The Committee concluded that DOJ had closed 10 cases, despite receiving specific information from a credible source of possible wrongdoing, because it determined that the evidence available did not establish a "crime." In at least five of these 10 cases, the decision appeared to have been based, at least in part, on insufficient evidence of criminal intent. The Committee concluded:

> Thus, contrary to the statutory standard, in 50% of the cases handled by the Justice Department since 1982 in which it declined to conduct a preliminary investigation of a covered official, it relied on factors other than credibility and specificity to evaluate the case. Moreover, in at least half of these cases, the Department of Justice refused to conduct a preliminary investigation into the alleged misconduct, because it had determined there was, at this early stage in the process, insufficient evidence of criminal intent.

Id. at 2155-56.

Upon completion of a preliminary inquiry,[7] the Attorney General must apply to the court for appointment of an independent counsel if she determines that "there are reasonable grounds to believe that further investigation is warranted." 28 U.S.C. 592(c). In making that determination, she may not conclude that the person under investigation "lacked the state of mind" required for the relevant criminal violation unless there is clear and convincing evidence that the person lacked such state of mind. 28 U.S.C. 592(a)(2)(B)(ii).

If the Attorney General concludes that an independent counsel is required, she must file with the court an application which contains sufficient information to assist the court in (1) selecting an IC, and (2) defining the IC's jurisdiction so that the IC "has adequate authority to fully investigate and prosecute the subject matter and all matters related to that subject matter." 28 U.S.C. 592(d) (emphasis added).

C. COVERED PERSONS BEING INVESTIGATED BY THE TASK FORCE

The Task Force currently has preliminary investigations pending against five "covered persons": (1) President Clinton; (2) Vice President Gore; (3) Former Energy Hazel O'Leary; (4) Interior Secretary Bruce Babbitt, and (5) Alexis Herman. The Task Force has also been investigating a number of activities of a sixth covered person -- Peter Knight, the chairman of the Clinton/Gore campaign. Among other things, Knight coordinated VP Gore's fundraising calls from the White House and was present when the calls were made. The Department has not yet triggered an independent counsel review as to Knight.

It should be noted that, in the current Administration, even the most senior White House staffers (such as former Deputy Chief of Staff Harold Ickes) are not "covered persons" under the statute. The "covered persons" provision includes individuals working at the Executive Office of the President who are paid at or above level II of the Executive Schedule (currently $133,600). Although Congress clearly intended to capture a significant

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[7] After initiating a preliminary inquiry, the Attorney General normally has 90 days to decide whether an independent counsel should be appointed (with the option of one 60-day extension upon a showing of good cause). However, when a preliminary inquiry is begun following a congressional request, the Attorney General must make her decision no later than 90 days after the request is received. Therefore, the Attorney General must resolve the matter of the Vice President's telephone solicitations no later than December 2, 1997, which is 90 days after the House Judiciary Committee's request for appointment of an independent counsel on this matter.

number of high-level White House officials within the "covered persons" provision, most of the current officials have avoided coverage simply by accepting a salary below level II.[8] While currently authorized by statute to appoint and pay twenty-five persons at level II, President Clinton pays only six persons at that level, none of whom are the focus of the Campcon investigation.[9]

D. OVERVIEW OF THE CAMPCON INVESTIGATION

1. The Investigative Plan

The Campcon investigative plan, which has remained essentially unchanged since it was originally crafted by the FBI investigators in early 1997, has focused on three distinct but interrelated matters:

-- An aggressive campaign fundraising operation developed and executed by a core group of individuals from the DNC and the White House, including the President, the Vice President, and a number of top White House advisors.

-- Allegations of illegal conduct by a myriad of opportunists and other individuals who gained White House access in order to further their personal, business, and political interests.

-- Efforts by the PRC and other countries to gain foreign policy influence by illegally contributing foreign money to U.S. political campaigns and to the DNC through domestic conduits.

The core group investigative plan was based on a theory that most of the alleged campaign abuses flowed, directly or indirectly, from the all-out effort by the White House and the DNC to raise money. It was this consuming quest for campaign

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[8] As originally structured in 1978, the total number of covered Executive Branch positions was approximately 120, with approximately 93 of those positions within the Executive Office of the President (EOP). In 1983, Congress reduced the total coverage of Executive Branch positions to approximately 70, of which approximately 36 were within the EOP. 1982 CAN 3543.

[9] Those six persons, according to the most recent listing provided by the White House Counsel's Office to the FBI's Public Corruption Unit, are the Director and two Deputy Directors of OMB, the Chairman of the Council of Economic Advisors, the U.S. Trade Representative, and the Director of the Office of Science & Technology Policy.

cash, for example, that led to the transfer of John Huang from the Department of Commerce to the DNC to begin the aggressive solicitation of Asian Americans. It led to the ambitious plan for White House coffees, overnights, and other perks for large donors. It led to the telephone solicitations by the President and the Vice President and the attempted merger of the WHODB and DNC databases. In fact, virtually all of the viable Campcon investigative avenues are clearly connected to the core group's initiatives. While that does not mean the core group members necessarily are culpable for the criminal violations the investigation uncovers, neither should they be immune from intensive investigative scrutiny.

While the DOJ prosecutors in charge of the Campcon investigation did not formally object to this investigative plan, they also did not embrace it.[10] From the beginning, there was a fundamental disagreement about how the investigation should proceed. The FBI investigators wanted to focus intently on the core group, on the theory that many of the apparent campaign abuses flowed, directly or indirectly, from the core group's all-out effort to raise money. In contrast, the prosecutors wanted to focus on the opportunists, with a "bottom up" strategy that might or might not lead eventually to the core group.

For the most part, the prosecutors' approach prevailed. Throughout the investigation, the Task Force has focused on building prosecutable cases against individuals such as Charlie Trie, Maria Hsia, and While this approach may be understandable, and is beginning to show promising results, it did neglect some of the larger issues. With the exception of the investigation of the White House fundraising calls, begun belatedly in September 1997, there has never been a concentrated investigation of the core group and its fundraising efforts. In fact, DOJ did not assign a prosecutor specifically to core group activities until July, after Director Freeh ordered an aggressive plan to interview all relevant core group and DNC officials and to become more persistent on subpoena compliance issues.

Even after the September shakeup and expansion of the Task Force, the "bottom up" approach has continued to dominate the investigation. While the Task Force has made significant progress in developing prosecutable cases against several of the opportunists, the activities of the core group -- with the

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[10] The reference to "DOJ prosecutors" is not meant to include the line prosecutors conducting the day-to-day investigation. For the most part, those line prosecutors appeared to be removed from the major decisions about how the investigation would proceed, particularly on issues that potentially involved the independent counsel statute.

exception of the White House telephone solicitations -- have received comparatively little attention.

2. Cautious Approach to Investigating "Covered Persons"

From the outset, the DOJ attorneys in charge of the Task Force have proceeded very cautiously before authorizing any investigative step that might involve a "covered person." Unlike a normal investigation, where agents and attorneys simply follow all logical investigative leads, the DOJ attorneys have been extremely reluctant to venture into areas that might implicate "covered persons." This reluctance has led to a flawed investigation in several ways.

First, the Task Force has partitioned its investigation, focusing on individual persons and events without effectively analyzing their relationship to the broader fundraising scheme. Second, the Task Force attorneys sometimes have made dispositive factual assumptions without investigating to see if those assumptions are accurate. For example, the attorneys concluded in the spring of 1997 that Vice President Gore's White House fundraising calls were not worth investigating because they all involved solicitation of "soft money" (a factual assumption that turned out to be incorrect). The White House coffees are a second example; until very recently, there still has been no serious investigation of the coffees, primarily because the DOJ attorneys had assumed -- incorrectly -- that they all occurred in "private" White House space. Third, important investigative areas, such as the serious allegations raised by Common Cause, have never been pursued because they have been tied up in lengthy threshold legal analyses within the Department.

The Department has also walled off the day-to-day investigation from much of its Independent Counsel legal analyses. Most decisions regarding IC issues are still being handled by DOJ attorneys who have only limited involvement in the ongoing investigation. While obviously these issues deserve the careful scrutiny of experienced Public Integrity attorneys, the separation between the legal analysts and the front-line investigators (both agents and attorneys) has been unusually rigid. Ironically, this separation became even more pronounced following the September shakeup of the Task Force. Until at least mid-October, the new Task Force heads, Chuck LaBella and Jim DeSarno, had no meaningful role in the Department's handling of Independent Counsel-related matters. As a result, the investigative approach to those matters has suffered from lack of coordination.[11]

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[11] There was also a marked change in how the Independent Counsel issues were discussed. Before the September changes, there had been regular discussions during the weekly Campcon

E. THE CORE GROUP'S FUNDRAISING SCHEME

1. The Common Cause Allegations

By pursuing its "bottom-up" investigative strategy instead of focusing on the core group, DOJ has failed to adequately address many of the larger campaign financing issues that could and should lead to the appointment of an Independent Counsel. As a starting point, the Campcon Task Force has failed to address an overarching issue: whether the Clinton/Gore campaign (as well as the Dole campaign) engaged in an illegal scheme to circumvent the federal campaign financing laws. This issue was first raised by Common Cause in October 1996, long before the Task Force was even constituted, but it has never been pursued. To this day, there has been no decision on whether the allegations should be investigated by the Task Force or referred to the FEC.

As background, candidates seeking the presidential nomination are eligible to receive public matching funds if they so choose. However, in exchange for the public funds, a candidate is required to limit his overall campaign spending. In 1996, the spending limit was approximately $37 million for the primary campaign and approximately $62 million for the general election. For knowing and willful violations of these limitations, there are criminal penalties set forth in the FECA and the Presidential Primary Matching Payment Account Act and the Presidential Election Campaign Fund Act.

The alleged scheme appears to have been borne in the summer of 1995, in response to a plan by campaign strategist Dick Morris to run an extremely ambitious series of TV ads, primarily in swing-voter states where President Clinton had problems. Morris wrote in his book that the key to Clinton's reelection was this early television advertising, designed to show selected TV viewers from "150 to 180 airings" or "about one every three days for a year and a half." According to published reports, there was an internal debate within the Clinton/Gore campaign about whether to turn down public financing during the primary elections "in order to avoid federal spending limits." In the end, the campaign appears to have designed a scheme to have it both ways -- to receive taxpayer funds and agree to a spending

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meetings about all Task Force matters, including those involving the potential application of the Independent Counsel statute. Beginning in September, however, the nature of the weekly meetings changed markedly, and there no longer was any meaningful discussion of IC-related issues. While the FBI has very recently received several DOJ drafts on pending IC matters, FBI officials have not had any significant role in the deliberative process.

limit, and simultaneously use the DNC to buy millions in advertising above the spending limit. According to Common Cause, the expenditures for the ad campaign totaled at least $34 million.

The heart of the Common Cause allegations is that the Clinton/Gore campaign -- and not the DNC -- fully controlled the advertising campaign, and that the so-called "soft money" funneled through the DNC was a sham. That is, the money was not used for "party building" activities, as "soft money" is supposed to be used, but rather to directly support the President's reelection. As stated in the October 28, 1997, Common Cause letter to the Attorney General: "[T]he presidential campaigns, and not the parties, fully controlled the raising and spending of these funds and designed, targeted and conducted the TV advertising campaigns financed with these funds. While the money was technically deposited into and disbursed out of political party bank accounts, the parties in reality played only a clerical role in serving as a conduit for these funds. In short, these funds were raised and spent by the presidential campaigns "for the purpose of influencing" a federal election, and thus should be treated as within the scope of the federal campaign finance laws."

While the Campcon Task Force has not undertaken any concerted effort to trace the funds used for these advertising campaigns, it has obtained substantial evidence that the President and his key advisors controlled virtually all aspects of the DNC fundraising efforts. There are numerous documents supporting such a conclusion, but none quite so compelling as the 4-17-96 memorandum from Harold Ickes to DNC Chairman Don Fowler:

> This confirms the meeting that you and I and Doug Sosnik had on 15 April 1996 at your office during which it was agreed that all matters dealing with allocation and expenditure of monies involving the Democratic National Committee ("DNC") including, without limitation, the DNC's operating budget, media budget, coordinated campaign budget and any other budget or expenditure, and including expenditures and arrangements in connection with state splits, directed donations and other arrangements whereby monies from fundraising or other events are to be transferred to or otherwise allocated to state parties or other political entities and including any proposed transfer of budgetary items from DNC related budgets to the Democratic National Convention budget, are subject to the <u>prior</u> approval of the White House.

With respect to the ads themselves, Dick Morris and others have stated the President personally reviewed and approved all ads before they ran. As Morris wrote in his book:

> [President Clinton] worked over every script, watched each ad, ordered changes in every visual presentation, and decided which ads would run when and where. He was as involved as any of his media consultants were. The ads became not the slick creations of admen but the work of the president himself. . . . Every line of every ad came under his informed, critical and often meddlesome gaze. Every ad was his ad.

Behind the Oval Office, at 144.

The recently-uncovered White House videotapes bolster the Common Cause allegations. At a DNC luncheon at the Hay Adams Hotel on December 7, 1995, the President stated to his supporters:

> We realized that we could run these ads through the Democratic Party, which meant we could raise money in $20,000 and $50,000 and $100,000 blocks. So we didn't have to do it all in $1000 and run down what I can spend, which is limited by law so that is what we've done.

On that tape and others, the President emphasized that the TV ad campaign was central to his favorable position in the polls. As Common Cause correctly points out, this certainly looks like an intentional scheme to evade the contribution and spending limits by "running these ads through" the DNC.

The Justice Department has weighed in on the legal issue, at least initially concluding that this scheme was simply an act of "coordination" between the Clinton/Gore campaign and the DNC. In her April 14 letter to Congress, the Attorney General stated that the FECA "does not prohibit the coordination of fundraising or expenditures between a party and its candidates for office." The Common Cause response, which appears to be supported by the evidence, is that this is not a case about mere "coordination." Instead, it argues, the case is about a scheme in which President Clinton and his top advisors raised and spent millions in direct support of his candidacy, and used the DNC as a mere conduit.

The circumstances of this case present unprecedented legal issues that have sparked a substantial difference of opinion among various election law experts, particularly on the "hard money vs. soft money" issue. If one thing is certain, it is that the law in this area is unclear and that there are no established enforcement policies either at DOJ or the FEC. See 1982 CAN 3551 ("Any case in which there is no clear policy against prosecution or any arguably exceptional circumstances are present should be sent to a special prosecutor.") DOJ has invited substantial criticism by appearing to resolve these

untested legal issues at the outset of the investigation, before the facts are fully developed.

On their face, the Common Cause letters present serious allegations of potential criminal conduct that deserve to be investigated. Of all the potential campaign violations brought to the attention of the Campcon Task Force, these arguably are the most serious. The allegations were compelling when they first reached the Justice Department in October 1996, and they have become stronger as more and more facts have been uncovered during the investigation. Because the allegations clearly involve the President, they should be investigated by an Independent Counsel. Moreover, the Attorney General should seek the appointment of an Independent Counsel immediately, for two reasons: (1) the Department has had the allegations for more than a year; and (2) there is virtually no chance that the allegations could be resolved in the course of a limited preliminary inquiry.

2. Other Allegations Connected to the Scheme

In addition to allegations of a broad conspiracy to circumvent the campaign contribution and spending limits, many of the other allegations that have arisen in the course of the investigation have a direct connection to the core group's fundraising scheme. For example, the fundraising operation included a $7 million targeting of the Asian-American community. The key player in this effort was John Huang, who was moved from the Department of Commerce to the DNC following the personal intervention of the President. Huang and others involved in carrying out the Asian-American targeting have been implicated in illegal fundraising. Huang is closely tied to the and the Lippo Group, which has substantial connections to the Chinese government.

As this one example illustrates, it is important to keep in mind that virtually all of the various pieces of the Campcon investigation are connected to the overall fundraising scheme. While this is not to suggest that the core group necessarily is culpable for all the fundraising improprieties being uncovered, it does demonstrate the need for an investigative strategy that includes a comprehensive look at the core group's activities.

F. VICE PRESIDENT GORE'S TELEPHONE SOLICITATIONS

1. The Statute

18 U.S.C. § 607 makes it unlawful "for any person to solicit or receive any contribution within the meaning of section 301(8) of the FECA in any room or building occupied in the discharge of official duties by any [officer or employee of the United States]." On its face, this felony prohibition would

appear to cover Vice President Gore's fundraising calls from his White House office.

2. The Investigation

While Vice President Gore admitted in March 1997 that he had made fundraising calls from his West Wing office at the White House, the Task Force did not undertake any serious investigation of these calls until July. In her April 1997 letter to Chairman Hatch, the Attorney General rejected a call to trigger the Independent Counsel statute for investigation of potential 607 violations. The Attorney General's letter implicitly relied on the argument that because Section 607 applies only to "contributions" as technically defined by the FECA, it would not prohibit the solicitation of "soft money." (VP had originally characterized the calls as soft money solicitations.) When it became apparent in early September that a portion of the monies raised by the Vice President's telephone solicitations had been placed into a "hard money" account by the DNC, the Department initiated a threshold inquiry and later a preliminary investigation under the Independent Counsel Act.

The Task Force has now established that the Vice President made approximately 86 fundraising calls from his West Wing Office and reached at least 43 potential donors. At least five of the persons solicited by the Vice President gave money that was deposited, in part, into a DNC "hard money" account.

3. Legal Issues

At this point, the Attorney General is faced with three questions: (1) Does Section 607 apply to the Vice President's telephone solicitations? (2) Assuming Section 607 does apply, is there an established DOJ policy of non-prosecution of such offenses? (3) Assuming Section 607 applies and there is no established policy of non-prosecution, is further investigation warranted by an Independent Counsel?

In determining whether the statute applies to the Vice President's telephone calls, the Department has focused on three threshold legal questions. First, does the statutory phrase "any person" include the President and Vice President, or are they exempt from the statute's coverage for separation of powers reasons? On this point, there appears to be a consensus that the statute does indeed reach the President and Vice-President. The Office of Legal Counsel reached the same conclusion in 1979 when analyzing a White House political event hosted by President Carter.

Second, because Section 607 was principally designed to prevent government workers from being pressured for contributions in their offices, does the statute apply to solicitation of non-

federal persons? DOJ has apparently concluded that non-federal persons are protected by the statute.

Third, because the statute prohibits the solicitation or receipt of contributions "in any room or building occupied in the discharge of official duties," does it apply to the Vice President's calls made to persons located on non-federal property? Stated differently, does a telephone "solicitation" occur both where the call was received and where the call was made? The DOJ attorneys who have been analyzing this issue have reached different conclusions, but all agree that it is a close question.

The disagreement on this point stems largely from differing interpretations of the Supreme Court's decision in United States v. Thayer, 209 U.S. 39 (1908), which is one of only four reported decisions (and the only Supreme Court decision) involving a Section 607 prosecution. Thayer involved a prosecution of a private individual who solicited contributions by mail from federal employees working in a post office. The defendant argued that because he had never set foot in the post office, he had not solicited "in" a federal building. In rejecting that argument, the Court stated that "the solicitation was in the place where the letter was received." 209 U.S. at 43-44.

Notwithstanding the broad language of Thayer, the better view is that Section 607 does prohibit telephone calls from a federal office to an outside location. The Court in Thayer was defining the point in time when the offense was complete, and obviously the mailing of a letter involves a time gap. In contrast, a telephone conversation occurs simultaneously at both ends of the line, and a prohibited solitication would be complete when made.

Assuming the Attorney General resolves the three threshold legal questions in a way that supports a technical violation of Section 607, she must then decide whether there is an established DOJ policy of non-prosecution of such offenses. In determining whether there are "reasonable grounds to believe that further investigation is warranted," the Attorney General is directed by the Independent Counsel Act to comply with "written or other established policies of the Department of Justice with respect to the conduct of criminal investigations." 28 U.S.C. 592(c)(1)(B). Primarily because Section 607 cases are necessarily fact-bound, there is neither a written nor "other established" policy of non-prosecution of these kinds of offenses. While there appears to be a consensus within DOJ that the telephone solicitations at issue here would never be prosecuted even if there was a technical violation, the Department nevertheless must concede that the Independent Counsel

statute does not permit the Attorney General to simply dispose of a case through an exercise of prosecutorial discretion.

With respect to the final issue -- whether further investigation is warranted -- the Attorney must apply to the court for appointment of an Independent Counsel unless she concludes, by clear and convincing evidence, that the Vice President "lacked the state of mind" required for a Section 607 violation. Based on the facts, the Attorney General simply cannot reach such a conclusion. The evidence tends to show that the Vice President was a active participant in the core group fundraising efforts, that he was informed about the distinctions between "hard" and "soft" money, and that he generally understood there were legal restrictions against making telephone solicitations from federal property.

We have received a draft DOJ memorandum dated November 21, 1995, which recommends shutting down the investigation on the ground that there is clear and convincing evidence that the Vice President subjectively intended to ask only for "soft" money. However, the draft memorandum is seriously flawed, relying almost exclusively on the Vice President's own statements to draw inferences favorable to him, even where those statements are contradicted by other reliable evidence. The weak analysis is demonstrated by the following introductory statement:

> There are a few circumstances and a few ambiguous descriptions by donors of their conversation with the Vice President which raise the question of whether the Vice President may have been asking in a handful of cases for contributions that could have been characterized as hard money contributions. However, in each instance, the same evidence can be viewed as leading to the contrary inference that the Vice President was asking the donor in question to make a soft money contribution.

This simply is not close to carrying the burden of demonstrating a lack of intent by "clear and convincing" evidence. In establishing the "clear and convincing" standard, Congress intended to set a high threshold before an Attorney General can close down an investigation involving a "covered person." In the face of compelling evidence that the Vice President was a very active, sophisticated fundraiser who knew exactly what he was doing, his own exculpatory statements must not be given undue weight. If the Attorney General relied primarily on those statements to end this investigation, she would be inviting intense and justified criticism.

4. Conclusion

The Attorney General should seek the appointment of an Independent Counsel with respect to the Vice President's telephone solicitations. Such an appointment is warranted on two levels. The preferable course of action would be to refer this matter as simply one piece of a comprehensive Independent Counsel investigation which focuses on the alleged scheme to circumvent the campaign financing laws, as discussed above in Section E. Viewed in that context, it is essentially immaterial whether the telephone solicitations sought "hard" money or "soft" money, or whether they were made from public space or private space. Because they were a key component of the overall fundraising scheme alleged by Common Cause and others, these solicitations should be referred for further investigation by an Independent Counsel. Such a referral could be made under either the mandatory clause of the statute or as a discretionary matter.

If the Attorney General decides not to seek an Independent Counsel on the broader fundraising scheme, she still should refer the matter of the Vice President's telephone solicitations. Even on the narrowly focused issue presented by the existing preliminary inquiry, there appears to be a technical violation of Section 607. Given the uncertain state of that law and probable difficulty establishing a knowing violation, this may well be an area in which prosecution is unwarranted. However, under the Independent Counsel Act, the Attorney General is not authorized to use prosecutorial discretion to resolve such matters at this stage; those decisions must be left to an Independent Counsel. The Attorney General is free, when requesting appointment of an Independent Counsel, to include "the Department's views of the potential prosecutorial merit of the case." 1994 CAN 766.

G. PRESIDENT CLINTON'S TELEPHONE SOLICITATIONS

The preliminary investigation of President Clinton's telephone solicitations has led the Task Force to the conclusion that, based on the investigation to date, there is no specific and credible evidence of a Section 607 violation. Although the evidence indicates that the President was asked to place fundraising calls on five separate occasions, he appears to have made such calls on a single date: October 18, 1994. The available evidence indicates that the President called nine donors on that date, and that six of the nine definitely were called from the President's study in the White House residence (apparently on the advice of the White House Counsel's office). As to the calls to the remaining three donors (John Connelly, Arthur Coia, and John Torkelson), there is circumstantial evidence that they were also made from the President' study, but that fact has not been conclusively established.

Notwithstanding the conclusion on the narrowly-constructed Section 607 issue, the Attorney General should also

seek the appointment of an Independent Counsel with respect to the President's telephone solicitations. Like those of Vice President Gore, the President's fundraising calls were part of the alleged scheme to circumvent the campaign financing laws, regardless of where the calls took place or how the money is characterized. While the DOJ memorandum suggests that further investigation would not be warranted even if the calls to the three donors were placed from the Oval Office (because "the evidence suggests these donors were solicited for soft money"), this conclusion is incorrect when considered in connection with the broader scheme. An Independent Counsel should be appointed to investigate this scheme, and the President's solicitations should be part of that investigation. As with the Vice President's calls, such a referral could be made under either the mandatory clause of the statute or as a discretionary matter.

H. FORMER ENERGY SECRETARY HAZEL O'LEARY

The preliminary investigation of Former Energy Secretary Hazel O'Leary has led the Task Force to the conclusion that O'Leary was not personally implicated in the solicitation of the $25,000 Africare donation from Johnny Chung. While there is no reason to challenge this conclusion based on the evidence known to date, it is also clear that the donation was made under extraordinarily suspicious circumstances that are worthy of additional investigation, as stated in the DOJ recommendation. Moreover, the events surrounding the donation and the meetings at the Department of Energy and the Africare event show substantial involvement by DNC officials, including Richard Sullivan and Don Fowler. Consequently, these events should be further investigated by an Independent Counsel as part of an investigation of the broader fundraising scheme of the core group. This course of action is particularly important in light of the various other Chung fundraising matters still under active investigation.

I. OTHER MATTERS IMPLICATING THE IC STATUTE

1. White House Coffees and Overnights

As part of its broad fundraising efforts, the White House/DNC Core Group devised and implemented an ambitious plan to reward big donors with White House coffees, overnight stays, trips on Air Force One, and other types of access to the President and Vice President. All of these activities are being investigated through grand jury subpoenas and other traditional law enforcement methods.

With respect to the coffees, the investigation to date shows that from January 1995 to November 1996, the White House hosted 108 coffees, attended by 1239 DNC and Clinton/Gore supporters. 314 of these supporters made donations within 90

days of the event (either before or after). 185 gave solely "hard money" contributions, 25 gave only "soft" money, and 91 gave a combination of the two. Within the 90-day windows, the supporters contributed approximately $2.35 million in "hard" money and $5.15 million in "soft" money. According to White House records, President Clinton attended 74 of the coffees and Vice President Gore attended 38 of them.

In her April letter to the Senate Judiciary Committee rejecting an Independent Counsel request, the Attorney General relied primarily on one implied argument: that the events may have taken place in private areas of the White House residence rather than in areas "occupied in the discharge of official duties." That argument has both factual and legal flaws. As a factual matter, the Task Force has learned that the coffees were held in at least eight different locations. While DOJ attorneys have been quick to characterize the "Map Room" (where at least 65 of the coffees were held) as private White House space, there has been virtually nothing to demonstrate that assertion. Even if the "Map Room" turns out to be part of the private living space, there were many other coffees held in other parts of the White House.

DOJ has relied very heavily on a 1979 opinion from the Office of Legal Counsel, but that opinion has only limited reach. The key issue addressed by OLC was whether § 603 (the predecessor to § 607) prohibited an alleged campaign solicitation by President Carter during a luncheon for Democratic Party donors and fundraisers that took place in the Family Dining Room of the White House. After undertaking a fact-specific analysis of how the Family Dining Room was used and how the luncheon was arranged, OLC concluded that the solicitation "probably" fell outside the scope of § 603.

The OLC opinion concluded that rooms in the White House may fall outside the scope of § 603 if used for "personal entertaining where there is a history of such use and where . . . the cost of such use is not charged against an account appropriating funds for official functions." Applying that fact-specific standard, there is little basis to conclude that any of the White House coffees, including those held in the "Map Room," fall outside the scope of the § 607 prohibition.

In addition to determining the character of the rooms used for the coffees, the Task Force must also investigate whether the President or other participants made a "solicitation" within the meaning of Section 607. Although the recently-discovered White House videotapes appear to be of only limited value in determining the full scope of the coffee discussions, the coffees certainly were effective in raising millions of

dollars -- both "hard" and "soft."[12] In any event, the Task Force has subpoenaed White House records and is undertaking a criminal investigation of these activities which involve the President and Vice President.

Because the coffees, overnights, and other White House perks for big donors were simply pieces of the broader fundraising scheme carried out the the White House and DNC, they should be part of a comprehensive Independent Counsel investigation of that scheme.

2. Soliciting Contributions from Foreign Nationals

The Federal Election Campaign Act explicitly prohibits any person from soliciting, accepting, or receiving from a foreign national "any contribution of money or other thing of value . . . in connection with an election to any political office." 2 U.S.C. § 441e. The Campcon investigation has developed substantial evidence that money from foreign nationals flowed into the DNC as a result of the massive fundraising effort coordinated by the DNC and the White House. The DNC has turned back millions of dollars because of apparent improprieties.

The key legal questions are (1) whether "soft money" falls within the scope of the FECA, and (2) whether the foreign gifts to the DNC were in fact "soft money." DOJ has taken the legal position that all soft money falls outside the scope of the FECA -- including § 441e -- because it fails to meet the strict definition of "contribution" in § 431. This interpretation by the election law experts at the Public Integrity Section has been publicly adopted on several occasions by the Attorney General. This position has been greeted with intense criticism from some election law attorneys, who correctly point out that, at the very least, these are uncharted areas of the law. The FECA, after all, neither defines "soft money" nor specifically addresses "soft money" gifts to national parties. The uncertain state of the law invites the question of whether DOJ should be resolving these thorny legal issues, particularly in the face of independent counsel concerns. Certainly there are significant passages in the legislative history of the independent counsel statute that admonish the Department not to undertake such "elaborate legal analyses" when a covered person is involved. 1987 CAN 2158.

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[12] The one coffee for which we have developed significant information shows strong evidence of solicitation. At a 6-18-96 coffee in the Map Room attended by the President, John Huang, Don Fowler, [ ] two Thai businessmen, and others, Huang directly directly solicited the businessmen -- in the presence of the President -- after Fowler described the upcoming election as the most important since Lincoln.

Even if it is appropriate for DOJ to resolve the threshold question of "soft money" at this stage, it is not at all clear that the suspicious foreign gifts in this case all constitute "soft money." In light of the evidence of nearly absolute control of DNC fundraising efforts by the White House, there is a very real issue about whether the "soft money" argument is largely a sham. The FEC's General Counsel is quoted in the 1-6-97 Legal Times as saying that if money "is used for a candidate's election directly, then there is no question that 441e applies."

At the very least, we need to investigate far more thoroughly before we can comfortably conclude -- as a factual matter -- that the specific gifts at issue were in fact "soft money" donations. In some cases, such as the Hsi Lai Temple fundraiser attended by the Vice President, the evidence points specifically to the solicitation of "hard money contributions."

3. Misuse or Conversion of Government Property

Since early 1997, the Task Force has been investigating whether White House personnel misused or converted government property for political purposes. The most significant example is that of the WHODB database, which appears to have been a high priority for the President and the First Lady. According to a recently-discovered White House memo, the President wanted to integrate the taxpayer-funded database with the DNC database. Despite a January 1994 warning from the White House Counsel's Office not to use WHODB for political purposes, the new memo for Erskine Bowles and Harold Ickes shows an intent to do just that. The memo, written by a former Bowles aide, states:

> Harold and Deborah DeLee want to make sure WHODB is integrated w/DNC database--so we can share--evidently POTUS want this to[o]! Makes sense.

The Task Force obtained database and related White House documents through subpoena and had developed an aggressive investigative strategy to examine its procurement and use (although that investigation appears to faded into the background in recent months). Whether or not the investigation leads to prosecutable offenses, the Task Force again is in the posture of investigating the activities of senior White House officials, including the President. And while it may turn out that the President had no hands-on role in either the development or use of the database, it is difficult to contend that there is "insufficient information to investigate" for purposes of the Independent Counsel statute.

J. THE DISCRETIONARY CLAUSE OF THE IC STATUTE

least subjects (and potential targets) of the criminal investigation. Beyond the Core Group, the Task Force has focused intense investigative effort toward others who also appear to be close to the President, such as Charles Yah Lin Trie and John Huang. Investigation of such individuals is precisely the kind of circumstance for which the discretionary provision was designed. "This [discretionary] provision could apply, for example, to members of the President's family and lower level campaign and government officials who are perceived to be close to the President." 1987 CAN 2165.

With respect to McLarty and Ickes, it appears that Congress intended to capture within the "covered persons" provision individuals who occupy such high-level White House positions. As presently written, the "covered persons" section includes any individual working in the Executive Office of the President who is compensated at a rate of pay at or above level II of the Executive Schedule. § 591(b)(3). Although he is authorized by statute to appoint and pay twenty-five persons at level II, the President currently pays only six persons at that level.

As these numbers show, the White House has avoided mandatory coverage for virtually all of its top level officials by simply paying them below level II. Whether or not this is an intentional effort by the White House to limit the number of "covered" senior officials, it certainly exposes a loophole in the independent counsel statute. In deciding whether or not to exercise her discretion under the statute, the Attorney General should consider whether McLarty and Ickes are among that group of top level officials so close to the President that DOJ investigation of them would "present the most serious conflict of interest of an institutional nature." 1978 CAN 4269.

4. DOJ is Investigating Top Campaign Officials.

Because the Independent Counsel statute arose from the abuses of Watergate, it reserves a unique spot for campaign-related misconduct. Top campaign officers are the only non-government officials to be included as "covered persons" within the mandatory provision of the statute. The reason for including campaign officials is spelled out clearly in the legislative history:

> There are few individuals who are as important to an incumbent President running for re-election or a serious candidate for President than that individual's campaign manager or the chairman of any of his national campaign committee of his or of his party.

1978 CAN 4269.

The mandatory "covered persons" provision of § 591(b)(6) currently includes "the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of that committee exercising authority at the national level, during the incumbency of the President."[13] The Independent Counsel law was originally drafted to cover the chairman of <u>any</u> national campaign committee seeking the election of reelection of the President, but that section was dropped after the Department of Justice expressed concern that it could potentially cover hundreds of campaign committees that spring up during a national campaign, such as "Youth for Carter" or "Doctors for Ford." 1978 CAN 4394.

By its literal terms, the Independent Counsel statute covers only the chairman and treasurer of the Clinton-Gore Committee (Peter S. Knight and Joan Pollit, respectively), along with any officer "of that committee" exercising authority at the national level. It does not by its terms cover senior officers of the Democratic National Committee. However, in deciding whether to exercise her discretionary authority, the Attorney General should consider how the DNC was used during the 1996 election cycle. By essentially commandeering the DNC for the purpose of getting the President re-elected, the White House appears to have erased the traditional lines between the President's own campaign committee and the national party committee. In fact, the DNC was in large part the President's central re-election machine, under the tight control of senior White House advisors. Under the circumstances, it is almost nonsensical that the Independent Counsel statute could be invoked for Peter Knight or Joan Pollit but not for Don Fowler and John Huang.

5. <u>Precedent</u>.

This Attorney General has invoked the discretionary clause in at least three matters: Whitewater, the White House requests for FBI files, and the Bernard Nussbaum perjury allegation. In the Whitewater matter, the Attorney General invoked the political conflict of interest provision because of allegations of criminal conduct by "McDougal and other individuals associated with President and Mrs. Clinton." Similarly, the Attorney General found a conflict of interest in the Nussbaum matter because the investigation would "involve an inquiry into statements allegedly made by a former senior member of the White House staff."

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[13] Section 591(b)(7), which provides that "covered" government officials remain subject to the independent counsel statute for one year after leaving the office or position, does not apply to campaign officials.

It would certainly be consistent with those precedents to find a political conflict of interest in this case, where there are strong allegations against "individuals associated with" the President. Charles Trie, for one, has been described as a personal friend. Similarly, Thomas (Mack) McLarty, who serves as "Counselor to the President" and is one of the President's closest friends and advisors, has been implicated in the Tamraz matter.

6. National Security Matters.

With respect to the investigation of Chinese government efforts to influence U.S. elections, DOJ and the FBI have conflicting duties to (1) keep the President informed about significant national security matters, and (2) simultaneously keep from the White House certain national security information that may relate to the ongoing criminal investigation. DOJ and the FBI have faced this conflict several times during the course of the investigation, most recently in early November 1997.

Although the appointment of an Independent Counsel certainly would not eliminate the difficulty of deciding which matters should be brought to the attention of the President, it would lessen the perception problem.

7. Appearance of a Conflict.

There is a widespread public perception that the Department of Justice has a conflict of interest in investigating the campaign financing allegations. When testifying before Congress in 1993 in support of the Independent Counsel Reauthorization Act, the Attorney General emphasized the importance of avoiding the appearance of a conflict:

> There is an inherent conflict of interest whenever senior Executive Branch officials are to be investigated by the Department of Justice and its appointed head, the Attorney General. . . .
>
> It is absolutely essential for the public to have confidence in the system and you cannot do that when there is conflict or an appearance of conflict in the person who is, in effect, the chief prosecutor. . . . The Independent Counsel Act was designed to avoid even the appearance of impropriety in the consideration of allegations of misconduct by high-level Executive Branch officials and to prevent . . . the actual or perceived conflicts of interests. The Act thus served as a vehicle to further the public's perception of fairness and thoroughness in such matters, and to avert even the most subtle influences that may appear in an investigation of highly-placed Executive officials.

Senate Hearing 103-437, at 11-12 (May 14, 1993). These comments are virtually identical to statements appearing throughout the legislative history of the independent counsel statute.

Notwithstanding her statements in 1993, the Attorney General recently took the position (in her letter to Chairman Hatch) that in order to invoke the discretionary provision of the statute, she "must conclude that there is a potential for an actual conflict of interest, rather than merely an appearance of a conflict of interest." This position, based upon a 3-14-97 memorandum from DAAGs Mark Richard and Robert Litt,[14] has been strenously challenged by Chairman Hatch and others.

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[14] The Richard/Litt memorandum relies primarily on legislative history from 1982 and 1994. When it reconsidered the statute in 1982, the Senate passed an amendment allowing the discretionary appointment of an independent counsel "if the Attorney General determines that investigation of such person by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest, or the appearance thereof." 1982 CAN 3545. However, Congress eventually adopted the House version of the amendment, which did not contain the "appearance" language underscored above. The floor manager of the House bill, Rep. Hall, stated: "The bill as amended deletes the reference to appearances, and thereby requires the Attorney General to determine that an actual conflict may exist in order to utilize the special prosecutor provisions." Congressional Record, Dec. 13, 1982, at H9507.

In 1994, Congress considered two changes relevant to this issue. First, it rejected a DOJ proposal to allow the Attorney General to seek discretionary appointment of an independent counsel if a conflict existed with respect to a "matter" (in addition to a specific individual), concluding that such an amendment "would in effect substantially lower the threshold for use of the general discretionary provision." 1994 CAN 793. Second, Congress extended coverage of the statute to Members of Congress, in circumstances where the Attorney General concludes that appointment of an independent counsel "would be in the public interest." The legislative history characterizes this as a "broader standard" which enables the Attorney General to consider "a larger range of factors and to exercise greater discretion" in cases involving Members of Congress. "For example, the Attorney General could consider not only whether an actual conflict of interest might result if the Department handled the matter, but also whether an appearance of a conflict of interest might weaken public confidence in the investigation and any prosecution." 1994 CAN 781.

While there certainly is support for the Attorney General's recently-stated position (as set forth in the Richard/Litt memo), it seems contradicted by a host of references in the legislative history. Moreover, it makes little sense conceptually to conclude that appearances can be taken into account for investigating "covered persons" but not other officials. After all, the underlying premise for the mandatory trigger is that there is an actual conflict of interest whenever Attorney General is called upon to investigate a "covered person" (so there is no need to analyze appearances).

On balance, the better argument seems to be that the Attorney General can and should consider the "appearance of a conflict" as one of the factors in deciding to invoke the discretionary clause. And in the circumstances of the Campcon investigation, that factor should weigh heavily.

8. The Chief Investigator Has Concluded That There is a Conflict of Interest.

The chief Campcon investigator, Director Freeh, has concluded that the investigation presents the Department with a political conflict of interest. This by itself does not trigger the independent counsel statute, since the ultimate resolution of the conflict issue rests solely with the Attorney General. However, the Director's view should be a significant factor in the Attorney General's continued analysis of whether to invoke the discretionary provision.

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3/31/2000

"LA BELLA MEMO"
July 16, 1998

Redacted to delete information the disclosure of which could adversely affect
a pending criminal investigation or prosecution
or would violate Rule 6(e) of the Federal Rules of Criminal Procedure
Redactions completed on March 24, 2000.

JANET Reno

Copy 5 of 7

INTERIM REPORT

FOR

JANET RENO
ATTORNEY GENERAL

AND

LOUIS J. FREEH
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

PREPARED BY:

Charles G. La Bella
Supervising Attorney
Campaign Financing Task Force

and

James DeSarno
Assistant Director
Federal Bureau of Investigation
CAMPCON Task Force

July 16, 1998

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Table of Contents

I. Introduction 1

II. Statutory Framework 6

A. Investigative Approach 6

1. Critical Mass vs. Stovepipe 6

2. In Search of a Uniform Threshold Under the ICA 8

B. Legislative History of the ICA 15

III. Information That We Believe Is Sufficient To Trigger A Preliminary Investigation And Support A Determination That Further Investigation Is Warranted Under the ICA 20

A. Harold Ickes 20

1. Aiding And Abetting Conduit Contributions, False Statements And A Scheme To Defraud 26

2. Common Cause Allegations And Conspiracy To Violate Soft Money Regulations 36

3. Diamond Walnut/Teamsters 41

B. The President 46

1. Trie's PLET Donations 46

2. Common Cause Allegations and Conspiracy to Violate Soft Money Regulations 50

3. Senior White House Official's Knowledge of Foreign Contributions: Soft and Hard Money 51

(a) Johnny Chung 51

(b) Charlie Trie 54

(c) 55

C. Vice President Gore 57

Common Cause Allegations and Conspiracy to Violate Soft Money Regulations 57

D. The First Lady 58

1. Trie's PLET "Contributions" 58

2. Gina Ratliff Incident 59

E. John Huang, Marvin Rosen, David Mercer and the DNC 61

1. 61

2. Huang's Commerce Department Solicitations/Mercer's Cover-up. 63

3. Miscellaneous Events 71

F. Loral Matter 73

1. The Decision to Investigate 73

2. Actual And Potential Conflicts Of Interest 74

(a) DOJ's Expressed Concerns 75

(b) The White House Desire To "Get The Story Out" 75

3. The Task Force's Dilemma 76

IV. The Enforcement Dilemma 79

A. The Problems 80

1. FECA and the FEC: Impotence By Design 80

2. Compliance By the Major Parties 81

3. The Conduit Problem and the Criminal Response 88

V. Conclusion 93

DOJ-FLB-00033

INTERIM REPORT

I. Introduction

This report is an effort to piece together the disparate investigations involving allegations of campaign finance abuse being handled by the Task Force, to offer a framework in which to consider the evidence gleaned from these investigations, and to suggest a role to be played by the Department so that the abuses detailed below do not repeat themselves in the next election cycle. Several of the investigations have culminated in criminal prosecutions; others are still active with charges anticipated, and some will be closed. However, there runs through each investigation certain common themes: the desperate need to raise enormous sums of money to finance a media campaign designed to bring the Democratic party back from the brink after the devastating Congressional losses during the 1994 election cycle, and the calculated use of access to the White House and high level officials -- including the President and First Lady -- by the White House, DNC and Clinton/Gore '96, as leverage to extract contributions from individuals who were themselves using access as a means to enhance their business opportunities.

The temptations served up by White House operatives to political fundraisers and contributors cannot be underestimated. The pressure to produce contributions created an environment ripe for abuse. Dick Morris, hired by Clinton/Gore '96 in June 1995 to salvage the President's political future, determined almost immediately that the situation demanded a media blitz which could cost as much as $1 million per week. Harold Ickes, Deputy Chief of Staff to the President, assumed the role of Chief Whip -- relentlessly exhorting party functionaries and fundraisers to bring in the money. Ickes also functioned as the de facto head of the DNC and Clinton/Gore '96, making all key decisions from his post at the White House.

One of the innovations devised to generate the sums needed was a system of escalating perks for donors and fundraisers. Most notably, fundraisers who solicited $100,000 or donors who contributed $50,000, were denominated Managing Trustees of the Democratic party. This entitled them -- and their designated guests -- to a plethora of benefits, the most munificent of which involved opportunities to mingle with the President, Vice-President and First Lady at various party functions. Other important perks included special seating at DNC functions, invitations to White House coffees, opportunities to travel on Air Force One and Two, overnight stays at the White House, complimentary tickets to DNC events, participation in official U.S. sponsored trade missions, membership in DNC committees and related entities (including the Trustee Program, the Democratic Business Leadership Forum and the DNC Finance Board of Directors), as well as invitations to meetings and other events where senior White House personnel were in attendance.

The fundraising was also geared, in a more sophisticated manner than it had been in the past, toward the special interests of various ethnic groups. Asians, a group which believed itself under represented in terms of political influence, were courted much more actively than ever before. Our investigations suggest that key operatives at the White House understood and exploited the fact that, among Asian groups, a "photo op" with the President, Vice President or First Lady was a commodity which could be used to leverage business opportunities overseas. In a market system run amok, where the demand for such photos was insatiable, the cost of a photo opportunity sometimes ran as high as $20,000 or $30,000.

In addition, the opportunity to be part of a small group to have coffee with the President became a major fund raising technique. The price for coffee with the President ranged from

$25,000 to $50,000 per person. The chart, annexed at Tab 1, demonstrates how the frequency of these coffees increased during the time when funds were desperately needed to fund the media campaign. Between 1992 and 1994 there were no similar coffees held at the White House. However, between January 1995 and November 1996, the number of coffees mushroomed to as many as 14 per month. According to the statistics compiled by the Task Force, over 42% of the individuals who attended the coffees contributed $5.05 million hard and $9.81 million in soft money during the 1996 election cycle. This figure does not include donations made by corporations associated with the individual attendees. (Tab 2)

The rush to exchange donations for access provided the perfect environment in which opportunists like Charlie Trie, John Huang, Maria Hsia and others were able to flourish. Given the conditions fixed by the White House, exploitation of the campaign funding process was inevitable.

At the outset, there were discrete responsibilities assigned to the DNC, Clinton/Gore '96 and the White House. As the pressures to finance the media campaign grew, however, and especially as it became clear that the mid-term elections would be disastrous for the Democrats, the lines began to blur and, ultimately, to disappear altogether. All pretense of maintaining discrete areas of responsibility and control were shattered as the need for campaign funds -- driven by the media campaign -- increased. Such blurring of lines is troubling because it triggered an intermingling of funds, resources and personnel that resulted in the circumvention and violation of campaign contribution regulations.

The White House, as the player with the greatest clout, took on the dominant role -- in the person of Harold Ickes -- in decisions concerning strategy, fundraising and the expenditure of

all funds. Ickes assumed the role of Svengali, assuming power -- with the imprimatur of the President -- to authorize DNC and Clinton/Gore expenditures, award media contracts and direct every aspect of the DNC and Clinton/Gore activities related to the reelection effort. For example, the media bills were directed to Ickes who decided when they were to be paid and whether payment for a particular expense came from the coffers of the DNC, Clinton/Gore '96 or the state committees. As is evident from a series of memos to and from Ickes, a small portion of which are detailed below and at Tab 3, Ickes acted as the CEO of the effort to reelect the President. Ickes met with both DNC and Clinton/Gore chiefs almost daily to cement his control of the purse strings of the DNC and Clinton/Gore '96, as well as his direction of policy and strategy for these entities. DNC and Clinton/Gore employees reported to Ickes regularly concerning fundraising efforts, budgets, events and strategy. Although Fowler and Knight were the titular heads of these organizations, it was Ickes who pulled all the key strings. Fowler and Knight fulfilled more ceremonial than substantive roles -- providing the facade behind which Ickes was free to operate.

Dick Morris too straddled the DNC and Clinton/Gore organizations. Morris was paid by both and believed he worked for both.[1] This was not surprising given that the White House itself made no distinction between the DNC and Clinton/Gore. As detailed below, the blurring of the lines extended to the highest levels of the White House. The Vice President used a Clinton/Gore (hard money) credit card when he was ostensibly soliciting "soft money" on behalf of the DNC.

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[1] During the fall of 1994, Morris and the President held weekly strategy meetings. Between August 1994 and May 1995, Morris was paid as a "subcontractor" for the polling firm of Penn and Schoen, which was in turn paid, at least in part, by the DNC. From June 1, 1995 through August 31, 1996, Morris was paid by Clinton/Gore '96. During that same period, he was also paid by the DNC as a member of the November 5 Group, a corporation formed by Squier, Knapp, Penn, Schoen, and Morris.

Thus, Clinton/Gore '96 funded these calls which, according to the Vice President, had nothing to do with the reelection effort but rather were to fund so-called generic "issue ads." In addition, the Vice President received of a series of Ickes memoranda and attended weekly meetings concerning, among other things, the interplay between these so-called "soft money" solicitations and the DNC's hard money accounts. (Curiously, though renowned as a policy wonk, the Vice President claims he did not read the memos and cannot recall the meetings.)

Another simple, but by no means isolated example, of this type of conduct is the involvement of Clinton/Gore '96 employees in raising funds nationwide to fund the so-called generic "issue ads." For example, Laura Hartigan, while employed as Finance Director at Clinton/Gore '96, took charge of a "DNC project" to raise funds for the media campaign. In a memo to Harold Ickes, entitled Clinton/Gore '96 Commitments - Media Fund, Hartigan provided a state by state analysis of the dollars raised and promised by key contributors and solicitors to the DNC. (Tab 4) Like the use of the Clinton/Gore credit card to solicit soft money contributions, the use of a paid Clinton/Gore '96 employee to execute a DNC effort in connection with generic "issue ads" is telling. While some chalk these efforts up to "super coordination," others view them as circumstantial evidence of the true nature of fundraising efforts associated with the media fund.

The intentional conduct and the "willful ignorance" uncovered by our investigations, when combined with the line blurring, resulted in a situation where abuse was rampant, and indeed the norm. At some point the campaign was so corrupted by bloated fundraising and questionable "contributions" that the system became a caricature of itself. It is hoped that this report will place in context the abuses uncovered in our investigation: a system designed to raise money by

whatever means, and from whomever would give it, without meaningful attention to the lawfulness of the contributions or the manner in which the money was spent.

II. Statutory Framework

The Independent Counsel Act, 28 U.S.C. § 591 et seq., (hereinafter "ICA" or "the Act") is at the edge of each of our investigations. The Act can be triggered in one of two ways. First, the mandatory clause provides that the Attorney General shall conduct a preliminary investigation where there is information sufficient to investigate whether any "covered person" may have violated any federal criminal law. 28 U.S.C. § 591(a). Second, the Attorney General may conduct a preliminary investigation under the following "discretionary" provision:

> When the Attorney General determines that an investigation or prosecution of a [non-covered] person by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person . . . if the Attorney General receives information sufficient to constitute grounds to investigate whether that person may have violated Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

28 U.S.C. § 591 (c)(1) (emphasis added).

A. Investigative Approach

1. Critical Mass vs. Stovepipe

Since the inception of the Task Force, we have been faced with numerous investigations (30 - 40 at any given time) which present separate vignettes of potential criminal conduct. While there are several key players and themes that run through the Chung, Hsia, Trie, Jimenez, Glicken, and Huang matters, to name a few, each is an investigation unto itself with a principal target. A separate investigative team (prosecutors and agents) is charged with responsibility for each investigation. It is true that each team is acutely aware of the ICA.

However, while a particular investigative team may be aware of some of the activities of the overlapping individuals developed by other investigations, by and large the Task Force has, from its inception, had a stovepipe approach to investigative matters.

On the one hand, it has been said on more than one occasion that the sheer volume of allegations relating to potential campaign finance violations requires a triggering of the Act and the appointment of an Independent Counsel. That is, given the amount of smoke surrounding these allegations, senior White House officials and key DNC and Clinton/Gore officials, there must be a fire somewhere and the Act should be triggered. Granted that this provides an expedient way to unload these matters onto the shoulders of an Independent Counsel, it is not sufficient to discharge the Department's duties and responsibilities.

On the other hand, it cannot be that we are doomed to stovepipe each and every allegation of wrongdoing and view it in isolation. As prosecutors and investigators we are trained to look within the four corners of an investigation in order to make judgments concerning the commencement or conduct of a criminal matter. However, the campaign finance allegations do not present the typical criminal matter. Rather, they present the earmarks of a loose enterprise employing different actors at different levels who share a common goal: bring in the money.

Everyone who has worked on these investigations has noted that the overlaps and crossovers deserve investigation. And yet, the Task Force has never conducted an inquiry or investigation of the entire campaign finance landscape in order to determine if there exists specific information from a credible source that a covered person (or someone within the discretionary clause) may have violated a federal criminal law. Every time this was suggested (e.g., Core Group investigation, Common Cause allegations) it has been rejected on the theory that such an

inquiry can only be conducted pursuant to a preliminary investigation under section 591 of the Act. However, we have been told that we can only commence a preliminary investigation if there exists specific and credible evidence that a potential criminal violation has occurred. That is, you cannot investigate in order to determine if there is information concerning a "covered person," or one who falls within the discretionary provision, sufficient to constitute grounds to investigate. Rather, it seems that this information must just appear.

As a result of this Catch-22 approach, there has been a critical component missing from our investigative strategy. This report will attempt to bring together the bits and pieces of information and evidence that have developed despite the absence of the type of landscape investigative approach outlined above. When viewed in context, various innocent-appearing actions and events develop into a pattern running through the separate investigations. The conduct of certain figures common to several individual investigations, while not sufficiently sinister in any single investigation, takes on a different gloss when combined with the same actors' conduct in several investigations. This is especially true with respect to the conduct of senior White House officials and key DNC and Clinton/Gore officials. These individuals make brief, albeit key, appearances in the individual investigations. While their participation in a single investigation generally falls short of a knowing participation in potential criminal conduct, the sum of their appearances results in a pattern of conduct worthy of investigation.

2. In Search of a Uniform Threshold Under the ICA

Another difficulty has been that the Task Force has been existing in an environment in which there are two different rules of engagement depending on the nature of the investigation. On the one hand, we are bound and determined to investigate thoroughly every lead and

allegation concerning campaign financing. We have often been told to follow all leads and leave no stone unturned. This is as it should be. The Task Force has opened criminal investigations, issued subpoenas, and presented evidence to a Grand Jury, based upon a determination that there is an allegation which, if true, may present a violation of federal law. The low quantum of information necessary to trigger a Task Force investigation has remained constant from the outset. The Task Force's threshold has never been articulated in terms of specific and credible information -- much less evidence -- that a crime has been committed in order to commence an investigation. As a result, more than one criminal investigation has been opened by the Task Force based upon a newspaper article that strings together "allegations" and "facts" suggesting a possible federal violation.[2]

On the other hand, a higher threshold than that employed by the Task Force has been imposed when approaching allegations that may implicate the ICA and White House personnel. The ICA provides that a preliminary inquiry shall be conducted whenever the Attorney General receives information (not evidence) "sufficient to constitute grounds to investigate whether any person . . . may have violated any Federal criminal law . . ." 28 U.S.C. § 591(a) (emphasis added). The only factors to be considered under the ICA in determining whether grounds to

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[2] It has also been the policy of the Task Force to continue to investigate allegations and to decline prosecution and/or further investigation only after each and every allegation has been fully investigated. This is true despite the fact that some allegations approached what a reasonable investigator might characterize as frivolous. For example, the Task Force continued to investigate the overnight stays at the Lincoln bedroom and attendance at White House coffees long after any expectation of a potential violation of law had disappeared. The rationale was that no stone would be left unturned. Thus, even if not unlawful in and of itself, an overnight stay or attendance at a coffee by a contributor might provide context to some of the other activities under investigation or constitute an overt act in an overall criminal conspiracy. The Department has also confirmed that no campaign finance investigation will be closed without conferring with the Director of the FBI.

investigate exist are the specificity of the information received and the credibility of the source of the information. This provision seems simple enough and indeed consistent with the quantum of information necessary to commence a typical Task Force investigation. And yet, in applying § 591(d)(1) of the Act, a good deal has been read into the legislated threshold. The threshold has been raised from consideration of the specificity of the information and credibility of the source, to a determination that there is specific and credible evidence of a federal violation. Evidence suggests something which furnishes proof; information need not be as directed. While the distinction may appear to be subtle, it is significant. [3]

The mechanics of how we address campaign finance matters is also flawed and has contributed to the confusion. If an allegation suggesting a potential federal violation was made, an investigation was commenced and the Task Force pursued it. And yet, whenever the ICA was arguably implicated, the Public Integrity Section was called in to consider if a preliminary investigation should be commenced, to conduct and direct the investigation, and, thereafter, to recommend if a further investigation was warranted. While these actions were generally taken in loose coordination with the Task Force, a peculiar investigative phenomenon resulted. The

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[3] We received a briefing for the Attorney General prepared by the Public Integrity Section in connection with the Attorney's General's July 15th testimony. Under the heading "Why AG Has Not Recommended Appointment of IC" is the following statement:

> I. The Independent Counsel Act
>
> • The Statutory standard under the Independent Counsel Act requires:
>
> (1) Specific evidence from a credible source that a crime may have been committed, **and** either ...

In the pages that follow concerning specific topics like "Allegations Relating to Chinese Government Influence," we see the constant refrain: "There is no evidence ..." However, the statute refers to information and not to evidence. The reference to "specific and credible evidence" is just wrong. (Tab 5) (emphasis added)

Department would not investigate covered White House personnel nor open a preliminary inquiry unless there was a critical mass of specific and credible evidence of a federal violation. (It is not accidental that everyone generally refers to the standard as requiring specific and credible evidence rather than information. Indeed, the phrase "specific and credible evidence" has become so much a part of our lexicon that it has even found its way into high-level briefings on the Act to explain why the Department has done what it has done-- see fn 3.) And yet, the Task Force has commenced criminal investigations of non-covered persons based only on a wisp of information. The failure to distinguish between information and evidence as we attempt to apply the Act, as well as the employment of two distinct thresholds in connection with the commencement of criminal investigations, impacts on the conclusions reached in these matters.[4]

The Task Force's threshold concerning the commencement and conduct of criminal investigations has been publicly endorsed by the Department in the numerous correspondence sent to Congress as well as in the testimony of the Attorney General before the Senate. As such, this threshold constitutes a written or other established policy of the Department within the meaning of the ICA. See 28 U.S.C. § 592(c)(1). The implications that flow from such an established policy in the area of campaign financing are significant.

The standard for triggering a preliminary investigation under the ICA should be identical to the threshold employed when deciding to open a Task Force investigation. If the Task Force

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[4] Even among the ICA investigations conducted to date, there appears to be a very different approach taken when the allegation involves the President, Vice President or Senior White House Officials. The Babbitt and Herman matters illustrate the very low quantum of information deemed necessary to trigger the ICA and the need to conduct further investigation. And yet, although matters involving covered persons and White House personnel outlined in this report present specific information from credible sources well beyond that present in these other investigations, the Act has not been called into play.

issues subpoenas, elicits (and at times compels) sworn testimony, and employs the other investigative techniques available during a criminal investigation, this should satisfy the investigative threshold in the ICA as well. This assures that covered persons under the ICA are treated neither more harshly nor more leniently than others in less powerful positions. This was certainly the standard envisioned by Congress when it determined that "whenever the Attorney General received information sufficient to constitute grounds to investigate" a covered person or one who falls within the discretionary provision, a preliminary investigation should be conducted. See Legislative History of the ICA, infra. The reference to "the specificity of the information and the credibility of the source for the information" was intended to limit the Attorney General in determining whether sufficient grounds to investigate exist by eliminating other factors the Attorney General could rely upon to avoid commencing a preliminary investigation. (Tab 6) However, these factors are now being advanced as somehow creating a higher threshold than that which the Attorney General employs in deciding to commence a criminal investigation which does not implicate the ICA.

Likewise, the standard for the conduct of a campaign financing investigation -- including a determination that further investigation is warranted -- should be consistent, regardless of whether the ICA is implicated. Thus, following a preliminary investigation under the Act, the decision as to whether further investigation is warranted, should parallel the standard employed by the Task Force in conducting, and closing, investigations. Under the Act itself, a decision concerning the need for further investigation is governed by the Department's written or established policy. In the area of campaign financing investigations, that policy embraces the "leave no stone unturned" approach employed by the Task Force. See Footnote 2, supra

DOJ-FLB-00045

The question thus becomes whether the Task Force standard or the ICA standard -- as currently applied to campaign financing investigations involving White House personnel -- should be the benchmark. While some have argued that the Task Force's "pursue every lead and leave no stone unturned" approach presents a somewhat relaxed predication requirement,[5] the Department has articulated several compelling reasons why this approach is the appropriate policy in connection with campaign finance investigations: the shortened statute of limitations for election violations; the rash of potential illegal activities presented during the 1996 election cycle and the resulting political crisis; the apparent injection of foreign money into our political system; the widespread circumvention of existing election law restrictions; the exposure of gaps in the law which permitted wholesale circumvention of federal election laws; and the possible participation -- or willful blindness -- of public officials, and high level party officials in connection with these activities. Perhaps most importantly, the public cynicism and apathy engendered by reporting (much accurate, some not) of the campaign abuses, compels an exceptionally thorough investigation, so that there is not even the appearance, let alone the reality, that leads have not been pursued.

We were not participants in the application of the Act by the Department prior to September 1997. However, as a prosecutor and investigator who have observed its application

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[5] The standard for the commencement of a criminal investigation, as set forth in the U.S. Attorney's Manual, is consistent with the Task Force's approach and the Department's stated policy. The Manual provides:

> The grand jury may be utilized by the U.S. Attorney to investigate alleged or suspected violations of federal law.

United States Attorney's Manual § 9-2.010

over the past ten months, it seems evident that, for whatever reason, there has been unnecessary complication in applying the standards set forth in the ICA concerning the commencement and conduct of investigations. This is especially so where the President and White House personnel are involved. Indeed, the continuing and often heated debate involving the so-called Common Cause allegations is an apt example. If these allegations involved anyone other than the President, Vice President, senior White House, or DNC and Clinton/Gore '96 officials, an appropriate investigation would have commenced months ago without hesitation. However, simply because the subjects of the investigation are covered persons, a heated debated has raged within the Department as to whether to investigate at all. The allegations remain unaddressed.

When you juxtapose the Common Cause allegations against the Loral allegations, for example, there is no acceptable explanation as to why one is the subject of a full criminal inquiry and the other is, and remains, in an investigative limbo. The fact is that Loral has been, and remains, a front page story whereas the Common Cause allegations never grabbed the public attention. The tone, tenor, and tempo of the debates on Common Cause and Loral seemed to flow from this. The debates appear to have been result orientated from the outset. In each case the desired result was to keep the matter out of the reach of the ICA. In Common Cause (outlined below at pages 36-41), this was accomplished by never reaching the issue. The contortions that the Department has gone through to avoid investigating these allegations are apparent. For example, it was suggested that these allegations be sent to the understaffed and investigatively impotent Federal Election Commission ("FEC") for an initial review to determine if the FEC believes that potential criminal charges exist. In Loral (outlined below at pages 75-79) avoidance of an ICA was accomplished by constructing an investigation which ignored the

President of the United States -- the only real target of these allegations. It is time to approach these issues head on, rather than beginning with a desired result and reasoning backwards.

While the Common Cause and Loral matters are discussed more fully below, it is important to note that these anomalies exist and the time has come to address them based upon the information received and developed by the Task Force. In the context of campaign financing allegations, the Department's established policies are, and should be, those that the Task Force has employed from its inception: whether the allegations, if true, present a potential violation of federal law. This is also the appropriate standard to be applied under the ICA in the context of potential campaign finance violations.

B. Legislative History of the ICA

The above statutory framework analysis is based upon a plain and fair reading of the ICA. However, a review of the legislative history of the 1978, 1983, 1987 and 1994 amendments to the ICA, and its predecessor, support this analysis and yield two factors which are particularly germane to our discussion.

First, in connection with the commencement and conduct of criminal investigations, Congress intended to achieve an equilibrium between those covered by the Act and those who are not. If there is sufficient information for a criminal investigation to be commenced in connection with John Q. Public, this same quantum of information is sufficient to trigger an investigation under the ICA. The amendments of 1987 and 1994 make it clear that those covered by the Act are intended to be in the same position as non-covered citizens when it comes to whether an investigation is commenced and, if commenced, whether a further investigation is warranted. For this reason the Department's "established policies" were legislatively grafted onto the Act.

Second, the legislative history accompanying these amendments is riddled with comments suggesting that in the past, the Department's literal, hyper-technical, parochial, or professorial reading and application of the ICA has proved to be the catalyst for several amendments. It seems that the more the Department has resisted a common sense reading and application of the ICA, the more it has invited Congressional action. And, on more than one occasion, Congressional action has further restricted the Department's discretion in the application of the Act. For example, in discussing the 1987 amendments, the Senate report notes that in several cases the Department had declined to conduct a preliminary inquiry despite the fact that it had received:

> . . . specific information from a credible source of possible wrongdoing, because it determined that the evidence available did not establish a 'crime.' In at least 5 of these 10 cases, this decision appears to be based, in whole or in part, upon a finding that there was insufficient evidence of a subject's criminal intent and therefore, no 'crime' to investigate.
>
> Thus, contrary to the statutory standard, . . . [the Department] relied on factors other than credibility and specificity to evaluate the case. Moreover, in at least half of these cases, the Department of Justice refused to conduct a preliminary investigation into the alleged misconduct, because it had determined there was, at this early stage in the process, insufficient evidence of criminal intent.

S.Rep. No. 100-123, at 7 (1987), reprinted in 1987 U.S.C.C.A.N. 2150, 2156 (hereinafter collectively referred to by year followed by "U.S.C.C.A.N.") (emphasis added).

In the same report, it was noted that "[s]ome of the most serious implementation problems identified by the Committee concern the Justice Department's procedures for handling cases under the statute." 1987 U.S.C.C.A.N. at 2158. The most serious problem chronicled by the Committee was the Department's practice of conducting "threshold inquiries" of incredible length

involving "elaborate factual and legal analysis" in order to determine if certain information was sufficient to trigger a preliminary investigation.[6] The Judiciary Committee noted:

> It is not clear why the Department of Justice has adopted this practice. Some have suggested that the Department is conducting preliminary investigations in all but name to avoid statutory reporting requirements that attach only after a 'preliminary investigation' has taken place. Since these reporting requirements are the primary means of ensuring the Attorney General's accountability for decisions not to proceed under the statute, Congress intended them to attach in all but frivolous cases.

1987 U.S.C.C.A.N. at 2158 (emphasis added). The clear mandate is that a preliminary investigation should be triggered in all but frivolous cases. As detailed below, the Task Force has uncovered a variety of non-frivolous allegations involving covered and discretionary persons under the ICA.

Finally, the Department was criticized for its interpretation and application of the Act in determining whether further investigation was warranted following a preliminary investigation. The Committee noted that the Department had substituted its own "reasonable prospect of conviction" threshold for the statute's "reasonable grounds to believe that further investigation or prosecution is warranted" threshold.[7] See 1987 U.S.C.C.A.N. at 2160. In doing so the

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[6] One could argue that this is precisely what the Department is doing now by employing two thresholds for criminal investigations: one for the commencement of campaign finance investigations not implicating the ICA, and another for the commencement of a preliminary investigation under the Act.

[7] This is much like the substitution we have adopted in connection with the Common Cause allegations. These allegations -- and the potential criminal violations -- are outlined below. Suffice it to say that the Department appears to moving towards its own threshold in determining that the Common Cause allegations do not, as a matter of law, present a potential violation of federal law without conducting any inquiry or investigation whatsoever. Instead, it is suggested that the allegations be referred to the FEC which in turn can then advise the Department if a potential criminal charge is presented.

DOJ-FLB-00050

Department ignored Congress' intent in establishing the preliminary investigation and substituted its own judgment:

> The purpose of allowing the Justice Department to conduct a preliminary investigation is to allow an opportunity for frivolous or totally groundless allegations to be weeded out. . . . On the other hand, as soon as there is any indication whatsoever that the allegations . . . involving a high-level official may be serious or have any potential chance of substantiation, a Special Prosecutor should be appointed to take over the investigation.

1978 U.S.C.C.A.N. at 4270 (emphasis added).

As a result, Congress amended the ICA: (a) to prevent the Department's "disturbing practice" of conducting "threshold inquires" to determine if a preliminary investigation is warranted; (b) to limit the Attorney General to consideration only of the specificity of the information and credibility of the source in determining whether a preliminary investigation should be triggered; (c) to impose a reporting requirement upon the Department following a preliminary investigation; and (d) to remove reference to "prosecution" in determining if a further inquiry is warranted. 1987 U.S.C.C.A.N. at 2163-64.

The ICA is far from a model piece of legislation. Because of this, some within the Department tend to resist its application, while others adopt a creative reading to provide a more sensible enforcement mechanism. People have been reading things in and out of the Act in order to avoid what is perceived as an impermissibly low threshold for triggering the Act and warranting further investigation. However well intentioned these efforts may be, it is clear that Congress intended the ICA to embrace this low threshold. The perception that the Department is skirting the Act certainly will evoke heightened Congressional scrutiny and possibly additional legislative fixes calculated to restrict further the Department's ability to navigate in these difficult waters. If

we have concerns about the ICA in its current incarnation, and we do, the Department should propose appropriate amendments. If we believe that the Act should be triggered only if there is specific and credible evidence of wrongdoing, or that the Department should be given more leeway in connection with preliminary investigations, we should advocate such amendments. The campaign finance investigations certainly provide an appropriate platform upon which to launch proposed changes to the Act. However, if we are seen as part of the problem, as we were in connection with the 1987 amendments, our views and concerns may well be lost when it comes time to draft appropriate fixes to the ICA. A legislative fix without significant input from the Department would likely result in an even more cumbersome legislative framework within which to work. For this reason also, it is incumbent upon us to engage in a fair and common sense reading and application of the ICA regardless of our feelings concerning the wisdom of the Act as currently drafted.

In the end, you may conclude that our statutory analysis is incorrect and determine that the Department has consistently applied the appropriate standard concerning the commencement and conduct of a criminal investigation under the Act. However, even under what we believe to be a higher threshold, this does not alter our conclusions in the following section of this report. That is, the information developed in the areas outlined below is sufficient to trigger a preliminary investigation. In addition, given the amount of information developed, this information is sufficient to support a determination that further investigation is warranted in each of these areas.

III. Information That We Believe Is Sufficient To Trigger A Preliminary Investigation And Support A Determination That Further Investigation Is Warranted Under the ICA

There are several individual areas which we believe present information sufficient to trigger a preliminary investigation and support a determination that further investigation is warranted under the ICA. They fall both within the mandatory and discretionary provisions of the Act. These areas are outlined below.

A. Harold Ickes

We understand that Public Integrity, in another investigation, determined that Harold Ickes is not a "covered person" and therefore does not fall within the mandatory clause of the ICA. (Tab 7) The facts we have developed in the context of this case, however, suggest that a different conclusion is now appropriate.

The Chair of Clinton/Gore '96 is a covered person under the Act as is any officer of that committee "exercising authority at the national level." 28 U.S.C. § 591(b)(6). The evidence developed by the Task Force establishes that Harold Ickes operated as the de facto Chairman of Clinton/Gore '96. In addition, Ickes functioned on a daily basis as a de facto officer of that committee exercising absolute authority at the national level. As such, it is our belief that Ickes falls within the mandatory provision of the Act.[8]

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[8]Annexed at Tabs 8 and 9 respectively, are the lists of covered personnel in the Bush and Clinton Administrations. Although the President is authorized by statute to appoint and pay twenty-five persons at Level II, thus including them as covered personnel, President Clinton currently pays only six persons at that level. As is evident, the Clinton Administration, by reducing the salary structure of certain senior White House officials, has removed these individuals from the covered list. While these senior White House officials -- like Ickes -- perform largely the same function as their Bush Administration predecessors, they fall outside of the ICA by forgoing certain modest compensation. Whether this was the intent of the salary cap, or only an incidental benefit, is irrelevant. It is clear that the position occupied by Harold Ickes,

DOJ-FLB-00053

In a separate matter, Public Integrity analyzed whether Terence McAuliffe -- who served as the Finance Chair of Clinton/Gore and later as "Honorary Campaign Co-Chair" of Clinton/Gore -- was a covered person under Section 591(b)(6) of the Act. This is the same section of the ICA within which we believe Ickes falls. Public Integrity produced two memos on the subject, dated March 13, 1996 and September 30, 1997, which are annexed at Tabs 10 and 11 respectively. In analyzing McAuliffe's status under § 591(b)(6) of the Act, Public Integrity concluded that the Act "establishes a two-part test, relying on title and function, for determining whether an officer other than the chairman and treasurer is a covered person." (Tab 10 at p. 2) Since neither McAuliffe's title (Finance Chair and Honorary Campaign Co-Chair) nor function (glorified fundraiser) satisfied the elements of § 591(b)(6) of the Act, Public Integrity concluded that McAuliffe was not a covered person. This type of analysis, looking at the reality of the position rather than its trappings, leads to a very different conclusion when applied to Ickes' role during the 1996 campaign.[9]

Unlike McAuliffe, Ickes had no official title at Clinton/Gore '96. However, it is clear that Ickes functioned as the de facto Chairman of Clinton/Gore '96 as well as Chief Executive Officer of that committee exercising authority at the national level. We believe that Ickes' de facto title, which follows from his de facto function, establishes his place as a covered person under the ICA.

Deputy Chief of Staff to the President, has traditionally been a covered position for purposes of the ICA. See Tab 8 at Page 111 (Sununu, Duberstein and Baker).

[9]The support for this analysis is predicated upon a November 19, 1986 memorandum from William Weld, Assistant Attorney General, Criminal Division, to Arnold I. Burns, Acting Attorney, which is referenced at Tab 10, Page 2, Note 1.

Ickes' prominence in this regard dates back to September 1994 when he began to send memos to the President regarding the need to raise millions in connection with the media campaign the White House anticipated waging over the next few years:

> The purpose of the breakfast would be for you to express your appreciation for all they (Vernon Jordon, Bernard Schwartz and Jay Rockefeller) have done to support the Administration, to impress them with the need to raise $3,000,000 within the next two weeks for generic media for the DNC and to ask them if they, in turn, would undertake to raise that amount of money.

See Tab 12 (emphasis in original).

Ickes' efforts in this regard were relentless. In January 1995, he wrote to President Clinton that "[w]e should meet at your earliest convenience, perhaps including Chairman Dodd and Chairman Fowler and Terry McAuliffe, to discuss when and how to begin the fundraising effort for the Committee to Re-elect as well as the DNC." (Tab 13) Less than one month later, at the same time the White House coffees began as a fundraising tool (inspired by an Ickes memo to POTUS),[10] the regular Wednesday night meetings at the White House began. There were separate money and issue meetings held on Wednesday nights all geared to the fundraising and strategic efforts to be employed by the DNC and reelection committees. While the attendees were generally different at each meeting, Ickes regularly attended both the money and issue meetings.

Ickes also memorialized his position with regard to the DNC in an April 17, 1996, memo to Fowler in which he, in effect, confirmed himself to be the Chief Executive Officer of the DNC:

> [A]ll matters dealing with allocation and expenditure of monies involving the Democratic National Committee ("DNC") including, without limitation, the DNC's operating budget, media budget, coordinated campaign budget and any other budget or expenditure, and including expenditures and arrangements in

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[10] With regard to the coffees, it was Ickes who determined in January 1995 that the DNC would pay for the coffees. (Tab 14)

> connection with state splits, directed donations and other arrangements whereby monies from fundraising or other events are to be transferred to or otherwise allocated to state parties or other political entities and including any proposed transfer of budgetary items from DNC related budgets to the Democratic National Convention budget, are subject to the prior approval of the White House.

(Tab 15) (emphasis in original).

Morris has stated that this memo simply memorialized what had been the accepted practice from the outset. In August 1995, Morris hired media consultants to do polling and TV ads. At Ickes' direction, the bills were sent to Ickes at the White House and it was Ickes who determined how much of a particular bill was to be paid by the DNC, by Clinton/Gore '96, or the State Committees. This practice continued right up to the 1996 election. (Tab 16)

Morris also confirmed that Ickes was the sole person charged with making financial decisions for the White House, DNC and the reelection effort. Morris stated that Ickes controlled every aspect of DNC and Clinton/Gore fundraising and that Ickes was brought in by the President to run the reelection effort. Ickes himself reaffirmed his position all through the 1996 election cycle in numerous memos, at meetings and by virtue of his conduct toward Clinton/Gore '96. In fact, Ickes went so far as to pen some of his memos to the President, Vice President and others on Clinton/Gore '96 letterhead. These memos addressed substantive issues like the Penn and Schoen polling budget for 10/95 through 8/96 and reporting on paid media spots. (Tab 17)

Ickes also regularly sent memos to Bobby Watson, Chief of Staff at DNC, directing Watson to pay outstanding balances owed to media consultants "immediately" with copies to Clinton/Gore officials. And Ickes wrote directly to Peter Knight and others at Clinton/Gore in this same vein. (Tab 18) In fact, in an April 10, 1996 memo, Ickes (at the request of the President) directed that all those who attend DNC and political coffees at the White House be

added to the Clinton/Gore '96 database. (Tab 19) Both Clinton/Gore and the DNC complied and the database was expanded.[11]

It is not simply that Ickes perceived himself to be in charge. Those at the DNC and Clinton/Gore clearly recognized this to be the case. For example, in an August 8, 1995 memo to Ickes, Scott Pastrick, National Treasurer for the DNC, wrote: "It has been brought to my attention that you are considering a decision to disallow the DNC Finance Division from formally packaging corporate and individual donor benefits and activities at the 1996 convention..." (Tab 20) Similarly, Clinton/Gore officials sent Ickes "proposed weekly budget reports" seeking his input, (Tab 21) as well as reports on the money raised for the media campaign. (Tab 22)

Quite apart from this paper trail, Leon Panetta acknowledged in an FBI interview that he did not have the experience to run a national presidential campaign and therefore relied heavily on Ickes to handle all issues relating to the President's reelection. Panetta confirmed that he relied on and trusted Ickes to handle the multiple tasks and issues regarding the organization and operation of the President's reelection efforts.[12] According to Panetta, Ickes ran the re-election effort from the outset and took the lead concerning DNC matters as well.

In the course of the Task Force's investigations, the presence of Harold Ickes is the common denominator. It would be impossible to address each of the memos from or to Harold

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[11] Ickes also was the chief negotiator on behalf of Clinton/Gore in services of the November 5 Group. This group, which included Dick Morris and the Penn/Schoen firm, was used to coordinate the entire media campaign.

[12] In fact, in his interview Panetta stated that he was aware of only two telephones in the White House that were paid for by funds from Clinton/Gore '96. One of these phones was in Ickes' office, thus underscoring Ickes' involvement with the reelection effort and Clinton/Gore '96.

Ickes that demonstrates his position as a senior White House official, Clinton/Gore Campaign Operative and CEO of the DNC. Instead, we have annexed a detailed time line of important Ickes memos and meetings which chronicle these positions and his absolute control over White House, DNC and Clinton/Gore operations. See Tab 23. When viewed in context, this time line makes clear that Harold Ickes is the very type of senior White House official and Clinton/Gore functionary contemplated in section 591(b)(6) of the Act.

Ickes also falls squarely within the discretionary provision of the Act. This provision, calculated to function as a "catchall" provision, was intended to include "members of the President's family and lower level campaign and government officials who are perceived to be close to the President. 1987 U.S.C.C.A.N. at 2165 (emphasis added).[13] Given Ickes' role in the reelection effort, his intimacy with the President, his status at the White House, and his control over the DNC and Clinton/Gore, Ickes presents the type of political conflict contemplated under the Act. Indeed, Ickes' relationship with the White House continues even today. According to a statement made by Ickes on the Today show on June 22, 1998, he is now working with the White House to help "get the message out" to the press on matters relating to Kenneth Starr. Ickes' involvement with the White House and the President on this sensitive issue raises the specter of a political conflict of interest should Ickes be the subject of a criminal investigation.

Whether you consider Harold Ickes as a covered person, or someone who is within the discretionary provision of the Act, there is sufficient information concerning his activities to

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[13] In establishing this provision, Congress recognized that "there may be situations in which conflicts of interest become apparent at a later stage of an investigation. For example, during an investigation conducted by the Department of Justice, additional facts may surface concerning a person close to the President. . . which could give rise to a conflict of interest." 1982 U.S.C.C.A.N. 3537, 3545-3546. Such is the case here.

commence and conduct an investigation based upon the Department's established policies relating to Task Force matters.

1. Aiding And Abetting Conduit Contributions, False Statements And A Scheme To Defraud

First, there is an allegation that Ickes knowingly permitted the DNC and Clinton/Gore '96 to accept conduit contributions collected by Charlie Trie and to file false and misleading reports with the FEC. The specific information from credible sources is as follows:

On March 21, 1996, Trie approached Michael Cardozo, the Executive Director and Trustee of The Presidential Legal Expense Trust ("PLET"). PLET was a trust established by the President and Mrs. Clinton to meet their mounting personal legal expenses. The June 28, 1994 Press Release concerning the establishment of the trust, its purpose and rules and regulations relating to contributions and contributors, provided in pertinent part:

> Under the terms of the trust, contributions will be accepted only from individual citizens other than federal government employees, not from corporations, labor unions, partnerships, political action committees or other entities. Individual contributions will be limited to a maximum of $1,000 per year. The trustees will periodically publish the names of all contributors. The trust will also publish periodic reports on its receipts and expenditures. (Tab 24)

When Trie approached Cardozo, he offered Cardozo a bag which contained $460,000 in checks and money orders of individual "donors."[14] In a recent interview, Mark Middleton acknowledged that Trie showed him the checks shortly before they were presented to Cardozo. According to Middleton – a former White House employee – he advised Trie not to submit the

[14] At the time Trie proffered these contributions, he was adamant that he not be associated with the donations since he expected to be appointed to an undisclosed Commission by the President in the near future. In fact, on April 22, 1996, just weeks after the PLET "donations" were tendered by Trie, President Clinton appointed Trie – the former Little Rock restaurant owner – to the Commission on U.S. Trade and Investment Policy.

checks to PLET because they looked "foreign." Despite Middleton's warning, Trie brought the bag of checks to PLET.[15]

Trie assured Cardozo that all the "contributions" were from U.S. citizens. Cardozo returned $70,000 later that same day to Trie because, according to Cardozo, the checks were "defective on their face." The remaining $390,000 was deposited into the PLET account, although Cardozo was still uneasy about the Trie money. Based upon his concern, Cardozo decided to scrutinize the Trie "contributions" and to advise the White House of the situation.

A PLET administrator conducted a brief review of the Trie checks that were retained by PLET. As a result, PLET determined that many of the checks were comprised of bundled money orders which were sequentially numbered, though often signed by people in different cities. There were also many third party checks and the word "Presidential" was uniformly misspelled (as "presidenseal") on several of the checks.[16] The preliminary review also suggested that some of

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[15] The Task Force conducted a search of Trie's Watergate apartment in October of last year and found a copy of the June 28, 1994, PLET Press Release, including contribution and contributor restrictions. A fax cover sheet was also seized indicating that the release was faxed by Mark Middleton to Antonio Pan (Trie's codefendant in the pending indictment) at Trie's Watergate apartment on March 7, 1996. (Tab 25) This was just two weeks before Trie tendered the bag full of checks to Cardozo. Pan's role in the PLET contributions is unclear at this point. (Pan's role in the conduit schemes charged in the Trie indictment was that Pan, on behalf of Trie, helped structure the repayment of conduits from foreign sources. It is interesting to note that at some point in the conduit scheme charged in the Indictment, Pan had contact with John Huang concerning the structured checks. Huang's involvement with an effort by to structure checks "contributed" in connection with a White House coffee is also outlined below).

[16] Clinton/Gore '96 apparently did not apply the same level of diligence to scrutiny of contributions as did the PLET and Middleton. Clinton/Gore apparently never discovered that ten conduit checks gathered by Maria Hsia for a September 1996 fundraiser all had the payee written with a uniform misspelling in one cursive handwriting as "Clienton Gore 96." Ten other conduit checks for the same fundraising event had the payee in block letters as "CLIEN TON-GORE 96."

the "donors" might have been coerced into giving the checks by a Taiwanese-based Buddhist cult of which they -- and Trie -- were members.

On April 4, 1996, Cardozo went to the White House to alert Harold Ickes and the First Lady about the Trie contributions and his concerns. (Ickes had no formal role or position with PLET. Therefore, we must assume that he was present as the President's representative.) Based upon Cardozo's expressed concerns, the First Lady told Cardozo to be very diligent in determining the eligibility of the contributions. Ickes' notes from the meeting reflect a "public relations" concern about reporting the return of contributions on the Trust's disclosure statement. Ickes' note reads: "Don't report names if $ are returned."[17] (Tab 26) Given Ickes' role in the reelection effort, it is not surprising that he would be concerned about the political fallout of a wholesale return of "foreign looking" contributions gathered by the President's good friend Charlie Trie.

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[17] When Cardozo was asked in his Senate testimony about Harold Ickes' participation in the meeting, he said "I have no recollection of Mr. Ickes saying anything at the meeting. He was buried in his notes." In reviewing the unredacted Ickes calendars we received recently from the White House, we discovered a meeting scheduled between Ickes and Terry Lenzner, the Chairman and CEO of The Investigative Group, Inc. ("IGI"), the day before the April 4th Cardozo briefing of Mrs. Clinton and Ickes. Lenzner and IGI were hired by PLET to investigate the Trie "contributions." While the formal engagement of IGI appears to have occurred after the briefing of April 4th, the Lenzner/Ickes meeting of April 3rd suggests that IGI may have been involved in the matter -- albeit informally -- before the April 4th briefing. In a recent interview, however, Lenzner denied this and claimed he was at the White House on an entirely separate matter. Indeed, he recalled that although he was waved into the White House and waited for almost two hours, he did not meet with Ickes at all on April 3rd because the White House had just learned that the plane transporting Ron Brown had crashed. Neither Lenzner nor Ickes disclosed the April 3rd meeting during the course of their testimony to the Senate about the Trie contributions. It is interesting to note that the Ickes/Lenzner meeting had previously been redacted by the White House in connection with production of Ickes calendars as "non-responsive." The Task Force is still negotiating to obtain unfettered access to the calendars of Panetta.

DOJ-FLB-00061

Based upon its initial review, and after consultation with its attorneys and trustees, PLET formally hired Terry Lenzner and IGI -- a Washington-based investigative firm -- to investigate the Trie "donations." Apparently the sole restriction placed on Lenzner and IGI in conducting the investigation was that they were not to talk to Trie. Two days after IGI was formally retained, Trie brought another $179,000 in checks to PLET. These checks were immediately rejected by PLET and Trie was told not to bring any more "donations" to the Trust.[18]

In early May, Cardozo returned to the White House for a second briefing. On this occasion, Cardozo briefed Harold Ickes about the IGI findings. In addition to Ickes, the briefing was attended by Jack Quinn (White House Counsel), Maggie Williams (Chief of Staff to the First Lady), Bruce Lindsey (Deputy White House Counsel), Evelyn Lieberman (Deputy White House Chief of Staff) and Cheryl Mills (Deputy White House Counsel). The IGI investigation confirmed the findings of the PLET's internal investigation and added that the checks were bundled in a likely attempt to buy influence. No one from either the DNC or Clinton/Gore '96 - except Ickes - was present at this briefing. And yet, during this meeting Bruce Lindsey, after hearing Trie's name, commented that he knew Trie from Little Rock and that Trie was involved with the Democratic Party. (In fact, Trie was a Managing Director of the DNC at that time.)

Just three days after this May briefing, Trie donated -- and the DNC accepted -- $10,000. The following day Trie attended an event and sat at the President's table after having donated another $5,000 to the DNC. Two days later PLET received IGI's draft report reiterating the causes for concern outlined in the briefing. Receipt of the report prompted Cardozo to advise

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[18] Cheryl Mills, Deputy White House Counsel, admitted in her Senate testimony that she was aware of the delivery and rejection of this second batch of Trie checks.

White House Counsel that PLET would return all the "donations" gathered by Trie. Cardozo was later told that the President and Mrs. Clinton concurred in the decision of the trustees.[19]

In June 1996, shortly after the return of the Trie "donations," PLET altered its own reporting requirements so that the return of the Trie money would not have to be disclosed. It appears that this decision was reached by PLET in consultation with White House officials -- including Ickes, Mills and Quinn. In previous PLET reports, any returned contributions were clearly reflected. The failure to do so is consistent with Ickes' April 4th notes reflecting his concerns surrounding the disclosure of the return of the Trie "contributions." See Tab 26. This change in policy appears to be inconsistent with the PLET regulations concerning the publication of the names of all contributors as well as publication of all receipts and expenditures. Since the contributions were accepted by PLET, and thereafter returned from its account, the Trie "contributions" were either a receipt or an expenditure of funds. In any event, in their Senate testimony, both Quinn and Mills denied any participation in the decision to alter the PLET accounting methods. Cardozo stated that the reporting change was one recommended by the

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[19] In his prepared statement to the Senate, Cardozo enumerated the reasons why the Trie "contributions" were returned:

> One, the unique circumstances under which the funds were delivered to the Trust; Two, the fact that it now appeared that most if not all of these contributions were raised at meetings of a religious organization, the Ching Hai -- Buddhist sect which according to IGI had been described by some as a "cult" and which raised concerns about peer pressure and coercion; and Three, concern over the ultimate source of some of the contributions due to what appeared to be the advancement of funds by the Ching Hai organization to some contributors.

Trust's accountants (the same accounting firm retained by the DNC) and the timing of the change was fortuitous vis-a-vis the Trie "donations."

On August 12, 1996, Cardozo sent a letter to Cheryl Mills with an enclosure asking her to circulate it by hand to Mrs. Clinton, Jack Quinn, Harold Ickes, Bruce Lindsey, Evelyn Lieberman and Maggie Williams. (Tab 27) The enclosure was a July 5, 1996 letter from David Lawrence (a member of the Taiwanese sect that was the source of the Trie "contributions") to the PLET trustees. In his letter, Lawrence thanked PLET for the return of his $1,000 "donation" (which was included in those checks bundled by Trie) and advised the Trust that the funds were raised by requesting donations from members of The Ching Hai sect and that none of the rules or regulations of PLET had been explained to them. In addition, the promise of reimbursement by the organization was known to the so-called contributors. In fact, Lawrence had opted to have the organization reimburse him for $500 of his $1,000 "donation."

The Lawrence letter made clear that which had been discovered by PLET's internal review and confirmed by the IGI investigation: the "donations" were from members of the Ching Hai International Association; when they were solicited, the members were not advised of the rules and regulations of donation (including that the Trust would file periodic reports identifying donors); and the organization made it clear that those who "contributed" could be reimbursed by the organization if they chose.

Mills testified that no action was taken by the White House in response to the Lawrence letter. Neither the DNC nor Clinton/Gore was advised by Ickes, the President, the First Lady, White House Counsel, or anyone else at the White House about the problems surrounding Trie's PLET "donations." This is true despite: (a) Ickes' role as the de facto head of the DNC and

Clinton/Gore '96; (b) Ickes' weekly meetings with Peter Knight, head of Clinton/Gore '96; (c) regular budget and fundraising meetings at the White House which included, among others, Ickes, Gore, Panetta, Lieberman, Sosnik, Ron Klain (VPOTUS Chief of Staff), Peter Knight, Terry McAuliffe (Clinton/Gore Finance Chair), Laura Hartigan (DNC and Clinton/Gore '96 employee), Don Fowler (DNC), Chris Dodd (DNC), Marvin Rosen (DNC), Richard Sullivan (DNC), Scott Pastrick (DNC) and B.J. Thornberry (DNC); (d) the President's active role in the affairs of the DNC and the reelection effort; and (e) Ickes' White House briefings detailing the concerns surrounding Trie's PLET "donations."

In short, no one who was briefed on the problems with the Trie "donations" lifted a finger to advise the DNC or Clinton/Gore '96 about the situation despite numerous opportunities to do so.[20] Fowler and Knight first learned about the tainted Trie contributions when the story broke in the press. Because of their ignorance, Trie continued to attend dinners with the President, enter the White House, and function as a major solicitor and fundraiser through election day.

In August of 1996 -- not two months after PLET returned the Trie donations -- the DNC accepted $110,000 solicited by Trie in connection with the Presidential Birthday Gala.[21] We have

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[20] In October 1996, after the fundraising controversy had broken in the press, Ickes was asked by Thornberry at DNC about John Huang. Ickes responded that if the DNC was going to look at John Huang, Thornberry should look at Trie as well. No particulars were provided at that time by Ickes as to why Trie should also be looked at in connection with campaign contributions. The comment, however cryptic, speaks volumes about Ickes' knowledge concerning Trie.

[21] Interestingly, John Huang is listed on the DNC check tracing forms as the DNC contact. (Tab 28) This group of solicited funds is featured as an overt act in the Trie indictment. Since it was foreign soft money, we chose not to charge this as criminal conduct. Since the filing of the Trie indictment, however, the Department has taken the position that such contributions are violative of FECA.

confirmed that $100,000 of these solicited funds were conduit contributions.[22] (Trie also gave additional, albeit smaller, amounts to the DNC following the PLET incident).

Trie was invited back to the White House in December for the DNC Trustee Christmas party. To that point no one at the White House, PLET or IGI made any effort to question Trie about these so-called "contributions" -- which were all returned -- or whether any of the other Trie "contributions" or solicitations suffered from the same defects. In fact, Trie's December White House appearance came after IGI issued its final report in which it detailed "donor" after "donor" who said they were reimbursed for their "contributions," and after the other questionable conduct about Trie's fund raising efforts were a matter of public record.[23] All indications are that this conduct was calculated to consciously avoid learning the truth.

It is true that we have uncovered no document that establishes directly that Ickes knew that Trie was a regular DNC/Clinton Gore solicitor/contributor. The reports sent to Ickes generally addressed financial needs and gross receipts. However, to conclude that Ickes was not aware that Trie was a significant solicitor/contributor and close friend of the President, is absurd.

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[22] In light of statements made by Chung in his debriefing concerning Trie acting as a conduit for PRC money into the Presidential election, this transfer in August of 1996 -- like the other Trie "donations" and solicitations -- takes on greater significance as does the true source of the Trie PLET "contributions."

[23] If that weren't enough, it was at this same DNC Christmas event that Trie secured a bogus driver's license for an Asian man who he brought into the White House to meet President Clinton. The man who entered with Trie was photographed with Trie and the President. The photo depicts Trie apparently introducing him to the President. To date, the White House has been unable to identify this individual other than under the bogus name that appears on the WAVES records. The photo was also supplied to counsel to the President but apparently the President cannot assist with an identification. This unknown Asian man may or may not have some connection with the Trie "contributions" to PLET or to the conduit donations solicited for the Presidential gala. It is just one more avenue that warrants further investigation.

Ickes himself advised DNC's Thornberry (after the scandal began to break) that if the DNC had questions about Huang, it should also look into Trie as well.

In addition, it was common knowledge among those at the DNC, Clinton/Gore and the White House, that Trie was a big contributor/solicitor and a close friend of the President from Little Rock. Lindsey acknowledged as much during Cardozo's second White House briefing on the Trie "donations," at which Ickes was present. Similarly, when Middleton faxed a letter to the White House from Trie to the President on the very day Trie brought the first bag full of checks to Cardozo, Trie was identified in the fax cover sheet as a "personal friend of the President from LR ... [and] a major supporter." (Tab 29) In fact, Trie's personal friendship with the President was one of the very reasons offered by Cardozo in his Senate testimony to explain why no one ever bothered to ask Trie for an explanation concerning the source of these "donations." Indeed, no one wanted to "offend" a friend of the President by confronting him with pointed questions concerning hundreds of thousands of dollars of "contributions" collected by him for the personal benefit of the President and First Lady. Instead, IGI was hired by PLET, and paid nearly $15,000 in fees, to find out what Trie could have confirmed in a simple and candid interview following the delivery of the checks.

Based upon the foregoing, it is evident that Ickes, while occupying a de facto position as a principal in DNC and Clinton/Gore, concealed the Trie problem from these entities. This concealment is especially troubling in light of Ickes' concern -- evident in his notes of the April 4th briefing by Cardozo -- about the effect of reporting the return of the Trie money. See Tab 26.

Ickes was also aware that the DNC and Clinton/Gore needed funds right through the election in order to keep the media campaign going. Trie was a regular source of funds for the DNC and Clinton/Gore as a contributor and fundraiser. White House calendars indicate that during the Spring and Summer of 1996, Ickes, Fowler and Knight were meeting regularly at the White House. (Tab 23) And yet, despite his proclivity for memo writing generally and taking charge of DNC and Clinton/Gore matters, Ickes was strangely silent on the Trie "donations" problem. He failed to pen one word on the subject or to mention one word of concern to either Fowler or Knight.

Did the failure to disclose to the public or to advise the DNC or Clinton/Gore '96, aid and abet Trie in the conduit scheme charged in the indictment filed against him? PLET itself advised Trie (after rejection of the second bag of checks) not to bring any more "contributions" to the Trust. However, by keeping the DNC and Clinton/Gore in the dark about Trie's PLET donations, Ickes enabled Trie to continue to solicit and to contribute. Ickes also enabled DNC and Clinton/Gore to continue to accept funds "solicited" by Trie. Perhaps Ickes did not inform DNC or Clinton/Gore so as not to burden these entities with the knowledge and the duty to check Trie's earlier contributions and to vet carefully all future solicited or donated funds. At best, Ickes engineered an effort to consciously avoid learning the truth about Trie. At worst, Ickes' failure to act was intended to conceal the truth from those who could have protected the DNC and Clinton/Gore from Trie's illegal solicitations/contributions. In any event, DNC and Clinton/Gore blissfully continued to accept tainted contributions from Trie.

The PLET allegations are not new. They were initially reviewed before we joined the Task Force. At that time it was concluded that since the FEC and FECA did not govern the

PLET or its filings, there was no potential criminal violation. (We are not aware of a formal declination of this matter.) In reviewing the information gathered by the Task Force from its inception and applying to it additional recent information developed concerning Ickes, Trie and Senior White House Officials, it is clear to us that this matter should now be reopened and pursued as a conspiracy, mail fraud, wire fraud and false statements investigation. Moreover, in light of Ickes' status under the ICA, a preliminary investigation should be triggered and a decision be made promptly that further investigation is warranted.

2. Common Cause Allegations And Conspiracy To Violate Soft Money Regulations

Ickes' participation in the so-called Common Cause allegations, is similarly troubling. Much has been made of the fact that the Department is unsure whether the applicable statutes (outlined in the Litt, [redacted] memoranda previously circulated), present a potential violation of federal law. To be sure, Litt, advocating that the Department not even commence an investigation, concluded in May 1997:

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> For all of these reasons, it is appropriate under established Department of Justice policy to refer to the FEC the issue of whether party advertising campaigns during the 1996 presidential election were properly paid for. It is important to note that this analysis does not imply that the advertisements, and their funding, did not violate FECA. It only says that, based on the present record, that determination should be made as an initial matter by the FEC rather than by the Department and a grand jury. In any event, the activities of the party committees may be relevant to other matters under investigation, and will be examined to that extent. Moreover, if at any time we uncover evidence demonstrating that there were knowing and willful violations of FECA, this conclusion could change.

See, Litt Memo dated May 28, 1997 (emphasis in original).

Nearly one year later, Bob reached a similar conclusion:

> We need not actually refer the matter to the FEC. We are aware that the FEC is already investigating it. They are, of course, desperately short of resources: almost a year ago they asked us for help and we have yet to respond. While the FBI is not prepared to provide resources to assist the FEC, JMD indicates that we can find other sources. We should do so immediately, and in our letter telling them we are providing these resources note that we are deferring to them on these issues. . . . It is unfortunate that the FEC is so weak, but we should not use that as an excuse to disregard well-established concepts of predication and well-established procedures, to conjure up novel legal theories of which political candidates had no notice, and to take on the responsibility of primary regulator of the political process. That is not an appropriate function of the Department of Justice.

See, Litt Memo dated February 6, 1998.

To date, the Department has not determined whether the Common Cause allegations implicate a potential federal violation. Even Litt, in arguing that an investigation should not be commenced, concluded that the question remains open. It may be that some day a court will determine that the standards set out in the applicable statutes are too vague or infringe unconstitutionally upon the First Amendment and cannot be enforced. It may be that a prosecutor, based upon a fully developed factual record, will exercise his/her discretion and decline to bring charges even if a technical violation presents itself. However, to substitute our judgment -- as a matter of law -- at this early stage of the process is a mistake. The potential violations exist, and therefore it is a matter that warrants investigation under the Department policies -- outlined above -- which have been established for alleged campaign finance violations.

The alternative approach -- a parochial and professorial application of the ICA -- is the very approach that has gotten the Department into trouble in the past. It is the same type of maneuvering and practice that triggered the 1987 Amendments to the ICA and the sharp criticism

of the Department that accompanied these amendments. Indeed, one could argue that the Department's treatment of the Common Cause allegations has been marked by gamesmanship rather than an even-handed analysis of the issues. That is to say, since a decision to investigate would inevitably lead to a triggering of the ICA, those who are hostile to the triggering of the Act had to find a theory upon which we could avoid conducting an investigation. However, in light of the Task Force's actions in non-ICA related matters, this position is untenable. Any objective review of the Common Cause debate and the Task Force's threshold in other investigations makes this clear.

Finally, the alternative approach, while avoiding application of the ICA, virtually ignores the possibility that there exists a section 371 conspiracy to defraud the United States by violating the civil regulatory framework set out in FECA. When asked to research this point, an attorney in Criminal Appeals concluded that such a prosecution was indeed viable. The memo, attached to this report at Tab 30, presents a well reasoned theory upon which a potential criminal violation may be predicated. It is not – as suggested by Bob Litt – a Merlin-like legal theory conjured up to ensnare unwitting participants in the political process. Rather, it is an established legal theory applied to the novel conduct conjured up by sophisticated political operatives to circumvent and to violate the law. [24]

As is evident from the annexed memorandum, the Supreme Court has held that a conspiracy to defraud the United States reaches "any conspiracy for the purpose of impairing,

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[24] The legal analysis is analogous to the Section 371 theory that was found to be viable in connection with John Huang's scheme to conceal his fundraising activities while he was at the Department of Commerce. See pages 63-70 and Tab 46. There, the regulatory system involved is the Hatch Act and its prohibitions against political fundraising by Government employees.

obstructing or defeating the lawful function of any department of Government." Dennis v. United States, 384 U.S. 855, 861 (1966). In fact, while a conspiracy to defraud the United States may allege a violation of a specific statute (civil or criminal), "the impairment or obstruction of a governmental function contemplated by Section 371's ban on conspiracies to defraud need not involve the violation of [any] statute at all." United States v. Rosengarten, 857 F.2d 76, 78 (2d Cir. 1988), cert. denied, 488 U.S. 1011 (1989) (emphasis added). Quite apart from the Common Cause debate and questions involving "issue advocacy" and the First Amendment, section 371 provides an independent predicate upon which to base a potential violation of Federal law. To date, we have been so caught up in determining whether violations of the Presidential Primary Matching Payment Account Act (PPMPAA) and the Presidential Election Campaign Fund Act (PECFA) are criminal acts, and paralyzed by the suggestion that any investigation in this area is tantamount to a totalitarian attack upon the First Amendment, that we have not focused on the possibility that mere civil violations may form the predicate for a § 371 conspiracy. We dare say that it has been buried in the debate because it presents a significant speed bump on the highway around the Common Cause allegations that some have cleverly constructed. Thus, the Common Cause allegations are not allegations in search of a criminal violation, but rather present allegations upon which a full investigation should be based.

It has been almost two years since the Common Cause allegations were first sent to the Department for consideration. In our responses, we have consistently assured Common Cause that we are reviewing the matter. The fact is the allegations have been and remain in limbo. However, the factual landscape surrounding the Common Cause allegations has changed dramatically over the last several months and there is reason to reevaluate the Department's

position. As a result of the Task Force's investigative efforts, it is clear that every aspect of the reelection effort was orchestrated from the White House. The DNC and Clinton/Gore were used as vessels, to be filled and emptied at the direction of -- among others -- Harold Ickes. Ickes injected himself into the DNC and Clinton/Gore as a manager, director and agent and took control of these organizations insofar as the reelection efforts were concerned. Simply stated, Ickes was empowered by the President to run the reelection effort and he did precisely that. To the extent that there was any effort to circumvent the regulations outlined above, Ickes was at the heart of the effort.

In addition, several facts have been developed -- outside of the content of the so-called issue ads -- which support the conclusion that the media fund contributions were collected in an effort to influence the 1996 presidential election and, therefore, arguably subject to FECA. The use of the Clinton/Gore credit card by the Vice President in soliciting contributions for the media fund has been referred to already. However, the Task Force recently learned that Laura Hartigan, when a Clinton/Gore employee, was tasked by Ickes to work with the DNC in an effort to coordinate state by state pledges to the media fund. Similarly, the recent interviews of the state committees which were used to purchase the generic "issue ads" suggest that they were mere conduits through which the funds passed in an effort to accomplish indirectly what the DNC and Clinton/Gore '96 could not accomplish directly. In short, the media fund was driven by the reelection effort as was the media campaign. The facts suggest a concerted effort -- orchestrated by the reelection team -- to circumvent the regulatory framework established to prevent this kind of activity.

Based upon the Department's established policies concerning the commencement and conduct of Task Force criminal investigations, there is now ample information upon which to commence and conduct an investigation relating to the Common Cause allegations. There is no reason to distinguish this matter from the numerous other allegations that have given rise to full-blown criminal investigations by the Task Force. It is intellectually dishonest to commence an investigation of Loral, Mark Middleton, COSCO, or Jude Kearney, to name a few, on a quantum of information at or below that which exists for the Common Cause allegations and not to commence an investigation of that matter simply because it implicates the ICA. There is no reason why the Department's policies and thresholds concerning campaign financing allegations should be altered simply because the ICA is implicated.

3. Diamond Walnut/Teamsters

Another area concerning Ickes involves his actions in connection with the Diamond Walnut matter. If nothing else, this incident underscores Ickes' position as a senior White House official who is close to the President and who used that position to leverage the fund raising efforts of the DNC in connection with the upcoming Presidential election.

The core allegation is that in an effort to encourage large Teamster contributions and public support of the Democratic Party, Ickes used his position at the White House to direct then U.S. Trade Representative Mickey Kantor to make contact with Diamond Walnut Senior Management to attempt to settle the on-going labor dispute between management and the Teamsters. The Task Force is just now putting flesh on these allegations. However, Ickes' Senate testimony as to what, if any, involvement he and the Administration had with this matter has also emerged as an area to be investigated. Indeed, while Ickes testified that he was unaware

DOJ-FLB-00074

of any action taken by the Administration concerning the Diamond Walnut labor dispute, there is evidence -- testimonial and circumstantial -- to the contrary.

The Task Force has recently obtained several memos which suggest a direct contact between Ickes and Teamster officials in connection with the Diamond Walnut strike. In fact, what emerges from these memos is a plan initiated by Ickes to entice the Teamsters to increase their support of the re-election effort. The first document, annexed at Tab 31, is an undated memo entitled "Teamster Notes". Based upon other facts uncovered in the investigation, it appears that this memo was written in early 1995. In an interview, Ickes acknowledged that the handwriting and underlining on this memo was his, but claimed he did not know who prepared the document or why it was prepared. The relevant portions (with Ickes' underlining) are set out below:

> Carey is up for re-election in 1996.
>
> ***
>
> The Teamsters played an enormous role in the '92 campaign.
>
> ***
>
> 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 for the past two years. With our proclamations on striker replacement, the Team Act ..., Davis-Bacon and the Service Contract Act 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.
>
> ***
>
> It is in our best interest to develop a better relationship with Carey. We won't always agree on issues and he's a tough, street fighter. But he is well intentioned, hell-bent on reforming the union and trying to root-out the "bad guys." If he doesn't succeed in his effort, the union is likely to fall back into the hands of the "old Teamsters." This would be a huge setback for the entire labor movement. 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. Previous

> Teamster presidents have met with the POTUS. A meeting would be a good idea and could help Carey. (Tab 31)

The second document is an undated memo from Bill Hamilton (Teamsters Director of Governmental Affairs) to Ron Carey. Again, our investigation suggests that this memo was written in the first half of 1995. It refers to a June meeting between Hamilton, Carey, and Agriculture Secretary Dan Glickman to attempt to persuade Glickman "to cut off USDA support for Diamond Walnut" in connection with school lunch programs and promotion programs oversees. The memo notes that the meeting was set up for the Teamster officials "by the White House after [Carey and Hamilton] met with Ickes and others over there a month or so ago." (Tab 32)

Finally, there is a March 27, 1995, memo from Bill Hamilton to several Teamster officials regarding a "Meeting with the White House." (Tab 33) In this memo, Hamilton recounts that Teamster President Carey and he met with key White House and Clinton Administration people -- including Harold Ickes -- to discuss a range of Teamster topics. This meeting was apparently a follow up to an earlier February meeting between Ickes and Hamilton. The important part of the memo is listed under "Outcomes" and provides:

> 1. **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.

The White House recently produced documents relating to Kantor, Ickes and Diamond Walnut. The documents reflect a good deal of contact between Ickes' and Kantor's office concerning Ickes' request that Kantor contact Diamond Walnut Executives concerning the strike. Telephone records also confirm several calls to Kantor from Ickes in early 1995 which correspond

to several e-mails produced by the White House which reflect Ickes' desire for Kantor to contact Diamond Walnut executives in early 1995 concerning the strike.

These memos, telephone records and e-mails, as well as Ickes' conduct in connection with the Diamond Walnut strike, must be viewed in context. At the Democratic National Convention in August of 1992, Ickes arranged a meeting between Teamster President Carey and then candidate Bill Clinton. After this meeting Carey announced that the Teamsters would be supporting the Democratic Party after having supported the GOP in the last three elections. See Tab 23 at p. 1. Later, Ickes actively sought to solidify Teamster support by finding ways in which the Administration could support Teamster efforts in different areas. (See Tab 31) One of these areas was in connection with the lengthy Diamond Walnut strike. The fact is that Kantor, at Ickes' request, did contact the CEO of Diamond Walnut. When interviewed by FBI agents, CEO Cuff said that he has never before or since received a call from such a high level Administration official. (The strike, which began in the fall of 1991 is still unresolved.) According to Cuff, Kantor claimed that foreign leaders and negotiators were raising the Diamond Walnut situation whenever the United States referred to human rights abuses overseas and this was the impetus for the call. The essence of Kantor's message to Cuff was that the strike was hindering Kantor's international trade negotiations and it would be good if it was resolved. (Kantor has given similar innocuous explanations to pointed press inquiries on the subject.) The Teamsters' political backing was never mentioned. Cuff reported Kantor's call to the Board at the next Directors meeting. We have secured a copy of the relevant portion of the minutes and they confirm Cuff's statement.

These memos, meetings, telephone records and e-mails suggest much more of a substantive role by Ickes (and apparently Kantor at Ickes' request) than Ickes later admitted in his sworn testimony. Moreover, it is evident that Ickes' contact with Teamster officials was the result of a concerted effort by the DNC to court Teamster contributions, public support, and get out the vote efforts in connection with the upcoming Presidential election. The implications of Ickes conduct -- given his status with the DNC and Clinton/Gore -- are apparent. If Ickes used his official position to take official action or to cause official action to be taken in return for campaign contributions to the DNC, or if contributions were a reward for official action taken by Ickes or another official at his direction, a potential criminal violation exists. See, e.g., 18 U.S.C. §§ 600, 601, 1341 and 371.

Apart from the underlying transaction, it seems clear that Ickes' sworn testimony is at odds with the substance of the internal Teamster memos. This suggests a potential perjury charge in connection with Ickes' Senate testimony which warrants investigation.

The Diamond Walnut investigation is in its infancy. The matter was recently referred to the Department by the Senate in its final report. The issue, however, is not whether this information presents an indictable or prosecutable offense at this juncture. Rather, is there sufficient specific information from a credible source to commence a criminal investigation under the standard Task Force rules of engagement. We believe the answer is yes and have opened a criminal investigation. While the evidence and information is not overwhelming at this early stage, in light of the other matters detailed above, including Ickes' position with the reelection effort, it militates in favor of commencing a preliminary investigation under the ICA and reaching a prompt determination that further investigation is warranted.

B. The President

1. Trie's PLET Donations

There are several facts concerning the President's association with Trie at the time of the PLET donations which, in our view, warrant investigation. They are outlined below.

The Trust was established by and for the benefit of the President and First Lady. They were the Trust's sole beneficiaries. Monies that were contributed went to reduce their personal legal bills. When the Trust was established, there were several rules established concerning acceptance of contributions, the management of the Trust, and the public filing of periodic reports listing those who contributed. These rules and regulations were publicly released in connection with a general invitation to all qualified contributors to make qualified contributions. See Tab 24 .

As detailed above, on the morning of March 21, 1996, Trie went to the Executive Director of PLET with $460,000 in checks and money orders. Trie assured the Executive Director that all the "donations" were from citizen donors and that he wanted to keep his association with the donation quiet because, among other things, he was soon to be appointed to an unnamed Commission by the President.

On January 31, 1996, the President had signed an Executive Order enlarging the Commission on U.S. Trade and Investment Policy by five members. The White House WAVES records confirm that Trie visited the President at the White House on January 29, 1996, two days before the President expanded the Commission. It would seem that it was on this visit that the

President informed Trie of the new seats to the Commission and the fact that Trie would be given one of those seats.[25]

Cardozo provisionally accepted the $460,000 checks and asked Trie to come back after lunch to continue their discussion about the proffered contributions. Trie left and apparently met Mark Middleton for lunch. Shortly after this lunch, Middleton faxed a letter prepared by Trie to the White House concerning Trie's impressions and concerns about the situation in the Taiwan Straits. The fax was directed by Middleton to Maureen – (we believe Maureen Tucker who was an intern in the President's office). On the fax cover sheet transmitting Trie's letter, Middleton wrote:

> Dear Maureen,
> As you likely know, Charlie is a personal friend of the President from LR. He is also a major supporter. The President sat beside Charlie at the big Asian fundraiser several weeks ago." (See Tab 29)

On April 26, 1996, the President (based upon the recommendation of Tony Lake and other NSC staffers) responded to Trie's letter. Curiously, the President's letter was not sent to Trie's Watergate apartment. Rather, it was sent to Charlie Trie c/o Middleton's D.C. business address. (Tab 34)

Trie returned to meet with Cardozo later on the 21st. Cardozo returned $70,000 of the proffered checks to Trie because they were defective on their face. (This was after Middleton told Trie, after inspecting the PLET checks, that the checks looked "foreign" and should not be given to Cardozo.) The remaining $390,000 was deposited in an interest-bearing PLET account.

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[25] Between January 2, 1996 and March 21, 1996, Trie visited the White House on four occasions. Two of those visits listed the President as the person visited.

On April 4, 1996, Ickes and the First Lady were briefed by Cardozo on the Trie contributions to PLET and Cardozo's concerns with respect thereto. (As noted earlier, IGI's Chairman and CEO, Terry Lenzner entered the White House the day before this meeting and was scheduled to see Ickes). On April 22, 1996, Trie - the former Little Rock Restaurant Owner - was appointed to one of the newly created seats at the Commission on U.S. Trade and Investment Policy. As the Senate Report points out, Trie's qualifications were well below those of the other members of the Commission. On the same day that Trie was appointed, the PLET Trustees formally decided to hire IGI to investigate the checks gathered by Trie, but were instructed not to speak with Trie concerning the "contributions."

Two days after his appointment to the Commission, Trie returned to PLET with an additional $179,000 in checks. These checks were summarily rejected and Trie was told not to bring any more "donations" to the Trust.

On May 9th Ickes and a host of others were briefed at the White House on the IGI preliminary findings. One week later Cardozo, after receiving IGI's draft report, advised Cheryl Mills that PLET would be returning the balance of the Trie "donations."

The timing of Trie's PLET donations is indeed curious: one month before Trie was appointed to the Commission but after the creation of additional seats on the Commission and after Trie was told that he would be appointed. Were Trie's PLET "donations" related to the appointment? We know that the bulk of the funds were collected by Trie in New York on March 16, 1996 -- one week after Middleton sent the PLET rules and regulations to Trie's Watergate apartment. (Tab 25) (In fact, the "donations" were collected from followers of the Ching Hai sect at gatherings held in Houston, Los Angeles and New York.) Were the donations intended to

influence an official act or were they made because of an official act -- Trie's Commission appointment? Were the actions of the President sufficient to deprive the citizens of his honest and lawful services?[26]

Alternatively, were the contributions related to the subject matter contained in Trie's Taiwan Straits letter sent to the White House by Middleton on the day the contributions were tendered by Trie? Were they intended to facilitate the letter finding its way to the President? Were they offered as an incentive to encourage a positive action on the letter?

Was the decision to alter the Trust's reporting methods -- admittedly done to conceal the Trie "contributions" and the return thereof -- part of a scheme to defraud the Trust or the public in connection with the Trust's commitment to file a periodic disclosure statement? In light of Ickes' notes from the April 4th briefing -- a meeting he attended as the President's representative along with the First Lady --was the decision not to report the returned funds one in which the White House participated?

These are questions that can only be answered following an investigation. It may be that there are innocent explanations as to why the President, the First Lady, Harold Ickes, and White House counsel never advised the DNC or Clinton/Gore '96 about the Trie "donations" and consciously concealed the return of these "tainted" funds from the public until after the November elections. There may be an innocent explanation as to why PLET paid nearly $15,000 in fees to

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[26] While contributors often are given positions in Administrations, e.g., ambassadorships, this is substantively different. Here there are questions and real concerns about the source of the money "donated," and the timing of the "donations." In addition, these matters raise at least the suspicion of a quid pro quo. The timing of the Trie "donations" to PLET is at least as curious as the timing of contributions of Bernard Schwartz and the waivers sought by Loral in connection with its satellite project with China. The Loral matter is currently the subject of a full criminal investigation.

IGI to investigate the Trie "donations" and yet advised IGI not to interview Trie concerning these funds.[27] However, this conduct is certainly as redolent of a scheme to defraud as it is of a series of innocent actions. There is a need for further investigation.

In addition to the involvement of the President and Harold Ickes, it is clear that the First Lady and White House Counsel (Quinn and Mills at a minimum) also were intimately involved in the PLET fiasco. Did White House Counsel have a duty to advise Clinton/Gore or the DNC of the problems with the Trie "contributions?" The fact is that White House Counsel was often copied on Ickes' memos to the DNC and Clinton/Gore regarding various fundraising issues.

Based upon the established policy of the Department vis-a-vis Task Force investigations, we would commence an investigation and, based upon these facts, conclude that further investigation is warranted. The result should be no different because the ICA is implicated.

2. Common Cause Allegations and Conspiracy to Violate Soft Money Regulations

The President is likewise implicated in a potential violation outlined in the Common Cause allegations as well as a conspiracy to violate soft money regulations. It was the President who anointed Ickes as the head of the DNC and Clinton/Gore fundraising efforts and to whom Ickes reported directly. In fact, Ickes' calendars reflect a significant number of briefings of the President on various topics including the media fund and re-election efforts. (Tab 23) Therefore, to the extent Ickes had knowledge relating to the Common Cause allegations and soft money violations, it is likely, indeed probable, that the President shared that knowledge. At a minimum, this needs to be investigated fully.

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[27] Since PLET ultimately returned all of the Trie "donations," the IGI fee represented a $15,000 net loss to the Trust as a result of Trie's "fund raising" efforts.

3. Senior White House Official's Knowledge of Foreign Contributions: Soft and Hard Money

It has been evident from the outset that a good number of the cases under investigation at the Task Force involve foreign funds finding their way into the '96 Presidential election. There are several incidents that suggest that the President and senior White House officials knew or had reason to know that foreign funds were being funneled into the DNC and the re-election effort. (The same is true, of course, for several high-level RNC officials as we have seen from the Barbour investigation.)

The President, and Vice President, were sent regular memos from Ickes outlining the true financial situation of the DNC and the need to raise a great deal of money quickly to keep the media campaign going. The regular White House money and issue meetings also focused on the need to raise more and more money. This was a constant theme played by Ickes from late 1994 through election day 1996. The following events demonstrate a pattern of activity within the White House involving senior White House officials. This pattern suggests a level of knowledge within the White House -- including the President's and First Lady's offices -- concerning the injection of foreign funds into the reelection effort.

(a) Johnny Chung:

In December of 1994, Chung wrote to his DNC contact Richard Sullivan with his White House "wish list." Chung was attempting to arrange a series of White House events for a prominent group of Chinese businessmen he was bringing through Washington. The group included the Chairman of Haomen Beer who was described by Chung in his letter to Sullivan as someone who "will play an important role in our future party functions." (Tab 35) Chung's

wish list included lunch in the White House Mess and a photo session with the President in the Oval Office following the President's weekly radio address. As it turned out, Sullivan did not deliver and Chung arranged a photo op with the President through Maggie Williams in the First Lady's office.

In March of 1995, Chung again went to Sullivan with a White House access "wish list" involving prominent Chinese businessman, at least one of whom -- Chung told Sullivan -- could encourage American Chinese companies to donate to the DNC. Sullivan told Chung that a meeting with the President would be difficult to arrange. Chung responded that he would make a $50,000 contribution if Sullivan could make the arrangements. Once again, Sullivan did not deliver. And, once again, Chung went to the First Lady's office for assistance. This time Chung approached Evan Ryan, Special Assistant to Maggie Williams, and made the same $50,000 offer in return for granting his White House "wish list." Ryan went in to speak with Maggie Williams and when she returned, she told Chung that Williams and the First Lady's Office would assist Chung. Ryan also told Chung that the First Lady's Office owed the DNC $80,000 for the White House Christmas party, and if Chung could help with that debt, it would be appreciated. Chung said he would donate $50,000 to help retire the debt. The following day, Chung wrote a $50,000 check and gave it to Ryan (at the White House) for delivery to Williams. Williams then arranged a White House lunch and visit with the First Lady for the following day.

Chung returned to Williams and asked for a meeting with the President for himself and his Chinese businessmen. Thereafter, Chung and his delegation were admitted to the President's Saturday radio address. After the address, photos were taken of these Chinese businessmen with the President. However, somewhere between the photo session and the photos being sent out

from the White House, the NSC stepped in and questioned whether photos of the President with these so-called Chinese businessmen should be released. Chung was beside himself when the release of the photos was delayed. He had promised that these photos would be delivered on his next trip to China, but could not get them out of the White House.

In April, Chung wrote to Maggie Williams in an effort to get copies of the photos so he could take them to his delegation in China. (Tab 36) By that time, Chung had been advised by Sullivan that the NSC had concerns about releasing the photos. The e-mails on this subject between NSC staffers establish the knowledge of some at the White House concerning the link between the Chinese delegation and DNC contributions:

> A couple of weeks ago, late Friday night, the head of the DNC asked the President's office to include several people in the President's Saturday Radio Address. They did so, not knowing anything about them except that they were DNC contributors.
>
> It turns out they are various Chinese gurus and the POTUS wasn't sure we'd want photos of him with these people circulating around. Johnny Chung, one of the people on the list, is coming in to see Nancy Hernreich [Director of Oval Office Operations] tomorrow and Nancy needs to know urgently whether or not she can give him the pictures. Could you please review the list asap and give me your advice on whether we want these photos floating around? (FYI - these people are major DNC contributors and if we can give them the photos, the President's office would like to do so).
>
> See Tab 37 (emphasis added).

In his response, Robert Suttinger, Director of Asian Affairs at the NSC, warned about Chung and what White House access meant to him:

> I don't see any lasting damage to U.S. foreign policy from giving Johnny Chung the pictures. And to the degree it motivates him to continue contributing to the DNC, who am I to complain"?

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> But a caution - a warning of future deja vu. Having recently counseled a young intern from the First Lady's office [we believe this is a reference to Gina Ratliff] who had been offered a "dream job" by Johnny Chung, I think he should be treated with a pinch of suspicion. My impression is that he's a hustler, and appears to be involved in setting up some kind of consulting operation that will thrive by bringing Chinese entrepreneurs into town for exposure to high-level U.S. officials. My concern is that he will continue to make efforts to bring his "friends" into contact with the POTUS and FLOTUS - to show one and all he is a big shot, thereby enhancing his business. I'd venture a guess that not all his business ventures - or those of his clients - would be ones the President would support. . . ."

See Tab 38. The photos were released shortly thereafter.

In a separate incident in January 1995, Chung wrote to Doris Matsui, Deputy Assistant to the President, " . . . [i]n the next two years, I will be coordinating a lot of visits from Asian business leaders to support DNC." (Tab 39)

In light of these events, the connection between Chung's foreign business associates and DNC contributions is evident.[28] It is inconceivable that senior officials at the White House were oblivious to these connections.

(b) Charlie Trie:

The facts surrounding the incident with the PLET "donations" suggest a knowledge or a conscious decision by the White House not to learn the truth about Trie's DNC and Clinton/Gore '96 contributions and solicitations. From the first briefing, Ickes' notes reflect a concern with how the return of ineligible contributions would be reported to the public by the Trust. At that juncture, all Ickes knew about the Trie "donations" was what Cardozo had told

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[28] The importance of access to Chung's on-going businesses interests was best demonstrated by a mild extortion of Chung by the First Lady's staff. The facts are set out at pages 59-60.

summarily rejected by Cardozo because they were facially defective; and the First Lady and Cardozo had concerns about the balance of the proffered "donations." And yet, Ickes' first concern was to keep any return of these "donations" from becoming public. Obviously, Ickes knew that any questionable transactions involving Trie-- a personal friend of the President from Little Rock -- would reflect adversely on the President and perhaps impact negatively on the reelection effort.

In addition, although IGI was paid nearly $15,000 to investigate the Trie donations, the investigators were not permitted to interview Trie, who was commonly known to be a close friend and big supporter of the President from Little Rock. And, after the Trie "donations" were returned because they were defective, no effort was made by anyone to alert the DNC or Clinton/Gore of this fact. As a result, tainted foreign and conduit donations continued to be solicited by Trie and accepted by the DNC and Clinton/Gore. These actions (and inactions) involving the President, First Lady, Ickes, White House Counsel and Bruce Lindsey, suggest a conscious decision not to learn the truth about Trie's fundraising activities. By not alerting the DNC and Clinton/Gore and by directing IGI not to confront Trie about the PLET "donations," the White House chose not to impede a potent fundraiser at a time when funds were needed.

C. Vice President Gore

Common Cause Allegations and Conspiracy to Violate Soft Money Regulations

During the investigation concerning Vice President Gore's fund raising calls from the White House, the Department concluded (among other things), that he did not solicit hard money and therefore there could be no § 607 violation. The fact is that Gore, using a Clinton/Gore (hard money) credit card, placed several calls from the White House to pitch soft money contributions. The Vice President denied that he was aware that the soft money contributions were routinely being split upon receipt by the DNC between soft and hard accounts. He stated in his interview that he did not recall the Ickes memos directed to him on the issue or the discussions at the regular Wednesday night meetings about this point. [29] (The Vice President's failure to recall reading the memos sent to him is reminiscent of his claim not to have read the April 1996 memos advising him that an event he was to attend at the Hsi Lai Temple in Hacienda Heights, CA, was in fact a fundraiser arranged in part by Maria Hsia.)

Quite apart from the § 607 analysis, it is evident that to the extent either the Common Cause allegations or a § 371 conspiracy to defraud the United States presents a viable potential

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[29] In September 1994, Ickes wrote to Panetta about the need for quick approval for generic media ads. In order to accomplish the media blitz, Ickes wrote that the DNC would have to raise approximately $3 million over the next 3 weeks, "of which $2 million should be 'hard' dollars. (An individual is permitted to contribute a maximum of $25,000 'hard' dollars to political activities during a calendar year.)" The memo, although not sent to the Vice President, goes on to outline how the President, Vice President and First Lady will have to be enlisted to accomplish this by, at a minimum, calling major donors who in turn would call other major donors. (Tab 40) It is inconceivable that this topic was not addressed at one of the regular Wednesday night meetings.

Based upon this memo, and the others penned by Ickes which were sent to the Vice President, it seems that everyone was on notice about the need for "hard" dollars and at least the possibility that the first $25,000 contributed in a given year would be applied to a hard money account. Certainly Ickes was aware of the possible split that did in fact occur.

violation of federal law, the Vice President would certainly be among those whose conduct would be reviewed. Like President Clinton and Harold Ickes, he participated in the fund raising and strategic efforts of the White House as they impacted the DNC and Clinton/Gore '96.

D. The First Lady

1. Trie's PLET "Contributions"

Many of the questions outstanding about Ickes and the President also apply to the First Lady. She knew who Trie was; she had been briefed about his donations to the PLET; and something in that briefing caused her to alert Cardozo of the need to be very diligent in vetting the Trie "contributions." In early May, the First Lady's Chief of Staff was among a small group briefed on the IGI findings. It is inconceivable that Maggie Williams did not pass this information on to the First Lady. And in August 1996, the First Lady was on a short list of people to receive, by hand delivery, a letter from David Lawrence outlining the untoward circumstances by which contributions to the PLET were obtained from members of the Ching Hai sect. (Tab 27)

Knowing of these problems with the Trie "contributions," being intimately involved in fundraising (she was employed by the campaign to solicit from major donors), and participating -- at times alone, and at times with the President -- in a variety of DNC and Clinton/Gore events, the First Lady certainly knew that Trie was donating to and soliciting heavily on behalf of the DNC. (Even Middleton, a former mid-level White House figure, knew this much, as evidenced by his cover note on the fax transmitting Trie's Taiwan Straits letter, on which he identified Trie as "a major supporter of the President.") And yet, the First Lady failed to give either the DNC or Clinton/Gore the same warning she gave to PLET and Cardozo (to scrutinize carefully Trie's "donation") after the problems with Trie's PLET donations were known to her. While she may

not have had the same fiduciary relationship to the DNC and Clinton/Gore which Ickes and the President did, based upon her knowledge that Trie's "contributions" to PLET were riddled with defects, in light of her direction to Cardozo to review carefully the Trie "donations," and the fact that she was a beneficiary of the Trust, her failure to advise the DNC, Clinton/Gore, or the public of these facts (and instead to welcome Trie to various events at the White House which were his only because of his questionable monetary donations and solicitations) is worthy of investigation.

2. Gina Ratliff Incident

The incident involving Gina Ratliff and her brief employment with Johnny Chung, is also troubling. At about the same time Chung was setting up the radio address event, Chung was also attempting to hire Gina Ratliff, a FLOTUS intern, to help him with his public relations business. Eventually, Chung persuaded Ratliff to come to his business. Shortly after she went to work for Chung, Ratliff was either fired or left his employment. It was not a happy parting of the ways. Apparently, Ratliff believed that Chung owed her $15,000 for moving expenses incurred in connection with her new -- albeit short lived -- career. Chung disagreed and the dispute got ugly. In May 1995, Evan Ryan, Special Assistant to Maggie Williams, told Chung that unless he settled the dispute with Ratliff, the White House would be closed to him. In fact, Ryan made it clear that this message came directly from Maggie Williams, Chief of Staff for the First Lady. Ryan confirmed this in a recent interview. Chung subsequently paid Ratliff $8,000 through Ryan (at the White House) to settle the dispute. Chung stated that he felt pressured to make the payment because if he refused, his access to the White House would be adversely impacted. Since Chung's financial well being depended on continued access to the White House, Chung's business interests dictated that he resolve the matter -- a fact he said was well known by Williams and others at the

White House. As Chung explained in a recent interview, on numerous occasions he informed DNC and White House personnel that the more access he could get, the better his business would be and the more contributions he could make.

Based upon these facts, it could be argued that Ryan and Williams were seeking to extort money from Chung to settle Ratliff's claims in return for continued access to the White House, the President and the First Lady. Alternatively, Ryan and Williams were soliciting a thing of value – payment of Ratliff's claim – in return for access to the White House, the President and the First Lady. Certainly those around the President and the First Lady knew that to deny Chung access to the White House would adversely affect his business interests. And while Chung may not have been entitled to this access, the denial was used as a threat to extract a settlement of a dispute with a former intern of the First Lady.

The entire matter was handled by two senior officials in the First Lady's office. Chung and Ryan both confirm that Chung's continued access to the First Lady, and the White House, was at stake in connection with settling Ratliff's claim. While it is unclear at this juncture if anyone other than Ryan and Maggie Williams were aware of the squeeze being placed on Chung and the pressure being applied to the "White House access" lever, (there is no evidence that either the President or the First Lady were aware of these events), the matter does warrant further inquiry.

While the First Lady is not a covered person under the mandatory provisions of the Act, she should be considered under the discretionary clause. Given our threshold for opening investigations, determination of what the First Lady knew and what she did (or chose not to do) in connection with the information detailed above, is something which deserves further inquiry.

DOJ-FLB-00093

E. John Huang, Marvin Rosen, David Mercer and the DNC

There are several incidents involving John Huang, Marvin Rosen, David Mercer and the DNC which are troubling. These incidents suggest that at some level, certain DNC fundraisers were actively engaged in conduct which had the effect of concealing questionable fundraising conduct from the FEC and the public. The particulars are detailed below:

DOJ-FLB-00095

2. Huang's Commerce Department Solicitations/Mercer's Cover-up

In a separate investigation, the Task Force has recently learned that David Mercer, another mid-level member of the DNC who regularly appeared at Ickes' White House strategy and money meetings, was also involved in what appears to be, at a minimum, a scheme -- again with John Huang -- to cause false entries to be made on the books and records of the DNC.

The Task Force has uncovered a document, dated October 30, 1995, from Mercer's files at the DNC. (Tab 43) The document lists a group of potential Asian-American contributors with anticipated donations and instructions relating to those who apparently are to place the various solicitation phone calls. Two entries relate to people apparently solicited by John Huang while he

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[32] Notes from Janice Kearney, who reported Presidential doings, describe the June 18 coffee in the following way: "The gathering was an eclectic group of top supporters of the President." In fact, of the twelve people at the coffee, fewer than half were acknowledged contributors. As noted earlier, these people were "invited" shortly before the coffee apparently to dilute the decidedly foreign presence of the CP Group and The other attendees were either foreign nationals, DNC officials, or Thai business people.

was employed at Commerce. (Huang left Commerce in either mid-December 1995 or in early 1996, in order to accept a paid fundraising position at DNC which was arranged directly by President Clinton.)

One of the donors attributed to Huang on the solicitation sheet is Mi Ahn, a California resident. Next to Ahn's name and the figure $10,000 is the notation "John Huang call." We have telephone records that show Ahn called Huang at Commerce on June 5, 1995. On June 9, 1995, there is a telephone message from Mercer to Huang at Commerce: "Have talked to Mi. Thank you very much." On June 12, 1995, Mi Ahn gave $10,000 to the DNC – the same amount listed next to her name on the October '95 solicitation sheet. Mercer listed Jane Huang – John's wife – as the solicitor of these funds on the relevant DNC documents. We believe this was done because Huang was employed at Commerce at the time and was prohibited (under the Hatch Act) from soliciting funds. In an article in the Los Angeles Times, Ahn was quoted as saying Huang encouraged her to financially support the DNC during their phone conversation from his Commerce office. Ahn said a California DNC staffer followed up on the Huang call and she gave $10,000. Mercer's initials appear to be written over the name of the donor on the call sheet. (See Tab 43) During his Senate testimony and FBI interviews, Mercer simply had no recollection of why he thanked Huang in connection with Ahn and could offer no explanation as to why Jane Huang's name appears as the solicitor.

When Ahn was later interviewed by FBI agents, she denied that Huang had ever solicited her, and further denied the statements attributed to her in the Los Angeles Times article. However, the records appear to support Ahn's original version which appeared in the Los Angeles Times.

During the course of our investigation, no one has suggested that Jane Huang has ever been a DNC solicitor. Curiously, however, Jane Huang was also listed (by Mercer) as the solicitor for several other donations made while her husband John was at the Department of Commerce. On October 12, 1994, K. Wynn donated $12,000 to the DNC. At that time, Huang was working at the Department of Commerce. The DNC form first had John Huang as solicitor; his name is crossed out and replaced by that of his wife Jane. (Tab 44) And, on November 8, 1995, Arief and Soroya Wiriadinata each wrote a $15,000 check to the DNC. Although Jane Huang is listed as the solicitor of this $30,000 contribution, the Wiriadinatas admitted when interviewed that John Huang had "suggested" the donation be made. The Wiriadinatas denied even knowing Jane Huang.

Chung Lo was the second name associated with Huang on the October 30, 1995 call sheet. See pages 63-64 and Tab 43. There is evidence that Huang called Chung Lo in late October in an effort to persuade Lo to attend a November 2nd event featuring Vice President Gore. Lo declined to give a donation at that time. Lo has stated, however, that she was called by Huang when Huang was at Commerce for fundraising purposes. In fact, Lo said that the only calls she got from Huang while Huang was at Commerce were to solicit funds. While Lo did not contribute to the November 2nd event, she did send a check in 1996.

In an FBI interview, Lo admitted that when she was in Washington, she visited Huang at his Commerce office and would discuss fundraising but would do so in the Shanghainese dialect. She also confirmed that Huang called her in California from his Commerce office. She knows this because Huang would call and leave a message to return his call at his Commerce office. When Lo returned these calls, they would talk about fundraising. Huang's telephone records from

Commerce confirm several calls to Lo's telephone in San Francisco.[33] The notation on the October 1995 call sheet next to Chung Lo's name provides "I've been told she's holding out for another fundraiser or SOMETHING. John Huang and Charlie Trie to work on this." (Tab 43)

In connection with the November 2, 1995 Washington fundraiser, there was a concern that the event was going to be a flop. A few days before the event, Huang and Mercer met at the Willard Hotel. According to Mercer's Senate testimony on May 14, 1997, this was just a chance meeting and only pleasantries were exchanged. However, according to the Senate Report, Mercer's expense voucher for his parking at the Willard that day was explained as a meeting with John Huang. (Tab 45) Again, this meeting -- three days after the dated call sheet referred to above -- came at a time when Huang was at Commerce and therefore prohibited (under the Hatch Act) from engaging in fundraising. As improbable as Mercer's explanation is, he stuck to it in his sworn testimony to the Thompson Committee.[34]

The credible information points to the fact that Mercer knew John Huang was engaged in fundraising while he was at Commerce and that Mercer and Huang actively tried to conceal this

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[33] Phone records obtained by the Task Force show that several calls were placed from Commerce to Chung Lo's business telephone in San Francisco in June 1995 (1 call), September 1995 (3 calls), October 1995 (4 calls, including one on October 30th and another on October 31st), November 1995 (2 calls). Four of these calls were from Huang's extension at Commerce, the others were from other Commerce extensions during Huang's tenure at Commerce.

[34] Huang also met with fundraiser Sam Newman and DNC staffer Mona Pasquil, who were the organizers of the November 2nd event. Pasquil told the Senate that when she expressed concern that the event might not be a success, Huang said that he might be able to help her once he left the Department of Commerce and began working at the DNC. His apparent concern at this meeting about the strictures of the Hatch Act do not vitiate the other information we have suggesting that he may have violated that Act's terms. It may mean no more than he was not as familiar and comfortable with Pasquil and Newman as with Mercer. In any event, we do not need to resolve the motivation questions at this point. That there are questions about Huang's behavior only underscores the need to investigate further.

fact by inserting Jane Huang as the solicitor to cover John's tracks. In fact, the Task Force records indicate that the above donations are the only donations attributed to Jane Huang. And those contributors with whom we have been able to speak have confirmed that they had no dealings whatsoever with Jane Huang. Indeed they did not even know who Jane Huang was.

By concealing John's fundraising activities, any suggestion of a possible Hatch Act violation could be avoided. While the Hatch Act has no criminal penalties for its violation, the disclosure of such a violation could have effected dramatically the continued employability of Huang at Commerce and future employment at DNC respectively. If Huang's fundraising activities were discovered before he left Commerce, his Commerce employment would have been jeopardized and the resulting inquiry would have made his move to the DNC a public relations nightmare.

Even though Huang and Mercer (and possibly others) were able to keep his fundraising activities a secret while he was at Commerce, thus avoiding the public relations' nightmare, this conduct does suggest a potential criminal violation. The Task Force asked Criminal Appeals to research a potential Section 371 conspiracy to defraud the United States based upon a Hatch Act violation. We recently received the benefit of the research in which it was concluded that a scheme to defraud in connection with false statements and active concealment relating to campaign funds solicited in violation of the Hatch Act, does present a viable prosecutable theory. In fact, the memo, (Tab 46), presents several theories upon which a Section 371 prosecution could be predicated. In light of this research, the conduct of Huang and Mercer presents a potential criminal violation and a full investigation is warranted.

The Task Force's investigation has uncovered facts which suggest that it was not only Mercer who was aware of John Huang's active fundraising at Commerce. An October 20, 1995, fax from Laura Hartigan -- who was working at Clinton/Gore at the time -- to Harold Ickes at the White House, included a document entitled "Clinton/Gore '96 Commitments - Media Fund." (Tab 4) This memo listed, among others, John Huang as having made a $75,000 commitment to the media fund. According to this memo, Huang's $75,000 commitment was received by the DNC as of October 20, 1995. Based upon our review of subpoenaed records, the $75,000 refers to funds solicited (not donated) by John Huang. This $75,000 commitment appears to be comprised of, among other donations, the Ahn ($10,000), Wynn ($12,000) and Wiriadinata ($30,000) donations, which were all credited by Mercer to "Jane Huang." Thus, at the same time David Mercer was altering the books and records of the DNC to conceal John Huang's active solicitations while Huang was at Commerce, Hartigan was boldly attesting to Huang's fundraising activities in an internal memo to Harold Ickes.[35] At a minimum, it appears that Hartigan, Ickes and Mercer were aware of the chicanery with respect to Huang's fundraising efforts while he was employed at Commerce. (As detailed below, Ickes was well aware in the fall of 1995 that Huang was employed at Commerce and was attempting to move to a paid position at DNC.) It would also appear that there is a potential perjury case to be investigated in connection with David Mercer's Senate testimony as it relates to John Huang.

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[35] In a recent interview, Hartigan -- true to DNC and Clinton/Gore form -- could recall nothing about the memo and what funds made up Huang's $75,000. She did confirm, however, that, according to the memo, the funds attributed to Huang were received by the DNC prior to the date of the memo.

It is also interesting to note that at the time Hartigan prepared this memo to Ickes on the media fund commitments, she was a Clinton/Gore employee. The funds reflected in this memo were comprised of soft money and included several corporate donations. This was exclusively a DNC project in that it related directly to the so-called "generic issue ads" and not to the reelection effort. The fact that a key Clinton/Gore employee was at the helm of this DNC effort -- reporting directly to Harold Ickes on the project -- speaks volumes about the true purpose of these "generic issue ads," Ickes' role in the reelection effort, and the willingness to eliminate even the pretense of independence among Senior White House officials, the DNC and Clinton/Gore '96.

John Huang's path from Commerce to the DNC provides an interesting backdrop to his questionable fundraising efforts at Commerce. The effort to have the DNC hire Huang as a fundraiser began in the summer of 1995. Huang was billed as someone who would be able to orchestrate the DNC's effort to tap into the Asian-American Community. In mid-September, Huang and the met with President Clinton and Bruce Lindsey at the White House. It was during this meeting that Huang's desire to leave Commerce and to begin work for the DNC was expressed. In fact, it was who underscored for the President that Huang's talents were being wasted at Commerce and should be utilized in some other way. In a follow-up meeting with Lindsey the next day, Huang confirmed that he wanted to leave Commerce for the DNC. Lindsey mentioned Huang's desire to Harold Ickes who had received the same message directly from the President. On October 2, 1995 -- a few weeks before Ickes received Hartigan's memo reflecting Huang's $75,000 commitment to the Media Fund -- Ickes met Huang to discuss his move from Commerce. Huang told Ickes that he would go to either the DNC or Clinton/Gore -- whichever Ickes thought was best. Ickes chose the DNC and contacted Marvin Rosen (and

possibly Fowler) about hiring Huang. Ickes then reported back to the President that Huang's move to the DNC was being worked out. Certainly when Ickes received the Hartigan memo and notice of Huang's $75,000 commitment which had been received by the DNC, he was aware of Huang's current employment at Commerce.

The President himself asked Marvin Rosen in early November about Huang's status with the DNC and commented that Huang came highly recommended. As a result, the next day Huang was called to set up an interview at the DNC. This was done despite Fowler's earlier reluctance to hire him. A few days later, Huang met Rosen and Sullivan and was hired by Fowler that same day. Within a few weeks, Huang was a paid DNC fundraiser. Apparently Rosen, Fowler and Sullivan were so concerned about Huang's understanding (or lack of understanding) of the law relating to fundraising, that they insisted that Huang receive special training in this area. At the same time, however, Huang was also given an incentive component to his base salary at DNC based upon his fundraising efforts. The incentive was calculated to make up for the salary cut he suffered in the move from Commerce to DNC.

Huang's fundraising efforts in his final months at Commerce, and the need to conceal these efforts by listing Jane Huang as the solicitor of record on the DNC books, take on quite a different hue when viewed in the context of the efforts to move Huang from Commerce to the DNC. The role of Ickes, the President, Fowler, Rosen, Mercer, and Hartigan certainly militate in favor of a full investigation into these efforts and the apparent altering of the books and records of the DNC to conceal Huang's activities during this "transition" period.

3. Miscellaneous Events

There are several miscellaneous events (some mentioned above) which raise questions about whether the DNC -- at some level -- was aware of (or intentionally oblivious to) potential campaign irregularities:

(a) According to the Senate Report, the DNC vetting procedures went from stringent to, at best, curiously lax. In 1992, a system was in place which involved the vetting of all contributions of $10,000 or more. A group varying from 6 to 10 persons were responsible for vetting the checks. By 1994, only one member of the DNC General Counsel's office and one DNC part-timer handled vetting, and they did so only for checks of $25,000 and over. In May of 1994, the part-timer left the DNC. After that, according to Chairman Fowler, the responsibility went to the Finance Division. However, he could provide "no specifics" on how it was performed, and Sullivan described the new process as "a poor compliance system."

(b) On December 14, 1994, Chung wrote to Sullivan at the DNC about a group of foreign nationals who were scheduled to visit the White House. He provided Sullivan with detailed information about the group, including Chairman Chen of Haomen Beer who, according to Chung, would play "an important role in our future party functions". (Tab 35)

(c) On March 8, 1995, Chung contacted Sullivan and asked if Sullivan could arrange for a meeting for Chung with the President. Sullivan did not do so. As he explained in his Senate deposition:

> We had gotten money from Johnny previously. I think he had contributed about 100,000 to that point over the past year, and the fact that -- him showing up with these five people from China, I had a concern that he might -- that they -- he might be taking -- I had a sense that he might be taking money from them and then giving it to us, you know. That was my concern.

DOJ-FLB-00104

(Sullivan Senate Deposition, June 4, 1997, at 228).

(d) On January 4, 1995, Chung wrote to Doris Matsui, Deputy Assistant to the President:

> In the next two years I will be coordinating a lot of visits from Asian business leaders to support DNC. I look forward to working closely with you . . .

(Tab 39) (emphasis added).

None of these miscellaneous matters -- standing alone or together -- presents compelling information upon which a prosecution would be commenced. However, in the context of what we have learned, it is information worthy of further investigation.

As is evident, there are a variety of matters which raise concerns about the DNC and some of its officials. None of the DNC officials fall within the mandatory provision of the Act. On the contrary, aside from Ickes, none of these officials were de facto officers of Clinton/Gore exercising authority at the national level. However, an investigation into the fundraising activities of the organization and several of its high level officials -- including Rosen and Mercer -- at least suggests a potential political conflict of interest for the Department of Justice which should be considered. As long ago as 1978, when the office of Special Prosecutor was first created, Congress was concerned about this very scenario:

> The Attorney General and his principal assistants are appointees of the President and members of an elected administration. It is a conflict of interest for them to investigate their own campaign or, thereafter, any allegations of criminal wrongdoing by high-level officials of the executive branch.

1978 U.S.C.C.A.N. at 4222.

The reason such a potential political conflict is suggested is based in part on the fact that Ickes, and others, including the President, were very active in running the affairs of the DNC and

Clinton/Gore. The fact that both the President and Ickes were part of what could be considered the DNC and Clinton/Gore control group, casts a different light on the investigation. While this does not present the type of distilled potential conflict contemplated in the Act, it is a matter to be considered under the discretionary provision.

F. Loral Matter

There are several issues arising from the Loral matter which are troubling.

1. The Decision to Investigate

Recently, allegations surfaced that Loral was given a waiver on the export of satellite technology in return for campaign contributions by CEO Bernard Schwartz. The mere fact that these allegations were made has presented a dilemma for the Department. This was evident in the first meeting held to address the allegations. We were attempting to reach a consensus on the Department's response to these allegations when an interesting suggestion was made. Someone urged that in light of the Hill's announcement to have Congressman Cox's Committee look into the matter, perhaps the Department should stand down in connection with any criminal investigation/inquiry so as to avoid the inevitable tension between the Department and Cox's Committee reminiscent of the tension between the Task Force and Senator Thompson's Committee last year. The argument was that if we attempted to conduct a criminal investigation, the first time we requested that the Committee not grant immunity, not call a particular witness, or not make certain information public, we would be accused of obstruction and engaging in a cover up.

The other half of the dilemma was that although no one could articulate a solid basis upon which to predicate a criminal investigation, given the political climate, it was generally felt that the

Department had to commence an investigation. As a result, the Task Force was asked to formulate an investigative plan based upon allegations -- not because there was any real indication of a quid pro quo or criminal conduct -- but rather because allegations were made which, if true, suggested a potential violation of federal law. The Task Force did put together a proposed investigative plan which included potential criminal allegations. (Once again, the Task Force's low threshold with respect to matters not involving senior White House Officials was triggered and a full criminal investigation was begun.) When the Loral allegations are placed side by side with those contained in the Common Cause letters received by the Department almost two years ago, it is difficult to justify the Department's failure even to commence an investigation of the Common Cause allegations.

2. Actual And Potential Conflicts Of Interest

The Department has opted to commence an investigation of the Loral matter.

One of the areas to be reviewed is whether the contributions of Bernard Schwartz somehow corruptly influenced the President's decision to issue the 1998 waiver to Loral over the Justice Department's "concerns" that the waiver may adversely impact an ongoing criminal investigation. That is, was the waiver corruptly influenced by the President's desire to help his friend and generous DNC contributor Schwartz and to impede the ongoing investigation?

In connection with this investigation, at least two high-level DOJ employees will be witnesses. Their testimony will be material on the issue of what was said to the White House in

connection with the Department's concerns about the on-going criminal investigation. Several potential and actual conflicts arise as a result of these facts.

A. DOJ's Expressed Concerns

By expressing our concerns, the Department took a position adverse to that ultimately adopted by the President. The Department believed that a decision to grant the waiver had the potential to effect adversely the ongoing criminal investigation. We are now called on to investigate the motives underlying a decision by the President which was contrary to the position advanced by the Department. In addition, the President's decision -- even now -- continues to have the potential to effect adversely an ongoing criminal investigation being conducted by the Department. To us, the conflict is evident.

As a subtext to this conflict, it will become material what the precise conversation (or conversations) was (were) between Bob Litt and Chuck Ruff concerning the Department's position. This is especially true in light of indications by Ruff, according to press reports, that the Department's concerns were not deemed by the Department as significant given the manner in which they were communicated to the White House. It may be that the tone and tenor of the conversation (conversations) will be the subject of differing interpretations. There seems to be a "he said, he said" shaping up. At a minimum, the conversation (conservations) will likely be spun by the White House.

B. The White House Desire To "Get The Story Out"

Quite apart from these issues, the White House recently contacted the Department about document production to the Hill on the Loral matter. Apparently, the Department was contacted by DOD about the production of a particular DOD report to the Hill and what effect its

production would have on the ongoing criminal investigation. This is the same criminal investigation which may be adversely effected by the President's decision to sign the waiver. The Department's response -- after consultation with the prosecutors handling the Loral matter -- was that production would effect adversely the investigation and the report should not be produced. Following this determination, Chuck Ruff called the Deputy's Office to have Justice reconsider its decision because the White House believed that a prompt release of all the documents was in its interest and would serve its purposes. A meeting was called by Bob Litt (one of the DOJ witnesses in our investigation) to revisit the issue and to see if a time could be agreed upon for the release of this report. At the meeting we expressed a concern about negotiating or even consulting with the White House on the timing of the release of documents simply because a quick release was in the interest of the White House. The contact should certainly not involve Bob Litt, one of the witnesses whose statement (testimony) will be material in the investigation of the manner in which the Department's concerns were communicated to the White House. (Bob Litt and Mark Richard recently requested to be recused from the Loral matter) This type of negotiation, consultation and posturing in the context of this investigation is unseemly and serves to underscore the conflict that underlies this entire matter.

While the issue concerning the release of the documents has been mooted, and the Department witnesses are no longer involved with the matter, the entire Loral matter presents a string of conflicts which will not go away and which cannot be ignored.

3. The Task Force's Dilemma

As a backdrop to the entire Loral matter, the initial concern is that our conducting this investigation is a recipe for disaster. If there is a single piece of paper that we miss, a single

employee anywhere that we neglect to interview, or a single question we do not ask, we will be branded incompetent at best and, at worst, part of a corrupt effort to cover up for the Administration. While this is not the type of environment in which to conduct a criminal investigation, it is not a sufficient reason to ship this matter to a preliminary inquiry under the ICA either. However, the following concerns may establish a principled reason to send this matter to a preliminary inquiry under the ICA.

There are two documents which could form a basis upon which to predicate a federal criminal investigation. The first is a February 13, 1998, letter from Thomas Ross, Vice President of Government Relations for Loral, to Samuel Berger, Assistant to the President for National Security Affairs. It could be argued from this letter that Schwartz intended to advocate for a quick decision on the waiver issue by the President. In the letter, annexed as Tab 47, Ross wrote: "Bernard Schwartz had intended to raise this issue (the waiver) with you (Berger) at the Blair dinner, but missed you in the crowd. In any event, we would greatly appreciate your help in getting a prompt decision for us."

In the letter Ross also outlined for Berger how a delay in granting the waiver may result in a loss of the contract and, if the decision is not forthcoming in the next day or so, Loral stood to "lose substantial amounts of money with each passing day." The President signed the waiver on February 18, 1998. On January 21, 1998, Schwartz had donated $30,000 to the DNC; on March 2, 1998, he donated an additional $25,000.

The second document is a memo from Ickes to the President dated September 20, 1994, in which Ickes wrote:

> In order to raise an additional $3,000,000 to permit the Democratic National Committee ("DNC") to produce and air generic tv/radio spots as soon as Congress adjourns (which may be as early as 7 October), I request that you telephone Vernon Jordan, Senator Rockefeller and Bernard Schwartz either today or tomorrow. You should ask them if they will call ten to twelve CEO/business people who are very supportive of the Administration and who have had very good relationships with the Administration to have breakfast with you, as well as with Messrs. Jordan, Rockefeller and Schwartz, very late this week or very early next week.
>
> The purpose of the breakfast would be for you to express your appreciation for all they have done to support the Administration, to impress them with the need to raise $3,000,000 within the next two weeks for generic media for the DNC and to ask them if they, in turn, would undertake to raise that amount of money.
>
> * * *
>
> There has been no preliminary discussion with Messrs. Jordan, Rockefeller or Schwartz as to whether they would agree to do this, although, I am sure Vernon would do it, and I have it on very good authority that Mr. Schwartz is prepared to do anything he can for the Administration.

See Tab 12 (emphasis in original).

From this memo one could argue that Ickes and the President viewed Schwartz as someone who would do anything for the Administration -- including raising millions of dollars in a short period of time to help the media campaign. We now know not only that the media campaign was managed by Ickes from the White House, but also that it played a critical role in the reelection effort. Consequently, it is not a leap to conclude that having been the beneficiary of Schwartz' generosity in connection with the media campaign, the Administration would do anything it could to help Bernie Schwartz (and Loral) if the need arose.

If in fact there is anything to investigate involving the Loral "allegations," it is -- as set out in the Task Force's draft investigative plan -- an investigation of the President. The President is the one who signed the waiver; the President is the one who has the relationship with Schwartz; and it was the President's media campaign that was the beneficiary of Schwartz' largess by virtue of his own substantial contributions and those which he was able to solicit. We do not yet know the extent of Schwartz solicitation efforts in connection with the media fund. However, if the matter is sufficiently serious to commence a criminal investigation, it is sufficiently serious to commence a preliminary inquiry under the ICA since it is the President who is at the center of the investigation.

For all these reasons, the Loral matter is something which, if it is to be investigated, should be handled pursuant to the provisions of the ICA.

IV. The Enforcement Dilemma

Apart from consideration of the information and evidence developed by the Task Force and what, if any, impact that evidence has upon the ICA, there is another significant issue which must be addressed. That is, given the information and evidence we have developed to date, what obligation does the Department have to ensure effective enforcement efforts in the future in the area of campaign finance violations. The short answer is that given the current state of the law, there is not much we can do. However, with a few key changes and modifications, an effective enforcement mechanism is within our reach. In light of the abuses we have uncovered over the last 21 months, we believe that it is incumbent upon the Department to articulate the problems and to propose changes (modest and ambitious) in a positive manner.

A. The Problems

1. FECA and the FEC: Impotence By Design

At the heart of the enforcement dilemma is the Federal Election Campaign Act ("FECA"). FECA, as drafted and amended, is designed so that any meaningful prosecution is difficult at best. By reducing felonies to misdemeanors and combining a shortened statute of limitation with a heightened intent requirement, the role of the prosecutor in all but the most egregious cases has been non-existent. And, when you add to this the FEC -- the only administrative/civil game in town-- with its special rules of engagement and paltry investigative resources, there is, by design, no effective civil or criminal enforcement mechanism in the area of campaign financing. It is no wonder that campaign finance abuse is such a fertile area for the clever white collar criminal. Not only is criminal prosecution made more difficult than in the typical fraud case, the risk of civil or administrative sanctions are likewise remote. There is virtually no deterrent that exists -- civil or criminal -- in this area and the '96 election cycle has demonstrated the depth of abuse that is possible. If one tenth of the energy and resources that were spent on the Senate and House oversight investigations were directed toward mending the impotent enforcement mechanisms Congress has created, we would be well on the road to recovery.

The fact is that the so-called enforcement system is nothing more than a bad joke. Thousands of Americans each year believe that if they check a box on their tax returns, they are striking a blow for campaign financing reform and against big contributors coopting our elected officials through a system whereby big contributors buy access to the exclusion of the average person. Simply stated, the matching funds provisions do not serve their stated purpose. Given

the loopholes, the law, the opportunists, and the elected officials in desperate need of funds to fuel media campaigns, the enforcement system is illusory at best.

2. Compliance By the Major Parties

Under the current enforcement system, the two major parties are virtually insulated from any serious enforcement actions. In the criminal arena, given the statutes we are dealing with and the way the parties have set up their fundraising mechanisms, it would be extremely difficult to charge the major parties with a criminal violation. Both parties have built in layers of deniability and negligence between senior party officials and the rank and file solicitors/fundraisers. As a result, the "lack of knowledge" and "negligent employee/volunteer" defenses are as much a part of the system (by design) as the need to raise money to fuel campaigns.

During the 1996 election cycle, the DNC had about as sloppy an operation as you could imagine. However, the DNC designed its operation to insulate top officials from the sins of the fundraisers and solicitors. On the one hand, there were the senior White House officials who, working with senior DNC and Clinton/Gore personnel, were the architects of a "contributions for access and perks" system calculated to fuel the media engine that was driving the reelection effort. From the White House these officials -- without benefit of formal title or position -- issued directives as to the access and perks available and the money needed to keep the media fund running. Always just days away from exhausting available funds, the drive for contributions was constant. See, e.g., Tabs 48 and 49.

On the other hand, enticing solicitors, fundraisers and donors with perks and access was the oil that kept this machine running. Those with business acumen quickly recognized how access and perks could be transformed into personal profit in the context of private business

opportunities. Trie, Chung, Kronenberg, Hsia, Jimenez, to name a few, are living proof of the environment created in the '96 election cycle. Without a credible compliance effort, those who chose to exploit the opportunities served up by the White House, the DNC and Clinton/Gore, went unsupervised and unhampered. This was true even after the warnings were heard loud and clear along the way by senior White House officials. See, e.g., PLET discussion supra at pages 46-50 (Ickes, First Lady, White House Counsel aware of donations collected by Trie which were comprised of foreign funds in violation of PLET rules and regulations); Tabs 35 and 39 (Chung letters to the DNC and White House linking DNC assistance and contributions to Chinese businessmen he intends to bring to the White House); Tabs 37 and 38 (NSC e-mails suggesting a connection between Chung's Chinese businessman and DNC contributions); and Senate deposition of Richard Sullivan reprinted in part at page 71 (suggesting that there was a suspicion concerning the true source of Chung's donations). The result was the solicitation and acceptance of conduit and foreign contributions.

The compliance disconnect involved not only solicitors, fundraisers and contributors, but applied to the DNC's internal functions as well. The DNC had a practice of automatically allocating a contribution first to a hard money account (up to an individual's yearly maximum) and sending the balance off to a soft money account. However, the required notifications to the contributors -- sent to alert them that they had reached their maximum hard money limit for that year -- were rarely sent out simply because compliance was not a priority and DNC resources were "better spent" on raising money rather than insuring compliance with exiting laws. Similarly, the vetting of checks also fell in favor of more aggressive fundraising efforts. However, the DNC's senior officials were always insulated from the sins of those in the accounting and

collection departments. The procedures were on the books and the failures were, according to the DNC officials, an oversight by, and the responsibility of, low level employees or volunteers.

In each of the areas outlined above, the DNC designed a system which gave the appearance of concern for compliance, but in fact provided no substance to ensure compliance with existing laws. Likewise, Clinton/Gore '96, working hand in hand with the DNC and the White House in the fundraising frenzy, presented a mere facade of a compliance framework. The result was the wholesale violations which the Task Force has been addressing over the last 21 months.

For its part the RNC, while apparently not on a par with the DNC, had its fair share of abuses. The Barbour matter is a good example of the type of disingenuous fundraising and loan transactions that were the hallmark of the 1996 election cycle. In fact, Barbour's position as head of the RNC and NPF -- and the liberties he took in those positions -- makes the $2 million transaction even more offensive than some concocted by the DNC. Indeed, with one $2 million transaction, the RNC accomplished what it took the DNC over 100 White House coffees to accomplish.

It is evident that the missing piece from campaign finance enforcement is a credible incentive for the major parties to comply with the law. Any real campaign finance reform has to begin with the major parties and motivating them to comply with the law. This can be accomplished in at least two ways.

The most ambitious approach would be to undertake an overhaul of the substantive provisions of FECA and to create an enforcement-ready FEC. This would, of course, entail addressing the jurisdictional reach of FECA (and the FEC) concerning soft money (foreign and

DOJ-FLB-00116

domestic), the intent requirements, the statute of limitations, and the funding and complexion of the FEC (including a credible enforcement arm of the FEC). These are complex issues requiring careful treatment. Our work on the Task Force provides excellent experiences upon which to participate in such an undertaking. We could write extensively on these points; however, that is best left for another report on another day.

Short of the type of complete overhaul contemplated above, there are several relatively minor adjustments which could increase enforcement dramatically. For example, the effective use of civil and administrative proceedings against the major parties (and in an appropriate case the candidate also) for the very type of abuses seen in the 1996 election cycle could accomplish a great deal. With a lower quantum of proof needed to prove a violation and a lesser intent requirement, a civil or administrative proceeding could hurt the parties in the areas in which they are vulnerable. First, with a sensible damage provision, a civil or administrative proceeding could be just the tool to compel the major parties to promulgate and enforce internal rules and regulations calculated to insure that everyone working within the party -- employees and volunteers alike -- is not only properly trained, but is properly supervised during the course of the election cycle. The parties have to be "inspired" to construct and maintain effective and credible internal compliance divisions which are as important to the operation of the parties as their fundraising components. Compliance divisions have to have the ability to enforce compliance within the party including making appropriate referrals for enforcement action. Monetary penalties would go a long way to encourage the creation of compliance divisions and credible internal scrutiny of party activities.

In addition, a civil or administrative proceeding provides the opportunity for the creative use of injunctive relief to compel (and to insure) future compliance. This can be accomplished by requiring the out of compliance party, committee, or candidate to maintain a compliance division which will in turn maintain certain minimum compliance standards. In addition, the party, committee, or candidate can be required to employ an outside monitor to oversee conduct in future election cycles following a violation. The outside monitor could observe the operation in connection with the next election cycle and report to the appropriate enforcement agency concerning the efforts in place to avoid future violations. These conditions can be imposed as part of a resolution of a particular violation by the party, committee, or candidate.

The reports which must be filed by the candidates and their committees should also be amended to ensure that important information is reported and reviewed by those who have enforcement responsibility at the time the reports are filed. Currently, most violations are detected initially by the press during periodic reviews of filings with the FEC or by an opposing candidate who is sufficiently outraged by a particular practice that he/she reports it to the FEC. This does not constitute an acceptable enforcement network. The regulators must take the reporting requirements as well as the information reported seriously. In order to accomplish this, the review of the material cannot be the result of a haphazard review occurring months and sometimes years after the reporting is made. Rather, the review process, as well as an appropriate enforcement response, must be methodical, timely, and diligent. These efforts will assist in motivating compliance.

You will recall the notes from the Panetta staff meeting as the fundraising scandal began to break in the press. The Task Force obtained these notes from the White House pursuant to

subpoena. The notes reflected comments by a White House Staffer who, amid reports of foreign money finding its way into the re-election effort, opined that any FECA violations would not be addressed by the FEC until after the election. What was not said -- but what was clearly understood -- was that any election abuse addressed after the election will likely be forgotten long before the next election and chalked up to the cost of doing business. In any event, it would have no impact on the current election.

In the Barbour investigation, it was discovered that the RNC took a similar tact by not drawing down on the Young loan to NPF until a date which insured that the $2 million transaction would not have to be reported to the FEC (and therefore publicly) until after the election. This was not accidental, but rather a strategic move calculated by top RNC officials to avoid a potentially embarrassing -- and possibly an illegal transaction -- from being discovered prior to election day. The RNC officials -- like the Panetta staff member -- knew full well that a post-election day discovery of a violation is an acceptable cost of doing business.

Given the lethargic response to campaign finance abuses in the past, it is no wonder there is no incentive to play by the rules. A critical problem is that the FEC has exclusive jurisdiction over administrative proceedings involving funding violations. And yet the FEC was designed to be impotent. Not only is the FEC under staffed, it cannot act absent a consensus of the politically balanced Commission. The system is not designed to function but rather to protect an environment in which abuses can flourish. Say what you will, but the FEC is not an effective enforcement mechanism.

In order to break this enforcement dilemma, the Civil Division of the Department of Justice should be given at least concurrent jurisdiction to bring administrative actions based on

FECA violations.[36] By doing so, and by establishing a significant section within the Civil Division to address such cases, the Department could accomplish in the area of campaign finance compliance what has been accomplished in the area of compliance by securities and commodities firms (and their employees) with respect to securities and commodities laws, rules and regulations. Virtually every broker-dealer today has elaborate and credible compliance departments which use best efforts to ensure that the company and all employees are observing all laws passed by Congress as well as the rules and regulations promulgated by the Securities and Exchange Commission ("SEC") and the Commodities Futures Trading Commission ("CFTC") for the marketplace. However, this compliance was not the result of an expression of goodwill or sudden enlightenment by the broker dealers. On the contrary, civil lawsuits and credible enforcement actions have established the principle that compliance is the norm in the marketplace. The brokerage houses are responsible for their employees and agents when they act in the marketplace. If an employee or agent is not properly trained or supervised and bad things result, the brokerage house responds in damages. In addition, the Government has from time to time snapped a broker into compliance with an enforcement action resulting in monetary damages and injunctive relief. These actions have been complimented by a mandatory monitoring system conducted by an investigative firm (which is paid by the offending brokerage house), which have become part of any settlement of the action. Compliance follows stiff civil and criminal enforcement and monitoring operations. It is that simple.

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[36] To the extent that there needs to be a legislative fix to grant the Department concurrent jurisdiction with the FEC for civil violations, the current political climate appears propitious. Members of the House recently broke ranks with the leadership and demanded some campaign finance reform. This may be the type of modest reform that will be acceptable to a majority on both sides of the aisle.

In the area of campaign financing, however, there is no real civil enforcement mechanism in place. The FEC is unable to engage in any meaningful enforcement efforts and the Department of Justice is precluded from doing so in the civil arena. As a result, there is no real effort by the major parties to comply with the law because the occasional FEC enforcement action or criminal misdemeanor prosecution is chalked up to the cost of doing business and nothing ever changes. Both the RNC and DNC pay lip service to compliance -- but nothing more. A few well-placed and expertly investigated civil actions will quickly ensure the creation of credible compliance departments within the major parties and genuine concern for how the fundraisers and solicitors bring in the money.[37]

It is curious that with the millions of dollars spent on media advertisements during the last election cycle, virtually nothing was spent by the parties on effective compliance departments. That speaks volumes about where the major parties place compliance with existing laws on their list of priorities -- somewhere below securing the obligatory red, white, and blue balloons for release on election night. We are now paying the price for this neglect.

3. The Conduit Problem And The Criminal Response

One of the major problems resulting from an ineffective enforcement mechanism is the proliferation of conduits in the election process. Through conduits two evils are realized. First, those who by law are not permitted to participate in our electoral process are able to do so. This can be foreign governments, foreign officials, ineligible residents or ineligible entities. Second, the

[37] Here, unlike the investment situation, there are no disgruntled customers who have lost money and will scream "foul" as a result of a brokers conduct. Rather, in the election context the victim is the regulatory framework, the integrity of the electoral process and the public at large. Absent diligent investigative reporting or an opponent who is prepared to blow the whistle with respect to a particular practice, violations typically go undetected.

regulations concerning the types of money being donated (hard money vs. soft money) can be circumvented easily. The result is that the electoral process can shift by virtue of unauthorized contributions in favor of one candidate at the expense of another. While in the past we have treated these abuses as "minor offenses," the magnitude of these abuses can alter the outcome of a particular election. If we have learned anything about the election process it is that the amount of money raised as well as the type of money raised (hard vs. soft) can impact directly on the results of a particular election. And yet, we tolerate a system that promotes -- and even rewards -- the use of conduits. This has to change.

Conduit payments are difficult to detect. A simple reimbursement scheme -- especially if accomplished with cash -- does not leave a bright investigative trail. More often than not investigators back into a conduit scheme while investigating some other alleged violation. It is clear, based upon the Task Force's experience, that the criminal law alone is not an effective method to guard against conduit donations finding their way into the process. Rather, any effective deterrent has to begin with major parties and the fundraisers themselves. The key is enforced diligence in connection with solicited funds. An effective compliance department or legislated procedures could accomplish this. The standard procedures should include a requirement that contributors be required to attest on a donor card that: (i) the source of the money is not foreign; (ii) they are an authorized donor; and (iii) they are not being reimbursed, directly or indirectly, for the contribution. In addition, the donor should attest that they are aware that foreign funds or conduit reimbursement would be illegal and that this donor information will be filed by the Committee, candidate or party with the FEC (a federal government agency) and that the representations made on the card are true and accurate. Then, if conduit money was later

detected, a federal criminal violation could be brought and the intent requirement satisfied by virtue of the donor card. The standard "I didn't know it was not permitted" or "I never heard of the FEC" defenses would be eliminated. Similarly, fundraisers/solicitors should be required to advise prospective donors about the prohibitions of conduit and foreign source payments and make some effort in the field to determine that the donations are genuine and not reimbursed.

If credible compliance departments are maintained by the parties, enforcement efforts should be strict and when violations are found, the consequence should include prosecution of the conduit (as opposed to our general policy not to prosecute), the solicitors and, in appropriate cases, the party or Committee itself, under the felony provisions of Title 18 United States Code.

In order to accomplish this, the Department of Justice should revise its long standing policy relating to conduits. In the Federal Prosecution of Election Offenses, we have announced to the world that our approach to the conduit is one of non-prosecution. See Prosecution of Election Offenses (1995 Edition) at 117. We should now modify our policy and pledge an effective enforcement operation against conduits for violation of the law.

In addition, the Department's misdemeanor approach to campaign financing violations in general should be changed as well. The presumption should be that these violations are deemed serious by the Department and will be treated as such. With the minor adjustments suggested above, the Department could make a significant course change in the area of campaign finance abuse.

Short of legislative fixes, the Department has the tools right now to effect a change in the prosecutorial response to election offenses. This would, of course, mean altering our published guidelines. However, the experience of the task Force has given us more than ample reason to

DOJ-FLB-00123

alter our long standing policies. We noted earlier that the Department has articulated several compelling reasons why the Task Force's "pursue every lead and leave no stone unturned" approach justifies a somewhat relaxed predication requirement. See page 13 above. These relaxed predication requirements were adopted in response to a flood of election law violations. For these same reasons, it may be time to change the Department's public statements concerning the prosecution of election offenses. The tone and tenor of any new statements should reflect the seriousness of the criminal conduct we have been investigating, its effect on the political process, and the need for deterrence in this area. In short, any new statements should reflect an all felony approach for those orchestrating conduit or foreign contribution schemes and a misdemeanor (rather than no prosecution) approach for the simple conduit who was not part of the planning process.

The mere conduit -- who we currently decline to prosecute -- is not unlike the mule or courier in a typical airport or border-bust case. The real culprit is the drug dealer who has effectively insulated himself/herself from arrest by hiring a low level mule or courier to carry the drugs from point A to point B. However, our response has never been to give the mules a free pass or a one-time "get out of jail free" card because they are not players in the larger drug operation. To the contrary, we have no problem sending them to jail for 10-15 years to demonstrate how serious we deem the underlying offense, as a deterrent to others, and as an incentive for the mule to tell us all they know about the larger operation.

We should adopt the same approach with respect to the so-called simple conduit. It is rare that the conduit is truly ignorant of what is going on. They are asked to make a political contribution to a candidate or party designated by someone else who, in turn, reimburses them for

DOJ-FLB-00124

their contribution. Like the mule who claims he/she did not know the drugs were in the trunk or suitcase, but was only asked by a friend to drive the car into the United States or to carry the suitcase, the conduit always claims ignorance of the law and denies any knowledge that this conduct was somehow illegal. Those of us who deal with these conduits understand the kabuki dance that we are engaged in. We rush to grant immunity (or issue one of our now famous non-prosecution conduit letters) so that we can focus on the organizer of the conduit scheme.

Without the conduit, the system does not work. And yet, we have publicly stated that absent aggravating circumstances, the conduit will not be prosecuted. Moreover, there is no incentive for them to tell us the whole truth when they and their lawyers know that if they stick to their scripted lines, they will not be prosecuted. (More times than not their attorney is paid for by the target of the conduit investigation and the conduit's version is generally consistent with whatever "defense" the target is constructing.). An effective and intelligent prosecution plan -- coupled with the changes outlined above concerning the donor cards -- will effect this.

The particulars of an effective enforcement mechanism may of course take different forms than those outlined above. We could write volumes on the subject based upon our experiences with the Task Force. However, it is sufficient at this point to alert you to the enforcement dilemma and to suggest some possible resolutions. The Department should put an energized working group together (a healthy portion of which should include experienced AUSAs) to address these issues in the near future. This is not a matter we can leave for someone else to resolve. It is clear that if the Department fails to address this dilemma, we will find ourselves faced with the same conduct at the end of every election cycle.

V. Conclusion

We have been reviewing the facts and the evidence for the last ten months. During that time we have gained a familiarity with the cases, the documents and the characters sufficient to draw some solid conclusions. It seems that everyone has been waiting for that single document, witness, or event that will establish, with clarity, action by a covered person (or someone within the discretionary provision) that is violative of a federal law. Everyone can understand the implications of a smoking gun. However, these cases have not presented a single event, document or witness. Rather, there are bits of information (and evidence) which must be pieced together in order to put seemingly innocent actions in perspective. While this may take more work to accomplish, in our view it is no less compelling than the proverbial smoking gun in the end. As is evident from the items detailed above, when that is done, there is much information (and evidence) that is specific and from credible sources. Indeed, were this quantum of information amassed during a preliminary inquiry under the ICA, we would have to conclude that there are reasonable grounds to believe that further investigation is warranted. As suggested throughout this memo, there are many as yet unanswered questions. However, the information suggesting these questions is more than sufficient to commence a criminal investigation.

It may be that in the end the allegations outlined above will all wash out and not a single additional prosecution will be brought. In fact, as an experienced prosecutor and investigator we are confident that we cam predict the course that some of these matters will take. However, we must operate within the four corners of the ICA as drafted, not as we would have it drafted. It seems clear to us that in the end, the prosecutorial discretion necessary to make a determination concerning the matters outlined above, given the status of the people whose conduct is under

review and the provisions of the ICA, is the type of decision designed to be made by a responsible Independent Counsel.

Attachments

CONFIDENTIAL MEMORANDUM

July 20, 1998

To: The Attorney General
The Deputy Attorney General
James K. Robinson, Assistant Attorney General

From: Robert S. Litt

Re: La Bella/DeSarno Memorandum

I thought I would set down some preliminary observations about the memorandum provided to you by Chuck La Bella and Jim DeSarno. I believe that Public Integrity should be asked to comment on it.

The Independent Counsel Act

The memorandum argues at length that the Department has applied the Act improperly and inconsistently. Setting aside the repeated attacks on the motivations of those who disagree with the conclusions reached in the memorandum — attacks which I think are unjustified and inaccurate — the central argument is that we have applied too high a standard in seeking specific and credible evidence of criminality, and that the Task Force's investigation has been hindered by this artificial standard.

I would have thought that this issue had been laid to rest by now. The comprehensive nature of this memorandum shows that the Task Force has not been blocked from pursuing any leads in matters where there is predication for a criminal investigation.[1] However, to date it has been unable to come up with any specific and credible information that a covered person may have committed a crime. The memorandum

[1] The memorandum states that "[e]very time" it was suggested that the Task Force "conduct[] an inquiry or investigation of the entire campaign finance landscape in order to determine if there exists specific information from a credible source" that would trigger the Act, "it has been rejected on the theory that such an inquiry can only be conducted pursuant to a preliminary investigation." (pp. 7-8) I am unaware of any occasion on which this has happened. On the contrary, the Attorney General constantly asks whether we have uncovered information sufficient to trigger the Act, and constantly emphasizes that the Task Force must follow the evidence wherever it leads.

EXHIBIT 4

frequently raises questions, but a question or a speculation is not specific and credible information. In other words, it is not the Independent Counsel Act that is blocking investigation of the President and those around him; it is the lack of any specific and credible information that they may have committed a crime.

I do agree with the memo that the decision to investigate the Loral matter seems to involve a lower standard of predication than we ordinarily use. Indeed, the memo itself makes it clear that there is absolutely no evidence at this time of anything more than that the President and others in the White House may have taken into account the fact that Loral was a major contributor — although even this much is by no means clear. However, as we have often discussed, this is simply not a crime in the absence of a specific quid pro quo. I do not doubt that had this matter been brought to any U.S. Attorney's office in the country it would have been closed without investigation. (I note that no one has expressed interest in following up criminally on the recent Wall Street Journal article setting forth numerous instances in which Sen. Lott took actions favoring large contributors).

Our decision to investigate the Loral matter was, thus, in part a response to outside pressure. (It was for this reason that I believed, and still believe, that we should have deferred a criminal investigation to Congressional inquiries). However, it is not unusual for us to commence investigations of matters we would not ordinarily investigate in response to outside pressure (Martin Luther King, for example). Moreover, Loral is different from the Common Cause allegations (which I will discuss somewhat more below) in that there is no agency with the sort of primary jurisdiction that the FEC has to evaluate campaign finance matters. If the Loral investigation leads to any specific and credible information against the President or another covered person, then we must trigger the Act; but not even the memorandum's authors believe we have that now.[2]

Finally, although I don't think that it has any impact on the analysis,I want to note my disagreement with the proposition that the Attorney General's statements that we will follow all leads in the campaign finance investigation constitutes an established policy of the Department for purposes of the Independent Counsel Act (p. 12). That cannot be so; if the

[2] I leave to others the analysis of whether the role that Mark Richard and I played in communicating with the White House creates a conflict for the Department.

Attorney General stated that we would not investigate this matter, would that constitute a policy enabling us to avoid invocation of the Act? It seems clear to me that such a policy has to be independent of the particular case; that certainly has been the practice of the Department, as we noted in the § 607 preliminary inquiry. Parenthetically, I note that the memorandum fails to acknowledge that the MOU with the FEC clearly is such a policy.

The Common Cause Allegations

The Department having determined that the activities of the White House and the DNC in the media fund campaign did not warrant criminal investigation under FECA or the presidential funding acts, the memorandum argues that they should be prosecuted as a conspiracy to defraud the United States. (Sen. Thompson's committee made the same argument; no one appears to press the election law violations now). It notes that we are pursuing this theory with respect to John Huang, whose alleged fund-raising activities at the Department of Commerce may have violated the Hatch Act — but not the criminal provisions of the Act.

Whatever the merits of the theory may be with respect to Huang, however, there is a crucial difference. Huang's activities (if true) violated the Hatch Act; the argument in the memorandum is that the media fund campaign was a crime even if it did not violate the election laws and indeed followed the guidance issued by the FEC. I am certainly not aware of any case in which a defendant followed a comprehensive regulatory scheme and exploited a loophole in it, but was later prosecuted because prosecutors later decide that the loophole should not have been there.

For example, under the Ethics in Government Act certain government officials are required by statute to file financial disclosure forms, and false statements on those forms are criminal. The forms permit you to omit listing any assets worth less than $1000 (I believe that is the amount, but the particular number is irrelevant). If a wealthy man broke up all his assets into stockholdings of less than $1000, so that his worth appeared to be zero on the EIGA form (and did it in conspiracy with his stockbroker), could he be prosecuted for conspiracy to violate the United States? I would hope not. Yet fundamentally that is what happened here.

At bottom, the "conspiracy to defraud" theory advocated here rests upon the premise that the campaign finance laws were in fact violated by the White House's control of the DNC media campaign.[3] Having found, however, that control itself is irrelevant, and that the question of the content of the advertisements should be deferred to the FEC, I think we have moved beyond this point.[4]

Ickes

I remain troubled, as I was when I read the draft memorandum, by the allegations concerning Ickes, although they are somewhat confusing and the potential violations are not totally clear. It would certainly be helpful to see a chronological listing of the Ickes/Trie/Huang matters. But it still seems to me that we have enough to investigate whether Ickes is criminally culpable as an aider and abettor to illegal campaign contributions, and whether he committed perjury in the Diamond Walnut matter.

However, Ickes is covered under the Independent Counsel Act, if at all, only under the discretionary provision. The attempt to make him a "de facto" covered person because of his campaign authority flies in the face of both the language of the Act, which requires that he be an officer of the campaign exercising authority at a national level, and of the Department's consistent practice, which looks to both function and title. The memorandum argues, in effect, that since Ickes exercised authority at a national level, and had a major role in running the Clinton Gore campaign, he should be deemed to have a title. This is exactly the kind of creative reading of the Act that the memorandum unjustly accuses the Department of engaging in.[5]

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[3] For example, at p. 39, the memo suggests the possibility that "civil violations may form the predicate for a § 371 violation" (emphasis supplied), and claims that new facts have been discovered showing that the White House directed the media fund campaign – an issue which has never been disputed.

[4] I note also that it is inaccurate to intimate that the analysis of the Common Cause allegations was contorted in an effort to avoid the Independent Counsel Act. While the authors of the memorandum may disagree with the conclusions reached, those conclusions were reached as a result of an analysis of the law without reference to the Act.

[5] The same is true of the suggestion, at p. 20 n.8, that even though Ickes was not covered as a White House employee under the terms of the statute, he should have been.

Since Ickes is covered only under the discretionary clause, the strict time limits of the Act do not apply. I would urge that there be a more thorough analysis of what we are investigating with respect to Ickes. But it is my view, in accord with the memorandum, that if we in fact do have predication for a criminal investigation of Ickes, we should give serious consideration to having it handled by an independent counsel. Ickes was and is very close to the President, in all the ways described in the memorandum, and a strong argument can be made that we would have a conflict of interest in investigating him — although I note that we previously rejected that position in connection with an allegation unrelated to his campaign activities.

Other Matters

There is no question that there is much here worth investigating. The Task Force appears to be pursuing these leads vigorously and capably. There are surely individuals at the DNC who are at least subjects of this inquiry; but it bears repeating that no one at the DNC is a covered person, and we have long ago determined that there is no conflict in investigating Huang or others mentioned in the memorandum. The Task Force should simply be reminded to pursue this matter wherever it leads and if specific and credible information points to the President or another covered person, or a person as to whom the Department might have a conflict (such as the First Lady), to notify you immediately.

Remedies

The section of the memorandum dealing with remedies going forward has some ideas worth considering. It seems to me that it would be helpful to separate that section out from the rest of the memorandum (perhaps toning down the rhetoric somewhat) and circulate it more broadly for comment. I completely agree with the idea of requiring the parties to have contributors affirmatively state that they are not being reimbursed; furthermore, it seems to me that without that we would not be able to institute the revised prosecutive policy for conduits that the memorandum advocates, since proof of intent to violate the law would otherwise be very difficult. Moreover, there may be good reasons for some of our existing prosecutive policies which it is suggested we change, and it seems to me that a serious discussion of these ideas would be useful.

"LA BELLA REPLY"
August 12, 1998

Redacted to delete information the disclosure of which could adversely affect
a pending criminal investigation or prosecution
or would violate Rule 6(e) of the Federal Rules of Criminal Procedure
Redactions completed on March 24, 2000.

ADDENDUM TO INTERIM REPORT

FOR

JANET RENO
ATTORNEY GENERAL

AND

LOUIS J. FREEH
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

PREPARED BY:

Charles G. La Bella
Supervising Attorney
Campaign Financing Task Force

and

James DeSarno
Assistant Director
Federal Bureau of Investigation
CAMPCON Task Force

August 12, 1998

ADDENDUM TO INTERIM REPORT

I. INTRODUCTION

We have received from James Robinson, Lee Radek's Review of Interim Report ("Review") a copy of which is annexed at Tab 1. At this juncture, we are faced with crucial issues which need to be aired fully and we welcome the opportunity for a frank exchange with others in the Department who are familiar with these matters. However, we would be remiss if we did not reference at the outset the acrimonious tone and tenor of the Review. Such an approach lessens legitimate debate and hampers the ability to reason to a result based on the merits. We therefore intend to concentrate on the substance of the arguments rather than the personal animus.

A. STOVEPIPE ANALYSIS

In describing the "stovepipe" approach, we intended, in large part, to reference the natural tendency of investigators and prosecutors to segment individual allegations and charges. The Interim Report was our way of forcing us to break out of that mold by marshaling together in one place disparate pieces of evidence. We remain hopeful that the Interim Report will cause those with whom the Attorney General chooses to share it also to reevaluate the matter, whatever may be the ultimate outcome or their personal view of the matter. In any event, the landscape approach is an approach that we have advocated on countless occasions during our tenure in Washington; it should come as no surprise to anyone. We have often said that when time allowed, we intended to engage in such an analysis.

The Common Cause allegations and Core Group investigations would have hastened such an overview. The rejection of the Core Group approach (like the closure of the PLET investigation) was accomplished before we were involved in the Task Force and therefore we only

know what has been reported to us by those who were present at the time. We are, however, shocked to read in the Review that the Common Cause allegations were "thoroughly considered, analyzed at length, and closed on their merits." (Review at Page 3)(emphasis added). To the best of our knowledge that is not the case.[1] On the contrary, after a flurry of memoranda on the issue this past winter, we understood that the matter was tabled. Although we attempted at various points to bring it to resolution, i.e., to have a decision one way or the other as to whether the allegations formed a predicate for investigation, we were repeatedly told that the matter remained under consideration. No one has ever advised us otherwise. Indeed, the sudden appearance of an August 4, 1998, memorandum by Criminal Appeals on this very issue appears to support our belief that the matter remains unresolved. We have no knowledge of what triggered the writing of this memorandum. However, since it is addressed to Jim Robinson and Bob Litt, we presume that one or both must have requested the analysis. We trust that this would not have been done if the issue had been "closed on the merits" some months ago.[2]

Moreover, it is not just we two who were under the impression that the matter was tabled. [redacted]he AUSA brought in to review and to investigate the Common Cause allegations, was under the same impression. In late December [redacted]eft the Task Force in frustration because

ATTY NAME
ATTY NAME

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[1] If indeed this matter was "closed on the merits," we would be very interested in seeing the closing or declination memo. It was our understanding that closing memoranda were to be written and the Director of the Federal Bureau of Investigation was to be consulted before a matter was closed. To our knowledge, neither one of us has seen, much less reviewed, a closing or declination memo concerning the Common Cause allegations.

[2] Further supporting this view is the fact that to our knowledge the Common Cause letters (dating back almost two years) remain unanswered despite the Attorney General's well-known mandate to respond promptly to all correspondence. We were told that no written response to Common Cause would be made until a decision on the issue had been reached.

he was prevented from commencing an investigation based on these allegations. In his departure memo, dated December 23, 1997, a copy of which is annexed at Tab 2, [redacted] wrote concerning the Common Cause allegations:

> The pool of persons potentially responsible for this corruption is both limited and well known. There are criminal statutes applicable to this conduct, and at this point we simply cannot say that the conduct is not prosecutable, as a matter of law. What we do not know, without investigating, is whether or not we could responsibly initiate criminal prosecutions.
>
> That, to date, we have been unable to investigate the Common Cause allegations in a straightforward way has been a great personal and professional disappointment. But, I believe the public has been most dis-served by the way in which the "whether to investigate" issue has been approached, debated, and resolved. Never did I dream that the Task Force's effort to air this issue would be met with so much behind-the-scenes, maneuvering, personal animosity, distortions of fact, and contortions of law.[3] (It also is my impression that many involved have not read the pertinent cases.) All this, not to forestall an ill-conceived indictment, not to foreclose a report making an independent counsel referral, but to prevent <u>any</u> investigation of a matter involving a potential loss of more than $180 million to the federal treasury.
>
> You, of course, are well informed of my views. By no means do I minimize the real impediments to a prosecution. Yet, nearly every day something developed in other investigations comes to our attention, which has significance to the Common Cause allegations. As an example, I have recently been directed to the deposition testimony of Harold Ickes in which he states: that only he and Sosnik had the power to authorize payment of the media consultants' bills [9/22/97 Senate Depo. P. 62]; that he decided whether the DNC or C/G Committees would pay a particular bill [9/22/97 Senate Depo. Pp 64-5]; and that while he thinks that the

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3 I will not repeat the details, most of which you already know. While I recognize that there have been legitimate disagreements, some positions urged in support of avoiding any investigation have been so plainly wrong as to be disheartening (e.g., the suggested referral to the FEC, on the misapplication of the MOU with that agency, with the claim that the FEC could refer the case back after it checked out the ad content, but with the unspoken reality that no criminal investigation would ever happen -- certainly not within the three-year statute of limitations; or the contention that an independent counsel referral must be made immediately if any investigation is even authorized).

> DNC and C/G Committees signed separate contracts with the media consultants, he's not sure he ever saw them [9/22/97 Senate Depo. Pp. 78-9]. Thus, it appears that the President's Deputy Chief of Staff (who was not an employee of the DNC) determined which media ads the DNC paid for, without regard to the DNC's contractual liability, if any.
>
> I realize that I have moved from a neutral position to that of an advocate for investigating the Common Cause allegations. Further, I now believe that the only responsible step, likely to uncover the facts is a grand jury investigation. That position, coupled with the mutual loss of confidence evident between myself and those outside the Task Force who have weighed in on this issue, leads to the inevitable conclusion that I can no longer play a useful role in the evaluation or pursuit of the Common Cause allegations.

ATTY NAME

Since [redacted] left the Task Force at the end of December, neither of us has been advised of a resolution of the Common Cause allegations "on the merits." It is our understanding that the matter remains open and unresolved. It was because of this that the current media fund investigation was opened around May of this year. It is an attempt to investigate some of the matters presented while waiting for a final decision on the Common Cause allegations. This was done so that, should we be given final authorization to pursue the matter, we would at least have the foundation of an investigation in place.

B. COMMON CAUSE ALLEGATIONS

The issue remains whether, as a matter of law, the Common Cause allegations fail to set out potential violations of federal criminal law (FECA, PPMPAA, PECFA, § 371, etc.). If there is no possible violation, there can be no investigation.

The importance of the issue cannot be overstated. The two principal presidential candidates together received approximately $180 million in federal funds for 1995-96. The candidates for 1999-2000 will receive substantially more. If the money for '95-96 was obtained on the basis of false representations (in particular, regarding agreed limitations on spending), the

people of the United States were defrauded of those funds. If this possible fraud is left unaddressed, the pressures of ever-increasing campaign spending portend unchecked corruption.

Recently a new voice has been heard. The FEC's Audit Division has issued a report, pursuant to its statutory duty (not in response to any Department referral), addressing, among other things, the core of the Common Cause allegations regarding the Clinton-Gore campaign.[4] In spite of campaign committee delay in providing some records and outright refusal to provide others, the FEC auditors found strong evidence of media campaign coordination between agents of the DNC and the campaign committees. That evidence, coupled with the electioneering content of the ads in the media campaign, led the auditors to find the DNC media payments ($46,546,476) to have been an in-kind contribution to either the primary or general campaign committee. Reimbursement of overpayments was recommended.

The Clinton-Gore committees' response to the audit findings is essentially the same defense already mounted by them in the news media. The ads in question, they say, are merely "issue ads" long approved by the FEC. Admitting a high degree of coordination (and not denying that one person may have been responsible for authorizing payment for ads for both the DNC and the committees), the committees claim that the ads nevertheless contain no "electioneering message." In the alternative they urge that if there are electioneering messages, the applicable legal standard actually is "express advocacy," which they assert is in none of the ads.

The Clinton/Gore arguments are not dispositive. For example, when urging that the FEC has approved issues ads, they fail to note that the cited Advisory Opinion, stating that a national

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[4] Contrary to the suggestion in the Review, and repeated often at meetings, the MOU does not mandate that initial responsibility be placed with the FEC. It is clear that the Department can investigate independently (MOU para. 4).

party committee's "issues" advertising costs can be generic spending, limits that opinion to spending that does not in fact constitute a coordinated expenditure subject to 2 U.S.C. 441a(d). FEC Advisory Opinion 1995-25. Further, the Clinton/Gore paper completely omits any reference to the application of the presidential campaign funding statutes, or their interpretation by the courts (rejecting, for example, first amendment limitations).

The Supreme Court has specifically held that the public campaign financing laws do not violate the first amendment rights of candidates or their supporters because the candidate is free to reject the limits of those laws. Buckley v. Valeo, 424 U.S. 1, 57 n.65, 91-109 (1976)(per curiam). Thus, to the extent that there exists a content test for communications expenditures which may be regulated under FECA, it need not be read into the public campaign financing laws.

The central question posed by the Common Cause allegations is not whether the national party committees could lawfully (under FECA) pay for the ads in question with hard or soft money, or as coordinated expenses under FECA, or independently (outside FECA). Rather, the question is whether the spending was, in fact, that of the candidates or their campaign committees, regardless of the content of the ads. The fact that an agent's payment for a candidate's campaign expense may be innocent or unknowing does not relieve the candidate of the legal obligation not to exceed spending or contribution limits under PPMPAA or PECFA.

What the FEC auditors' reports add is considerable, credible and *new* information supporting the Common Cause allegations. Because they have been working on this audit since January 1997, whereas we were allowed to begin to look at the edges of this issue only four months ago, they have received and analyzed more documents than have we. Their financial

analysis is far more elaborate than we have been able to prepare. Things we only suspected now have empirical support.

For example, the auditors point to specific indications on bank records of the media vendors which substantiate the payment, timing of payments, and the purpose of payments by the DNC for advertising directed and controlled by the candidate and the campaign committee. We did not know, until we read in the auditors report, the contents of the ads. The text and video of the ads is pertinent to a determination whether the ads were those of the DNC or the campaign committee. Specifically supported is the allegation that the Democratic presidential candidate directed and controlled ads which he intended to influence his election -- ads which were paid for by the DNC at the candidate's request. Exclusion of the spending for such ads from the candidate's voluntary agreement to limit expenses (in connection with, or to further, his election) is a potential criminal violation of the federal campaign financing laws. It should be investigated.

The auditors' report also substantially undercuts the conclusion of the August 4, 1998 Appellate Section memo that a Section 371 conspiracy to defraud charge would not be permissible because the ad campaigns were lawful under the campaign statutes. Assuming, without conceding, that "the proper treatment of the advertisements does not turn on either the degree of coordination between the candidates and the parties or their subjective intent" (Appellate Memo, pp. 17-18) but on "whether they contain an 'electioneering message'" (Id., p. 18), the auditors found just that -- electioneering content. Moreover, the Memo's reliance on First Amendment protection of political expression ignores the Supreme Court's explicit holding that the public campaign financing laws do not implicate the first amendment.

DOJ-FLB-0018

We recognize that the FEC document is a report by auditors and the final FEC product, reviewed by FEC General Counsel, among others, may be somewhat different. However, the Independent Counsel Act denies us the option of waiting for the ultimate version. This is so for two reasons. First, it may be months before the FEC issues its final report. In the meantime, the statute of limitations is running, especially on the FECA claims which have a shortened three year limitation period. Second, to wait is tantamount to saying career auditors with the FEC are not a credible source and that it takes the imprimatur of lawyers to make a claim viable. Such an argument is untenable.

C. ICA

1. Evidence and Information

As set forth in the Interim Report (p.10), evidence suggests something which furnishes proof, whereas information need not be as directed. As such, we continue to believe that the distinction is relevant, and to the extent that the import of words shapes our analysis, we should be precise in this area. We appreciate that the Review does reference information rather than evidence (albeit without acknowledging a distinction). However, it refers to "specific and credible information" as the proper standard (Review pp. 5 and 6). In fact, that phrase nowhere appears in the Act. Rather the ICA speaks of specific information from a credible source. 28 U.S.C. § 591. Again, the precision of the Act's wording is crucial because it can, in certain instances, make a difference in determining whether the Act should be triggered. For example, it is possible that specific information may come from a credible source, although the information itself is not especially credible. Yet unless it descends to the level of "frivolous," the Act must be triggered. See S. Rep. 100-123, 1987 U.S.C.C.A.N. at 2158.

DOJ-FLB-00181

The Review complains bitterly about references to the Herman and Babbitt referrals. When applying the Act in the Alexis Herman matter, the Attorney General spoke eloquently of the need to do so because she could not rule out the possibility that the law had been violated. To the extent that we are aware of the facts in the Herman investigation, we appreciate fully the Attorney General's reluctance to apply the Act to allegations which seem so ephemeral, and we respect all the more her decision to call for an ICA even though the allegations seem so unlikely to result in a prosecution. The argument set forth in the Interim Report is simply that the analysis applied in Herman (as well as Babbitt) calls for a triggering of the Act here; whether any prosecution will result is not the issue.

2. Dual Standard of Predication

The Review's analysis relies almost entirely on the statutory amendments of 1982. And indeed, at that time Congress was concerned that the Act had been triggered too cavalierly. They were responding particularly to the appointment of a Special Prosecutor (only later was the term Independent Counsel used) for Carter appointees Hamilton Jordan and Timothy Kraft. Both men were investigated for possession of personal use amounts of cocaine even though there was "a clear Departmental policy not to prosecute" because of the minimal quantity involved. S. Rep. 97-496 (1982) at 15, 1983 U.S.C.C.A.N. 3537, 3550-51. But by 1987 and 1994 the pendulum had swung. Congress was reacting to what it saw as stonewalling by the Department in its refusal to appoint an Independent Counsel in instances where the information available warranted it. The legislative history to these later amendments, which form the basis of the Act we now must interpret, is therefore what is crucial to our analysis today. The pertinent legislative history from 1987 and 1994 is set forth at pp. 15-19 of the Interim Report. Reaching back to language in the

legislative history relating to the 1982 amendment is of limited use in establishing a context for the ICA in light of the 1987 and 1994 amendments.

D. SPECIFIC RECOMMENDATIONS

1. Harold Ickes

There is no dispute that Harold Ickes is not a covered person under the literal wording of the Act. That is, he was not officially designated as an officer of Clinton/Gore. We continue to believe however, that such literalness strangles meaning, and as such, is contrary to legitimate methods of statutory interpretation. See, e.g., Lynch v. Overholser, 369 U.S. 705, 710 (1962).

We will not repeat the facts which make it clear that Harold Ickes was a de facto officer (principal) of Clinton/Gore '96 and the legal ramifications of such a conclusion.[5] However, it is worth reviewing what the Clinton/Gore '96 Committee itself has said about Harold Ickes in its most recent submission to the FEC relating to, among other things, the Common Cause allegations:

> Finally, the Audit staff relies on an authorization memorandum to Primary committee and DNC staff indicating that Harold Ickes had authorized payment of certain SKO invoices as evidence of coordination. ... In any event, it is the content of an ad that determines whether expenditures for that ad count against limitations applicable to the Primary Committee or to the DNC for 441a(d) expenditures. The fact that one or more persons are responsible for authorizing ads for both the DNC and the Primary Committee is irrelevant because coordination is legal.

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[5] We understand that while rejecting the de facto argument as out of hand, Lee Radek has also suggested that at most it shows Ickes' role in the financial decision making of Clinton/Gore, as if this were not enough. As we have argued all along, the money is the essence of it all, because the need to feed the media fund was of paramount importance. To presume that other work would not be delegated by the head of an organization -- de facto or not -- is to ignore the realities of leadership.

Response of Clinton/Gore '96 Primary Committee, Inc. And Clinton/Gore '96 General Committee, Inc. To the Exit Conference Memoranda of the Audit Division at p 11 (emphasis added).

The statement that Harold Ickes is responsible for authorizing ads for both the DNC and Clinton/Gore constitutes an admission by Clinton/Gore '96. The fact that Clinton/Gore '96 (Primary and General Committees) is making such an admission concerning Harold Ickes' responsibility vis-a-vis the reelection effort, is of import in the discussion of Harold Ickes' position. Is this not an admission of an official role filled by Harold Ickes? Is it not an admission that Harold Ickes held a position (as agent at a minimum) with the Committee and in that position he exercised control at the national level? This is a sound argument that should be made on these facts.

If we were talking about corporate liability based upon the conduct of Harold Ickes, we would, without question, conclude that Harold Ickes was an acknowledged agent and, given the control exercised by him, a de facto officer of the Committee. Therefore, Ickes' conduct would bind the corporation for criminal acts committed by him. Quite apart from Ickes' own criminal exposure, it is a fact that the Committee is bound by his conduct in light of the admission that Ickes was one of the people (officer/agent) responsible for certain media related conduct on behalf of the Committee. To the extent that that conduct presents a potential violation of law, Ickes and the "corporation" are proper targets of an investigation.

Rejection of the de facto argument ignores the reality of the situation. Another document, not referenced in the Interim Report, underscores dramatically Harold Ickes' control of DNC and

media-related funds. In a document entitled "Procedures for Generic Media Buys," the relevant portion of which is annexed at Tab 3, the following procedure is established:

> No money will be moved by the DNC unless and until DNC has received confirmation from Harold of the total amount approved to be spent.

When combined with the recent admission by the Clinton/Gore Committee, recited above, this establishes beyond question Harold Ickes' de facto role.

Beyond that, however, the very factors that the Review dismisses as irrelevant to the mandatory clause analysis (Review pp.9-11), i.e., that Harold Ickes' salary was lowered to come just under the statutory cutoff, that his position had traditionally been covered, and that his exercise of power and authority was extraordinary, at the very least warrant exercise of the discretionary clause. While we gather that it is Public Integrity's policy not to give advice as to invocation of the discretionary clause (Review, p.10), we believe that as supervisors of the Task Force, it is our responsibility to address this important issue. To do otherwise is to ignore the facts and fail to provide a framework in which they should be considered. After hearing the various viewpoints, the decision, of course, is entirely the Attorney General's to make.

We are also troubled enormously by the contention that there should be a "thorough analysis of the information we have and the reasonable inferences that can be based on that information" before a determination is made as to whether Harold Ickes comes within the discretionary clause. (Review, p. 11) Such an approach seems directly contrary to the purpose of the Act for it suggests that the conflicts which warrant invocation of the discretionary clause will vary depending on the information gathered. The conflicts, if they exist, are independent of the information collected. They result from the position occupied by Harold Ickes in connection with

the matters at issue and not from the strength of the information developed concerning the underlying transactions.

Finally, the Review concludes that there are no statutes or theories to support the idea that Harold Ickes could be criminally responsible in connection with Trie's illegal contributions to the DNC by virtue of Ickes' involvement in the PLET matter. We believe there is sound support however in basic agency law as well as in such statutes as 18 U.S.C. §§ 371 and 1341, among others.

2. President Clinton

It is clear, and the Interim Report acknowledges, that the information about the President is not as considerable as that relating to Harold Ickes. This is because the information relating to Harold Ickes is overwhelming. However, the information relating to the President is nonetheless substantial. Indeed, Harold Ickes attended the April and subsequent meetings with Cardozo as the President's agent. We know that the President was informed of the problems with the Trie "donations" since, as the Report points out, the President and First Lady later agreed with the PLET trustees that the Trie "donations" should be returned in their entirety. Without reiterating all the information and arguments in the Interim Report, the issues concerning the President cannot be dismissed simply because they are characterized as less weighty than those concerning Harold Ickes.

In dismissing the possibility that the President's activities may warrant a triggering of the Act, the Review again resorts to a stovepipe analysis. Without discussing any of the fact patterns

DOJ-FLB-00186

outlined in the Report (see pp. 51-56), the Review dismisses them individually as insignificant.[6] Again, the purpose of this Report was to focus on the information *collectively*. We believe when that is done, the predicate set forth in the Act is met. In fact, the timing between the Trie contributions and the Trie appointment is specific information from a credible source of a potential Quid Pro Quo. As we pointed out in the Interim Report, the information is at least as compelling as the facts presented in the Loral matter which triggered a full criminal investigation or the . Absent meaningless hairsplitting, the weight of these facts cannot be fairly distinguished from those in Loral nor from those that triggered the § 607 inquiries late last year. In sum, we cannot understand how the PLET information falls short of the other information which has triggered criminal investigations as well as preliminary investigations under the ICA.

The Interim Report also contained a section entitled, "Senior White House Officials Knowledge of Foreign Contribution: Soft and hard Money. See Interim Report at 51 - 56. The report recites the following:

> The following events demonstrate a pattern of activity within the White House involving senior White officials. This pattern suggests a level of knowledge within the White House -- including the President's and First Lady's offices -- concerning the injection of foreign funds into the reelection effort.

Although this is trivialized in the Review, it is pertinent as circumstantial evidence that there was a degree of knowledge within the White House concerning the counting of foreign

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[6] To take but one instance, in referencing the the Review (p. 8) states that the Report "does not identify any facts concerning the President except that he attended". On the contrary, what is so significant about his attendance is the fact that he was present while John Huang solicited funds although almost all the attendees were foreign nationals precluded by statute from making donations. (Report, p. 56) We know from the President's interview during his Preliminary Inquiry that he was well aware of the ban on foreign money donations.

funds. At a minimum, this suggests a conscious avoidance of the truth concerning some of the more flamboyant fund raisers such as Trie and facts are recited with sufficient particularity to satisfy the ICA's threshold of specific information from a credible source that a potential violation of federal law occurred. While this section of the Interim report was expressly intended only to demonstrate a level of knowledge and not as a separate predicate upon which to trigger the ICA, the evidence is significant in that regard.

3. Vice President Gore

Since the Report was written (and as Lee Radek is well aware though it is not referenced in the Review) new evidence has surfaced concerning the Vice President's role in fundraising. We were recently provided a memorandum of a meeting attended by the Vice President. The memo contains David Strauss' handwritten notation of "$20,000" (the hard money cutoff) and references comments attributed to the Vice President about his role in the fundraising marathon. (Strauss was Deputy Chief of Staff to the Vice President.) The memo therefore resurrects the question of the Vice President's knowledge that his solicitations within the White House were designed, at least in part, to raise hard money. This possible § 607 violation (along with the possibility that the Vice President may have given a false statement on this point during his interview) adds to the analysis given in the Interim Report and bolsters the conclusion that an Independent Counsel should review the allegations against the Vice President. Indeed, this evidence supports the position taken by the Task Force in November concerning the then available information that suggested the appointment of an Independent Counsel was warranted (use of Clinton/Gore credit card to place calls and the failure of recollection concerning the memos that were addressed to the Vice President). See Tab 4.

4. The First Lady

The analysis of the First Lady's role again turns on the predication necessary to trigger the Act. The facts are set forth with particularity. Her potential criminal involvement tracks the conduct set forth relating to the PLET incident. While the information against the First Lady is not overwhelming at this time, in light of the involvement of Harold Ickes, the President and White House Counsel, it is sufficient to warrant further inquiry.

5. Other Matters

Although the Review trivializes the involvement of Huang, Rosen, Mercer and the DNC, this does disservice to the facts. The DNC was an organization central to the election of the President (especially because, due to the ubiquity of Harold Ickes, its function merged with that of Clinton/Gore). It therefore appears to pose the type of political conflict of interest which can so shake confidence in decisions of the Department. Huang and Mercer, as DNC employees, bring the issue into relief. And since the Report was written, the fact that Mercer accepted $5,000 in travelers checks from Charlie Trie has become public. While we were aware of this fact, at this juncture we do not know precisely why this money was given. Again, it raises questions which need to be answered and can best be handled by a person perceived to be independent of the political consequences.

6. Common Cause Allegations

We reiterate our observations above, pp.4-8.

7. Loral

The Review shares the view expressed in the Interim Report that this was a matter which likely did not merit any investigation. Now that we are there however, the Review asserts that there is no conflict in conducting that investigation because the conflicted persons have been recused. It is true, of course, that in general there can be effective recusals of Department officials involved in a matter under investigation. What makes the recusal unworkable in this case however, is that the persons being recused are at the epicenter of the entire Campaign Finance investigation. As unfair as it may be, Bob Litt's name has been invoked repeatedly by persons trying to discredit the Department's neutrality in this investigation. It therefore is especially inappropriate to have Departmental attorneys evaluating Bob's credibility. In the event that the "he said/he said" is viewed as favoring Bob's recollection, the Department will inevitably be accused of having had a political motive for its determination. In such circumstances, it is in everyone's best interest to remove the decision from this possible line of attack. It is, in this respect, a classic political conflict of interest which we believe the ICA is designed to avoid. Finally, to the extent we are pursuing the Loral investigation, the President is at its center. This fact alone is sufficient under the ICA to trigger a preliminary investigation.

II. CONCLUSION

Our first objective when joining the Task Force was to get investigations on track. That having been accomplished we can now sit back and see the forest as well as the trees. We have spent several months preparing the overview set forth in the Interim Report. It contains many conclusions. The Review dismisses them all. While we stand by the Report in its entirety, you

need not accept every argument therein in order to conclude that the weight of the information now is such that an Independent Counsel is warranted under the strictures of the Act.

DOJ-FLB-00191

Copy 1 of 8
3/31/2000

"RADEK RESPONSE"
August 5, 1998

Redacted to delete information the disclosure of which could adversely affect
a pending criminal investigation or prosecution
or would violate Rule 6(e) of the Federal Rules of Criminal Procedure
Redactions completed on March 24, 2000.

U. S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 6, 1998

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL

FROM: James K. Robinson
Assistant Attorney General

SUBJECT: Campaign Financing Task Force - Independent Counsel Proposal

TIMETABLE: None. Information only.

PURPOSE: To provide you with two memos relevant to a review of the LaBella memo.

DISCUSSION: As you know, I am in the process of reviewing the LaBella memo in anticipation of providing you with my recommendation on how to proceed. In this regard, I have already met "one-on-one" with Lee Radek, Chuck LaBella and Dave Vicinanzo to discuss their views. I am considering also meeting with James DeSarno of the FBI as he is the co-author of the memo.

In the meanwhile, I am attaching hereto a memo prepared by Lee Radek commenting on the LaBella report as well as a memo prepared by our Appellate Section on the Application of the "Conspiracy to Defraud" Provision of 18 U.S.C. § 371. This statute plays a critical role in LaBella's analysis as set forth in his report.

RECOMMENDATION: None.

Attachments

U. S. Department of Justice

Washington, D.C. 20530

AUG 0[illegible]

TO: James K. Robinson
Assistant Attorney General
Criminal Division]

FROM: Lee J. Radek
Chief
Public Integrity Section
Criminal Division

SUBJECT: Review of Interim Report

The Public Integrity Section has carefully reviewed the "Interim Report" prepared by Charles LaBella, former Supervising Attorney for the Campaign Financing Task Force, and James DeSarno, Assistant Director, Federal Bureau of Investigation (FBI), CAMPCON (Task Force). The Report presents the authors' views of the standards set out in the Independent Counsel Reauthorization Act of 1994 (the Act), and recommends that the Attorney General seek appointment of an independent counsel to handle campaign financing matters. The Report also makes individual recommendations with respect to the President and Vice President (the only covered persons discussed in the Report) and a number of persons not covered by the Act, recommending in each case that an independent counsel should be sought to investigate further. Finally, drawing upon the observations of these two individuals, the Report makes a number of recommendations for changes, legislative and policy, with respect to our handling of campaign finance matters. These merit further review and consideration by the Department, but will not be discussed further in this memorandum.

I am troubled that the Report ignores the purposes that we had hoped to see accomplished in the course of this undertaking. The Report does not provide an in-depth summary or overview of the work of the Task Force, what it has accomplished and where it is headed. It offers no framework or plan for completing the work that these two supervisors have begun. It does not set out the authors' view of the appropriate role of the Department of Justice in addressing campaign financing issues -- what we can and should be seeking to accomplish -- or how that role has been and will be fulfilled through the work of the Task Force. I find

the Interim Report disappointing in this regard, to say the least.

The bulk of the Report, rather, is devoted to a recommendation that the Attorney General refer the entire campaign financing matter[1] to an Independent Counsel. It is that portion of the Report that I will address in depth here. It is my conclusion that the recommendation is flawed and based on numerous misinterpretations of the Independent Counsel Act.

One point must be made at the outset. I am, to put it directly, outraged by the personal attacks and the suggestions contained in this Report, some subtle and some stunningly blunt, that the motivations of those who have advised the Attorney General over the last two years concerning the application of the Act with respect to campaign financing matters have been colored by bad faith, a deliberate twisting of the law and an effort to protect the White House. We have worked closely with these two individuals over many months, and while we certainly have had our disagreements, I am shocked that they should harbor such views. For example, they describe the attitudes and participation in the investigative process of those who have taken positions with which they disagree as "result oriented," "going through contortions," "gamesmanship," and "intellectually dishonest." Of course, these two officials of the Department are entitled to communicate their concerns to you, and if they had such concerns, should have done so long ago and cleared the air in a forum in which they would have remained confidential. It is inexcusable, and I believe clearly calculated, that they have chosen to communicate their views about others within the Department in a memorandum that is the subject of such intense public interest, and is therefore likely to be leaked or become public through some other route.

1. <u>Complaints about "Stovepipe" Approach to the Investigation</u>

It is not clear to me what the Report's concern is in this section of the memorandum. The Report seems to express a view that the Task Force's work is being conducted as an uncoordinated group of individual investigations, with no one assessing the "big picture."

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[1] We assume that this is the recommendation, although the Report nowhere is explicit as to whether it is recommending independent counsels with respect to specific alleged violations purportedly committed by specific individuals, or a general "campaign financing" independent counsel, with jurisdiction over all allegations of campaign financing abuse within the statute of limitations.

DOJ-FLB-00131

First of all, all decisions about how to structure the Task Force's investigation have been made by the Task Force command structure; to the extent there has been any failure to incorporate an unified approach or engage in an interlocking analysis of all the facts, I am unable to comment. However, I can say that in all the decades of experience I have had in the Department, I am unaware of any previous effort that has been as carefully coordinated and in which such extensive steps have been taken to ensure that any overlapping evidence or potentially interlocking cases is not overlooked. All task force matters nationwide have been directly supervised for the past year by one person, Mr. LaBella, whose job it was to make sure that the forest was not overlooked for the trees. A single team of FBI agents and other investigative personnel reported directly to one FBI supervisor, Mr. DeSarno. To the extent that these two may have become enmeshed in the details of individual investigations and cases, there were weekly, and often twice weekly meetings, with the Deputy Attorney General and the Attorney General to review developments and progress, with overlaps and interconnections a constant topic of review. If there is a "big picture" that is being ignored by the Task Force, prompt steps should be taken by its new head to address that failure.

One factual assertion must be addressed here. The Report contends that the Task Force's efforts to do a broad survey of the "entire campaign finance landscape" have been "rejected," and that under our approach to the Independent Counsel Act, evidence of wrongdoing "must just appear." This is simply untrue, and I am unaware of any occasion when this has happened. The Task Force generally and Mr. LaBella personally, to my knowledge and in my presence, have been repeatedly told that no investigative steps were closed to them, that they are free to follow any leads, and that if their efforts develop specific and credible information that any covered person may have violated the law, the Attorney General will trigger the Act.

The two examples the Report cites in fact illustrate how off the mark this complaint is. The Common Cause allegations were thoroughly considered, analyzed at length, and closed on their merits. Even so, the Task Force has repeatedly been assured that to the extent the facts underlying the Common Cause allegations are relevant to its investigation, it is free to explore them. The other example, the so-called "core group" investigative approach, was pursued by the Task Force for a period of time and eventually dropped by the Task Force because it was unproductive; no one instructed the Task Force that it could not conduct such a review.[2]

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[2] Indeed, this effort was insisted upon by Director Freeh, and numerous agents were directed to turn their attention to a pursuit of this unpredicated investigation at a time when the

DOJ-FLB-00132

Director Freeh's December 1997 testimony before the House Government Reform and Oversight Committee on the progress of the investigation is illuminating on this point. He repeatedly assured Congress that while there had been disagreements from time to time over investigative strategy, the investigation had not been impeded or blocked. In response to a question from Congressman Burton as to whether the FBI felt that its ability to investigate the campaign financing matters had been impeded by the Department, Director Freeh responded:

> Not impeded in the sense that they were unable to conduct what we believe is the requisite investigation. There have been complaints and there have been differences between prosecutors and agents in this case -- again, not an uncommon phenomenon -- about the scope or the direction or the perspective, but those have been, to my satisfaction, resolved without the investigation being harmed or impeded.

To summarize, I agree entirely that it has been important that this project be handled as an unified task force undertaking, rather than having the individual cases parcelled out to the United States Attorneys' Offices, as would normally be the case. That was accomplished through the supervision of the two individuals who have authored this report. Weekly meetings have been held to ensure that patterns and the possibility of overlapping or connected schemes were identified and discussed. The Attorney General has asked repeatedly as the investigation has progressed whether information has been developed that warrants reconsideration of the Independent Counsel issue and has repeatedly been told by these two individuals, responsible for coordination of the entire investigation, that there is no such information.

2. <u>The Independent Counsel Act</u>

The Report argues that the Department has improperly and inconsistently interpreted the Independent Counsel Act in its approach to matters arising under the Task Force jurisdiction. I believe that the authors of the Report have misunderstood, and in some instances mischaracterized, the recommendations of the Criminal Division to the Attorney General, which have provided the analytical foundations on which her final conclusions have rested. In some crucial aspects as well, I suggest that the

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Task Force was attempting to review large quantities of documents that had been obtained from the Democratic National Committee (DNC). This led to delay in the review of documents, and resulted in the discovery of important evidence by the press before we were aware of it. Mr. LaBella's appointment was a direct result of the ensuing furor.

DOJ-FLB-00133

Report misinterprets the Act.

(a) "Evidence" and "Information"

The first issue, which permeates the Report's discussion of the Independent Counsel Act, is an assertion that the Act has been misapplied because from time to time the Public Integrity Section has used the phrase "specific and credible evidence" rather than the statutory language, "specific and credible information" to describe the standard that governs the determination of whether a preliminary investigation is warranted. The Report states that this "raises the threshold" for triggering the Act, and that a difference in meaning between the two words, while "subtle, is significant."

If there was confusion on this issue, it should have been raised and clarified long ago; as they have been used by us, the two words carry the same meaning. In describing the requirements of the Act, we do not always parrot its wording, but use words that we regard as equivalent in meaning. In this case the two words both make it clear that the Act requires facts, rather than speculation or mere allegation, upon which a decision may be based. We have never suggested in any context that proof of an offense was required before the Act is triggered, as the Report suggests at page 10.

The Report claims that we have failed to distinguish between evidence and information but does not explain what it views that difference to be. It further claims that this failure has affected the "conclusions reached in these matters," but fails to explain how. We note that the Report fails to identify any particular independent counsel analysis dealing with matters under the Task Force's jurisdiction which it believes was erroneous because of this purportedly altered standard.

To reiterate, we have not used the word "evidence" in any technical or specialized way; it is merely an alternative phrasing to the statutory word "information." Both words are intended to convey the identical meaning -- a requirement that our conclusions be based on facts rather than speculation or innuendo.

In every case in which the Public Integrity Section has been asked since the first enactment of the predecessor of the Act, to analyze the question of whether the Act has been triggered, it has applied the same standard. It explores whether we have "information sufficient to constitute grounds to investigate" whether a person covered by the Act may have committed an offense. 28 U.S.C. § 591(a). In determining whether we have such information, we are to consider the specificity and credibility of the information; if "the Attorney General determines that the information is specific and from a credible

source, the Attorney General shall, upon making that determination, commence a preliminary investigation [.]" 28 U.S.C. § 591(d)(2). This is the standard that has been applied to each matter under the Act, and to each allegation that has arisen within the context of the campaign financing investigation.

The Report fundamentally misunderstands the requirements of the Independent Counsel Act -- and as a result leaps to the outrageous conclusion that the Public Integrity Section has engaged in a result-oriented analysis to protect the White House -- when it asserts that different standards have been applied to the various campaign financing matters that have arisen under the Act. In the Babbitt matter there was sworn testimony from a credible individual with no known motive to lie directly contradicting statements Babbitt had made under oath. In the Herman matter, we received detailed allegations from an individual in a position to have first-hand knowledge of the facts that Herman had a concealed financial interest that she had failed to disclose on her financial disclosure forms. There is no such specific and credible information concerning the President or Vice President, the only two covered persons mentioned in the Report, outlined anywhere in the Report or that has been brought to our attention in any other context. Furthermore, this allegation conveniently ignores the fact that both the President and Vice President have been investigated pursuant to the Independent Counsel Act with respect to campaign financing violations; that is, when we were presented with specific information from a credible source, we did not hesitate to trigger the Act.

(b) Dual Standard of Predication

The Report next suggests that the Task Force has an extremely low standard of predication before opening a criminal investigation, and therefore the same standard should govern the determination as to whether the Independent Counsel Act is triggered. The Task Force's predication standard with respect to matters that arise outside the Independent Counsel Act is a matter of prosecutorial discretion, bounded only by the limits of due process, and there well may be sound reasons for it to be so low. Obviously, this power to investigate is subject to tremendous abuse, and should be used only sparingly; in this case the public interest has led the Attorney General to conclude that it is appropriate to pursue investigations we would not otherwise pursue.

The Independent Counsel Act, in contrast, is a statutory standard that we are not free to ignore. Congress did not intend that independent counsels would be appointed merely because there was public concern or congressional pressure to investigate. The "specific and credible information" standard was specifically

DOJ-FLB-00135

adopted to ensure that there must be concrete factual support for a conclusion that a covered person may have committed a crime before triggering the requirements of the Act. In 1978, when the Act was first passed, only specific information of the offense was required: "The term 'specific information' is used so that the provisions of [the Act] will not apply to a generalized allegation of wrongdoing which contains no specific factual support." S. Rep. 170 at 52. In 1982, concerned that the trigger standard was too low, Congress raised it to add the credibility requirement:

> Public confidence is not served by investigation of meritless allegations made by unreliable sources. [The prior standard requiring only specific information] invites abuse of the special prosecutor process by persons who want to harm the reputations of public officials. Finally, this standard wastes valuable Department of Justice resources by requiring high priority investigations in situations where no one else would be investigated.

S. Rep. 496 at 12. Congress reiterated in 1982 that the specificity requirement meant that "the provisions of [the Act] will not apply to generalized allegations of wrongdoing which contain no factual support." Id.

The Report argues that the legislative history supports the opposite reading. It contends that Congress intended that covered persons should be investigated under the same circumstances that ordinary citizens would be investigated, and that since the Task Force is investigating individuals based only on a "wisp of information" under circumstances where the allegations may be described as "frivolous," the same standard should apply to covered persons. The legislative history is indeed replete with expressions of concern that there be a level playing field with respect to covered persons and ordinary citizens, and that the same standards should apply. However, Congress's concern in making these observations was that the triggering standards were too low, and that covered persons were being subjected to investigations under circumstances where no ordinary citizen would be; it therefore included the "specific and credible" predication standard to approximate the generally applicable standards for initiation of a criminal investigation. See, e.g., FBI General Crimes Guidelines. The prospect that the Department would devote resources to the investigation of unsubstantiated, frivolous allegations against ordinary citizens was simply not a factor in Congress's calculus. See, S. Rep. No. 496 at 11-13 (1982) (discussing need to raise triggering standard so unsupported allegations do not trigger the Act).

We believe the Act itself as well as the legislative history make it clear that the Act is to be triggered only when the

DOJ-FLB-00136

Department receives specific and credible information suggesting that an individual, either covered by the Act or as to whom it would be a conflict of interest for the Department to investigate, may have committed a violation of federal criminal law. Whatever may be our authority to conduct inquiries of "allegations" without factual support under more flexible standards or for other purposes under our broad prosecutorial discretion with respect to matters not arising under the Act, triggering the Act requires specific and credible information that a crime may have been committed.[3]

This is still an extremely low threshold. In assessing whether the Act is triggered, we lack the discretion to weigh all the traditional factors that we ordinarily consider in deciding whether a matter merits investigation. We cannot consider the

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[3] The Report also argues that since the Attorney General has directed that "no stone be left unturned," and the Task Force is fully investigating all campaign financing allegations whether they appear to be meritorious or not, this constitutes an "established policy" of the Department which ought to govern the determination of whether the Independent Counsel Act is triggered. 28 U.S.C. § 592(c)(1)(B). Following a preliminary investigation, the Department is indeed required to follow established policies with respect to the conduct of investigations pursuant to this provision of the Act. This provision was added in 1982, and is intended to permit, with a report to the Court, the closing of matters as to which we have an established policy against prosecution. See S. Rep. 2059 at 14-15. This provision does not affect and does not come into play with respect to the decision whether to initiate a preliminary investigation, which requires specific and credible information.

It is also worthy of note that while the Report places great stock in the informal public statements of the Attorney General that "no stone be left unturned" as establishing a policy of the Department which we are bound to follow, it advocates that we completely ignore a longstanding written policy of the Department, the Memorandum of Understanding (MOU) with the Federal Election Commission (FEC), discussed infra. Apparently policies are only to be followed if they lead to the results sought by the authors.

It should go without saying that the remarks of the Attorney General describing the approach to a particular investigation could never constitute a written or established policy of the Department under the Act. Otherwise, any Attorney General could predetermine the outcome of the independent counsel decision with such an ad hoc pronouncement.

minor nature of the alleged offense, the lack of potential jury appeal, the availability of alternative remedies, or the likelihood that the investigation will develop a solid enough case to prove an offense beyond a reasonable doubt. Covered individuals have repeatedly been subjected to a full-scale preliminary investigation and subsequent investigation by independent counsels in circumstances where most prosecutors, exercising prosecutorial discretion, would have declined even to investigate. Public servants covered by the Act do, however, have the statutory protection that the provisions of the Act will not be triggered absent specific and credible information that they may have violated the law. The Report's conclusion that this minimal standard should be set aside in this case has no support in the Act, and indeed appears to us to be the very sort of strained, result-oriented analysis of which it accuses those who disagree with the authors.

3. Specific Recommendations that the Act be Triggered

The Report then makes a series of recommendations that the Independent Counsel Act be triggered with respect to several specific individuals and allegations. Each will be addressed below.

(a) Harold Ickes

Although the Report argues otherwise, Harold Ickes is not a covered person. The Act covers "any officer" of the Clinton/Gore '96 campaign committee "exercising authority at the national level." 28 U.S.C § 591(b)(6). During the campaign, Ickes was Deputy Chief of Staff at the White House with primary responsibility for coordinating the campaign functions among the White House, the DNC, and Clinton/Gore '96; he was not an officer of the campaign. He held no campaign title and received no compensation from the campaign. Nevertheless, the Report argues that because Ickes acted like an officer of the campaign he is a "de facto" covered person under the Act.[4]

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[4] One part of the Report criticizes this Section's handling of independent counsel matters by citing legislative history from the 1987 Reenactment that criticizes the Department for conducting preliminary investigations under the guise of threshold inquiries in order to avoid the Act's reporting requirements. However, in its effort to determine during the 30-day period whether a person may have violated criminal law as required under § 591(a), the Department has always conducted whatever investigation of the facts that could be accomplished in the short amount of time allowed. Indeed, in the Senate Report following the hearings for the latest Reenactment, the Department's closure without preliminary investigation of several matters because the facts proved to be untrue, and others because the facts did not constitute an offense,

DOJ-FLB-00138

We can find no support in the Act or its legislative history for the "de facto" argument. The Act's coverage provisions are bright line markers. Covered individuals are clearly demarcated by title and salary level. The Act provides that "officers" of the campaign who exercise national authority are covered, not "individuals" who do so even though they are not officers. We are not free to rewrite the statute to cover persons whom Congress chose not to cover. Indeed, the interpretation advanced in the memorandum effectively eliminates half of the statutory provision: it would cover anyone who exercised national authority, regardless of whether they were officers. Again, to reach its conclusion that Ickes is covered, the Report seems to be engaging in the same twisting and stretching of the terms of the Act to reach a desired result of which it accuses those who disagree with its authors.

The Report also hints that Ickes should be considered to be covered under the Act because of his former high-level position in the White House. He held the title of Deputy Chief of Staff, a title that in previous Administrations typically had received sufficient compensation to render the incumbent a covered person under section 591(b)(3). Ickes, however, was compensated at a rate of pay below Level II of the Executive Schedule, which is the statutory cutoff. Under the clear provisions of the Act, he is not and never was covered under this provision. In any event, he left this position well over a year ago, and thus would no longer be covered no matter what his rate of pay may have been.

More persuasive is the argument that because of Ickes' exercise of power and authority with respect to campaign matters, together with his high-level (though again not covered) former position as a White House staffer, he should be found to be covered under the discretionary clause. The Criminal Division has always considered the decision whether to invoke the discretionary clause to be a personal decision entrusted to the Attorney General, and other than notifying the Attorney General when an individual as to whom she may want to consider use of the discretionary clause is under investigation, has avoided weighing in on the merits of the issue.

However, the Report affirmatively asserts that Ickes and others are "covered" under the discretionary clause, seemingly overlooking the fact that the clause <u>is</u> discretionary. The Report asserts that the discretionary clause was "intended to include" certain persons as covered. Report at 25. To the contrary, the discretionary clause was intended to permit the Attorney General to decide that any person as to whom there was a

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were cited as being in compliance with the Statute.

DOJ-FLB-00139

conflict of interest should be investigated under the provisions of the Act. The legislative history suggests some individuals as examples of persons as to whom the Attorney General might find a conflict, but the provision does not in any way direct that any of these persons are to be considered covered.

The Report recounts at some length the reasons why the Attorney General might determine that she should utilize the discretionary clause with respect to Ickes. Dave Vicinanzo has undertaken a thorough analysis of the information the Task Force has gathered suggesting that Ickes may have violated federal criminal law. Even should the Attorney General ultimately decide to exercise the discretionary cause with respect to Ickes, the restrictive time periods and investigative limitations imposed by the Act do not come into play until that decision is made, and I see no reason why the Attorney General should rush to a conclusion to utilize the discretionary clause. At the very least, a thorough analysis of the information we have and the reasonable inferences that can be based on that information should be completed before any decision is made.

I do note, however, that I am unaware of any case that would support the suggestion in the Report that Ickes is criminally responsible in connection with Charlie Trie's illegal contributions to the DNC because he failed to warn it after learning that Trie had made questionable payments to the President's legal defense fund. The Report offers no case or statutory analysis to support its theory. I understand that Dave Vicinanzo is reviewing this issue as well.

(b) President Clinton

(i) Charlie Trie and the Presidential Legal Expense Trust (PLET) Contributions

The Report next recommends that the Act be triggered with respect to President Clinton. On April 22, 1996, President Clinton appointed his friend Charlie Trie to the Commission on U.S. Trade and Investment Policy (Commission). Approximately one month earlier, Trie had provided the Presidential Legal Expense Trust (PLET) with a large number of donations he claimed to have solicited from the Asian-American community on behalf of the President, many of which PLET subsequently returned because they appeared to be conduit or foreign contributions. When he made the contribution, Trie made comments that suggested he had already been told he was going to be named to the Commission.

The Report goes on to ask a series of rhetorical questions inquiring whether the President may have committed a bribe, knowingly accepted a gratuity, or committed other crimes with respect to the decision to name Trie to the Commission or the handling of PLET decisions, and suggests that while "there may be

DOJ-FLB-00140

innocent explanations," the only way to know the answers to the questions is to conduct a criminal investigation, and since the President is a covered person, the Independent Counsel Act is therefore triggered.

The authors of the Report apparently recognize that there is absolutely no specific and credible information suggesting that the President committed a crime with respect to any of these matters; the Report identifies none, but rather lists a series of provocative and speculative hypothetical questions it asserts should be answered. It falls back on its argument that since the Task Force investigates allegations and speculation without predication, this matter should be treated the same way. As explained in detail above, this is not the standard of the Independent Counsel Act, and does not govern the decision to trigger the Act.

However, the conduct of Charlie Trie and his role in the solicitation and delivery of illegal campaign contributions, and the degree to which his conduct with respect to the PLET contributions mirrored that role, are clearly matters of legitimate interest to the Task Force. In the course of its investigation of Trie, should the Task Force develop any facts -- as opposed to speculative questions -- suggesting that the President named Trie to the Commission in quid pro quo exchange for his PLET contributions, that will trigger the Act, and we will conduct a preliminary investigation at that time. The Report recognizes, of course, that financial supporters of the Administration are not barred from service to the government, and that the President is free to name his financial and political supporters to a variety of governmental positions without running afoul of the law. Report at 49, n.26. We do not and will not investigate every public official who takes official action that benefits a supporter on the speculation that it may have been a bribe, though I recognize that the current investigation of the Loral matter edges close.[5] If this were the standard, every member of Congress would be under criminal investigation, since each regularly takes official action that benefits his or her supporters.

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[5] The Report's discussion of the Loral matter will be explored in more detail later in this memorandum. In brief, rather than conclude from the Loral precedent that all such matters should be investigated, we suggest that the Loral decision is an anomaly because of the unique circumstances of that matter. We also would recommend that if our initial inquiry does not promptly develop evidence to support a theory that there was criminal conduct with respect to the Loral matter, it should be closed.

DOJ-FLB-00141

(ii) Knowledge of Foreign Contributions

The Report then recommends that the Act be triggered because the President, Vice President and senior White House officials knew or had reason to know that foreign funds were being funnelled into the DNC. It contends that Johnny Chung was granted access to the White House because he was a contributor to the DNC, and that White House staffers knew he was bringing foreign nationals to the White House for various events. It outlines an exchange of memos and e-mails among mid-level White House staffers expressing some concern about Chung and the individuals he was bringing into the White House. From this, the Report concludes that "the White House" knew that Chung's contributions were illegal conduit contributions of foreign money, and that "it is inconceivable that senior officials at the White House were oblivious to these connections."

It is my view that there is no information whatsoever outlined in the Report to support this conclusion. Far from inconceivable, I think it very unlikely that Chung informed anyone at the White House that his contributions were illegal or that they had any awareness of this fact. Indeed, the focus of the internal communications that are described in the Report was on Chung's apparent representations that he could encourage apparently legal American-Chinese business donations. The internal communications quoted by the Report plainly do not suggest that the authors recognized any possibility that Chung's contributions were illegal in any way.

The Report also contends that the President and others engaged in a "conscious decision not to learn the truth" about Charlie Trie's fund-raising and therefore are guilty of "not alerting the DNC and Clinton/Gore" about potential problems with Trie. Other than the fact that apparently no one in the White House did alert the DNC after the problems with Trie's PLET contributions were uncovered, the Report contains no explanation as to why it concludes that this was potentially criminal. There is no legal or factual analysis offered of the circumstances under which such non-action by individuals outside the campaign might be criminal.

It is my view that the facts described in the Report do not support a conclusion that any covered person may have violated federal criminal law and thus do not trigger the Independent Counsel Act. As noted above, however, Trie's conduct is clearly within the legitimate scope of the Task Force's investigation; if in the course of its continuing review it develops facts, as opposed to speculation, supporting a conclusion that a covered person may have committed a crime relating to Trie's contributions, we will consider at that time whether the Independent Counsel Act has been triggered.

DOJ-FLB-00142

Finally, the Report argues that "senior White House and high-level DNC personnel" knew or consciously decided to avoid learning the truth about illegal foreign funds in connection with contributions. This is a very brief portion of the Report. It does not identify any facts concerning the President except that he attended coffee. The Report does not explain how or why it reaches the conclusion that based on that attendance, the President knew or should have known than was making illegal contributions of foreign funds. No other covered person is mentioned.

The Task Force has never been restricted in any way in its investigation of the coffees, though concern has indeed been expressed by me and others from time to time that this line of investigation carries little likelihood of bearing fruit. Nevertheless, the FBI and the Task Force supervisors expressed their continuing interest in exploring the circumstances of the coffees. Should the Task Force develop information in the course of that investigation that the President or any other covered person violated federal criminal law with respect to the donations, we will consider at that time whether the Independent Counsel Act has been triggered.

(c) Vice President Gore

The portion of the Report devoted to Vice President Gore is only one page long, and is so superficial that I am at a loss as to how to respond. It seems to suggest that the Attorney General was wrong in her section 607 analysis which led to the conclusion that no independent counsel need to be appointed with respect to Vice President Gore's fund-raising calls. Its bottom line, however, without analysis, is that if there were a viable "§ 371 conspiracy to defraud the United States," the Vice President "would certainly be among those whose conduct would be reviewed." Because we are offered no facts or analysis, I am unable to offer any views of this recommendation.

With respect to the apparent criticism of the Attorney General's conclusion last year that the fund-raising calls did not warrant appointment of an independent counsel, the Report makes no specific points and thus I am unable to respond. To the extent that the Report seems to suggest that the decision was inappropriately based solely on the uncorroborated statements of the Vice President as to his intent and lack of knowledge, this is a gross misreading of our recommendation to the Attorney General. Our conclusions that these were soft money solicitations and thus outside the scope of section 607 was based on the results of hundreds of interviews with those who participated in the calls, and the examination of scores of

documents.[6] In addition, as a wholly independent ground supporting our recommendation, we documented a well-established Departmental policy of not prosecuting section 607 violations absent aggravating circumstances not present here.

(d) The First Lady

The First Lady is not a covered person. Nevertheless, I assume it is very likely that the Attorney General would decide to invoke the discretionary clause were we to receive substantial information suggesting that the First Lady had committed a federal criminal violation. I reiterate, as was pointed out above, that the discretionary clause grants us considerably more flexibility than do the mandatory provisions of the Act. We are free to explore any allegations preliminarily and test information received before deciding whether the Act should be invoked.

The Report contends that the First Lady may be criminally liable for her failure to warn the DNC about Trie after learning of his questionable contributions to PLET. As is discussed above, it offers no case or legal analysis to support this theory. The First Lady was not an officer in the DNC, and there is no evidence that she knew of Trie's contributions to the DNC. I am aware of no established -- or even cutting edge -- theory of criminal liability under which the First Lady could be prosecuted based on these facts, although again, Dave Vicinanzo is reviewing this issue.

The "Gina Ratliff incident," described as a "mild extortion," hardly merits discussion. The Report acknowledges that there is no evidence whatsoever that the First Lady even knew of these events, which were handled by two of her staffers. While it says that it is "unclear" whether any others in the White House knew, it does not describe why it is unclear. In any event, I do not believe that it is an extortion for the White House to inform Chung that his continued privileges to visit the White House depended upon his meeting his contractual obligations to a former White House intern.

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[6] The Report asserts at one point that "the calls had nothing to do with the reelection effort, according to the Vice President," id., at 5, insinuating that because of the patent absurdity of that representation, nothing the Vice President said about the calls should be believed. The problem with this argument is that the Vice President said no such thing. In his interview, he acknowledged without hesitation that the calls, and the resulting funds that would be raised, were expected to have a positive impact on the campaign.

DOJ-FLB-00144

(e) Other Matters

The Report concludes its survey of matters that it recommends warrant the appointment of an independent counsel with the description of variety of incidents which it describes as "troubling." They range from the coffee to John Huang's apparent fund-raising while he was still employed at the Department of Commerce to a variety of incidents that may suggest DNC officials should have been aware that some contributions were from foreign sources. The individuals named include John Huang, DNC fund-raiser Marvin Rosen, DNC mid-level official David Mercer, and others.

None of these individuals are covered by the Act, and the Attorney General concluded long ago that there was insufficient potential for a conflict of interest to warrant use of the discretionary clause with respect to these individuals and events. It has been my assumption that all of these matters have been under active ongoing investigation by the Task Force. The Report identifies no new information or developments that would suggest that there is now a conflict of interest for the Task Force to continue the investigation and resolve these matters.[7]

(f) Common Cause Allegations

The argument that the Act should be triggered based on the Common Cause allegations runs throughout the memorandum. This issue has been discussed and analyzed within the Department repeatedly and at great length, and the Attorney General has reached and publicly announced her decision that the allegations do not warrant appointment of an independent counsel.[8] We see

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[7] This does not mean that I concur that prosecution based on the legal theories of liability advanced in the Report would necessarily be appropriate or valid. I am particularly troubled by the prospect of escalating a possible civil Hatch Act violation into a felony conspiracy. Considerably more legal and policy analysis is called for before proceeding on this theory.

[8] The Report's repeated complaint that the Common Cause allegations have been left unresolved and hanging, without action, is simply untrue. The Attorney General has repeatedly responded to these allegations in writing and has testified concerning her conclusion in this matter. See, e.g., Letter from the Attorney General to Senator Orrin Hatch, Chairman, Committee on the Judiciary, April 14, 1997. In her recent testimony, the Attorney General explained at some length both her decision and the basis for it:

With respect to the advocacy ads, as I have pointed out

> to you before, and the statute that creates the Federal Election Commission has made very clear, the FEC has primary responsibility under the law for interpreting the election laws and for investigating violations of those laws. The Department has had a longstanding policy, reflected in a written 1977 memorandum of understanding, deferring to the FEC in investigating election law violations.
>
> We have brought criminal prosecutions only where the law is clearly established and clearly violated. To establish a criminal violation, we have to show that the defendant acted knowingly and willfully, that he consciously violated the law. The law governing these allegations is far from clear and it is impossible to conclude on what we know that anyone could have violated it knowingly and willfully. At the same time, the FEC is pursuing this and if they determine that there is evidence, they will refer it to us and if it reflects on a covered person and is specific and credible with respect to a covered person, I will trigger the Act.
>
> First, at the time of the ad campaigns at issue, the Department of Justice and the FEC had taken the position that coordination between a party and its candidate was irrelevant. What mattered was the content of the advertisement, what it said.
>
> Secondly, the content tests are very unsettled. Courts differ on whether the proper standard is express advocacy or electioneering message. The courts differ over the application of these tests in particular cases. ...
>
> The Department has no experience in judging the content of political advertisements. We have never investigated such a matter. This is precisely the sort of thing which should be deferred to the FEC under the structure of the Act. We are aware that the FEC already has under investigation allegations that soft money was misused during the 1996 election by the parties and the candidates to evade the spending limits. If the FEC uncovers evidence of a knowing and willful violation of the election laws that warrants criminal prosecution, I am sure they will refer it to us under established procedures, and if it triggers the Independent Counsel Act, I will do so.

This is hardly a matter that is "unresolved" or left hanging in

nothing to be gained by further debate of the issue, and will address only a few points with respect to Common Cause.

First of all, the Report misrepresents the course of discussion on this issue. The Report alleges that the Common Cause analysis was based on a "parochial and professorial application" of the Independent Counsel Act, that our handling of the matter has been "marked by gamesmanship" and is "intellectually dishonest." The Report argues that we were "hostile" to the triggering of the Act, and thus "had to find a theory" to avoid conducting an investigation.[9]

The authors' attribution of bad faith to those of us who have disagreed with them on various issues is nothing short of shocking. A range of experienced attorneys, including an attorney from the Appellate Section, have devoted innumerable hours of work to exploring these complicated issues, and there is simply nothing in any of our exchanges with Messrs. LaBella and DeSarno that would merit such attacks on the integrity of these attorneys. We have explored every argument advanced by them concerning the Common Cause allegations with consideration and respect, but have in the end disagreed. It is outrageous for this Report to twist these attorneys' good faith efforts to explore these issues by labelling them with pejorative terms, or to suggest that their -- and my -- views were corrupted by a determination to avoid any given result.

Indeed, the Common Cause allegations were analyzed without respect to the Independent Counsel Act. Those allegations were rejected on their merits as not suggesting potential violations of federal criminal law, based on the information available to us. While we did not conclude that the handling of soft money by the two campaigns was necessarily in conformity with the Federal Election Campaign Act (FECA), we did conclude that given the state of the law, that conduct could not have been a willful violation of the law, and thus could not be prosecuted criminally. We further concluded that this sort of regulatory issue is one that is squarely within the province of the FEC and properly handled by it both as a matter of administrative law and pursuant to our long-established MOU with the Commission, which

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limbo. The Attorney General could not have been clearer.

[9] This allegation would surprise the numerous subjects of ongoing independent counsel investigations. When specific and credible evidence of a potential violation of law by a covered person warrants further investigation, the record shows that no one involved in this process has hesitated to recommend that an independent counsel be appointed.

allocates initial responsibility for such matters to the FEC. We are unable to identify any "gamesmanship," or "parochial and professorial" reasoning in any of these determinations.

The Report argues that the Attorney General's conclusion with respect to the Common Cause allegations "virtually ignores the possibility that there exists a section 371 conspiracy to defraud the United States by violating the civil regulatory framework set out in the FECA." I do not dispute that a conspiracy to engage in concerted violations of the law, even the civil law, may support a criminal prosecution, though I believe there are sound reasons why any such prosecution should be approached with care, and why in most such cases deferral to the civil authorities is likely to be the most appropriate remedy. But no one "ignored" this "significant speed bump" that the Report claims this theory represents.

To the contrary, the Attorney General has addressed the ultimate issue here squarely. She has decided that no amount of coordination between the candidates and the party can, by itself, constitute a violation. Only the content of the ads can establish even a civil violation of the FECA.

Since the authors of the report would find a potential crime on these facts it would seem that they argue that it is a conspiracy to defraud the United States even where there is no civil violation, that is, where the subjects have conformed their behavior to the law. A recent Appellate Section memorandum rejects their theory, as should all who give it any serious consideration.[10]

The Attorney General has concluded that these allegations are properly addressed initially through the established regulatory processes of the FEC, not as a matter of criminal law. This is not sophistry or evasion of our responsibility to enforce the criminal law, as the Report seems to suggest. Rather, it is an analysis based on the appropriate allocation of enforcement responsibility in a complicated regulatory scheme. Our deference to the FEC is an established policy of the Department,

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[10] Any conspiracy requires specific intent, and the Attorney General's conclusion was that given the state of the law at the time, any violation of the FECA based on the conduct alleged by Common Cause could not be proven to have been a purposeful violation of a statutory standard known and understood by the offender. National Right to Work Comm. v. FEC, 716 F.2d 1401 (D.C. Cir. 1983) (civil enforcement action). Thus, if there were violations of the civil regulatory scheme -- and that is a determination properly made in the first instance by the FEC -- there is no basis on which to conclude that they may have been willful.

DOJ-FLB-00148

memorialized in a formal MOU, not a theory concocted on the spot to avoid application of the Independent Counsel Act.

The Report's argument that the only reason for our decision was the involvement of the President and other high-level officials is preposterous. Indeed, such allegations under any other circumstances would never have been considered for prosecution, and would never have received the serious exploration and consideration that have marked our review of the Common Cause letters. In fact, in the history of the election laws we have never investigated criminally any allegation of improper coordination of campaign advertising, or improper control of a party's ads by a candidate. The only reason this case has merited the attention it has received is precisely because it involves the President.

(g) The Loral Investigation

It is true that with regard to the Loral matter, the Task Force is examining a transaction without predicate. That happens from time to time when there is substantial public concern about a matter. However, at present, there is not a scintilla of evidence -- or information -- that the President was corruptly influenced by Bernard Schwartz, as the authors concede. It is stretching our investigative prerogative even to open an inquiry into the Loral transaction; it would be absurd -- and contrary to the law -- to refer it to an independent counsel without any evidence suggesting that any wrongdoing occurred.[11]

The Report suggests that there will be a conflict of interest with respect to this inquiry because two high-level Department officials, both of whom have dealt closely with the Task Force, are potential witnesses. That is an issue that is commonly dealt with, and has been dealt with in this case, by

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[11] The Report cites two documents which it suggests weakly "may establish a principled reason" to handle this matter under the Independent Counsel Act. One is a letter to National Security Counsel head Samuel Berger from a Loral executive urging a quick decision on the matter, because delay would result in serious financial losses to the company. We see nothing in this letter to suggest a corrupt deal between Loral and the Administration. The second document is a memorandum authored by Ickes three and a half years earlier, naming Schwartz as an individual that the President should call to ask for assistance in fund-raising in the course of the campaign. As set out earlier, we decline to infer that action taken on behalf of a supporter of an elected official is presumed to be corrupt, and there is nothing in these two documents that establishes anything other than that Loral was seeking action and Schwartz was a supporter of the President.

DOJ-FLB-00149

recusals. We see no reason why this would create a conflict of interest for the Department, were it to continue to investigate this matter. Department employees frequently are witnesses in criminal matters.

Similarly, the fact that this transaction involves a matter as to which the Department recommended a course other than that which the White House followed does not create a conflict of interest. The events are historical; we are not in a position where our investigation could be viewed as a cudgel to try to force the White House into following our recommendation. The Department frequently is asked for its views on a variety of governmental actions. Never has it been suggested that this creates a later conflict of interest if allegations of criminality arise. If we commented on a piece of legislation, would it then be a conflict of interest for us to investigate allegations that a legislator who voted contrary to our views took a bribe?

Finally, the document production issues raised by the White House with the Department are the sort of routine give-and-take among Executive Branch agencies that occur all the time. They do indeed create some tensions and difficulties, but they are common and not the sort of conflict of interest that would justify resort to the Independent Counsel Act.

DOJ-FLB-00150

MEMORANDUM

To: Chuck La Bella

[redacted]om: [redacted] Attny Name

1/7/98

Subj: Participation in Campaign Finance Task Force

Pursuant to the MOU executed at the request of the EOUSA, the period of my on-site participation in the Campaign Finance Task force ends on January 31, 1998. I plan to give notice to the Lansburgh that I will vacate my apartment on that date.

As you know, the substantive matter for which I have been individually responsible is the assessment of the allegations first made by Common Cause in October 1996. For the reasons set out below, I do not believe I have a further role to play in the Department's response, if any, to those allegations. I will continue to assist in whatever way I can the Task Force effort to bring other pending matters to indictment or declination, as appropriate. Further, if any case is later set for trial, I will be glad to play any part in the prosecution which you find helpful.

The Common Cause Allegations

From the beginning, you made it clear to me that the goal of the Task Force was, as expeditiously as possible, to close matters devoid of prosecutorial merit, to bring to indictment those matters with merit, and to recommend appointment of independent counsel when warranted. You have been steadfast in adhering to that goal. As a result, I approached the Common Cause allegations with no preconceptions, and with no predisposition as to how they should be handled. Initially, I attempted to answer the simple-minded questions I always ask when first confronted with allegedly fraudulent conduct (Did something bad/harmful happen? Do we know who is responsible? Is there a criminal remedy for the conduct?).

In fairly short order it became clear that the purpose of the presidential public funding statutes had been corrupted by the two major parties and their candidates, both of whom intentionally spent millions of dollars beyond their voluntarily agree-to spending limits. In addition, the pressure to produce those millions led, I believe, to many, if not most, of the election law violations that permeated political fund raising in 1995-96.

The pool of persons potentially responsible for this corruption is both limited and well known. There are criminal statutes applicable to this conduct, and at this point we simply cannot say that the conduct is not prosecutable, as a matter of law. What we do not know, without investigating, is whether or not we could responsibly initiate criminal prosecutions.

That, to date, we have been unable to investigate the Common Cause allegations in a straightforward way has been a great personal and professional disappointment. But, I believe the public has been most dis-served by the way in which the "whether to investigate" issue has been approached, debated, and resolved. Never did I dream that the Task Force's effort to air this

issue would be met with so much behind-the-scenes maneuvering, personal animosity, distortions of fact, and contortions of law.[1] (It also is my impression that many involved have not read the pertinent cases.) All this, not to forestall an ill-conceived indictment, not to foreclose a report making an independent counsel referral, but to prevent any investigation of a matter involving a potential loss of over $180 million to the federal treasury.

You, of course, are well informed of my views. By no means do I minimize the real impediments to a prosecution. Yet, nearly every day something developed in other investigations comes to our attention, which has significance to the Common Cause allegations. As an example, I have recently been directed to the deposition testimony of Harold Ickes in which he states: that only he and Sosnick had the power to authorize payment of the media consultants' bills [9/22/97 Senate Depo. p. 62]; that he decided whether the DNC or C/G Committees would pay a particular bill [9/22/97 Senate Depo. pp. 64-5]; and that while he thinks that the DNC and C/G Committees signed separate contracts with the media consultants, he's not sure he ever saw them [9/22/97 Senate Depo. pp. 78-9]. Thus, it appears that the President's Deputy Chief of Staff (who was not an employee of the DNC) determined which media ads the DNC paid for, without regard to the DNC's contractual liability, if any.

I realize that I have moved from a neutral position to that of an advocate for investigating the Common Cause allegations. Further, I now believe that the only responsible step, likely to uncover the facts, is a grand jury investigation. That position, coupled with the mutual loss of confidence evident between myself and those outside the Task Force who have weighed in on this issue, leads to the inevitable conclusion that I can no longer play a useful role in the evaluation or pursuit of the Common Cause allegations.

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[1] I will not repeat the details, most of which you already know. While I recognize that there have been legitimate disagreements, some positions urged in support of avoiding any investigation have been so plainly wrong as to be disheartening (e.g., the suggested referral to the FEC, on the misapplication of the MOU with that agency, with the claim that the FEC cold refer the case back after it checked out the ad content, but with the unspoken reality that no criminal investigation would ever happen -- certainly not within the three-year statute of limitations; or the contention that an independent counsel referral must be made immediately if any investigation is even authorized).

December 4, 1998

MEMORANDUM

To: Director Freeh

From: Larry Parkinson

Subject: Independent Counsel Matter: Potential Election Law Violations Involving President Clinton and Vice President Gore

For purposes of your consultation with the Attorney General on the pending independent counsel matter, this memorandum is intended to summarize our discussions on the key issues. For the reasons stated below, it is appropriate to recommend that she seek the appointment of an independent counsel to investigate potential election law violations involving President Clinton and Vice President Gore. Because similar allegations have been made against the Dole presidential election campaign, the independent counsel should be authorized to investigate those allegations as well.

This memorandum is divided into two parts. The first section focuses primarily on the narrow question presented at the end of this 90-day preliminary inquiry: is the advice of counsel defense sufficient for the Attorney General to conclude by "clear and convincing evidence" that the President and Vice President lacked the requisite criminal intent? The second section discusses broader issues that justify the appointment of an independent counsel (regardless of the outcome on the narrow legal issue).

I. The 90-Day Preliminary Inquiry

A. Threshold Issues

The Radek/Vicinanzo memorandum dated November 20, 1998 ("DOJ memo") streamlines the discussion by resolving correctly several important threshold issues. First, the memo defers appropriately to the FEC auditors' conclusion that the DNC-financed "issue ads" can be attributed to the Clinton/Gore campaign committee, thereby violating the spending limits. That conclusion obviously has been strengthened by this week's public release of the Audit Division's final report. The audit report, along with the very strong concurring opinion by the FEC Office of General Counsel, makes a compelling statement that the Clinton/Gore campaign

illegally benefited from the media campaign.[1] Therefore, the basic facts that led to the initiation of the 90-day preliminary inquiry -- the audit findings -- have become stronger.[2]

The DOJ memo also resolves the issue of control, after setting forth a good factual summary of the genesis and development of the issue ad campaign. The memo correctly concludes that the ad campaign was controlled in all major respects by the White House:

> [T]here was little dispute that the DNC issue ad campaign was not only coordinated with the White House but controlled by it. Fowler described the White House control as "near absolute."

DOJ Memo at 29. Among many other things, the memo relies on the April 17, 1996 from Ickes to Fowler establishing that all DNC expenditures were subject to prior White House approval.[3]

With respect to the purpose of the media campaign, the DOJ memo appears to give credence to the witness statements that the primary purpose of the issue ads was to aid the Democratic party and not to reelect the President. Such statements appear to be disingenuous at best; the documentary evidence clearly indicates that the primary purpose of the ads was the reelection of the President. In fact, the FEC Audit Report takes the matter a step further: not only does it flatly reject the argument that the ads

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[1] As you know, the career FEC auditors and lawyers reached similar conclusions about the Dole campaign.

[2] The FEC Commissioners met in public session on December 3, 1998. Campcon had agents in attendance and has reported that several of the Commissioners appeared hostile to the Audit Report. As expected, the final resolution by the Commission is uncertain. One thing that does appear certain, however, is that there will be no resolution for at least several months. Thus, there appears to be little reason for the Attorney General to seek a 60-day extension of the preliminary investigation.

[3] This total White House control of DNC expenditures raises a significant legal issue. As you will recall, in our January 30, 1998 memorandum to DAG Holder, we argued strongly that this was a case about "control" and not mere "coordination." Based on their discussions with the FEC auditors and attorneys, our agents believe that the FEC has acquired only a fraction of the evidence that Campcon has obtained regarding "control." When asked how they would treat a situation in which there was total control of committee expenditures by a campaign, the FEC staff responded that it was an intriguing scenario with which they had never been faced.

were not intended primarily to reelect the President, it essentially alleges an outright fraud:

> The Audit Division does not dispute that the advertisements in fact address pending political issues. However, the facts ascertained during the audit indicates that the primary purpose for addressing these issues was to assist President Clinton's reelection. It further appears that those facts which might otherwise demonstrate that the purpose and "targeting" of the advertisements were related to an overall party agenda (rather than the President's reelection) are true because of a deliberate effort to conceal the actual purpose of the advertisements.

FEC Audit Division Report on Clinton/Gore '96, at 42 (emphasis added).

Although its own analysis of "purpose" leaves something to be desired, the DOJ memo does reach a very significant conclusion: "it is clear that [President Clinton and Vice President Gore] both were sufficiently involved to be deemed coconspirators or aiders and abettors of any potential criminal violations of the FECA or PPMPAA." DOJ Memo at 31. This is an enormously significant conclusion in light of the FEC audit findings that there were violations of the relevant statutes. We are left, then, with the sole issue of whether the President and Vice President committed such violations "knowingly and willfully."

B. Advice of Counsel Defense

I view the advice of counsel defense as fairly strong in this case, but not strong enough to satisfy the "clear and convincing" standard under the Independent Counsel Act. I strongly disagree with the statement in the DOJ memo that "it is hard to imagine a more compelling set of facts establishing an advice-of-counsel defense." DOJ Memo at 40. While there appears to be no dispute that two of the lawyers representing the DNC and Clinton/Gore -- Sandler and Utrecht -- were involved significantly in the ad campaign process, the DOJ memo itself notes certain factors that cut against a viable advice of counsel defense.

1. No Direct Contact Between Lawyers and Principals.

The memo points out that where the attorneys never advise the principal clients directly, this undercuts to some degree the advise of counsel defense. It appears to be undisputed that the two experts, Sandler and Utrecht, never had direct contact with the President or Vice President. Instead, their advice was filtered through intermediaries. The principal intermediary was

Harold Ickes, who is, after all, the subject of a separate investigation for perjury. (While the perjury allegations are unrelated to media fund issue, does it make sense to shut down an investigation based on an advice of counsel defense where the person actually relaying the advice is about to have his own independent counsel?)

There appears to be relatively little evidence that actual legal advice was transmitted to the President or Vice President. Instead, this seems to be a situation in which the President and Vice President were told that "lawyers were involved" and that seemed to satisfy them. (See, e.g., DOJ memo at 40: "The Vice President felt confident that Quinn, who had some expertise in this area and was a good lawyer, had ensured that the ads were legal.") While certainly relevant to state of mind, this kind of evidence is not particularly persuasive in establishing a solid advice of counsel defense.

It also appears that the President and Vice President were relying primarily on Ickes and Quinn, even though they were not acting in a legal capacity. At the time, Ickes was Deputy Chief of Staff to the President and Quinn was Chief of Staff to the Vice President. The fact that they also happened to be lawyers does not necessarily mean they were dispensing "legal advice" for purposes of analyzing an advice of counsel defense.

Finally, there is one clear indication that the legal advice of Sandler and Utrecht may not have been getting through. As noted in footnote 11 of the DOJ memo (p. 22), "Sandler and Utrecht stated that they consistently applied the 'electioneering message' legal standard, not the express advocacy standard, when they reviewed the content of the DNC ads. Yet virtually every other witness recalls Sandler and Utrecht's advice in terms of express advocacy." While the memo concludes that this inconsistency is not significant, certainly it raises some question about whether the attorneys' advice was being heard and heeded.

2. <u>The Attorneys Were Not Disinterested</u>

The DOJ memo points out accurately that Sandler, as general counsel for the DNC, and Utrecht, as general counsel for the Clinton/Gore campaign committee, "worked for organizations with an unmistakable interest in ensuring the reelection of President Clinton." DOJ Memo at 38. The memo also states that "courts have declined to instruct juries on advice of counsel where the evidence indicated that the attorney was not disinterested in the outcome." Without impugning their integrity or professionalism,[4]

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[4] Apparently both Utrecht and Sandler are recognized experts in the election law arena, which has very few

Sandler and Utrecht certainly were not disinterested in the outcome.

3. No One Sought Advice From the FEC

If the DNC or Clinton/Gore truly wanted disinterested -- and dispositive -- advice on whether the spending for "issue ads" was properly allocated, they obviously could have gone to the FEC. They chose not to, presumably because they were afraid they might receive an answer they did not like. (When I met with the FEC's Chief Auditor in September 1998, he reacted viscerally when I asked him if the DNC or Clinton/Gore had ever sought advice on these matters.)

4. The Sandler Memo

There is one clear indication that Sandler -- one of the two lawyers critical to a viable advice of counsel defense -- had doubts about whether the media campaign was violating the law. In a February 2, 1996 memo to Don Fowler, Sandler stated:

> Under [the FEC's legal] test, the DNC is bumping up right against (and maybe a little bit over) the line in running our media campaign about the federal budget debate, praising the President's plan and criticizing Dole by name.

(Emphasis added). When the same memo was sent to Ickes at the White House, it had been rewritten to state that the FEC's "electioneering message" test "is the standard we are applying (albeit aggressively) in the current DNC media campaign." When interviewed about these memos, Sandler gave a contorted explanation which led our agents to believe he was lying.

5. The Investigation Was By Definition Limited

As is true in any preliminary investigation conducted pursuant to the Independent Counsel Act, we conducted this 90-day inquiry[5] without the use of standard investigative tools. Therefore, we had to rely on voluntary production of documents, voluntary statements by witnesses, and agreed-upon attorney-client privilege waivers. While our agents felt that they received full document production from the DNC, they were not

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practitioners. Utrecht in particular is a very impressive witness, according to the agents who interviewed her.

[5] In fact, because of the deadlines required for preparation and review of the DOJ memo and subsequent deliberations, the actual investigation was approximately 60 days.

confident that all relevant White House documents had been produced. While I am unaware of any specific documents we believe to be missing, Campcon has had significant difficulties with White House document production since the Task Force began its work.

C. The "Clear and Convincing Evidence" Standard

Under all the circumstances, is it reasonable to conclude by "clear and convincing evidence" that the President and Vice President lacked the requisite state of mind? As we pointed out during deliberations on the recent Gore and Ickes matters, Congress clearly intended to set a very high threshold before an Attorney General could close a case, either before or after a preliminary investigation, on the ground that the subject lacked the state of mind necessary to commit the alleged crime. In 1987, Congress amended the Independent Counsel Act in an effort to curb what it viewed as a "disturbing" practice by the Department:

> A third problem with the Department of Justice's implementation of the statute is its practice in several cases to decline further proceedings, despite specific information from a credible source of possible wrongdoing, due to a lack of evidence of the subject's criminal intent. The decision not to proceed has sometimes been made even in the face of conflicting or inconclusive evidence on the subject's state of mind.
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> . . .
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> The Justice Department's demand for proof of criminal intent to justify continuing independent counsel cases is disturbing, because criminal intent is extremely difficult to assess, especially in the early stages of an investigation. Further, it often requires subjective judgments, which should ideally be left to an independent decisionmaker. It is not the type of factual question that the Attorney General should be resolving in light of the Attorney General's limited role in the independent counsel process and lack of access to important investigative tools such as grand juries and subpoenas.

1987 U.S.C.C.A.N. at 2159-60.

The 1987 conference agreement emphasized, "The conferees believe it will be a rare case in which the Attorney General will be able to meet the clear and convincing standard and in which such evidence would be clear on its face. It would be unusual for the Attorney General to compile sufficient evidence at that point in the process." Id. At 2190 (emphasis added).

The question is whether this is one of those "rare cases." We should bear in mind the accurate conclusion that the President and Vice President "both were sufficiently involved to be deemed coconspirators or aiders and abettors of any potential criminal violations of the FEC or PPMPAA," DOJ memo at 31. There was a conscious, well-orchestrated effort by the White House to evade the spending limits through the media campaign. Moreover, this kind of campaign was unprecedented, as the President readily acknowledged when he bragged to his supporters about how he had found a new way to spend enormous amounts of money for the campaign. Under all the circumstances, notwithstanding the potentially viable advice of counsel defense, this matter should not be closed on a "clear and convincing" finding.

II. Broader Issues: Conflict of Interest

Even if the Attorney General determines that there is "clear and convincing" evidence of a lack of intent in this 90-day matter, she should step back and consider the impact of closing this investigation. It would be fair to summarize the decision in the following way:

-- For two years, the investigators advocated a need to conduct a broad investigation of the entire campaign financing scheme conducted by the White House and the DNC, including both the raising of campaign money and the spending of that money. The media campaign was critical to the reelection and many of the apparent criminal abuses resulted from the need to keep the money flowing into the media fund.

-- For nearly two years, investigation of the media fund was largely off-limits while the Department debated internally about the scope of the campaign finance laws and whether we should defer to the FEC. In the meantime, the Task Force pursued a variety of individual cases largely independent of one another.

-- While we were debating internally on the broader issues, the FEC was actually working on a comprehensive audit of the two presidential campaigns (much to our surprise). Contrary to the prevailing view within DOJ, the FEC auditors found massive violations of the law by both presidential campaigns.

-- Faced with evidence of legal violations, the Department was forced to initiate a preliminary investigation under the Independent Counsel Act.

-- The preliminary investigation consisted primarily (but not exclusively) of an examination of an advice of counsel defense. We went to the subjects and their lawyers and asked them what happened. They informed us that the subjects had no criminal intent, notwithstanding the apparent violations. After investigating that issue, we agreed with the subjects and closed the entire matter, with one exception:

-- The exception is the related investigation of the Dole campaign. Since we have no evidence relating to an advice of counsel defense for that campaign, we will keep that investigation alive, particularly in light of the FEC's recent Audit Report.

The media fund/Common Cause allegations have always been the biggest piece of the campaign finance scandal. In large part, those allegations led to the creation of the Campcon Task Force in the first instance. Nevertheless, those allegations have never been investigated in any comprehensive or organized way.

Nearly a year ago (January 1998), we sent a detailed memorandum to the Department seeking a comprehensive investigation of the Common Cause allegations. In that memo, we stated:

> "[T]he Common Cause allegations are the most serious of those issues raised in connection with the investigation of campaign finance." In a series of well-researched submissions, Common Cause has described a scheme to circumvent the FECA and presidential funding laws on a breathtaking scale. For knowing and willful violations of these laws, Congress provided for criminal penalties.
>
> It has been nearly 16 months since Common Cause first brought these allegations to the attention of DOJ. The Department has on more than one occasion written to Common Cause stating that the Task Force is "reviewing a variety of campaign financing issues arising out the last national election" and is "examining" the soft money issues raised by Common Cause. In fact, the Task Force has undertaken no actual investigation of these allegations. Consequently, some of the most fundamental questions relating to the 1995-96 presidential campaign remain outstanding:
>
> -- How were the campaign funds raised?
>
> -- How were they spent?
>
> -- How were they allocated and reported for FECA purposes?

-- Who made the fundaising and spending decisions?

While the Task Force has uncovered partial answers to these questions, in particular the last one, it is not because we have addressed them in any systematic investigative fashion. Instead, our information has come primarily from Common Cause, the newspapers, and tangentially from our investigation of other matters.

Very little has changed in the last year. After several months of memos and discussions last winter, in February the Attorney General took under advisement the matter of whether the Common Cause allegations could be investigated. We never received a response until July of 1998, when we read (with great surprise) the Attorney General's congressional testimony in which she stated that the Department was deferring to the FEC.[6]

Our January 1998 memorandum also recommended the immediate appointment of an independent counsel:

> Because the Common Cause allegations clearly involve the President, they must be investigated by an Independent Counsel. Moreover, the Attorney General should seek the appointment of an Independent Counsel immediately. Since the Department has had the allegations for nearly 16 months, a preliminary inquiry does not appear to be an option. Finally, we once again would incorporate by reference the FBI's prior written submissions recommending that, independent of the mandatory provision of the Independent Counsel statute, the Attorney General should exercise her discretionary authority pursuant to the political conflict of interest provision.

Notwithstanding the passage of time, our arguments remain the same. If anything, the need for investigation has increased.

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[6] In April 1998, the Task Force investigators developed a investigative plan and dubbed it the "Media Fund" plan. Because it was never clear how the Task Force could investigative the "media fund" while steering clear of the Common Cause allegations, the investigative plan was necessarily truncated. In any event, beginning in May, the investigators began to conduct the "media fund" investigation and obtained a significant amount of information that became very useful during the current 90-day preliminary investigation. That investigation consisted primarily of interviews of state party officials in a dozen key battleground states (focusing on the use of the state parties as conduits for the DNC), document production by the media consultants, and interviews of three DNC employees (Brad Marshall and two lower-level employees).

Intentionally or not, the Department has deferred to the FEC, which has spoken publicly in a resounding way.

For nearly two years, the Department has been investigating the potential criminal conduct of the President and Vice President. That is an inherent conflict of interest that the Independent Counsel Act was designed to address. Even if the Attorney General concludes by "clear and convincing evidence" that there is a lack of intent, she should exercise her discretionary authority and seek the appointment of an independent counsel.

MEMORANDUM

TO: James K. Robinson
Assistant Attorney General
Criminal Division

FROM: [redacted] Attny Naeve

Re: Independent Counsel Matter: Al Gore, Jr.

I have reviewed the Public Integrity memorandum we received today on the Independent Counsel matter concerning the Vice President. I have also spoken with Chuck La Bella and the agents who worked on the investigation. Although we have had limited time to consider the matter, we have the following immediate observations:

1. The Section 1001 question as set forth in the memorandum (p. 18) turns on whether the Vice President believed the media fund was financed with soft money and whether he believed the hard money donation limit was $2,000. The first question however is more properly whether he believed the media fund was financed exclusively with soft money. This is not simply a semantical difference since there is no doubt that the media fund was financed with soft money and that he knew it to be so. But whether there was a hard money component is the issue.

2. Brad Marshall of the DNC has been interviewed since the draft was written. His recollection is the same as Leon Panetta's i.e., that the 65/35 split was discussed at the November 21 meeting in the context of the media fund. In fact the statement was made by him. In response to a question, he said something to the effect that on the spending side of the media fund, we are averaging 65% soft and 35% hard.

Thus, we now have Panetta, Marshall and the contemporaneous Strauss notes (with quotation marks suggesting direct statements) all indicating that this topic was raised. On the other side is a group of people who basically "don't recall". This is a classic white collar scenario. Yet the memorandum gives more credence to the "don't recalls" than to the explicit memories. Certainly, a lineup like this (although at the time the memo was written Brad Marshall had not been interviewed) warrants additional inquiry. Some of those relied on e.g., Rosen, have their own credibility problems. (The La Bella Report makes reference to some behavior by Marvin Rosen that is, at the very least, quite questionable.) As for Strauss, the memorandum seems to rely more on his faulty recollection than on his contemporaneous notes.

3. The memorandum does not reference the Vice President's press conference wherein he made a statement to the effect that the phonecalls were designed to solicit money for the campaign. That statement stands in stark contrast to his later comments when interviewed for this investigation. And in placing all this in context, it has to be remembered that the phonecalls were made with a Clinton/Gore credit card. That suggests that it was indeed campaign related.

DOJ-VP-00489

4. The agents' notes and recollections of various interviews differs in some important respects from the memorandum. This is most pronounced as to Leon Panetta, who the agents view as a very credible witness, but who is pictured in the memorandum as having an "evolving memory" (p.21) and therefore lacking all credibility. To give just a few examples of the disparity between the agents and the memo:

a. The memo (p. 11) says Panetta's "impression" was that the Vice President was following the hard money discussion. The agents' notes reflect that Panetta said the Vice President was listening attentively.

b. Page 10, fn. 11 suggests that the Media Fund was not an item in the DNC budget during the Spring and Summer of 1995. However Watson recalled the agenda of the June 8, 1995 meeting included the Media Fund.

c. Page 11, fn. 12 says that Panetta may have contradicted himself. The agents notes do not support this. Panetta recalled the general topic discussed though not the specific details.

d. Page 12: The memo suggests that Rosen recalled the focus of the fundraising proposals presented to the President and Vice President during the November meeting was on raising soft money. The agents' notes indicate that Rosen had no recall whether the events were intended to raise soft or hard money.

e. Page 14, n. 15: The footnote concludes that Panetta, among others, did not understand the statement made by Pastrick at the top of the footnote. In fact, Panetta understood clearly the first part of the statement, i.e., that every DNC expenditure during a federal campaign is required to have a hard money component. The only thing Panetta did not know was the $20,000 limit.

f. Page 15, n. 16 The memo quotes Ickes' statement that Strauss was very sophisticated in matters of soft money/hard money, and therefore may have written notes of greater detail than actually discussed. However, the memo does not mention Strauss' own statement (reflected in agents' notes) that he was not familiar with these issues as they pertained to the White House and the DNC. Strauss was adamant that those notations reflected comments made at the meeting.

g. Page 16: The memo says that Gore stated he and the President did not often attend DNC budget meetings like that held on Nov. 21. In fact, the agents report that most witnesses indicated that the President and Vice President generally did attend the DNC budget meetings.

5. The memorandum at least twice refers to the fact that the Vice President might well have left the meeting at the point in which the hard money media fund discussion took place. Not

only is there no evidence that this occurred (i.e., no witness recalls his leaving) but the agents notes reflect that Ickes told them that when he conducted meetings (and he was conducting the meeting on November 21), he would halt the proceedings if the President or Vice President stepped out of the room; the meeting would resume when they returned. Therefore, rather than presume the Vice President was not present, the presumption must be that he was..

6. The memorandum notes (p. 15, n. 16) Ickes' speculation that Strauss may simply have been penning his own thoughts rather than recording statements made at the meeting. The memorandum does not mention that the Vice President conceded that if the statement were in the Strauss notes he presumes the statement was made; he simply has no recollection of it.

7. The agents disagree vehemently with the characterization of the Panetta interviews as set forth on pp. 20-21. Specifically, they assert that he did not change his statement, although the memo says he did so three times. He began his interview, as did all the witnesses, stating he had no specific recollection of the meeting. In both interviews he indicated that there was a discussion at the Nov. 21 meeting concerning the hard and soft components of the media fund. His recollection was not derived solely from the Ickes memorandum, although the Ickes memorandum supported his recollection.

On behalf of both Chuck and myself, we have some observations on the overall inquiry[1]:

As the memo recognizes, there are two separate questions to be resolved, one involving 607 and the other involving 1001. To some extent of course they are intertwined. As to the 607, given a policy of non-prosecution absent aggravating circumstances, the question is whether the information we now have presents any aggravating circumstance. Certainly a possible false statement on the issue could be seen as such.. Therefore, unless we can dismiss absolutely the claim that there was a false statement, the 607 issue at least must be considered.

In sum, we think given the new evidence i.e., Marshall, Panetta and the Strauss contemporaneous notes, along with some preexisting evidence, including the Vice President's press conference, his use of the Clinton/Gore credit card, and the incrediblity of his claim not to recall memos sent to him and topics discussed in his presence, it is impossible to close out this case. Given the failing recollection of so many witnesses, at the very least one would want to put into the grand jury several of these witnesses before closing out an investigation. A grand jury appearance under oath may well jog one's vague recollections as recounted in a voluntary interview. Grand jury is not an option during this stage of the investigation, but would be if this were turned over to an independent counsel.

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[1] Both Jim De Sarno and Jeff Lampinski are out of town today and could not weigh on this. Therefore, the limitation of the concluding portion of the memo is not meant to indicate that the FBI would not be in agreement if Jim and/or Jeff were available. We simply do not know and therefore do not include them in this final portion.

There is a sense we all share that at the end of the day the facts involving the Vice President's calls and statements would not warrant prosecution. But that is not the question we face at this point. The question we now face is whether further inquiry is warranted on both 607 and 1001. The answer we believe is yes.

Karen Skelton
04/23/96 01:55 PM

To: Ellen L. Ochs/[redacted]
cc:

Subject: Re: Coffee list

I do not remember asking, but I may have. These are FR coffees right? Your tossing me a copy of the list is fine whenever you get it.

Karen

COFFEE December 15, 1995

POTUS

David Bonderman
Texas Pacific Group
Ft. Worth, TX

Richard Blum
Richard C. Blum & Associates
San Francisco, CA

Dr. Robert Elkins
Integrated Health Services
Owing Mills, MD

H. Lee Godfrey
Sussman Godfrey
Houston, TX

Hon. Carl T. C. Gutierrez
Governor
Agana, Guam

Bennett LeBow
Brooke Management Company
Miami, FL

Carmen Lunetta
Port Director
Miami, FL

Elaine and Gerry Schuster
Massachusetts

Shelton Smith
Smith, Urquhart, Martin & Mitchell
Houston, TX

Alan Solomont
ADS Management
Andover, MA

Donald Sussman
Paloma Partners Management Company
Greenwich, CT

Sydney Topol
The Topol Group, Inc.
Boston, MA

Arief Wiriadinata
GeoPacific Link
Springfield, VA

00426

June 15, 1995

Dr. Hasjim Ning
Alexandria, Virginia

Dear Hasjim:

I was so sorry to learn of your health problems. You are in my thoughts and prayers during this difficult time.

Sincerely,

BILL CLINTON

BC/MS/SH/ws (Corres. #2299301)
P-102

DO NOT MAIL
RETURN TO: Yusuf Khapra, 174 OEOB

F 0033816

EXHIBIT
12

CO 293 (Rev. 8/91) Subpoena to Testify Before Grand Jury

United States District Court

THE DISTRICT OF COLUMBIA

TO:

Ann Frank Lewis

SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:
☐ PERSON ☑ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE	COURTROOM
United States District Courthouse 3rd St. & Constitution Ave., N.W. Washington, D.C. 20001	3rd Floor
	DATE AND TIME August 29, 1997 at 9:00 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

Please See Attachment

☐ *Please see additional information on reverse.*

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE OR CLERK OF COURT	DATE
Nancy M. Mayer-Whittington, Clerk and deputy clerk Margaret A. Poier	August 13, 1997
This subpoena issued upon application of the United States of America	NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY Laura A. Ingersoll/Peter Ainsworth Trial Attorneys Public Integrity Section, Criminal Div. U.S. Department of Justice 1001 G Street, N.W., Suite 310 Washington, D.C. 20001 202-[illegible]

COURT FOR THE DISTRICT OF COLUMBIA

*If not applicable, enter "none."

EXHIBIT 13

ATTACHMENT

For the period January 20, 1993, through the present, all original documents and records or -- where originals do not exist -- copies of all documents and records, as specified below. As used herein the terms "documents" and "records" include memoranda, correspondence, minutes of meetings, messages, notes, e-mails, facsimiles, checks, deposits, invoices, appointment logs, calendars, diaries, journals, telephone messages, telephone logs, telephone bills, ledgers, balance sheets, contracts, and all other materials, whether in written form or in the form of other media, mechanical or otherwise, such as computer disks, audio tapes, video tapes, and photographs.

If any portion of the document or record is responsive to this subpoena, the document or record shall be produced in full without redactions.

The documents and records to be produced are those documents and records within your personal custody or control, as follows:

(1) All documents and records relating or referring to political fund-raising or campaign finance meetings or strategy sessions which occurred in the Executive Office of the President.[1]

(2) All documents and records relating or referring to political fund-raising solicitations by the President, Vice President, First Lady, or Mrs. Gore. Such documents and records shall include telephone records, call sheets, Clinton/Gore Financing call sheets, Democratic National Committee (DNC) Financing call sheets, "thank you" letters, notes or persons present when calls were made, records of originating telephone call location, records of billing, to include, but not limited to, DNC and Clinton/Gore Campaign calling card information and U.S.

---

[1] For the purpose of this subpoena, the "Executive Office of the President" is defined as each unit within that Office and includes, without limitation, the Executive Residence Usher's Office, the residence of the President of the United States, the residence of the Vice President of the United States, the White House Office, the Office of the Vice President of the United States, the Council of Economic Advisors, the Council on Environmental Quality, the National Security Council, the Office of Administration, the Office of Management and Budget, the Office of National Drug Control Policy, the Office of Policy Development, the Domestic Policy Council, the National Economic Council, the Office of Science and Technology Policy, the Office of the United States Trade Representative, and all offices of all persons working for or on behalf of each of the above-mentioned entities.

Government calling card information.

(3) All documents and records relating or referring to breakfasts, coffees, dinners, and social events, which were sponsored by the DNC and/or the Clinton/Gore Campaign, and which occurred in the Executive Office of the President, including, but not limited to, guest lists, invitations, records of contributions or donations given by attendees, planning information, and cost and reimbursement information.

(4) All documents and records relating or referring to any guests' overnight stays at the White House, including, but not limited to, cost and reimbursement information.

(5) All documents and records relating or referring to DNC and/or Clinton/Gore Campaign donor relations and assistance, including, but not limited to, any and all records of "perks" or benefits afforded donors, such as use of the President's boxes at the Kennedy Center, Warner Theater, and Wolf Trap; State dinners; movies at the White House; Rose Garden ceremonies; use of White House tennis courts; Saturday Morning radio addresses; travel aboard Air Force One and Air Force Two; and lunch in the White House Mess.

(6) All documents and records relating or referring to the White House database (WHOdb).

(7) All documents and records relating or referring to money offered or given by or through Yah Lin Trie (aka "Charlie" Yah Lin Trie) to the Presidential Legal Expense Trust.

(8) All documents and records relating or referring to the following persons:

(a) P. Kanchanalak
(b) Pauline Kanchanalak (aka Pornpimol Parichattkul)
(c) Praitun Kanchanalak
(d) Arief Wiriadinata
(e) Soraya Wiriadinata
(f) Hashim Ning
(g) Yogesh Gandhi
(h) John Huang
(i) Jane Huang
(j) George Psaltis
(k) Tad Sioeng
(l) Jessica Elnitiarta
(m) Duangnet Kronenberg (aka Georgie Kronenberg)
(n) Wang Jun
(o) Maria Hsia
(p) Howard Glicken
(q) Sumet Chearavanont
(r) Dhanin Chearavanont

(s) Johnny Chien Chuen Chung
(t) Sarasin Viraphol
(u) Angelo K. Tsakopoulos
(v) John Hoon Kyung Lee (aka John H.K. Lee, Lee Kyung Hoon or Kyung Hoon Lee)
(w) Keshi Zhan
(x) Yah Lin Trie (aka "Charlie" Yah Lin Trie)
(y) Roger E. Tamraz
(z) Ng Lap Seng
(aa) James T. Riady
(bb) Mochtar Riady

including, but not limited to, documents and records reflecting the existence or substance of any communications or meetings with, visits to the White House by, political contributions from, or activities involving, those listed above.

(9) All documents and records relating or referring to:

(a) the Lippo Group
(b) LippoBank
(c) Cheong Am America
(d) K & L International
(e) K & L International Partners, Inc.
(f) Psaltis Corporation
(g) Hip Hing Holdings, Ltd.
(h) Automated Intelligent Systems, Inc.
(i) Ban Chang Group
(j) Ban Chang International
(k) San Kin Yip International Trading Corp.
(l) Daihatsu International Trading, Inc.
(m) Charoen Pokphand Group (aka CP Group)

and their parents, subsidiaries, affiliates, officers, directors, owners, employees, shareholders, agents, or assigns, including, but not limited to, documents and records reflecting the existence or substance of any communications or meetings with, visits to the White House by, political contributions from, or activities involving, those listed above.

June 4, 1999

TASK FORCE CASES
(Additions to last list are in bold)

Independent Counsel Matters:

Bruce Babbitt
Harold Ickes
Vice-President Gore
President Clinton (FEC)
Alexis Herman (agents only)
Hazel O'Leary (agents only)

Cases in Which Charges Have Been Filed

Charlie Trie and Antonio Pan (D.C. indictment)
Charlie Trie (Arkansas indictment)
Maria Hsia (D.C. and L.A.)
Johnny Chung
Franklin Haney
Howard Glicken
Mark Jimenez (FECA allegations in D.C.)
Mark Jimenez (tax and FECA charges in Miami)
FutureTech (tax evasion)
Juan Ortiz (conduit contribution, misdemeanor)
Pauline Kanchanalak and Georgie Kronenberg
Yogesh Gandhi
Michael Brown
Gene, Nora and Trish Lum
Robert S. Lee
John Huang
Berek Don

Ongoing Investigations

The Lippo Group and Bank
Haley Barbour
RNC kickbacks
Don Fowler, Roger Tamraz ~~and CIA Bob~~
Ted Sioeng and Jessica Elnitiarta
Triad
Angelo Tsakopoulous
~~In re Libya (5 to Congressman)~~

Ernie Green
Charles Duncan
Robert Luu
Lawrence Penna, David Chang, Vince Grieco and Carmen Alampi (re contributions to Toricelli campaign)
Richard Park
Mark Middleton — reinvigorated in light of Trie debriefing
C.J. Wang

Investigations Which FBI and the Task Force have Closed (awaiting AG determination)

George Psaltis
VPOTUS Obstruction (relating to finding of Strauss memo)
March Fong Eu
Global Resources Management
Jude Kearney
Molten Metals (referred to SEC in Boston)
White House Events
coffees, overnight stays, Whodb, Air Force One and Two
Ruben Velez
West Publishing, Vance and Dwight Opperman
Unique Gems
Charlie Chiang
In re Iran (MEK members as conduits)
In re Pakistan (Akram Chaudry)
Charles Parish
Larry Wallace
DNC scheme to defraud (re skimming of first $20,000)
In re Cuba
In re India
(a) $ to Indian ambassador to funnel into U.S. campaigns
(b) $ to Rep. Rohrbacher
In re Bangladesh
In re Afghan Foundation
In re Libya (Reagan/Bush campaign)
In re Iraq
In re Japan
In re Syria
In re Sudan
In re Saudi Arabia
Akram Chaudry

Investigations Not Yet Closed but Likely to be Shortly

Charles Parish
Vote Now '96
the Wiriadinatas
Dan Burton — closing memo sent to Public Integrity
~~Mark Middleton~~
In re Pakistan
(a) Dr. Bhatti
(b) ~~Akram and~~ Rashid Chaudry
Keshi Zhan (subfile of Trie, not being actively pursued)
~~George Psaltis~~
Lotus Fund
~~VPOTUS Obstruction (related to finding of Strauss memo)~~
~~In re Iran (MEK members as conduits)~~
RNC/NPF (underlying transaction)
In re Nigeria (Congressional Black Caucus)
COSCO

Pending Inactive Investigations

why inactive?

~~Loral~~
Liu Chao Ying
~~Eric Hotung~~ — **not Task Force case, but monitoring IC activity**

Investigations Closed

M. Larry Lawrence
Charles Intriago
Katherine Kuo (Chung spinoff referred to local DA)
In re Libya (payment to Congressman) — to be worked by N.Y. and Newark

ag.list

U.S. Department of Justice

Criminal Division

Office of the Deputy Assistant Attorney General Washington, D.C. 20530

September 29, 2000

Judah Best
Debevoise & Plimpton
555 13th Street, N.W.
Suite 1100-E
Washington, D.C. 20004

Dear Mr. Best:

During the course of my testimony on September 26, 2000, before the House Government Reform Committee, there was confusion concerning the Department's position with respect to a recent congressional subpoena to the Democratic National Committee for documents relating to the Campaign Financing Task Force's investigation. Some members of the Committee had the mis-impression that the Department was preventing the DNC from complying with its subpoena. I also may have contributed to the confusion by offering my mistaken understanding that the DNC had been told by the Department to fully comply with the subpoena.

I want to clarify that the Department takes no position on the issue of the DNC's rights and obligations concerning compliance with a congressional subpoena. That is an issue between the DNC and the congressional committee. It certainly has never been the Department's intent to prevent or discourage compliance with a congressional subpoena.

I trust this clarifies the Department's position on this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

Alan Gershel

Alan Gershel
Deputy Assistant Attorney General

EXHIBIT
15

JAN 21 00 12:00 NO.006 P.02

U. S. Department of Justice

Campaign Finance Task Force

DANIEL O'BRIEN, Assistant United States Attorney
(213) 894-2468

United States Courthouse
312 North Spring Street
Los Angeles, California 90012

January 21, 2000

Custodian of Records
Democratic National Committee

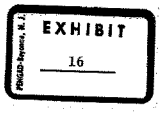
RE: Federal Grand Jury Subpoena
No. LA-823

Dear Sir/Madam:

The enclosed federal grand jury subpoena seeks certain information.

Because this subpoena relates to an ongoing official criminal investigation being conducted by the Federal Bureau of Investigation, it is requested that you not disclose the existence of the subpoena for an indefinite period of time.. Disclosure may impede the investigation and interfere with the enforcement of the law.

Once you have assembled the records called for in the enclosed subpoena, should you desire voluntarily to surrender them to the Grand Jury prior to the date listed on the subpoena, you may do so by mailing the documents to:



SA Jennifer M. Teasdale
Federal Bureau of Investigation
11000 Wilshire Boulevard, Ste. 1700
Los Angeles, CA 90024
FAX: (310) 996-3836

If you have any questions regarding this request, please contact the undersigned attorney at (213) 894-2468 or SA Jennifer M. Teasdale at (310) 996-3840. Thank you for your cooperation.

Very truly yours,

DANIEL O'BRIEN
Assistant United States Attorney
Campaign Finance Task Force

Encl.

DEBEVOISE & PLIMPTON

555 13TH STREET, N.W.
WASHINGTON, DC 20004
(202) 383-8000
TELECOPIER: (202) 383-8118

875 THIRD AVENUE
NEW YORK, NY 10022
TELEPHONE (212) 909-6000
TELECOPIER (212) 909-6836

21 AVENUE GEORGE V
75008 PARIS
TELEPHONE (33-1) 40 73 12 12
TELECOPIER (33-1) 47 20 50 82

INTERNATIONAL FINANCIAL CENTRE
25 OLD BROAD STREET
LONDON EC2N 1HQ
TELEPHONE (44-171) 786 9000
TELECOPIER (44-171) 588 4180

13/F ENTERTAINMENT BUILDING
30 QUEEN'S ROAD CENTRAL
HONG KONG
TELEPHONE (852) 2810 7918
TELECOPIER (852) 2810 9828

BOLSHOI PALASHEVSKY PER. 13/2
MOSCOW 103104
TELEPHONE (7-503) 956 3858
TELECOPIER (7-503) 956 3868

October 6, 2000

By Hand

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Re: Subpoena to the Democratic National Committee

Dear Mr. Chairman:

I am writing at the request of the Democratic National Committee ("DNC") with respect to your Committee's subpoena to the DNC calling for the production of all subpoenas, document requests and interview requests served upon or provided to the DNC by the Department of Justice's Campaign Financing Task Force.

The DNC has asked me to explain to you that it is deeply troubled by this subpoena, which is intended to require production by the DNC of materials that the Committee could have requested directly from the Department of Justice itself. We must assume that the reason you did not subpoena these materials directly from the Department of Justice is that the Department's production of these materials to your Committee would have violated the time-honored legal rules regarding the confidentiality of grand jury investigations. If so, your Committee's subpoena to the DNC operates to circumvent those confidentiality protections, with consequences that seem to us to be potentially very grave. Under these circumstances, the DNC is most uncomfortable being put in the position of being called upon to produce all of these grand jury subpoenas and similar materials served on the DNC, which detail the nature and scope of the grand jury's ongoing investigations, and indicate the names of potential grand jury witnesses.

This concern is intensified by the fact that the DNC was specifically cautioned by the Department of Justice, at the time of the issuance of a number of these subpoenas, that disclosure of the substance of those subpoenas "may impede the investigation and interfere

with the enforcement of law," as I informed you in my letter of August 9, 2000 (a copy of which is attached at Tab 1). As I also advised you in that letter, in light of those admonitions we asked the Department of Justice its position with respect to the release of the grand jury subpoenas and other materials that you have requested from the DNC.

The Department of Justice subsequently informed us that it could not advise the DNC how to respond to the Committee's subpoena, and would take no position on that issue, but would be protesting the subpoenas issued by the Committee. We advised your Committee's staff of the Department's position, and explained that, under the circumstances, the DNC felt that it needed to understand the nature of the Department's protest. It was our hope that this might provide some guidance as to the Department's current views with respect to the subpoenas and other requests that the Campaign Financing Task Force has served on the DNC.

We understand that the Department of Justice's protest is set forth in the September 25, 2000 letter to you from Assistant Attorney General Robert Raben. In that letter, Mr. Raben expressed:

> the Department's serious concern about the Committee's recent practice of subpoenaing public and private sector entities to produce copies of grand jury subpoenas and other documents relating to evidence gathered by the Campaign Financing Task Force, including subpoenas and documents relating to ongoing criminal investigations.

September 25, 2000 letter from Robert Raben, Assistant Attorney General, to the Honorable Dan Burton at 1 (attached at Tab 2).

Mr. Raben further explained in his letter that:

> We are concerned that the Committee's attempts to compel disclosure of this material could compromise ongoing criminal investigations being conducted by the Task Force. . . . [T]he practice of "subpoenaing subpoenas" or otherwise using the congressional subpoena power to shadow the Department's ongoing investigations could undermine effective law enforcement by creating a substantial risk that sensitive and confidential investigative information will be disclosed to targets of investigations and to other persons who might use the information to thwart our law enforcement efforts.

Id. (emphasis added).

Your Committee's subpoena to the Democratic National Committee called for the production by the DNC of:

> all document requests, subpoenas and interview requests provided to or served upon the Democratic National Committee by the Justice Department's Campaign Financing Task Force or the Federal Bureau of Investigation from September 1, 1996 to the present.

Subpoena *Duces Tecum* to the Democratic National Committee, Schedule A at 2. As a result, it appears to represent precisely the kind of subpoena to a private sector entity, "subpoenaing subpoenas" and other materials revealing sensitive and confidential investigative efforts, which the Department of Justice stated threatened to compromise and potentially thwart ongoing criminal investigations.

We understand that the Committee and a representative of the Department of Justice discussed this protest at a hearing on September 26, 2000. We were advised by the Committee's Majority staff of one line of questioning during that hearing, in which it was mistakenly suggested to the witness, Deputy Assistant Attorney General Alan Gershel, that the Department had "prevented" the DNC from responding to your Committee's subpoena, and that we had communicated that to the Committee's staff. We were also advised by the Committee's staff that, in response to this question, Mr. Gershel told the Committee it was his understanding that the Department had advised the DNC that it *should* comply with the Committee's subpoena. Your Committee's staff also advised us that you requested a letter from the Department of Justice urging that the DNC comply with the Committee's subpoena, and that Mr. Gershel responded that the Department would prepare a letter that he thought would satisfy the Committee.

This exchange, as reported to us by your staff, only further troubled and confused us, in light of both the question posed to Mr. Gershel (for the reason explained above), and Mr. Gershel's answer (which both did not reflect the position previously communicated to us by the Department, and seemed to be inconsistent with the Department's September 25 letter of protest to the Committee). Under the circumstances, we asked the Committee's permission to review the transcript of that hearing, while awaiting the letter that we were told would be forthcoming from the Department of Justice. For reasons that we do not entirely understand, to date the Committee has not permitted us to review that transcript.

On October 5, 2000, we received a letter from Mr. Gershel clarifying the confusion regarding the Department's position that resulted from his statements at the

September 26 hearing. Mr. Gershel's letter referred to the mistaken understanding of some members of the Committee that the Department had prevented the DNC from responding to the subpoena, and to his own mistaken understanding that the DNC had been told by the Department to fully comply with the subpoena. Mr. Gershel stated in this letter:

> I want to clarify that the Department takes no position on the issue of the DNC's rights and obligations concerning compliance with a congressional subpoena. That is an issue between the DNC and the congressional committee. It certainly has never been the Department's intent to prevent or discourage compliance with a congressional subpoena.

Letter dated September 29, 2000 to Judah Best from Alan Gershel, Deputy Assistant Attorney General (attached at Tab 3).

Mr. Gershel's letter did clarify the confusion resulting from the September 26 hearing. Based on his letter, it is our understanding that:

(a) the Department has not altered its previously stated concern that disclosure of the subpoenas sought from the DNC by the Committee "could compromise ongoing criminal investigations" (Tab 2); but that

(b) the Department nevertheless takes no position on how the DNC should respond to the subpoena, because the Committee's subpoena was directed to the DNC and not to the Department of Justice.

This clarification, unfortunately, leaves the DNC in the position of having to try to deal with very serious issues that we strongly believe should have been resolved directly between the Committee and the Department of Justice, because they relate to investigative documents created by the Department of Justice (not the DNC), and issued by a federal grand jury, in the course of the ongoing criminal investigation by the Department's Campaign Financing Task Force.

As we had advised the Committee's staff, we had begun the process of collecting the grand jury subpoenas and other documents that are called for by the Committee's subpoena promptly upon receiving that subpoena, to ensure that the DNC could comply with the subpoena as soon as possible after receiving the guidance that we requested from the Department of Justice. The DNC's own review of these materials has raised additional

concerns that were not addressed in the Department of Justice's protest, but that we believe also warrant serious consideration by the Committee.

The DNC has received dozens of federal grand jury subpoenas from the Campaign Financing Task Force, referencing (among other matters) numerous private individuals and entities. We previously have been advised by the Campaign Financing Task Force, however, that the inclusion of an individual's or entity's name in one of its subpoenas should in no way be construed as suggesting any wrongdoing or other grounds for concern regarding that person's activities, in light of the range and magnitude of the Task Force's investigation. This fact underscores one of the principal reasons for the rules regarding the secrecy of grand jury investigations, which was not specifically addressed in the Department of Justice's protest, but which we fear could be seriously undermined by your recent subpoena. Specifically, those rules of confidentiality are intended not only to prevent interference with ongoing criminal investigations, but also to protect the reputations of innocent parties. In this case, the disclosure of the identities of private individuals and entities listed in the grand jury subpoenas and other requests that are called for by your Committee's subpoena inevitably would stigmatize those among them who have never been indicted and indeed have not even been accused of any misconduct, regardless of the outcome of the Task Force's investigation.

The DNC's concern about the privacy and reputations of those private individuals and entities (who are unable to speak for themselves on this issue) is heightened by our recurring experiences of documents produced to your Committee pursuant to formal confidentiality protocols and specifically identified by the DNC as containing "Confidential Information" being leaked to third parties and the press, apparently for partisan purposes.

Most recently, a December 13, 1995 DNC Finance Call Sheet that was produced to your Committee pursuant to the confidentiality protocols that your Committee had in place at the time was quoted prominently in an article in a major newspaper. *See The New York Times,* page A-1, Sept. 14, 2000. Previously, two different documents that similarly were produced to your Committee pursuant to those written confidentiality protocols were filed with the Court by Judicial Watch, Inc., in its Freedom of Information Act case against the Department of Commerce. *See* Exhibit 6 to Plaintiff's Reply to Democratic National Committee's Opposition to Plaintiff's Motion for Review of Magistrate Judge's March 30, 1999 Memorandum Opinion and Order, *Judicial Watch, Inc. v. U.S. Department of Commerce*, Civil Action No. 95-0133 (D.D.C.). In each of these instances, the unique markings on the documents (including the words "Confidential Information" added pursuant to your Committee's confidentiality protocols) enabled us to confirm to whom those confidential documents were produced: your Committee, a federal grand jury (whose investigators are precluded from releasing them by Federal Rule

of Criminal Procedure 6(e)), and the Federal Election Commission (which is prohibited by 11 C.F.R. § 111.21 from releasing them without the DNC's written consent, which was never given). Numerous other documents produced to your Committee that similarly have never been publicly released by the DNC, but do not bear such distinctive markings, have likewise turned up in the hands of third parties.

Although we do not mean to suggest that you or your present Chief Counsel would in any way condone such violations of your Committee's confidentiality protocols, I hope you will understand that the DNC finds this pattern to be very troubling, and that it adds significantly to the DNC's concern that the materials called for by your most recent subpoena would be publicly released in a manner that would both interfere with ongoing criminal investigations, and prejudice innocent third parties. We understand, moreover, that your Committee presently has in place no special confidentiality protocols at all that would protect the confidentiality of the criminal investigative documents called for by your most recent subpoena.

The DNC has asked me to inform you that, under these circumstances, it is gravely concerned about (a) the very real prospects of interference with ongoing criminal investigations of matters that are directly relevant to the DNC, and (b) the needless embarrassment and harassment of innocent persons who are identified in requests from the Campaign Financing Task Force. The DNC's concerns on this latter point are heightened by our understanding that your Committee has not issued any similar subpoena for all grand jury subpoenas and other requests issued by the Campaign Financing Task Force to the Republican National Committee.

Please understand that the DNC has no interest whatsoever in your investigation of matters relating to the Department of Justice's Campaign Financing Task Force itself. Our only concern is with the consequences of the roundabout way in which you are pursuing that investigation, which places the DNC in the middle, and threatens both these ongoing criminal investigations and the reputations of these third parties.

Despite our concerns regarding your Committee's decision to subpoena these documents from the DNC instead of dealing directly with the Department of Justice, the DNC would like to cooperate with the Committee on this matter as best it reasonably can. We believe that if the Committee is willing to do so, it should be possible to quickly work out some sensible parameters that would satisfy whatever oversight interests the Committee has in this matter, without compromising ongoing investigations or the reputations of private individuals and entities who have never been indicted or accused of any wrongdoing.

We had hoped that the Department of Justice would have offered some guidance that would have facilitated accommodating your Committee's interests and the confidentiality issues relating to their subpoenas and other requests, but they unfortunately appear to believe that they simply cannot involve themselves in that manner. We would therefore appreciate the opportunity to meet with the Committee's staff ourselves, to attempt to agree to some reasonable parameters or guidelines pursuant to which the DNC can meet your Committee's requirements with respect to these materials without unnecessarily compromising ongoing investigations or innocent third parties. I would be prepared to meet with your staff as soon as possible, with the hope that Mr. Wilson and I could work out reasonable procedures that would enable the DNC to promptly produce the documents called for by your subpoena, without unnecessarily publicizing any information in those documents that is truly and for good reason confidential.

We hope the Committee will agree that its inquiry into the Department of Justice's investigation of criminal accusations that already are matters of public knowledge need not encompass other matters that are both non-public and sensitive. We also hope the Committee will agree to work with us in good faith to enable the DNC to comply with your recent subpoena in good conscience, and as quickly as possible, without compromising any confidential aspects of this criminal investigation or the reputations of those who have innocently been swept up in its wake.

Sincerely,

Judah Best, IPG

Judah Best

cc: The Honorable Henry Waxman

40043002.1

Date: Monday, July 7, 1997 7:27 am
From: CRM01(INGERSOL)
Subject: Task Force Report (7/7/97)

Mark/Bob/Lee --

NK

No PC for Trie search warrants -- On Wednesday afternoon, agents provided us with a draft affidavit to support search warrants for Trie's vacant residence in Little Rock, and the residence of his employee, Maria Mapili, who'd been seen removing file boxes from Trie's. The evidence did not support PC on substantive offenses, so the affidavit was predicated on obstruction -- Mapili discarding shredded (and therefore unidentifiable) documents from Trie's house, and taking boxes to hers. No evidence of documents discarded from her residence, so no PC whatsoever there! As she'd been served with a document supboena the previous Friday, we reasoned she might be preparing to produce documents and, indeed, as agents prepared to get on a plane to go to Little Rock we learned that surveillance had picked up an attorney whom Mapili had hired going to Trie's residence and removing file boxes, which he took to the hotel where he was staying; soon after, he called us and the FBI and said he had documents to produce. This sent any vestige of PC at Trie's place out the window. Nonetheless, the case agent and supervisor (Laughlin) and two attorneys flew to Little Rock to check out the state of matters there and try to meet with the attorney. Note: The bureau was very very keen on doing these searches, but in the end, after much discussion, the case agent and Laughlin conceded there was no PC for either -- we believe the process of evaluating the evidence was well-reasoned and that communication was open and candid. We attorneys were as keen as the agents to make it happen, but the evidence simply wasn't there.

NK [redacted]

lai

EXHIBIT
18

A-07

TO: RHB
FR: Melinda Yee
RE: Asia Trip
DATE: October 15, 1991

Per your request, I have spoken with several of the key people that would be involved with the proposed Asia trip (November 29-December 8). Let me briefly recap where we are at:

1) The CCNAA will provide the airfare for our entire trip for 4-5 people. They will also provide full accomodations, meals and transportation while in Taiwan. They will schedule key meetings with government officials and the business circle (many who have corporate affiliates in the U.S.). This includes a private meeting with you and the President. I have let them know that we need our own time as well for private meetings.

2) Maria Hsia will play an important role in Taiwan. She sees this trip as the opportunity to finally fulfill her trusteeship to us. Maeley Tom is also working on her to ensure Maria's complete participation. Maria would not be part of the official delegation but rather in the role of making introductions and fundraising in Taiwan with private individuals who are permanent residents and corporations who have business in the U.S. Last month she led a large delegation and successful $$ trip for Leo McCarthy.

3) John Huang is our key to Hong Hong. He is also interested in renewing his trusteeship to us on this trip through his Asian banking connections. He has agreed to host a high dollar event for us in Hong Kong with wealthy Asian bankers who are either U.S. permanent residents or with U.S. corporate ties. He will make sure that all of the hotel accomodations, meals, and transportation are paid for by his bank. He should be invited to be part of our delegation.

4) Fred Hong will play also bring in $$ from Hong Kong to us. John and Fred together should be able to pull in at least $50,000 directly from this trip with more $$ upon our return (by follow-up with the U.S. affiliates here). He should also be invited to be part of our delegation.

5) Nora Lum, Governor Waihee's chief fundraiser will take the lead in Hawaii. She has guaranteed $25,000 for us, but expects to be able to deliver much more. As we discussed, the Pearl Harbor Day events will coincide with our time in Hawaii, so we will be attending political events with the Governor and Senators Inouye and Akaka. The State Party will also be involved with the scheduling of fundraising and political events. Nora Lum will take care of hotel accomodations, meals and transportation. She has proposed organizing a labor breakfast and a private reception with big $$ in your honor.

EXHIBIT
19

The bottom line for this trip in both financial and political terms is as follows:

Financial - We should be able to bring home **at least** $100,000 and after subsequent follow-up **at least** $100,000 more by the end of the year.

Political - The Hawaii stop is very positive for us politically. It shows great solidarity among the Democrats with respect to the 50th anniversary of Pearl Harbor, especially since Bush will be there as well. Also, since you have not yet been to Hawaii as Chairman, this will help greatly with our relations with the state party and other key Democratic relationships that need to be cultivated. The Governor and the Senators have all agreed that your visit would be a very positive one and will work closely with us to maximize your presence.

My recommendation is that we move forward as scheduled with the Asia trip. I know that there are some other $$ events in the planning stage that could preempt everything. Thus, if we do postpone or cancel, I will need to let all of the above-mentioned know as soon as possible (so as to minimize any political and financial fall-out).

Please let me know as soon as possible (preferably before you leave for New York tonight) by phone or by circling one of the following options:

OPTION 1 Proceed with Asia trip as scheduled.

OPTION 2 Postpone Asia trip - the following would be our alternative date_____.

OPTION 3 Cancel trip completely.

I will speak with you soon. THANX!!!

cc: Alexis Herman
Brian Foucart
Dalia Traynham

DNC 0828867

TO: RHB
FR: Melinda Yee MY
RE: Revised Schedule for Asia Trip
DATE: October 22, 1991

Here is the proposed revised schedule for the Asia trip. Please note that after further conferring with Governor Waihee's top political and financial strategists, they believe that it would be better if we go to Hawaii after the Pearl Harbor events. Because the $$ aspect is very important to your visit, they felt that your visibility and the $$ delivered would be maximized if you are the total focus of attention. As you can imagine, the attention would not be fully focused on you during the Pearl Harbor events.

As I mentioned in my October 15 memo to you, between Hong Kong and Hawaii, we should be able to bring home at least $100,000, broken down as follows:

John Huang has offered to host an event in Hong Kong with a goal of $50,000.

Nora Lum, Governor Waihee's chief fundraiser has personally guaranteed $25,000. With the Governor's active support (and we need to have you call him in a few days), we can at least double that figure.

Maria Hsia will identify key donors to give to us directly during the Taiwan portion of the trip. She did not want to guarantee anything until she had made some initial inquiries with her business contacts in Taiwan.

December 5	Travel to Taiwan (leave Friday a.m. - lose a day)
December 6	Travel/arrive in Taipei (late p.m.)
December 7	Taipei
December 8	Taipei
December 9	Taipei
December 10	Taipei/Hong Kong (depart p.m.)
December 11	Hong Kong
December 12	Hong Kong/Hawaii (depart afternoon - gain a day)
December 12	Hawaii (arrive a.m.)
December 13	Hawaii/Travel (depart early p.m.)
December 14	Washington, D.C. (arrive a.m.)

For planning purposes, all parties would be most grateful if we can try to come to closure on committing to the trip by the end of this week.

THANK YOU!!!

cc: Alexis Herman
Brian Foucart
Cheri Carter
Dalia Traynham

EXHIBIT
20

TO: Alexis Herman
Joan Baggett
Brian Foucart ✓
Paul Tully
Dalia Traynham

FR: Melinda Yee MY

RE: Chairman's Asia/Hawaii Schedule

DATE: December 2, 1991

Attached is the Chairman's detailed schedule in Taiwan, Hong Kong, and Hawaii.

DNC 0828

PENGAD-Bayonne, N. J.
EXHIBIT
21

CHAIRMAN BROWN'S ASIA/HAWAII SCHEDULE
DECEMBER 4-13, 1991

Wednesday, December 4, 1991

9:00 A.M.
LEAVE WASHINGTON DULLES AIRPORT VIA UNITED AIRLINES #173

11:45 A.M.
ARRIVE SAN FRANCISCO

1:00 P.M.
LEAVE SAN FRANCISCO VIA UNITED AIRLINES FLIGHT #845

Thursday, December 5, 1991

6:50 P.M.
ARRIVE TAIPEI
Check in to **The Regent of Taipei**
No. 41 Nanking E. Road., Sec. 5
Taipei, Taiwan, Republic of China
Tel: (02) 523-8000
Fax: (02) 523-2828
Hotel accomodations, laundry service, and meals compliments of the KMT.

Friday, December 6, 1991

8:30 A.M. TO 9:00 A.M.
MEETING WITH VINCENT SIEW, MINISTER OF ECONOMIC AFFAIRS

11:30 A.M. TO 12:00 NOON
MEETING WITH C. J. CHEN, VICE MINISTER OF FOREIGN AFFAIRS

12:00 NOON TO 12:30 P.M.
MEETING WITH DR. FRED CHIEN, MINISTER OF FOREIGN AFFAIRS

12:30 P.M. TO 2:00 P.M.
LUNCHEON HOSTED BY MINISTER CHIEN

4:30 P.M. TO 5:00 P.M.
MEETING WITH CHIEN-SHIEN WANG, MINISTER OF FINANCE

6:30 P.M. TO 8:30 P.M.
DINNER HOSTED BY JAMES C. Y. SOONG, SECRETARY-GENERAL, KMT (RULING PARTY)

DNC 0828854

ASIA/HAWAII SCHEDULE
Page 2

Saturday, December 7, 1991

9:00 A.M. to 9:30 A.M.
MEETING WITH HSIN-LIANG HSU, CHAIRMAN, DEMOCRATIC PROGRESSIVE PARTY (OPPOSITION PARTY)

10:30 A.M. TO 12:00 NOON
SEMINAR AT THE VANGUARD FOUNDATION ON THE SUBJECT OF 1992 PRESIDENTIAL ELECTIONS

12:30 P.M. TO 2:30 P.M.
LUNCHEON ($$) ARRANGED BY MARIA HSIA

3:00 P.M. TO 5:00 P.M.
TOUR OF PALACE MUSEUM

6:30 TO 7:00 P.M.
PRIVATE MEETING ($$) WITH DANNY LEE, JASON HUANG, JASON HUANG'S BROTHER, AND PING NIU

7:00 P.M. TO 9:00 P.M.
DINNER ($$) ARRANGED BY PING NIU

Sunday, December 8, 1991

11:30 A.M. TO 12:00 NOON
PRIVATE MEETING ($$) WITH DR. CHIN LIN AND PING NIU

12:00 NOON TO 2:00 P.M.
LUNCHEON ($$) ARRANGED BY PING NIU

3:00 P.M. TO 3:30 P.M.
GREETINGS TO INVESTMENT VISA SEMINAR ATTENDEES SPONSORED BY TAIWAN MEDICAL ASSOCIATION (MARIA HSIA)

6:30 P.M. TO 9:00 P.M.
DINNER ($$) HOSTED BY MARIA HSIA

Monday, December 9, 1991

10:30 A.M. TO 11:00 A.M.
MEETING WITH PRESIDENT TENG-HUI LEE
(WITHOUT DELEGATION)

12:30 P.M. TO 2:30 P.M.
LUNCHEON ($$) ARRANGED BY MARIA HSIA

8:30 P.M.
LEAVE TAIPEI VIA CHINA AIRLINES #609

DNC 0828855

ASIA/HAWAII SCHEDULE
Page 3

10:10 P.M.
ARRIVE HONG KONG
Check in to the **Mandarin Oriental Hotel**
5 Connaught Road
Central GPO
Hong Kong
Tel: (852) 522-0111
Fax: (852) 810-6190
Hotel accomodations compliments of LippoGroup.

Tuesday, December 10, 1991

10:00 A.M. TO 10:45 A.M.
PRIVATE TIME

11:00 A.M. TO 12:00 NOON
MEETING WITH VICTOR FUNG, CHAIRMAN, TRADE DEVELOPMENT COUNCIL

12:30 P.M. TO 2:00 P.M.
LUNCHEON ($$) HOSTED BY LIPPOGROUP (JOHN HUANG)
AT MANDARIN ORIENTAL HOTEL

4:00 P.M. TO 4:45 P.M.
MEETING WITH U.S. CONSULATE GENERAL RICHARD WILLIAMS

5:00 P.M. TO 5:30 P.M.
MEETING WITH SIR DAVID WILSON, GOVERNOR OF HONG KONG
AT GOVERNOR'S OFFICE
ACCOMPANIED BY RICHARD WILLIAMS, STEVEN RIADY, DEPUTY CHAIR, LIPPOGROUP, J.P. LEE, DIRECTOR, LIPPOGROUP

7:00 P.M. TO 9:00 P.M.
DINNER ($$) HOSTED BY LIPPOGROUP (JOHN HUANG)
AT GRAND HYATT HOTEL

Wednesday, December 11, 1991

10:15 A.M.
LEAVE HONG KONG VIA CHINA AIRLINES #602

11:40 A.M.
ARRIVE TAIPEI

2:30 P.M.
LEAVE TAIPEI VIA CHINA AIRLINES #018

DNC 0828856

ASIA/HAWAII SCHEDULE
Page 4

7:00 A.M.
ARRIVE HAWAII
Check in to the **Ala Moana Hotel**
410 Atkinson Drive
Honolulu, HI 96814
Tel: (808) 955-4811
Fax: (808) 944-2974
Hotel accomodations compliments of the Governor of Hawaii.

12:00 NOON TO 2:00 P.M.
LUNCHEON ($$) ARRANGED BY NORA LUM
WITH CONSTRUCTION INDUSTRY/TRADE UNIONS
AT HILTON HAWAIIAN VILLAGE - 200 PEOPLE

2:00 P.M. TO 2:30 P.M.
BRIEFING BY GOVERNOR WAIHEE
AT THE GOVERNOR'S OFFICE

5:00 P.M. TO 8:00 P.M.
LIGHT DINNER PARTY ($$) WITH MAJOR DONORS HOSTED BY GOVERNOR WAIHEE; WALTER DODDS, CEO, FIRST HAWAIIAN BANK; STATE DEMOCRATIC PARTY
AT FIRST HAWAIIAN BANK - 50 PEOPLE

9:00 P.M. TO 11:00 P.M.
PRIVATE TIME

Thursday, December 12, 1991

7:30 A.M. TO 9:00 A.M.
AFSCME/AFL-CIO BREAKFAST HOSTED BY RUSSELL OKATA, EXECUTIVE DIRECTOR, AFSCME; GARY RODRIGUES, PRESIDENT AFL-CIO HAWAII
AT ILIKAI HOTEL - 300 PEOPLE

10:00 A.M. TO 11:00 A.M.
EDITORIAL BOARD PRESS BRIEFING ON THE 1992 PRESIDENTIAL ELECTION

12:00 NOON TO 2:00 P.M.
LUNCHEON ($$) WITH PROMINENT BUSINESS LEADERS ARRANGED BY NORA LUM
LOCATION TBA

2:30 P.M. TO 3:00 P.M.
MEETING WITH ROY WU, DIRECTOR GENERAL, CCNAA HONOLULU

5:30 P.M. TO 8:00 P.M.
MAJOR RECEPTION ($$) HOSTED BY GOVERNOR WAIHEE AND STATE DEMOCRATIC PARTY
AT ALA MOANA HOTEL - 300 PEOPLE

DNC 0828857

ASIA/HAWAII SCHEDULE
Page 5

Friday, December 13, 1991

12:20 A.M.
LEAVE HAWAII VIA AMERICAN AIRLINES #1502

7:29 A.M.
ARRIVE LOS ANGELES

8:45 A.M.
LEAVE LOS ANGELES VIA AMERICAN AIRLINES FLIGHT #76

4:27 P.M.
ARRIVE WASHINGTON DULLES AIRPORT

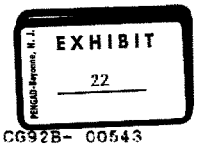
DNC 0828858

CAR RIDE WITH JAMES RIADY
AUGUST 14, 1992

TO: Governor Bill Clinton
FR: Melinda Yee
RE: Car Ride with James Riady

James Riady is the Deputy Chairman of Lippogroup and a long-time acquaintance of yours. The group is in financial services in the U.S. and throughout Asia. Mr. Riady lived in Arkansas from 1985-1987 when he was president of Worthen Bank in Little Rock.

He has flown all they way from Indonesia, where he is now based, to attend the fundraiser. He will be giving $100,000 to this event and has the potential to give much more. He will talk to you about banking issues and international business. This is primarily a courtesy call.



REED SMITH SHAW & MCCLAY LLP

Writer's Direct Numbers:
Phone 202-414-9408
Fax 202-414-9299
nskuque@rssm.com

1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005-3317
Phone: 202-414-9200
Fax: 202-414-9299

July 17, 1998

VIA FACSIMILE
Barbara J. Comstock, Esq.
Chief Investigative Counsel
Committee on Government Reform and Oversight
Congress of the United States
House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Re: Deposition of Melinda Yee

Dear Ms. Comstock:

This is to formally advise the Committee that Melinda Yee will not appear for a Deposition on July 17, 1998. As I previously have advised you orally, Ms. Yee and I have discussed the matter fully, and after due consideration of the Committee's request, Ms. Yee has decided not to testify concerning the 1992 election cycle, yet again.

As you are already aware from our previous discussions and correspondence, Ms. Yee has testified in conjunction with a subpoena issued by the United States Senate Committee on Governmental Affairs concerning these matters and she has cooperated extensively with the Department of Justice Campaign Financing Task Force. Thus, she has already addressed exhaustively the issues about which the Committee wishes to inquire and she has done so under oath. Ms. Yee's Senate testimony is available to the Committee as is the information gathered by the Department of Justice. Ms. Yee has also been questioned extensively in a deposition conducted by Judicial Watch.

Moreover, as already noted in my letter to you of July 13, the events in question are ancient history to an individual who moved out of the area and out of the political arena many years

EXHIBIT
23

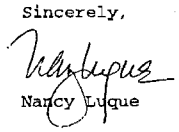
REED SMITH SHAW & MCCLAY LLP

ago. A review of the documents in advance of the deposition might have allayed my concerns in this regard, however, that was not possible. In addition, I cannot advise a witness who has testified repeatedly under oath about the same topics to do so again without reference to her earlier statements. That is not possible here.

In light of all of my concerns I have advised Ms. Yee to invoke her privilege not to testify, and she has accepted my advice.

Thank you for your consideration.

Sincerely,



Nancy Luque

cc: Ken Ballen

DEMOCRATIC ★ NATIONAL ★ COMMITTEE

David Wilhelm, Chairman

October 10, 1994

Charlie Trie
President
Diahatsu International Trading Inc.
523 Louisiana Street
Suite LL150
Little Rock, AR 72201

Dear Charlie:

Thank you for agreeing to become a Vice Chair of the Business Leadership Forum (BLF). For those of you who were able to attend our luncheon, we thank you for your participation. We feel it was a productive session and will help us to expand and improve upon the current operation of the Business Leadership Forum. As a follow up to the meeting, we wanted to readdress various matters discussed during the session.

First and foremost, we are looking to our Vice Chairs to help us recruit new members. On October 20th, we are holding a small (30 attendees) BLF recruitment dinner with Vice President Gore and senior administration officials. If you are able to recruit a new member, we would like to invite both you and the new member to attend the Vice President's dinner. The dinner will be held in Washington at the Ritz-Carlton Hotel. Richard Sullivan or Fran Wakem can provide prospect packages, further information or answer any questions you may have regarding the program or the Vice President's dinner.

Secondly, we want your help in implementing the regional issues briefings that we discussed. We have attached a list of the current Vice Chairs divided into regional groups. Also, attached is a listing of the full membership in your particular area. During the next several weeks, Fran Wakem of the DNC will arrange conference calls among the Vice Chairs in each region to discuss arrangements for a regional briefing. In the meantime, you should give some thought to date, topics and venue. Where possible, we suggest that you rotate responsibility for arranging the briefings among the Vice Chairs in your region. We have had preliminary discussions with the Democratic Governors Association as we hope to develop a program to expose your members to Governors from around the country. We hope that you will also contact Fran with suggestions for creative fundraising events.

009119

EXHIBIT
24

Democratic Party Headquarters • 430 South Capitol Street, S.E. • Washington, D.C. 20003 • 202.863.8000 • FAX: 202
Contributions to the Democratic National Committee are not tax ded

DEMOCRATIC ★ NATIONAL ★ COMMITTEE

David Wilhelm, Chairman

Third, Scott Freda of the BLF program is available to provide prospect lists for the purpose of recruiting new members. These lists include former DNC donors in your region or state or Fortune 500 type lists with address and phone numbers.

Please try and coordinate prospecting with Scott so that we avoid conflicts. We can attempt to research any other desired list which may be available. Scott can be reached at (202)863-7147.

Fourth, you should have received an invitation to the Business Leadership Forum's Eastern European Symposium. We are putting together what promises to be an excellent schedule in hopes that the trip will be another vehicle for recruiting new members. Jennifer Scully, (202)863-7152, is serving as the trip coordinator for the DNC. Please feel free to call her with any questions or to request additional invitations.

Finally, we have enclosed a form for you to respond with any additional feedback or comments both as to our discussion last Wednesday and the future structure of the program. We will also use information from this form to prepare a membership book (including only those members who have given us their permission to do so) that will be available to all members.

Thank you for your past support. It has been your tremendous efforts which have built the program from 132 members to 750. We look forward to working with you in the future.

Sincerely,

Tim

Timothy C. Collins
Chairman, Business Leadership Forum

Richard

Richard Sullivan
Director, Business Leadership Forum

009120

863-7107

Democratic Party Headquarters • 430 South Capitol Street, S.E. • Washington, D.C. 20003 • 202.863.8000 • FAX: 202.863.8091

DEMOCRATIC NATIONAL COMMITTEE
BUSINESS LEADERSHIP FORUM
1994 REGIONAL VICE-CHAIR LIST

ARKANSAS

Charlie Trie
President
Diahatsu International Trading Inc.
523 Louisiana Street
Suite LL150
Little Rock, AR 72201
Phone - 501-664-0028
Fax - 501-376-8989

CALIFORNIA

Johnny Chung
Chairman & CEO
Automated Intelligent Systems, Inc.
2771 Plaza Del Amo
Suite 809
Torrance, CA 90503
Phone - 800-999-1736
Fax - 310-328-8881

Jonathan Cooke
President
The Disney Channel
3800 West Almeda Street
Suite 514
Burbank, CA 91505-4340
Phone - 818-569-7701
Fax - 818-845-8249

Eugene Jackson
CEO & Chairman
World African Network
5120 West Goldleaf Circle
Suite 380
Los Angeles, CA 90056-1292
Phone - 404-365-8850
Fax - 213-299-3344

009121

FLORIDA

Jerry Berlin
Deax Michel, Inc.
5425 SW, 92nd Street
Miami, FL 33156-2105
Phone - 305-255-9900
Fax - 305-251-7723

GEORGIA

Gordan Giffin
Long, Aldridge and Norman
1 Peachtree Center Ave, NE
Suite 5300
Atlanta, GA 30303-3002
Phone - 404-527-4020
Fax - 404-527-4198

Ron Krise
President
CTI Resources
11660 Alpharetta Highway
Suite 400
Roswell, GA 30076
Phone - 404-410-0682
Fax - 404-410-0782

ILLINOIS

Rashid Chaudary
President
Raani Corporation
5401 West 65th Street
Bedford Park, IL 60638-5628
Phone - 708-496-8025
Fax - 708-496-8906

Kamrahn Kahn
Principal
Raani Corp.
5401 West 65th Street
Bedford Park, IL 60638-5628
Phone - 708-496-8025
Fax - 708-960-2913

Maxine Leftwich
President
LS Financial Group, Inc.
407 South Dearborn Street
Suite 600
Chicago, IL 60605-1111
Phone - 312-922-3590
Fax - 312-922-3591

Dick Stern
President
Stern Joint Venture Co.
676 N. Michagan Avenue
Suite 3330
Chicago, IL
Phone - 312-787-2203
Fax - 312-787-2208

MASSACHUSETTS

Thomas Dwyer, Jr., Esq.
Dwyer, Collora & Gertner
400 Atlantic Avenue
Boston, MA 02110
Phone - 617-357-9202
Fax - 617-357-6866

Ramesh Kapur
President
Med Tech
20 Hall Street
Medford, MA 02155-2019
Phone - 617-395-1946
Fax - 617-395-9098

'ohn McGuire
Partner
McGuire & McGuire
340 Main Street
Worcester, MA 01608
Phone - 508-754-3291
Fax - 508-752-0553

Alan Solomont
President\CEO
ADS Management
1 High Street
Building 6
North Andover, MA 01845-2699
Phone - 508-749-7020
Fax - 508-749-7019

NEW YORK

Tim Collins
Managing Director
Onex Investments
712 Fifth Avenue
New York, NY 10708-4415
Phone - 212-582-2211
Fax - 212-582-0909

Joe Fichera
Managing Director
Bear Stearns & Co., Inc.
245 Park Avenue
New York, NY 10128-1139
Phone - 212-272-7532
Fax - 212-272-3583

Michael Klein
Partner
Smith Barney
444 Central Park West

009134

DEMOCRATIC ★ NATIONAL ★ COMMITTEE

David Wilhelm, Chairman

October 24, 1994

Ng Lap Seng
Daihatsu International
Trading Inc.
523 Louisiana Street
Suite LL150
Little Rock, AR 72201

Dear Lap Seng:

On behalf of the Democratic National Committee, I would like tp thank you for joining the Business Leadership Forum, (BLF) and making such a generous contribution to the DNC. Your tremendous support allows the DNC the ability to provide record amounts of support form important races around the country and resources and funding for President Clinton's important legislative initiatives.

The Business Leadership Forum is the principal organization for business leaders within the Democratic Party. In this light, we have an excellent schedule planned for the BLF for the next year. Upcoming events include our inaugural trade mission to Vienna and Budapest on November 13 - 19, (see enclosed note) and our second annual Issues Conference/Retreat in Boca Raton, Florida for February 1-21, 1995. We also plan on holding issue briefings on Trade and Energy/Environment on dates to be determined in November and December. If you have nay questions regarding the BLF, pleas feel free to call me at (202)863-7187 or Fran Wakem, Deputy Director of the BLF at (202)863-7136.

Thanks again for your generous support of the DNC. We hope you find the BLF both enjoyable and enlightening.

Sincerely,

Richard Sullivan

Richard Sullivan
Director, Business Leadership Forum

EXHIBIT
25

SWCT-0001-07-2236

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DEMOCRATIC * NATIONAL * COMMITTEE

David Wilhelm, Chairman

To: Jennifer

Fr: Richard Sullivan

2 pages

Charlie,

這是Richard Sullivan給我的info，不知道
夠不夠。Anyway，一个人要(the new
member)要交$10,000 USD, in order to attend
the event.

Jennifer

EXHIBIT
26

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TRANSLATION OF NOTES ON DNC FAX COVERSHEET

Charlie,

This is the info Richard Sullivan gave me. Don't know whether it is enough. Anyway, a person needs (the new member) to pay $10,000 U.S. dollars in order to attend the event.

Jennifer

BUSINESS LEADERSHIP FORUM

Democratic National Committee
David Wilhelm, Chairman
Laura Hartigan, Finance Director

Business Leadership Forum
Timothy Collins, *Chairman*
Richard Sullivan, *Director*
Francessa Wakem, *Deputy Director*

Business Leadership Forum Vice Chairs
Mark Erwin, Charlotte, NC
Maxine Leftwich, Chicago, IL
Edward Romero, Albuquerque, NM
Marvin Rosen, Miami, FL

November 9, 1994

Miss Lin Ruo Qing
Chairman of the Board
China Sanyou Science and Technology Enterprise
No. 6 Building
Diao Yu Tai, Guo Bin Guan
Beijing, PR China
100630

Dear Miss Lin:

Thank you for your interest in the Business Leadership Forum. I would like to make you aware of two upcoming dates for lunch/dinner with the President/Vice President Gore. The first is a lunch with the President on December 3, 1994 in Los Angeles, CA. The second date is a reception and dinner with Vice President Gore on December 19th in Washington, DC.

Since you will be joining the Democratic National Committee's Business Leadership Forum, we strongly urge that you attend one of these two events so that we can meet you and introduce you to other members of the BLF and senior administration officials.

I hope to see you in the United States soon. If you have any questions, please feel free to call me at 202-863-7136.

Sincerely,

Francessa Wakem
Deputy Director, Business Leadership Forum

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EXHIBIT
27
FENGAD Secaucus, N.J.

Daihatsu International Trading, Inc.

facsimile
TRANSMITTAL

To: Fran Wakham, Deputy Director of BLF
From: Jennifer Russell
RE: Letter
Date: November 16, 1994
Page: 2, including cover page

Fran Wakam Fax: 202-863-8082

Dear Ms. Wakham:

Thank you for your help in writing a letter to Miss Lin Ruo Qing to join BLF's events on Dec. 3 and 19. Miss Lin is currently working for a Chinese government-owned organization; therefore, it is difficult for her to apply for a business visa. Your letter to her is a great help; however, I am wondering if you will add one more sentence to show the benefit for her to come over to the U.S.A. Enclosed please find your letter you wrote to her, and I have added one sentence as an example. Please feel free to change it. Mr. Trie and I very much appreciate your help. If you have any questions, please feel free to call me at (501) 664-8809. Thank you.

Best regards,

Jennifer Russell

EXHIBIT
28

SCGA 007084

Corporate Office: 2224 Cottondale Lane, Suite 102, Little Rock, AR 72202 U.S.A. ● Tel: (501) 664-8809 ● Fax: (501) 664-0988

November 16, 1994

Miss Lin Ruo Qing
Chairman of the Board
China Sanyou Science and Technology Enterprise
No. 6 Building
Diao Yu Tai, Guo Bin Guan
Beijing, PR China
100630

Dear Ms. Lin:

Thank you for your interest in the Business Leadership Forum. I would like to make you aware of two upcoming dates for lunch/dinner with the President Clinton/Vice President . The first is a lunch with the President on December 3, 1994 in Los Angeles, CA. The second date is a reception and dinner with Vice President Core on December 19th in Washington, D.C.

Since you will be joining the Democratic National Committee's Business Leadership Forum, we strongly urge that you attend these two events so that we can meet you and introduce you to other members of the BLF and senior administration officials. **With you being here, you will experience many culture and business exchanges with many American business leaders and government officials. The members of the BLF are successful business leaders of the most respected corporations in the United States. By joining these events, they will give you tremendous exposure for any future business endeavors.**

I hope to see you in the United States soon. If you have any questions, please feel free to call me at 202-863-7136.

Sincerely,

Francessa Wakem
Deputy Director, Business Leadership Forum

Fran,

I added those bold faced sentences. You can change them, if you want to.

Jennifer

BUSINESS LEADERSHIP FORUM

Democratic National Committee
David Wilhelm, Chairman
Laura Hartigan, Finance Director

Business Leadership Forum
Timothy Collins, *Chairman*
Richard Sullivan, *Director*
Francessa Wakem, *Deputy Director*

Business Leadership Forum Vice Chairs
Mark Erwin, Charlotte, NC
Maxine Leffwich, Chicago, IL
Edward Romero, Albuquerque, NM
Marvin Rosen, Miami, FL

November 16, 1994

Miss Lin Ruo Qing
Chairman of the Board
China Sanyou Science and Technology
Enterprise
No. 6 Building
Diao Yu Tai, Guo Bin Guan
Beijing, PR China
100630

Dear Miss Qing:

Thank you for your interest in the Business Leadership Forum. I would like to make you aware of two upcoming dates for lunch/dinner with President Clinton/Vice President Gore. The first is a lunch with the President on December 3, 1994 in Los Angeles, CA. The second date is a reception and dinner with Vice President Gore on December 19th in Washington, DC.

Since you will be joining the Democratic National Committee's Business Leadership Forum, we strongly urge that you attend one of these two events so that we can meet you and introduce you to other members of the BLF and senior administration officials. Coming to the U.S. will also enable you to experience many culture and business exchanges with successful American corporate leaders and government officials. The members of the BLF represent a wide variety of corporations and businesses from across the USA. By attending one of these two events, you will receive tremendous networking opportunities with other successful members of the BLF.

I hope to see you in the United States soon. If you have any questions, please feel free to call me at 202-863-7136.

Sincerely,

Francessa Wakem

Francessa Wakem
Deputy Director, Business Leadership Forum

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PRINCETON-Bayonne, N.J.
EXHIBIT
29

MAR-31-2000 12:02 CAMPCON 202 514 9554 P.03/04

GJS-DDC-00-2-2323

CO 293 (Rev. 8/91) Subpoena to Testify Before Grand Jury

United States District Court

THE DISTRICT OF COLUMBIA

TO:

Custodian of Records
EXECUTIVE OFFICE OF THE PRESIDENT
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:
☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE	COURTROOM
United States District Courthouse 3rd St. & Constitution Ave., NW Washington, D.C. 20001	3rd Floor
	DATE AND TIME April 14, 2000 ~~at 9:00AM~~

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

SEE ATTACHMENT

☐ *Please see additional information on reverse.*

E SUP 0250

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE / CLERK OF COURT
Nancy M. Mayer-Whittington, Clerk
(or) DEPUTY CLERK
Margaret Napier

DATE
March 24, 2000

This subpoena is issued upon application of the United States of America.

NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY
Monique Roth
Monique Roth, Trial Attorney
U.S. Department of Justice
Campaign Financing Task Force
1400 New York Avenue NW, 5th
Washington, D.C. 20530 202

EXHIBIT
30

ATTACHMENT TO THE SUBPOENA DUCES TECUM TO THE
CUSTODIAN OF RECORDS OF THE EXECUTIVE OFFICE OF THE PRESIDENT

Produce all original documents and records or, where originals do not exist, copies of all documents and records.

For the purpose of this subpoena, the term "documents" and "records" includes email, memoranda, correspondence, minutes of meetings, messages, notes, checks, deposits, invoices, appointment logs, calendars, diaries, journals, telephone messages, telephone logs, telephone bills, ledgers, balance sheets, contracts, and all other materials, whether in written form or in the form of other media, mechanical or otherwise, such as computer disks, audio tapes, video tapes, and photographs.

If any document or record is withheld under the claim of the attorney-client privilege or any other privilege, or if any document or record is withheld on the grounds that the act of producing that document or record is privileged, then a schedule shall be set forth identifying the date of, each and every author and preparer of, each recipient of, each person having possession, custody, or control of, and the present location of, each original and copy of the document or record. The schedule shall provide sufficient further information concerning the nature of the document or record to explain and substantiate the claim of privilege and to permit the adjudication of the propriety of that claim.

The documents and records to be produced are as follows:

(A) The original and unredacted calendars, diaries, telephone messages and telephone logs, from January 1994 through December 1996, of, or pertaining to, Mark Middleton

(B) All documents and records relating to Ernest Green from January 1994 through December 1996

Mar-31-00 15:52 From-DEPT OF COMMERCE FINANCE & LITIGATION +2024825906 T-504 P.03/05 F-067
MAR-31-2000 15:57 CAMPCON 202 514 9554 P.03/05

CO 233 (Rev. 8/91) Subpoena to Testify Before Grand Jury

GJS-DDC-00-2-2322

United States District Court

THE DISTRICT OF COLUMBIA

TO:

Custodian of Records
THE UNITED STATES DEPARTMENT
OF COMMERCE

SUBPOENA TO TESTIFY
BEFORE GRAND JURY

SUBPOENA FOR:
☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE	COURTROOM
United States District Courthouse 3rd St. & Constitution Ave., NW Washington, D.C. 20001	3RD Floor
	DATE AND TIME April 14, 2000 at 9:00AM

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

SEE ATTACHMENT

☐ *Please see additional information on reverse.*

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE OR CLERK OF COURT	DATE
Nancy M. Mayer-Whittington, Clerk IN BEHALF OF CLERK Margaret A. Hopper	March 24, 2000
This subpoena is issued upon application of the United States of America Attorney	NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT UNITED STATES ATTORNEY Monique Roth, Trial Attorney U.S. Department of Justice Campaign Financing Task Force 1400 New York Avenue NW, 5th Floor Washington, D.C. 20530 202/307-0655

COURT FOR THE DISTRICT OF COLUMBIA

EXHIBIT
31

ATTACHMENT TO THE SUBPOENA DUCES TECUM TO THE
CUSTODIAN OF RECORDS OF THE UNITED STATES DEPARTMENT OF COMMERCE

Produce all original documents and records or, where originals do not exist, copies of all documents and records.

For the purpose of this subpoena, the term "documents" and "records" includes email, memoranda, correspondence, minutes of meetings, messages, notes, checks, deposits, invoices, appointment logs, calendars, diaries, journals, telephone messages, telephone logs, telephone bills, ledgers, balance sheets, contracts, and all other materials, whether in written form or in the form of other media, mechanical or otherwise, such as computer disks, audio tapes, video tapes, and photographs.

If any document or record is withheld under the claim of the attorney-client privilege or any other privilege, or if any document or record is withheld on the grounds that the act of producing that document or record is privileged, then a schedule shall be set forth identifying the date of, each and every author and preparer of, each recipient of, each person having possession, custody, or control of, and the present location of, each original and copy of the document or record. The schedule shall provide sufficient further information concerning the nature of the document or record to explain and substantiate the claim of privilege and to permit the adjudication of the propriety of that claim

The documents and records to be produced are as follows:

(A) All records and documents relating to a Trade Mission to China in October of 1995

(B) All records and documents relating to Yah Lin "Charlie" Trie

(C) All records and documents relating to Ernest Green

(D) All records and documents relating to Wang Jun

(E) All records and documents relating to Wong Xu or Wong Xue

(F) All records and documents relating to Ng Lap Seng (a/k/a Mr. Woo or Mr. Wu)

(G) All records and documents relating to Mark Middleton

(H) The original and unredacted calendars and telephone message logs of the following Department of Commerce employees from January 1994 to December of 1996:

1. Former Secretary Ron Brown
2. James Hackney
3. Jude Kearney
4. Kathryn (or Kathrine) Hoffman
5. Bill (William) Morton

(I) All original and unredacted notes taken by the following individuals during their employment at the Department of Commerce:

1. Former Secretary Ron Brown
2. James Hackney
3. Jude Kearney
4. Kathryn (or Kathrine) Hoffman
5. Bill (William) Morton

(J) All records and documents relating to former Secretary Ron Brown's attendance at an event on October 18, 1995 at the Shangri-La Hotel in Hong Kong

(K) All records and documents relating to Wang Jun's appointment with former Secretary Ron Brown, at the Department of Commerce, on February 6, 1996

(L) All records and documents relating to a trade mission or other official trip of Secretary Ron Brown and other Department of Commerce employees to Africa in or about late November/early December of 1995.

Cooperation Opportunities with James Riady

1. Wal-Mart in Shanghai opens a store. Because Lippo has a successful cooperation experience at Lippo Village, and received sweet reward at Shenzhen. Actively urged Lippo to work with them in opening stores in Shanghai and Beijing.

Must obtain retail license and buy local product and imports to sell before we can consider. Local government may join in but maximum 10%. Wal-Mart takes 50%. Remaining may be divided with you.

The needed land must not be less than 10,000 square meters. Hopefully it will be a clear-cut deal. Distance from medium and high-income area cannot exceed 20 minutes driving time.

2. Buy a Hospital in Shanghai and Modernize It. At the Lippo Village, already has gained high-level hospital experience. Plus, James is a trustee of the Arkansas Medical School. His father is a trustee of USC. They may invite foreign doctors to be visiting doctors at Shanghai. And, can send Shanghai doctors for advanced training in foreign countries. The targets are foreign businessmen and high-income people.

3. Buy a School in Shanghai or Work Out a Joint Venture for an International School. Lippo Village's international school may be used as a model for planning.

4. There is a hotel in San Francisco - the stock should be bought in total or in part. This hotel is owned by the bank and is worth $7 million. It has a good record and may get a 60% loan. Suggest that you find 6 Chinese accounts to invest $1 million each. Lippo will retain 1/7 of the stock. These investors instantly become a partner of Lippo. They can use that to request immigration.

5. L.A. Bank Stocks: Maybe a part of the L.A. bank stock can be sold to Wang Jun. Knowing you have good relations with Wang Jun, hoping you can be the intermediary. Proposing that Wang Jun buy the Lippo bank stocks with money as reinforcement to enter the U.S. market. You may also plan to get a part of the stocks and a director position. James is a fair person. He knows especially the long-term strategy and the advantage of using business partners. He knows you have good relations with China. Hope you may be able to help realize the above suggestions. He agrees with my proposal and is willing to work with you on the above items.

If you are going to Jakarta in October, he may send his helicopter so you can visit Lippo Village. Thus you may have a clearer picture to push for the above items in China.

He may wait until you finish meeting on October 9 and hold a detailed talk with John Huang in New York on October 10.

Asian Trip

TO: Brian Foucart
FR: Melinda Yee
RE: Houston Finance Trip
DATE: November 15, 1991

As you know, I submitted a request to travel to Houston from November 21-25 next week to meet with the key money people involved with Asia. This advance work is necessary because we need to establish a solid relationship with some of these folks before the trip (our goal is to bring $100,000 out of Taiwan and thus far, $50,000 is pledged).

I discussed this with the Chairman last night and he agrees that the trip is necessary. He said to have you speak with him if you have any questions.

This will be the only advance travel by me for the trip. All of the L.A. work can be done by telephone.

Talk with you soon.

DNC 08

EXHIBIT
33

10/28/91

Brian/MM — I think Linda is exactly right — and Gail would be good. Logical choice — let's discuss — Cheri

MEMORANDUM

TO: CHERI CARTER

FROM: LINDA ROTUNNO

DATE: OCTOBER 25, 1991

RE: RHB ASIA TRIP

As I mentioned to you today, I believe it is vital that a member of the DNC finance staff accompany Chairman Brown during his upcoming trip to Hawaii, Hong Kong and Taiwan.

I think we all agree that Melinda Yee's job is to open doors for us in the Asian community and, it is our responsibility to follow-up. In this regard, and because fifty percent of the proposed Asian agenda is fundraising related, it would be impossible for the finance division to work with any new potential Asian donors if we do not have a representative with the Chairman during the trip. As far as our goals are concerned, it would be a wasted trip if we could not finesse these new relationships into real money.

Also, as I mentioned, I propose that Gail Dobert be our representative. Much of the trip will be dealing with prospective donors, which Gail is obviously quite good at. Also, a big part of this trip will be socializing and instilling a sense of friendship in the minds of our new Asian acquaintances and I can not think of anyone who could do this better than Gail. The other important factor will be to have someone along who can work with Maria Hsia and John Huang, and I will work with Gail to build these working relationships before the trip. Finally, because the trip is being fully financed by the government, I do not think cost will be an issue.

I think we should submit this idea to the powers that be and have Gail involved in any future discussions regarding the Asia trip.

Please let me know what you think. // all OK/JS & FC

cc: Melissa Moss
Gail Dobert

EXHIBIT 34

cc: Margy

MEMORANDUM

TO: Laura Hartigan

FR: Vida Benavides

RE: Asian Pacific American Los Angeles Fundraiser

Background

There is a Los Angeles Asian Pacific American fundraiser tentatively scheduled for September 28, 1993 with Vice-President Gore and Chairman Wilhelm.

DNC Treasurer, Bob Matsui will not attend.

Finance Role

Darius Anderson, Western Finance Director, has been responsible for organizing this event. He has been in contact with key APA Fundraisers such as John Huang, DNC Trustee. John Huang committed to the goal of $200,000.00. Mr. Huang is the Chair of the local fundraising committee and this committee had met with Darius & Ken Levy of DNC Finance office to discuss financial contributions, issues, and plans for the fundraiser.

APA Constituency Director's Role

I was informed through a memo from Mr. Anderson's office that a fundraiser is tentatively scheduled from the LA APA community to be held late September. I was only informed and requested by the DNC LA Finance Office to submit names/list to be contacted by their office for invitation purposes.

I attended the meeting with the local fundraising committee and DNC Finance Committee (Darius, Ken and Porter) last August 20th at Lippo Bank in Los Angeles.

My role was to update the committee with the affairs and issues relating to DNC APA Political Affairs office and to answer any questions. Members of the committee raised one issue: **Asian Pacific American political appointments, specifically from California.**

Thus far, my role is to inform the DNC Finance office the political ramifications in regard to :

1) White House appointments of APA's
2) Bob Matsui, DNC Treasurer (his role or lack of)

Help in anyway possible to avert political damage that have arised or may arise due to how this fundraising is being organized.

EOP

EXHIBIT
35

Democratic National Committee

VICE-PRESIDENT'S DINNER WITH ASIAN PACIFIC COMMUNITY

GENERAL BRIEFING AND GOALS

BACKGROUND

Since the end of the campaign the Administration has talked a great deal about reaching out to minority communities and plugging them into the political process. Since January, however, many national and international concerns have overshadowed this outreach effort and the Administration has been tardy in its action. It is important the both the Democratic National Committee and the Clinton Administration address crucial issues that effect the community.

EVENT

The DNC's Western States Office will be hosting a Vice Presidential Dinner in Southern California with the Asian Community in late September. Our outreach effort will concentrate on the state of California, as well as, reach into several national communities with large Asian populations. In Southern California, their are six major Asian communities that we will target: Chinese, Vietnamese, Koreans, Japanese, Indians, and Philippinos.

The Vice President will visit a local Asian community and meet with local business leaders and community representatives. In addition, Representative Bob Matsui will hold an issue briefing during lunch the day off the V.P. Dinner. The Dinner will feature keynote speakers Vice President Al Gore, DNC Chairman David Wilhelm, and Representative Bob Matsui. The dinner will be preceded by a 45 minute reception with music and an open bar.

CO-HOSTS

The Chair of this event is John Huang. Possible Co-hosts include Richard Park, Richard Choi, Steve Chang, Govind Vanghashia, Rajan Anand, and March Fung Eu. Not only will the Co-Host be looked to for input on the event, but they will take an active leadership role in networking within their individual communities and raising funds for the Vice President's Dinner.

STAFF

We will need both DNC staff and volunteers to help see this event to fruition. I anticipate that two DNC staffers will work full time on this event and that we will need the assistance of close to 8 volunteers.

The unique nature of this event may require the assistance of fund-raising consultant David Lang, who was a the top fund-raiser for former Los Angeles mayorial candidate Michael Woo. David has developed a strong network throughout California's Asian popluation and also may be able to reach into other parts of the nation.

EOP 052753

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Democratic National Committee

VICE PRESIDENT'S DINNER WITH ASIAN COMMUNITY

SCHEDULE OF EVENTS

LUNCH BRIEFING

Co-Hosts will meet with Representative Robert Matsui for a lunch the day of the Vice President's Dinner. This lunch will include an issue briefing to discuss the Asian community and the status of U.S. international relations with Asia.

VIP RECEPTION WITH VICE PRESIDENT GORE

Co-Hosts and Sponsors will be invited to attend a reception prior to the Vice President's Dinner. Cocktails will be served during this time and donors will have the opportunity to mingle with the Vice President and other guests. In addition, attendees will have the opportunity to be Photographed with the Vice President. The VIP reception is a social occasion during which donors may personally meet Vice President Gore before the Dinner begins.

VICE PRESIDENT'S DINNER RECEPTION

All contributors will be invited to the Dinner Reception which will immediately precede the Vice President's Dinner. Cocktails and hors d'oeuvres will be served.

VICE PRESIDENT'S DINNER

All contributors will be invited to the Vice President's Dinner. This meal center around a three course meal and several speakers will address attendees at a podium at the front of the room. Shortly, after the first course our Chair will speak briefly and introduce Chairman David Wilhelm. The Chairman will speak on the direction of the DNC and its minority outreach efforts and introduce Vice President Al Gore.

EOP 052754

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Democratic National Committee

VICE-PRESIDENT'S DINNER WITH ASIAN-PACIFIC COMMUNITY

CONTRIBUTION LEVELS

1. CO-HOST

Contribution: $25,000

Events: Lunch Briefing with Bob Matsui (Four Guests)
VIP Reception with the Vice President (Two Guests)
Dinner Reception (Ten Guests)
Vice President's Dinner (Ten Guests).

Other:
- Each Co-Host will receive membership into the DNC's Business Leadership Forum, regardless of whether the donation is written from a personal or corporate account.
- Photographs will be taken at VIP Reception with Vice President.
- Co-Hosts will receive one table at the Vice President's Dinner, which accommodates 10 guests.

2. SPONSORS

Contribution: $10,000

Events: Lunch Briefing with Bob Matsui (Two Guests)
VIP Reception for Vice President's Dinner (Two Guests)
Dinner Reception (Six Guests)
Vice President's Dinner (Six Guests)

Other:
- Each Sponsor will receive membership into the DNC's Business Leadership Forum if the donation is written from a personal account.
- Photographs will be taken at VIP Reception with Vice President.

3. PATRONS

Contribution: $1,000

Events: Dinner Reception (One Guest)
Vice President's Dinner (One Guest)

Other: A Patron will be entitled to one seat at the Vice President's Dinner.

* Guest number includes Donor. (I.E. 'Two Guests' means the Donor and one additional person).

EOP 052755

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Political Concerns

I. White House Appointments

The major concern for the LA APA Fundraising committee are Asian Pacific American appointments. There have been significant APA appointments, but key APA Democratic leaders from California have not yet been appointed by the administration.

March Fong Eu, Gloria Ochoa, Dale Shimisaki, Paula Bagasao, Yvonee Lee, Jocelyn Yap, Lam Nguyen, T.S. Chung, Shan Thever, Lon Hatamiya, Ron Wakabayashi, Mike Woo, ...etc...

The names just listed played key roles during the Clinton/Gore campaign and thus far, their appointment track have been delayed or not have been dealt with in an expeditious manner.

As an observer during the first meeting (Aug. 20), several committee members felt hessitant with committing donations without a guarantee that there will be appointments made by the time fundraiser will take place. Other policy issues came into the conversation such as the future APEC Conference and APA involvment, immigration, ..etc.

Richard Choi Bertsch (Korean American Democratic Council) brought the issue of appointments and DNC hires of APA's. He questioned Darius whether or not APA's will play a visible role during this fundraiser (advance, organizer helpers..etc.)

David Lai (March Fong Eu's staffer) was also present and has communicated Ms. Eu's concerns that she has yet to be contacted by the White House and update her on her appointment. She has to know real soon whether or not she will be appointed and if not, begin her campaing to remain Secretary of State.

Many were reluctant to commit to a figure but did so to show in good faith that they are committed to the party and to the APA community of Los Angeles.

p.3
LA APA Fundraiser

A. Political Perception

1. My concern is that if the WH made significant appointments too close to the fundraiser, the perception is that the APA from California were "buying" off appointments.

   There is no guarantee from the WH these appointments will be made in September. It will be politically embarrasing for those involved if no appointments come or just before the fundraiser.

2. The WH Principals have not yet done any substantive issue events with the Asian Pacific American community. To have the Vice-President do a fundraiser without an issues/public event will set off the wrong message.

3. DNC Treasurer Bob Matsui's schedule is in conflict with the tentative event. Congressman Matsui is disappointed that he was not consulted during the conception stages of this fundraiser. His absence at the first APA Constituency Fundraiser in his home state will be perceived in the negative. He is the only APA in the DNC Executive Committee and to have him absent during the Vice-President's & Chairman's visit with the APA community will be create discomfort for all involved. He should always be consulted whenever an Asian Pacific American fundraiser will be organized.

4. DNC Western State Finance staff should be careful of their financial demands from the APA community. To prematurely underestimate the APA's financial capability could backfire. Initial goal was $200,000.00. It was raised to $300,000.00. On August 26, the DNC Finance staff requested the goal of $ 500,000.00.(half a million from a community that has not yet seen the benefits of their contributions to the campaign/Administration)

   Many members of the local committee have expressed the "arrogance" from the "young staffers" requesting a committment that high and this early. The members are wondering if there are fundraisers scheduled with other constituency groups.

Monday, Aug. 30 at 1:00 pm (West Coast), John Huang and Darius will be meeting today and discuss the issues further. I am waiting for their calls.

Below are recommendations I hope that will work toward working this event out:

Recommendations

A. Have the VP do a public event/issues hit with the APA community during his visit (before the scheduled event).

(Gore's office/Darius/Marcy/Tom E. get all involved)

B. Press the WH/John Emerson to push CA. APA Appointments.

(Martha Phipps is waiting for Maria Haley's phone call)

C. Have WH call March Fong Eu's office and update her on the status of her appointment. WH has to make series of calls. John Emerson will have to make the call.

D. Ask Bob Matsui's AA/Tom Keany what role he would like to play. (ie.. accompany VP to events)

E. Have Chairman make a call to DNC Treasurer Bob Matsui to further clarify roles and concerns.

Few of the recommendations are contingent on the meeting Darius will have with John Huang. I will be meeting with Maria Haley/WH Office of Personnel to discuss the appointment track of APA's from California tomorrow.

Please be advised that Bob Matsui office and I should be consulted before the idea of holding a fundraiser in the APA community. There are a lot of political considerations before a fundraising meeting should take place within the Asian Pacific American community and consulting with each other would help future communications between political and finance.

cc: Martha Phipps, Minyon Moore, Marcy Sandoval

TO: Martha Phipps
Kent Markus
Minyon Moore
Laura Hartigan
Marcy Sandoval

1

FR: Vida Benavides

RE: John Huang's Compromise Proposal
LA Fundraiser

==========

John Huang's Proposal
==========

1) downpayment commitment of $100,000.00.

2) have key/local business & political leaders meet with Gore for the $100,000.00 event instead of the 200,000 fundraiser.

Requesting a small reception and dialogue time with Gore (1 hour)

3) commit 300-400,000 dollars at a later event once significant appointments are named and if the administration are useful of APA's during the APEC Conference in Seattle.

- our finance committee raised the goal to $500,000 without really consulting or exploring the possibility of raising that money from the local committee.

Reasons:
==========

1) receiving indication from local fundraising committee that Administration appointments have not gone far enough;

Committee members are not "activist", they are all major fundraisers: Richard Park (raised over 250,000) Richard Choi (100,000) Rajen Anand (25,000) March Fong Eu (100,000 -+)

The above mentioned are on appointment track either a job or commission or board.

2) They have mentioned the issues of appointment and lack of action from the administration during the first and 2nd meeting finance had with the local committee. (Ask Ken Levy...point person for Darius Anderson)

3) Since, John Huang himself is up for an appointment, his early commitment of 200,000 would be perceived as a buy-off.

4) These fundraisers would like to help in the future by going back to their fundraising base but would look foolish if they themselves commit to give without a guarantee of a possible appointment. Their own credibility will be questioned...regardless if their "activist" or not. WE should not assume that APA fundraisers lack political integrity.

EXHIBIT
36
PENGAD-Bayonne, N. J.

SOLUTIONS
==========

1) Accept John Huang's proposal , on the condition that the next fundraiser will raise $900,000 to a total of **$ 1million dollars** when Clinton comes to LA in December.

These must happen:

1) appointments by December
2) involvement of APA's during APEC Conference
3) in good faith.....by word that APA's will have to raise this by '94 due to the fact that DNC will not be raising money in the State for that year

4) aggressive political and outreach efforts to attrack the funds from key fundraisers from all over (MI, HI, NY)

OUTLOOK
=======

Appointments will be made by December.

Making lists of all APA's that are involved with Asia/Pacific Rim issues to be involved in APEC's public events.

Must work with the WH to include APA's from the Administration to be present at the APEC Conference.

Seek the funds from other sources to make LA fundraiser an all out California & DNC APA Friends from all over to make the **$900,000 mark.**

(David Lang, former fundraiser for Mike Woo/responsible of raising $2 mil is on DNC Contract---key player)

Set structure for DNC APA Finance Advisory Council that will be part of the overall new APA structure DNC will develop.

Cys + JTR'
file

Secretary of State
1230 J Street
Sacramento, California 95814

September 23, 1993

John Huang, Vice Chairman
Lippo Bank
711 W. College Street
Los Angeles, California 90012

Dear John:

As you may have read in the newspaper, White House sources have confirmed that I will be nominated as the United States Ambassador to Micronesia following routine clearances. I apologize that you may not have heard it from me first!

I want you to know how much I appreciate your support in this lengthy appointment process. I am truly honored to have had the benefit of your endorsement. It means more to me than you will ever know.

Having the opportunity to play a key role in the development of United States foreign policy in the Asian/Pacific region is one that I relish. Thank you for helping to make it happen.

As always, please don't hesitate to let me know if I can ever be of assistance. In the meantime, I send my warm regards.

Sincerely,

March

MARCH FONG EU

NOT PRINTED AT PUBLIC EXPENSE

PENGAD-Bayonne, N. J.
EXHIBIT
37

Legislative Administrative Services
Date: Thurs. 10-9-97

2.

Local Demos say they felt need to repay state party

Legality of transfers questioned

By DAVE SEATON

Several Cowley County Democrats sent checks to Topeka after receiving money from Washington last fall because they felt an obligation to repay the state party for services.

"I felt, hey, that's why I'm going to give them this, because they've been doing all this stuff, helping all the candidates," said former county chairwoman Teresa Krusor.

The "stuff" included a field organizer, polls and a get-out-the-vote campaign.

Krusor's husband, Mark, called Topeka and got a green light from its director, Tom Beall, to send $4,750 to the Democrats' Kansas Coordinated Campaign Committee. The Cowley County party had received a check for $5,000 from the Democratic Congressional Campaign Committee in Washington.

"It wasn't mandatory," Mark Krusor said of the request from Beall. Krusor said he thought Beall was aware of the check sent to Cowley County from Washington.

Rep. Judy Showalter, D-Winfield, said she felt "a moral, not a legal" obligation to send $400 to Topeka on the same day she received a check for $500 from the Democratic Senatorial Campaign Committee in Washington.

Jessica White, a Kansas State University student, was the field organizer in Cowley and Sumner counties.

"We were all supposed to help pay the girl's salary," Showalter said. Her check went to the office of Kansas Senate Minority Leader Tom Sawyer and was designated "payment for services of Democratic campaign coordinator."

Brett Cott, executive director of the Kansas Democratic Party, said he did not know how much the party had spent in Cowley County. He said White was one of about a dozen field organizers who received a stipend of $500 a month from the state party but whose living costs were handled locally.

In a memorandum to Teresa Krusor dated Sept. 24, a week before the letter accompanying the check from Washington was mailed, Beall sent a memo asking the Cowley County party committee for a contribution.

"As you are aware," the memo said, "the Kansas Democratic Party through the KCCC is providing generic voter contact/GOTV (get out the vote) activities on behalf of Democratic candidates all the way down the ticket. In addition, we have provided field organizers and a statewide voter file.

"We would like your county committee to contribute as much as you can afford ($10 to $5,000)."

Krusor said she had been asking Topeka for help. "He called and told me we're going to get you some help," she said of Beall.

Then Beall called and asked if she had received a letter from Washington, she said.

"He said he had talked to Carol Williams and it was OK," Krusor said. "He advised us there was nothing illegal about this."

Williams, executive director of the Kansas Commission on Governmental Standards and Conduct, said she had had frequent conversations with Beall, as with Republican campaign fund-raisers, but she never approved a county giving money from Washington to Topeka as if it were its own.

( ) Olathe Daily News
( ) Ottawa Herald
( ) Parsons Sun
( ) Pittsburg Morning Sun
( ) Salina Journal
(■) Winfield Daily Courier

"At no time was the question asked of me, can the national party send money to the counties and have them send that money on?" Williams said. "My guess is he (Beall) got the answer he wanted because he asked the questions in a certain way."

Beall could not be reached for comment.

Rep. Joe Shriver, D-Arkansas City, who received $500 from Washington in early August and later sent $250 to Topeka, said he never received a telephone call from Topeka or Washington concerning the money.

"I believe that was for polling," Shriver said of the $250.

Shriver said he was unaware of the alleged $300,000 or more moved from Washington to Topeka by the national Democratic Party. Since that time, through conversations with Rep. Henry Helgerson, D-Wichita, he has come to believe the practice "if true, should stop."

Helgerson blew the whistle on his party. "I believe there was a very orchestrated campaign from a high level to move money from Washington to Topeka," Helgerson said.

The objective was to provide up to $900,000 for negative television ads paid for by the state party in the U.S. Senate campaigns of Jill Docking and Sally Thompson, Helgerson said.

As for local candidates and county party people, Helgerson said he had no question that what they thought they were doing was legal.

Messages picked up at the local level varied as the orchestrated national effort spread, Helgerson said. Not everyone involved got telephone calls from Topeka, as he did, asking them to receive money from Washington and send it on to the state party.

Republican state chairman

Page 1 of 2

EXHIBIT
38

Legislative Administrative Services
Date: Thurs. 10-9-97

Local Demos say they felt need to repay state party

( ) Kansas City Star
( ) Emporia Gazette
( ) Garden City Telegram
( ) Hays Daily News
[redacted] Winfield Daily Courier

(Continued)

David Miller said he was not targeting local Democratic candidates or party officials. "I'm not trying to hurt those people," Miller said. "They didn't know better, and I believe they didn't know any better."

A full-scale investigation in the Legislature is Miller's objective. "What I'm most concerned about is the public policy and the integrity of the political system."

Instead of doing what the law intended, Helgerson said, some individuals followed a strategy of bending the law to get money where it was needed in order to manipulate the system. There was collaboration among state Democratic Party chairmen to do this, he added.

Dennis Langley, chairman of the Democratic Party in Kansas, "was not innocent" of these manipulative activities, in Helgerson's opinion.

Cowley County Republican chairman Scott Ruddick said he knew a lot of money came into Cowley County late in the 1996 campaign. "Whether that was legitimate money, or illegitimate money, I don't know," he said.

Ruddick agreed with Miller a legislative investigation was needed.

Shriver said his experience as treasurer for his father, Jack's, campaigns for the Kansas House told him it was illegal for a person to contribute in his own name when the money came from someone else.

Joe Shriver, who still owes $15,000 in attorney fees from his unsuccessful 1994 campaign, referred to an attorney general's opinion that it is illegal to transfer funds from one person to another in the name of a third. He said he did not know if this took place in 1996, but if it did, it should stop.

"Wrong is wrong," Shriver said. "Let's put a stop to it."

Sen. Greta Goodwin of Winfield could not be contacted for this article.

Democratic Senatorial Campaign Committee
430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447
Internet: info@dscc.org

J. Robert Kerrey, NE
Chairman

Program Chairs

Next Majority Trust
John Breaux, LA

Women's Council
Barbara Mikulski, MD
Barbara Boxer, CA

Leadership Circle
Kent Conrad, ND

Labor Council
Russ Feingold, WI

DSCC Roundtable
David Pryor, AR
Carol Moseley-Braun, IL
Patty Murray, WA

August 1, 1996

Rec 8-5-96

Donald Biggs
Biggs for Senate
2712 Olde Creek Court
Leavenworth, KS 66048

Dear Donald,

On behalf of the Democratic Senatorial Campaign Committee, we are pleased to make a contribution of $1,000 to your primary election campaign for the Kansas Senate.

The DSCC provides this contribution through corporate funds, which the DSCC understands can be accepted lawfully under Kansas law. Please advise the DSCC if their understanding in this matter is incorrect.

The DSCC understands that you will make any disclosure of this contribution which may be required on reports filed with the state of Kansas in accordance with Kansas law. In its turn, the DSCC will meet all of its reporting obligations.

Please let us know if anything in this letter does not correspond with the facts of the matter as you understand them. Should you have any additional questions or need further information, please do not hesitate to call Amy Watkins of the DSCC staff at (202) 224-2447.

Sincerely,

J. Robert Kerrey
Chairman

Enclosure

Paid for and authorized by the Democratic Senatorial Campaign Committee
Contributions are not tax deductible.

Sep-15-98 05:06P P.02

Date	Invoice No.	Description	Amount	Discount	Net Amount
08/01/96	SD080196	Contribution	1,000.00		1,000.00
08/01/96		*** CHECK 000131 TOTALS:	1,000.00		1,000.00

Thank you sent 8-8-96

Detach stub before depositing

DEMOCRATIC SENATORIAL CAMP. COMM.

DEMOCRATIC SENATORIAL CAMP. COMM.
430 South Capitol, S.E.
Washington, D.C. 20003

000131

NATIONSBANK
WASHINGTON, DC
CORPORATE ACCOUNT

15-120/540

8-5-96

	Date	Check No.	Payee I.D.
***1,000 DOLLARS AND NO CENTS	08/01/96	000131	Biggs

Pay This Amount
$**********1,000.00

PAY TO THE ORDER OF

Don Biggs for State Senate
2712 Olde Creek Court
Leavenworth, KS 66048

⑈000131⑈ ⑆054001204⑆ 193306796 0⑈

Vendor: Biggs Don Biggs for State Senate Check No.: 000131 Check Date: 08/01/96

Date	Invoice No.	Description	Amount	Discount	Net Amount
08/01/96	SD080196	Contribution	1,000.00		1,000.00
08/01/96		*** CHECK 000131 TOTALS:	1,000.00		1,000.00

DEPOSIT TICKET

DON BIGGS 5-96
FOR SENATE COMMITTEE
2712 OLDE CREEK CT. PH 913-682-1802
LEAVENWORTH, KS 66048-4398

DATE 8-5 1996
DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

SIGN HERE FOR CASH RECEIVED (IF REQUIRED)

Commerce Bank
Box 179
Leavenworth, KS 66048-0179

CASH ▶ ✓
CHECKS ▶ 1000 —
CHECK OR TOTAL FROM OTHER SIDE ▶
SUBTOTAL ▶
LESS CASH RECEIVED ▶
$ 1000.—

Detach stub before

⑆101000019⑆ 6102188191⑈

REORDER FORM

USE WITH COMPANION ENVELOPE - 44-005

Sep-15-98 05:05P P.01

SENATOR JERRY KARR
Senate Democratic Leader
State Capitol Building, Room 347-N
Topeka, Kansas 66612
(913) 296-3245

P.O. Box 1811
Topeka, Kansas 66601

10-21-96
Copy to Frank.

MEMO

To: Don Biggs
From: Tressie Hurley
Subject: DSCC Contribution
Date: September 3, 1996

The Democratic Senatorial Campaign Committee (DSCC) is part for the Democratic National Committee. It is the campaign entity which assists United States Senate campaigns. It is roughly the counterpart to our office on the national level.

9-5-96
Ck # 1022

The DSCC, in an effort to support state senate candidates, the Democratic Party, and their own candidates, will contribute $1,000 to each state Senate campaign our office designates. You may keep $200 but then must turn around and contribute $800 to the Senate Victory Fund, P.O. Box 1811, Topeka, KS 66601.

The money from the national DSCC to the campaign should be shown as a contribution from the DSCC on your Contributions and Other Receipts Report (Schedule A). The $800 contribution from you to the Senate Victory Fund should be shown on your Expenditures and Other Disbursements Report (Schedule C).

This money will help you (the $200) and it will help the Kansas Coordinated Campaign and all Democratic candidates as well.

This is perfectly legal. It is legal for a campaign to accept a contribution from a national Democratic Party group and for them to support the Senate Victory Fund, which is a designated Party committee.

NOT PRINTED AT GOVERNMENT EXPENSE.

EXHIBIT
40

Tino M. Monaldo, Chartered

Attorney at Law

335 North Washington
Corporate Square/Suite 130
P.O. Box 728
Hutchinson, Kansas 67504-0728
316 669-9338
Fax 316-665-5961

Tino M. Monaldo

November 13, 1997

Carol Williams
Executive Director of the
Kansas Commission on Governmental
Standards and Conduct
109 West 9th Street
Topeka, KS 66612

Dear Carol:

This law office has been asked by Dennis Langley, Chairperson of the Kansas Democratic Party, Inc. (KDP) to respond to your letter written on behalf of the Kansas Commission Governmental Standards and Conduct, (Commission) dated October 9, 1997. The KDP welcomes the opportunity to respond to your inquiry inasmuch as Mr. Langley requested an inquiry in his letter to you dated September 18, 1997 (See **Exhibit 1**). I would also like to state that in preparing my response your office has answered a number of procedural questions, politely, professionally and timely, all of which I greatly appreciate. I also appreciate the additional days you provided me to prepare this response.

We recognize that in politics where our political opponents want to practice mudslinging and the media does not report all the facts, sometimes one must prove his innocence, rather than being considered innocent until proven guilty. Your letter does not allege specific acts, which violated K.S.A. 25-4154(a) and/or 25-4153(d), but merely references statutes that could allegedly be violated. We can only assume these general allegations stem from an inaccurate and incomplete newspaper story appearing in the Wichita Eagle in September of 1997, or from the obviously bias political attacks made by the current State Party Chairperson of the Republican Party. While it appears unfair and rather impossible to disprove acts which have not been specifically alleged, the KDP, in an effort to clear its reputation, has requested your inquiry and to assist you, provides the following information.

However, since your inquiry, as stated in your October 9, 1997, letter was general and non-specific, we would submit that the specifics of any future allegations are absolutely essential in viewing both any direct and/or circumstantial evidence. Therefore it is critical to this inquiry to determine: (i) who is being accused (i.e. specific person); (ii) who did what (i.e. what specific

act(s) or communications(s), etc are suspect); and (iii) what was spoken or communicated with what person (i.e. to whom did the accused speak or communicate). Additionally, your inquiry should consider: (i) under whose authority someone was speaking or acting (i.e. what specific organization); (ii) was the activity or communication within the scope of authority vested in the individual(s) in question; and (iii) was the activity in question done by the person(s) in question done with the intent (mens rea) of violating the law.

Since your letter of October 9, 1997, does not allege specific actions or communications by a specific person with a specific person, or what organization these people are acting on behalf of, in this response, I have had to surmise or guess as to those person(s), act(s) and organization(s) that may be "in question." It is more than just an academic exercise to understand the specific person, organization and communication in question. Without these specifics, any accusation is patently unfair and would violate the basic constitutional principle of being able to face your accuser. Furthermore, without the specifics of who, what and how, and under whose authority people acted, examining in a fair and knowledgeable manner the intent of unspecified people, as to unspecified acts, becomes virtually impossible.

As you know, the specific intent of a person or organization to commit a crime is required for there to have been a criminal violation of the law. The existence of criminal intent is regarded as essential even though the terms of a criminal statute do not require it, unless it appears clearly that the legislature intended to make the act criminal without regard to the intent with which it was done, State v. Jones, 748 P.2d 839, 242 Kan. 385 (1988). In regards to K.S.A. 25-4154(a), the requirement of a specific criminal intent is self-evident by virtue of the statute's condition that the prohibited act have been made "knowingly".

At the onset the KDP wants to make the clear and unequivocal statement that it does not, and cannot speak on behalf of the Democratic National Committee (DNC), the Democratic Senatorial Campaign Committee (DSCC), the Democratic Congressional Campaign Committee (DCCC) and/or any other Democratic State Political parties (DSPs). Each of these organizations, we believe, are separate and distinct legal entities, and to the best of the KDP's knowledge have distinct separately controlled staffs. The DNC, DSCC, DCCC and/or DSPs have not given the KDP the express or implicit authority to act or speak on any of their behalves. The letters contained herein, which are attached as copies, from DNC, DSCC and DCCC, are provided to assist you, but the KDP does not and cannot speak on behalf of those entities.

It is important to understand this distinction because of the general nature of the allegations contained in your inquiry letter. If the allegation is that the DNC, DSCC and/or DCCC contributed money to counties or candidates with such money conditioned to go to the KDP, then for purposes of your Commission determining whether or not there was a violation of any state campaign election law, the Commission must find evidence that the DNC, DSCC and/or DCCC had the intent to condition those contributed funds and if in fact it did so. While throughout this letter the KDP denies knowledge of such intent by the DNC, DSCC, DCCC and/or DSPs, the intent of the DNC, DSCC, DCC and/or DSPs, is not something the KDP could possess or which the KDP has any actual knowledge. We have, we believe, been helpful to your inquiry, by seeking and receiving letters from the DNC, DSCC and DCCC to you. Any additional questions you have should be directed to the DNC, DSCC, DCCC and/or DSPs.

Similarly, the KDP also wants to make the clear and unequivocal statement that it does not, and cannot speak on behalf of the Kansans for a Democratic House (KDH), the Senate Victory Fund (SVF), the Kansas Senate leadership organization or staff (KD Senate), the Kansas Democratic House leadership organization or staff (KD House), or any particular Senate or House member. Each of these entities or persons, we believe, are separate and distinct legal entities, and, to the best of KDP's knowledge, have distinct and separately controlled staffs. The KDH, SVF, KD House, KD Senate, any Senator or House Member have not given the KDP the express or implicit authority to act or speak on their behalf. It is important to understand this distinction because of the general nature of the allegations contained in your inquiry letter. If the allegation is that the DNC, DSCC and/or DCCC contributed money to Kansas legislative candidates with that money conditioned to go to the KDH and/or SVF, then for purposes of your Commission determining whether or not there was violation of any campaign election law, the Commission must find evidence that the DNC, DSCC and/or DCCC had the intent to condition those contributed funds and if fact it did so. While throughout this letter the KDP denies any knowledge of any such intent by the DNC, DSCC and/or DCCC, any additional questions you have should be directed to the KDH, SVF, KD House, KD Senate, or Senator or House Members.

In response to your October 9, 1997, letter which asserts suspicion of two general statutory violations, the KDP has two brief responses, followed by a more detailed explanation:

First, the KDP specifically denies the allegations in Paragraph 1 of your letter that during the 1996 election cycle the KDP allegedly knowingly accepted contributions made in the name of another in violation of K.S.A. 25-4154(a).

Second, the KDP specifically denies the allegations contained in Paragraph 2 of your letter that during the 1996 election cycle the KDP knowingly received contributions in excess of the limits set forth in K.S.A. 25-4153(d).

The position of the KDP is grounded in the facts described below:

1. In 1996 the KDP received no more than $15,000.00 from any one of 17 different other DSPs (See **Exhibit 2**). The source of these funds was reported by the KDP in its reports previously filed with the Secretary of State. The receipt by the KDP of those funds is specifically permitted under K.S.A. 25-4153(d), which allows up to $15,000.00 to be contributed to the "state party committee by a person other than a national party committee or a political committee." The KDP believes it attracted these contributions from other DSPs because of the excellence of its coordinated campaign efforts, and the quality of its candidates. No apologies are made, none are necessary. Both political parties in Kansas are free to solicit and receive contributions of up to $15,000.00 per calendar year from other state political parties. Since this source of funds is specifically permitted under K.S.A. 25-4153(d), regardless of whether one state party or all 49 other state parties contributed to the KDP, all such contributions accepted by the KDP were legal and specifically permitted. When a statute specifically permits the KDP to receive a contribution from another state party, no amount of mud slinging by the media or the Chair of the Republican Party can possibly convert a legal receipt of a contribution into an illegal act.

Again without the benefit of knowing specifically what act the KDP is accused of or who the accuser is, the KDP, responding to inaccurate news reports, specifically states that the KDP, its officers or employees, did not explicitly or implicitly, in writing or verbally, request that the Democratic National Committee (DNC) or any person or entity contribute money to any DSPs with a condition that DSPs contribute that money to the KDP, as a means around the $25,000.00 limit on the DNC's contributions to the KDP under K.S.A. 25-4153(d) and/or K.S.A. 25-4154(a). The KDP makes this representation on its own behalf and not on behalf of any other party and specifically is not speaking on behalf of the DNC, DCCC, DSCC, DSPs, KDH, SVF, KD House, KD Senate and/or any House or Senate member.

2. The KDP received $20,255.00 ($17,000.00 in cash and $3,255.00 of in-kind contributions in non-federal dollars) from the DNC during 1996 (See **Exhibit 3**), which is under the limit described in K.S.A. 25-4153(d). This amount was properly reported and disclosed by the KDP on its report filed with the Secretary of State. Without repeating the entirety of the KDP's statements in Paragraph 1 above, the KDP reiterates it: (i) did not violate or intend to violate K.S.A. 25-4153(d) and/or K.S.A. 25-4154(a); (ii) did not explicitly or implicitly, verbally or in writing, ask the DNC to contribute money to any other state party with a condition that the state party could contribute that money to the KDP, as a means around the $25,000.00 limit on DNC contributions to the KDP under K.S.A. 25-4153(d) and/or K.S.A. 25-4154(a). The KDP makes this representation on its own behalf and not on behalf of any other party and specifically is not speaking on behalf of the DNC, DCCC, DSCC, DSPs, KDH, SVF KD House, KD Senate and/or any House or Senate member.

Additionally, **Exhibit 4** is a letter from the DNC to you, which is a definitive statement that the DNC did not on its own or in collusion with the KDP, circumvent the provisions of K.S.A. 25-4153 (d) and/or K.S.A. 25-4154 (a).

3. While the KDP is not responsible for reporting contributions made by third parties to any county central committee of the Democratic Party, through the cooperation of the Democratic Congressional Campaign Committee (DCCC), we were able to determine that the counties listed in **Exhibit 5** received $5,000.00 each from the DCCC accompanied by letters like the ones attached behind **Exhibit 6**.

Please note that the DCCC is not the DNC. The DCCC is a separate and distinct "political party committee" from the DNC. The DCCC conducts an active "non-federal" program of support for non-federal electoral candidates, such as candidates for state senate, state house and governor. The DCCC has also participated in Democratic Party reapportionment activities in other states. In administering its non-federal program, the DCCC maintains a segregated non-federal account to receive and make expenditures for state and local campaigns or other "non-federal" purposes. Such accounts are specifically allowed by the Regulations of the Federal Election Commission (FEC) (See 11 C.F.R. Section 102.5(a)(1)).

Moreover, the FEC has specifically recognized the right of a national political committee to pursue non-federal electoral goals under the relevant financing provisions of state law, including, those state laws permitting corporate contributions (See Advisory Opinion 1979-17, 1 Fed.

Election Camp. Fin. Guide (CCH), ¶5416, July 16, 1979). Second, the DCCC historically has contributed monies to county central committees and candidates in other states and also contributed to certain Kansas Democratic candidates in 1994 (See **Exhibit 7**). Kansas was long overdue to receive the attention, focus and money of the DCCC. Third, a county central committee is permitted under K.S.A. 25-4153(d) to receive up to $5,000.00 per calendar year from a committee such as the DCCC. In fact, **Exhibit 8** is a letter from the DCCC to you, which is a definitive statement that the DCCC did not on its own, or collusion with the KDP, circumvent the provisions of K.S.A. 25-4153(d) and/or K.S.A. 25-4154(a).

Therefore, no county central committee was in violation of the law by receiving a contribution from the DCCC, since to the knowledge of the KDP none of the contributions by the DCCC to counties exceeded $5,000.00.

Again, without knowing its accuser or the specific acts it is being accused of, the KDP specifically states: (i) the KDP, its employees and officers, did not request, explicitly or implicitly, in writing or verbally, that the DCCC or any person or entity contribute to county central committees, with a condition that the county central committees contribute that money to the KDP on behalf of the DCCC in violation of K.S.A. 25-4153(d) and/or K.S.A. 25-4154(a). The KDP makes this representation on its own behalf and not on behalf of any other party and specifically is not speaking on behalf of the DNC, DCCC, DSCC and/or any County Party.

4. It has been normal and customary for candidates and counties to purchase services, buy event tickets and sponsorships, when allowed, as well as to contribute funds to the KDP. **Exhibit 9** consists of a summary printout of monies received by the KDP from counties and candidates in 1992, 1994 and 1996. The KDP has to pay for things like the cost of paid field coordinators, (each field coordinator was paid a stipend for three to four months of grass roots field work in various counties across the state), polling services, voter registration lists, identification phone calls, direct mail services and a myriad of get-out-the-vote efforts via mail, phone and door-to-door efforts the benefits of which are felt throughout the state. The cost of these programs grows each year, and the party requested help for these cost from counties, PACS, candidates and other legal sources. The efforts in 1996 were more successful, but were consistent with past practices. Raising money by way of contributions, payments for services and sponsorship of events from PAC's, County Parties, Candidates, Democratic clubs and Congressional District Central Committees has been a source of fundraising in the past for the KDP.

As a result of the efforts of the KDP and the generosity of people supporting the KDP, including County Parties and other State parties, the KDP was successful in its grass roots efforts and party building activities, including:

- 176,000 Get-Out-The-Vote phone calls across the State
- $10,000 Get-Out-The-Vote radio advertisements
- $14,000 Get-Out-The-Vote newspaper advertisements
- Hired, trained and placed 15 field organizers covering at least 15 counties that worked full-time for about three months or targeted counties coordinating the KDP's efforts with local candidates, including about 75,000 Get-Out-The-Vote phone calls using

volunteers and untold tens of thousands of pieces of political literature distributed door-to-door, as well as assisting candidates and counties with events, press conferences and other typical campaign efforts

- Mailed 45,000 pieces of targeted mail in State Senate and House Races.
- Mailed 52,000 advanced voting applications and made 25,000 follow-up phone calls
- Mailed 35,000 pieces of direct mail to targeted female voters
- Implemented State Party Television Issue Advertising Campaign
- Made 137,000 voter identification calls identifying candidate preferences of unaffiliated voters and some Republicans across the State
- Developed and enhanced a Statewide voter file with voter tracking capabilities and placed this file in at least ten (10) counties across the State
- Conducted a Statewide benchmark public opinion poll for use by the candidates.

Despite partisan political attacks by the Chair of the Republican Party, the KDP raised money legally to provide excellent services around the State. Perhaps, what the Republican State Chair is really concerned about is the effectiveness of the KDP's grass roots efforts.

5. K.S.A. 25-4153(d) only restricts an individual County Party from contributing more than $15,000.00 to the KDP (exclusive of amounts paid for advertising or services rendered), and since no county paid to the KDP more than $15,000.00 for any purpose (services, advertising or contribution), neither the KDP, nor any county could have possibly violated K.S.A. 25-4153(d).

Moreover, services being purchased by County Parties and/or candidates is not a prerequisite under current law for a county or candidate to give money to a state party. Therefore, even if candidates and/or counties did not purchase services, they would be allowed to contribute money to the state party so long as the amount contributed in a calendar year did not exceed $15,000.00.

6. Tom Beall, the then Executive Director of the KDP's coordinated campaign effort spoke with county chairs and sought to raise money for the KDP. No county chair was threatened or coerced to pay any money to the KDP and no County Party's receipt of funds from the DCCC was or could be "conditioned" on the County Party making any contribution to and/or buying any services from the KDP (**See Exhibit 10,** Statement of Tom Beall). Furthermore, the counties' receipt of money from the DCCC could not have been conditioned by the KDP, because the KDP was not the contributing party. The conditioning of money by the KDP, which was controlled by and being contributed by the DCCC, would be meaningless, since the KDP simply had no authority to act on behalf of the DCCC. Furthermore, four counties which received money from the DCCC did not contribute money therefrom to the KDP, which constitutes rather conclusive evidence no one conditioned money received by counties. **Exhibit 11** contains a copy of a paid invoice from the KDP to the Reno County Democratic Party, similar to one sent to other counties. While other counties received invoices, the KDP could not locate copies of other invoices at this time. Some counties were more particular than others in their understanding of specific services they were receiving and some counties may have simply contributed money to the KDP. Most importantly, **Exhibit 12** contains statements from County Chairs verifying: (i) they were not coerced to contribute money to the KDP; and (ii) no county received funds from the DCCC, which funds had any condition placed on their receipt. As you

can see from the **Exhibit 6** letters, the DCCC did not condition any County's receipt of funds upon said county contributing that money to the KDP.

Again, without the benefit of knowing who is accusing the KDP of any specific act, the KDP specifically states: (i) the KDP, its employees and officers did not explicitly or implicitly, in writing or verbally, coerce or force any County Party to contribute to the KDP; and (ii) the KDP, its employees and officers did not, explicitly or implicitly, in writing or verbally, request the DCCC to give to any county in Kansas, conditioned on such county agreeing to contribute the money to the KDP. The KDP makes this representation on its own behalf and not on behalf of any other party and specifically is not speaking on behalf of the DNC, DCCC, DSCC, and/or any County Parties.

7. These contributions or payments by the County Parties to the KDP were not part of a "hidden ball" trick, as the Republicans claim. Raising money from counties, state party committees and national party committees is specifically permitted, i.e. explicitly allowed and does not constitute receipt of monies by the KDP that falls into a "gray" category. Where the receipt of money from a party or political committee is specifically allowed, it turns logic and principles of legislative interpretation on its head to claim now, as the Republican Chair does, that the receipt of this money (allowed by statute) is somehow now tainted or illegal.

As has been the practice in the past, if KDP staff has had a campaign finance question, they have been instructed to contact your office for clarification. During the 1996 campaign Tom Beall spoke with you, as Executive Director of the Commission, by phone about receiving contributions from counties and candidates. While no formal opinion was sought, Mr. Beall was not told that such fund raising efforts were improper or illegal. Based upon that conversation and Mr. Beall's understanding of campaign finance rules, Mr. Beall was of the understanding that so long as the contributing party did not condition contributed funds, the KDP's fundraising activities were legal and proper. Mr. Beall in turn communicated his understanding to the KDP, which, in good faith, relied upon both Mr. Beall's understanding of the Kansas Campaign Finance Rules, as supplemented by his discussion with you. At an absolute minimum, the KDP should not be accused of any intentional violation of a law, when the Commission voiced no objections to the activities in 1996. The Commission's opinion letter (dated September 11, 1997 No. 1997-45) (See **Exhibit 13**) confirms the basis of what Mr. Beall, in good faith, believes he was told during his conversation with the Executive Director of the Commission. So long as the contributing party (Party A in your letter) did not contribute money to the receiving party (Party B in your letter), conditioned on the money being contributed by Party B to Party C, then the contribution of Party A to Party B was legal and the contribution of money from Party B to Party C and the receipt of money by Party C was also legal.

The facts clearly establish that the KDP and its staff had no intent of violating the law. Based on Tom Beall's conversation with you and applying the statements contained the Opinion Letter 1997-45, (which confirms KDP's prior understanding); the fundraising activities of the KDP could not have had an intent to violate any law, i.e. KDP Staff in soliciting and/or receiving money from counties and/or candidates believed it was acting within the law.

8. While the KDP is not responsible for reporting contributions made by third parties to Democratic Candidates, we were able to determine that, to the best of its knowledge, the candidates listed in **Exhibit 14** received contributions from the DSCC, accompanied by letters like the ones attached behind **Exhibit 15**.

Please note, the DSCC is not the DNC or DCCC. The DSCC is a separate and distinct "political party committee" from the DNC. Second, the DSCC historically has contributed monies to state and local candidates in other states. Third, a house candidate or senate candidate can receive money from the DSCC not in excess of $500.00 in the primary or general election for house races and not in excess of $1,000.00 in the primary or general election for senate races. In fact, **Exhibit 16** is a letter from the DSCC to you, which is a definitive statement that the DSCC did not on its own or in collusion with the KDP, circumvent the provisions of K.S.A. 25-4153(d) and/or K.S.A. 25-4154(a).

Therefore, no candidate described herein was in violation of the law by receiving a contribution from the DSCC, since, to the knowledge of the KDP, no candidate received from the DSCC more than the allowed limit. Also, as you can see from the letters behind **Exhibit 15**, the DSCC did not condition any candidate's receipt of funds upon said candidate contributing that money to the KDP.

Again, without the benefit of knowing who is accusing the KDP of any specific act, the KDP specifically states: (i) the KDP, its employees and officers did not explicitly or implicitly, in writing or verbally, coerce or force any candidate to contribute to the KDP; and (ii) the KDP, its employees and officers did not explicitly or implicitly, in writing or verbally, request the DSCC to give money to any candidate in Kansas conditioned upon such candidate agreeing to contribute money to the KDP. The KDP makes this representation on its own behalf and not on behalf of any other party and specifically is not speaking on behalf of the DNC, DCCC, DSCC, KDH, SVF, KD House, KD Senate and/or any House or Senate member.

9. As you can see from **Exhibit 17**, only a few candidates who received contributions from the DSCC later contributed any money to the KDP. To our knowledge, some of the candidates who received DSCC contributions in 1996, made contributions to their respective House or Senate political committee, i.e. the KDH and/or SVF. Any payments to the House or Senate political committees would have been arrangements between the candidate and the particular House or Senate political committee, which are distinct and separate entities from the KDP. Historically, candidates have purchased services, event tickets or advertising from the KDP, or contributed money, when allowed, to the KDP, the KDH or the SVF. Raising money to help defray costs of providing services has been and is a natural and normal fundraising activity. The KDP makes this representation on its own behalf and not on behalf of any other party and specifically is not speaking on behalf of the DNC, DCCC, DSCC, KDH, SVF, KD House, KD Senate and/or any House or Senate member.

10. In response to your specific request made in our October 13, 1997, phone conversation, **Exhibit 18** contains a list of KDP employees during 1996. Additionally, I am providing a list of the officers of the KDP and the DNC Committeeman and Committeewoman from Kansas. I do request that if you desire any phone or face-to-face meetings with past or present employees or

officers of the KDP that you contact me first, as legal counsel for the KDP, for those arrangements.

In the final analysis, the thrust of the inaccurate news reports, was (i) that the DNC sent money to other state parties on the condition the money be forwarded to the KDP; (ii) that the DSCC contributed money to candidates on the condition it be contributed to the KDP; and (iii) that the DCCC contributed money to County Parties on the condition the monies be contributed to the DNC. There is no evidence that any of these monies was conditioned by the DNC, DCCC and/or DSCC. As such there is no basis for any legal conclusion other than that the KDP violated no laws, since the Commission's Opinion Letter 1997-45 states that the actions of the DNC, DSCC, DCCC (Party A in the opinion) were not illegal, provided they did not condition receipt of the money by other state parties, state candidates or County Parties, (Party B in the opinion letter) on the KDP receiving it (Party C in the opinion letter).

Conclusion:

I do not believe for a second that the Commission or you, as the Executive Director, are doing anything but the job you were directed to do. Yet, the efforts of some in the media and the Chair of the Republican Party to convert publicly disclosed and reported legal contributions to the KDP into some scheme to violate laws, walks, talks and looks like a witch hunt by the Chair of the Republican Party. The Chair of the Republican Party would like nothing better than to use anyone or anything, if possible, to occupy the resources, staff, time and attention necessary to respond to an investigation of the KDP. It takes a lot less time and effort for the Republican Party and the media to throw mud at the KDP, than it does for the KDP to respond to these false accusations.

Please note, **Exhibit 19** is proof of the partisan political by the Chair of the Republican Party. The attached partisan political piece by the Republican Chair demagogues against Democrats and their fundraising, but, shamelessly, in the same breath, solicits money from the Republicans to whom his letter is addressed. While the Republican Chair breaks no laws with his partisanship, he does expose his hypocritical attacks against Democrats, who raise money to elect candidates (all of which was fully disclosed), while he ignores the millions of dollars that flowed into Kansas via "independent" and undisclosed expenditures for TV ads by radically conservative Republican groups.

On a more personal note, what offends me is the blatant manner in which the media, the Chair of the Republican Party and others have ignored the views of the "real" people involved. My story is probably very similar in many ways to the officers and members of the Kansas Democratic Party executive and County Chairs. The first generation son of Italian Americans, my parents without high school educations, struggled to raise four children and send them to Catholic school and to college. I saw first hand the hardships my parents endured because my father was not a union member with protections, but a minimum wage "blue collar" worker who died from work-related problems. I also saw first hand the benefits of government loan programs that helped myself and all three of my siblings graduate from college (with all loans paid back). It is with this background that since the age of 15, I have chosen to work to elect Democrats, handing out

literature door-to-door, on street corners and making phone calls, stuffing envelopes and all sorts of non-glamorous chores, most of which I still do today.

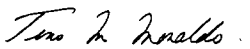
Neither the media, nor the Chair of the Republican Party has asked me why I, a County Chair, would contribute money to or purchase services from the KDP. He does not care about the answer. I give of my time, my own money and raise money for Democrats because of the principles the Party stands for. I believe in these principles just a fervently as Republicans believe in theirs. So please understand, I (and others) have given and will give freely to the Democratic Party and candidates, not because someone in Topeka or Washington tells us to (which they did not), but because of loyalty and support for Democratic Party principles.

In closing, the KDP represents and believes it legally solicited and/or received contributions and/or payments for services from County Parties and/or candidates, and received contributions from other State Democratic Party Committees, all for purposes of assisting the election of Democrats statewide, which is the mission of the KDP. All such receipts of the KDP were publicly and properly disclosed and within the appropriate limits. In fact, based on your office's Opinion Letter (1997-45), absent any evidence that the DNC, DCCC and/or DSCC conditioned its contributions to others, this investigation should be summarily terminated with a finding that there is no evidence of any law being broken by the KDP.

The KDP wants to cooperate so that after your inquiry is over and hopefully complete by December 31, 1997, the KDP will be exonerated by the facts and the law. My concern is that prolonged inquiry of the KDP during the 1998 election cycle will inherently benefit the Republican Party, even when exoneration of the KDP's actions will, we believe, be the ultimate result.

If there are topics or questions not covered in my letter, please feel free to call or write and the KDP will respond as promptly as possible to your additional inquiries. Thank you for your attention to this matter.

Sincerely,



Tino M. Monaldo

jd

cc: Kansas Democratic Party

bcc Dennis M. Langley
Velda Duette
Dan Lykins
Teresa Krusor
Shirley Jacques
Larry Tenopir
Tom Beall
Tom Sawyer
Anthony Hensley

VERIFICATION

I, the undersigned have read, understand and agree with the contents of this letter and believe the statements therein to be truthful and accurate.

Dennis M. Langley

Dennis M. Langley, Chairperson

VERIFICATION

I, the undersigned have read, understand and agree with the contents of this letter and believe the statements therein to be truthful and accurate.

Velda Duette

Velda Duette, Vice-Chairperson

VERIFICATION

I, the undersigned have read, understand and agree with the contents of this letter and believe the statements therein to be truthful and accurate.

Dan Lykins

Dan Lykins, Treasurer

VERIFICATION

I, the undersigned have read, understand and agree with the contents of this letter and believe the statements therein to be truthful and accurate.

Teresa Krusor, Secretary

VERIFICATION

I, the undersigned have read, understand and agree with the contents of this letter and believe the statements therein to be truthful and accurate.

Brett Cott

Brett Cott, Executive Director

THE MAINE DEMOCRATIC PARTY
P.O. BOX 5258
AUGUSTA, MAINE 04332-5258
(207) 622-6233
FAX (207) 622-265[illegible]

November 4, 1996
Fax - (207) 287-4975

Marilyn Canavan
Commission on Governmental Ethics
State House Station #135
Augusta, ME 04333

Dear Marilyn:

Enclosed please an amendment to our October Report. The committee mistakenly did not report a contribution to the Kansas Democratic Party. The disbursement was made from an account that is normally inactive. In fact, this was the only disbursement from the account this year. We apologize for the oversight.

Sincerely,

Kevin J. Mattson

Kevin J. Mattson
Executive Director

Paid for and authorized by the Maine Democratic

Schedule B

Page ___ of ___
(Schedule B only)

EXPENDITURES

CONTRIBUTIONS TO CANDIDATES, COMMITTEES

Do not include loan repayments or in-kind expenditures on this schedule.

Date of payment	Candidate/committee's name	Candidate/committee's address, zip code	Office sought, district #	Amount
10/4/96	Kansas Democratic Party	PO Box 1914 Topeka, KS 66609		15,000.00

1. Expenditures this page only 15,000.00

Last page only Schedule B:

2. Total from attached pages (Schedule B) .....

3. Total contributions to candidates/committees .....
(Enter on page 2, line 6.)

SCHEDULE A
CONTRIBUTIONS AND OTHER RECEIPTS

P[illegible] County Democratic Central Committee
(Name of Candidate, Party Committee or Political Committee)

Date	Name and Address of Contributor	PAC Affiliation OR Occupation of Individual Giving More Than $150	Check Appropriate Box: Cash Check	Loan	Other	Amount of Cash, Check, Loan or Other Receipt
3-10-96	Docking for U. S. Senate 125 S. Crestway Wichita, KS 67218		X			125.00
8-14-96	Divine For Congress P.O. Box 3565 Salina, KS 67402-3565		X			125.00
3-20-96	Kansans for Rathbun 254 N. Crestway Wichita, KS 67208		X			125.00
3-13-96	Gerald Karr-State Senate 1324 State Emporia, KS 66801		X			125.00
3-29-96	Sawyer for Representative 1116 Dayton Wichita, KS 67213		X			125.00
9-3-96	Teamsters Union No. 795 4921 Cessna Wichita, KS 67210	PAC	X			1,500.00
9-26-96	Sally Thompson for U. S. Senate P.O. Box 358 Topeka, KS 66601-0358	Political Campaign	X			300.00
9-30-96	Demo. Congressional Campaign Comm. 430 S. Capitol St. SE Washington, D.C. 20003	Campaign Comm.	X			5,000.00
10-02-96	Kansas Environmental Energy Network PAC 800 SE Quincy Topeka, KS 66612	PAC	X			5,000.00
1 3-96	Docking for U.S. Senate P.O. Box 306 Wichita, KS 67201-0306	Political Campaign	X			300.00

Subtotal This Page 12,725.00

Page 1

EXHIBIT 43

INVOICE

Kansas Coordinated Campaign Committee
P.O. Box 1914
Topeka, KS 66601-1914
Phone: 913/234-0425
Fax: 913/234-8420

SHIP TO: *Reno County Democratic Committee*
P.O. Box 728
Hutchinson, KS 67502

BILL TO: *Reno County Democratic Committee*
P.O. Box 728
Hutchinson, KS 67502

Salesperson:	*Date of order:*
Payment terms:	*Date order shipped:*
Method of shipment:	*FOB point:*
Invoice number:	*Invoice date:* 10/3/96
Order number:	

ITEM NO.	QTY.	DESCRIPTION	PRICE EACH	AMOUNT
		Electoral Targeting Data Voter Data Base & Software Survey Research Voter Contact Services - GOTV		

Sub total:	$4,500.00
Tax rate: _____ *Tax:*	
Shipping & handling:	
Previous amount owing:	
Credit:	
You pay this amount:	$4,500.00

EXHIBIT
44

RENO COUNTY DEMOCRATIC 0865
CENTRAL COMMITTEE
HUTCHINSON, KANSAS 67501

988

10-3 19 96

83-22
1011

PAY TO THE ORDER OF Kansas Democratic Party $ 4,500 00

Four Thousand Five Hundred and 00/100 DOLLARS

The Central State Bank
HUTCHINSON, KANSAS 67501

DEMOCRATIC CENTRAL COMMITTEE

MEMO

[redacted]

DEPOSIT TICKET

20-129/101

KANSAS DEMOCRATIC PARTY
KCC/NON-FEDERAL

CENTRAL NATIONAL BANK
TOPEKA, KANSAS

DEPOSITED IN

Checks and other items are received for deposit subject to the provisions of the Uniform Commercial Code or any applicable collection agreement.
BE SURE EACH ITEM IS PROPERLY ENDORSED

CURRENCY		
COIN		
CHECKS NOT NEED IDENTIFIED	Reno County Dem Central Committee	4500
	Ellis County	4500
		9000
TOTAL FROM OTHER SIDE OR ATTACHED LIST		
TOTAL		13500 00

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

13500.00

⑆101101293⑆ 1201098 78⑈

EXHIBIT
45

CONTRIBUTION PLAN FROM DSCC IN WASHINGTON
JULY 22, 1996

Attachment C

The Democratic Senatorial Campaign Committee (DSCC) is part of the Democratic National Committee. It is the campaign entity which assists United States Senate campaigns. It is roughly the counterpart to our office on the national level.

The DSCC, in an effort to support state senate candidates, the Democratic Party, and their own candidates, will contribute $500 to each state Senate campaign we designate. The campaign may keep $100 but then must turn around and contribute $400 to either the Kansas Coordinated Campaign or the Senate Victory Fund.

The money from the national DSCC to the campaign would be shown as a contribution from the DSCC on the candidate's on the Contributions and Other Receipts Report (Schedule A). The $400 contribution from the candidate to either the Kansas Coordinated Campaign or the Senate Victory Fund should be shown on the candidate's Expenditures and Other Disbursements Report (Schedule C).

Encourage them to accept this plan. It will help the candidate ($100) but it will help the Kansas Coordinated Campaign and all Democratic candidates as well.

Questions

1. Is this legal?

   Yes. It is legal for a campaign to accept a contribution from a national Democratic Party group and for them to support either the Senate Victory Fund (a designated Party committee) or the Kansas Coordinated Campaign.

   The easiest route may be for them to write their contribution to the Senate Victory Fund?

2. Will they be criticized by the Republicans?

   Probably. But virtually every Republican state senate candidate will receive money from the state party or one of the Republican leadership state senate political action committees.

Legislative Administrative Services

Date: Fri 9-26-97

( ) Topeka Capital Journal ( ) Hutchinson News ( ) Olathe Daily News
( ) Wichita Eagle ( ) Iola Register ( ) Ottawa Herald
( ) Kansas City Star (■) Johnson County Sun ( ) Parsons Sun

Democrat party chair doubts any role in fund-raising scheme

By Phil LaCerte
Sun Staff Writer

The chair of the Johnson County Democratic Central Committee may have been involved in a fund-raising scheme in which national party money was funneled to the state party.

But Micheline Burger, an Olathe attorney who sought election to a Kansas Senate seat in 1996, said if she was involved in a dubious fundraising scheme, her involvement was inadvertent. She added that state party officials had strongly denied any wrongdoing.

The campaign fund-raising irregularities were exposed in a Sept. 14 *Wichita Eagle* article that alleged that the Democratic National Committee indirectly donated $315,000 to the Kansas Democratic Party, exceeding a $25,000 annual limit on such "soft money" donations.

The article reported that as many as 70 Democratic candidates for state offices, as well as county and other state Democratic parties, were sent donations by an affiliate of the DNC. The candidates then allegedly were asked to pass 20 percent of the donations along to the state Democratic Party, thus circumventing the $25,000 annual limit and giving the state party much-needed funds at a time when both of Kansas' U.S. Senate seats were up for grabs.

Burger, though, said she had no communication during her campaign with either state or national party officials.

But Burger said a check of her campaign disclosure forms indicated that, on Aug. 1, she received a check for $1,000 from the DNC-affiliated Democratic Senatorial Campaign Committee. She subsequently made an $800 payment for "field services and mailing lists" to the Senate Victory Fund, which is used to assist state candidates.

"I don't know if anything is amiss or not," Burger said, "but if there was some kind of scheme and they involved me in it, then I feel I've been abused. I have no sympathy for anyone who circumvents campaign finance laws, whether they're Republicans or Democrats."

Jay Shadwick, chair of the Johnson County Republican Central Committee, said Burger, who has called for a Federal Election Commission investigation into whether Republican Sen. Sam Brownback violated campaign fund-raising laws, should also call for an investigation of her own party.

Shadwick added that the fund-raising allegations, if true, would be a reflection of the desperation of a party "without a message, who tried to buy the election."

"And, all of this definitely shows a need for campaign finance reform," Shadwick said.

Brad Russell, an Olathe attorney who also ran for a Kansas Senate seat in 1996, confirmed that he was asked to pass part of a DNC donation along for use by the state party.

Russell said he was contacted by a staffer in the Kansas Senate Minority Leader's Office, who indicated he would be receiving a check from the Democratic Senatorial Campaign Committee. Russell said the staffer encouraged him to send 20 percent of the donation along to the state party.

"It sounded to me like that would be running afoul of the spirit, if not out and-out the letter of the law," Russell said.

Despite assurances by party officials and by the Kansas Commission on Governmental Standards and Conduct that such an action would not represent a technical violation of state law, Russell said he declined to pass any of the $1,000 donation he received along.

"I just felt very uncomfortable with it," Russell said. "This seemed to be the kind of thing the state law was designed to prevent."

Russell said the $1,000 was still in a campaign account.

"If they want it back, I'll give it back," he said.

David Miller, chairman of the Kansas Republican Party, said during a press conference Thursday he would seek a legislative inquiry into the alleged fund-raising scheme. During a subsequent press conference, Miller's counterpart, Dennis Langley, chairman of the Kansas Democratic Party, denied any wrongdoing on the party's behalf.

EXHIBIT
47

SCHEDULE A
CONTRIBUTIONS AND OTHER RECEIPTS

P[illegible]o County Democratic Central Committee
(Na[illegible] of Candidate, Party Committee or Political Committee)

Date	Name and Address of Contributor	PAC Affiliation OR Occupation of Individual Giving More Than $150	Check Appropriate Box: Cash Check	Check Appropriate Box: Loan	Check Appropriate Box: Other	Amount of Cash, Check, Loan or Other Receipt
3-10-96	Docking for U. S. Senate 125 S. Crestway Wichita, KS 67218		X			125.00
8-14-96	Divine For Congress P.O. Box 3565 Salina, KS 67402-3565		X			125.00
3-20-96	Kansans for Rathbun 254 N. Crestway Wichita, KS 67208		X			125.00
3-13-96	Gerald Karr-State Senate 1324 State Emporia, KS 66801		X			125.00
3-29-96	Sawyer for Representative 1116 Dayton Wichita, KS 67213		X			125.00
9-3-96	Teamsters Union No. 795 4921 Cessna Wichita, KS 67210	PAC	X			1,500.00
9-26-96	Sally Thompson for U. S. Senate P.O. Box 358 Topeka, KS 66601-0358	Political Campaign	X			300.00
9-30-96	Demo. Congressional Campaign Comm. 430 S. Capitol St. SE Washington, D.C. 20003	Campaign Comm.	X			5,000.00
10-02-96	Kansas Environmental Energy Network PAC 800 SE Quincy Topeka, KS 66612	PAC	X			5,000.00
1 3-96	Docking for U.S. Senate P.O. Box 306 Wichita, KS 67201-0306	Political Campaign	X			300.00

Subtotal This Page

Page 1

EXHIBIT
48

SCHEDULE C
EXPENDITURES AND OTHER DISBURSEMENTS

Re County Democratic Central Committee
Na... of Candidate, Party Committee or Political Committee)

Date	Name and Address	Purpose of Expenditure or Disbursement	Amount
8-29-96	L & T Investments 720 North Main Hutchinson, KS 67501	Rent-Democratic Headquarters	100.00
8-29-96	Kansas State Fair Fairgrounds Hutchinson, KS 67502	Tickets - Demo.State Fair Booth	60.00
9-9-96	Advertising Specialties 606 N. Main Hutchinson, KS 67501	Give aways for State fair	514.27
9-23-96	Owl Printing & Lithographing 431 S. St. Francis Wichita, KS 67201	Wade Garrett printing costs	97.42
0-03-96	Kansas Coordinated Campaign Comm. P.O. Box 1914 Topeka, KS 66601	Electoral targeting data, Voter data base and software survey research-Voter contact services GOTV	4,500.00
10-07-96	Wade Garrett Campaign 1408 West 24th Hutchinson, KS 67502	Contribution	2,500.00
10-07-96	Jennifer Vincent Campaign 3206 East 43rd Hutchinson, KS 67502	Contribution	370.00
0-07-96	Larry Tucker Campaign 3901 Quivira Drive Hutchinson, KS 67502	Contribution	500.00
10-07-96	L & T Investments 720 North Main Hutchinson, KS 67501	Rent-Democratic Headquarters	100.00
0-07-96	Bob Krehbiel Campaign P.O. Box 7 Pretty Prairie, KS 67570	Contribution	1,000.00
Su...tal This Page			9,741.69

KCCC Memorandum

To: Doug Johnston

CC:

From: Tom Beall

Date: September 24, 1996

Re: funding for KCCC

The Kansas Coordinated Campaign needs your help. As you are aware, the Kansas Democratic Party through the KCCC is providing generic voter contact/GOTV activities on behalf of Democratic candidates all the way down the ticket. In addition, we have provided field organizers and a state wide voter file.

We would like your county committee to contribute as much as you can afford ($10 to $5,000). If you have any further question please don't hesitate to contact me.

Thank you in advance for all your help.

Happy Doug.

Tom

DEPOSITION EXHIBIT

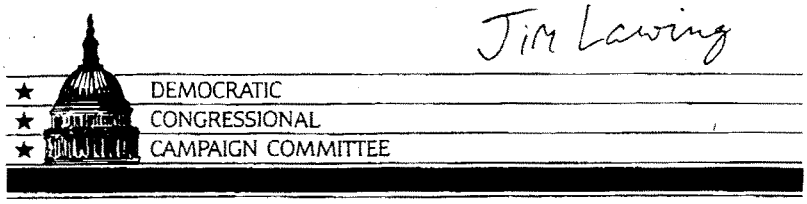
2 La

1

EXHIBIT

49

Jim Lawing



Martin Frost, TX
Chairman

September 30, 1996

Treasurer
Sedgwick County Democratic Committee
P.O. Box 1736
Wichita, KS 67201

Dear Friends:

On behalf of the Democratic Congressional Campaign Committee ("DCCC"), I am pleased to make a contribution of $5,000.00 to support your 1996 nonfederal general election activities in the state of Kansas.

The DCCC provided this contribution through corporate funds, which it is the DCCC's understanding, may be lawfully accepted under Kansas law. Please advise us if our understanding on this matter is mistaken.

The DCCC understands that you will make any disclosure of this contribution which may be required on reports filed with the State of Kansas in accordance with provisions of Kansas law. The DCCC will also meet all reporting obligations.

Please advise us if anything in this letter does not correspond with the facts of the matter as you understand them. Should you have any additional questions or need further information, please do not hesitate to call Jackie Forte-Mackay of the DCCC staff, at (202)485-3411.

Sincerely,

MARTIN FROST
CHAIRMAN

DEPOSITION EXHIBIT
3 Lawing

430 SOUTH CAPITOL STREET • WASHINGTON, D.C. 20003 • (202) 863-1500

CONTRIBUTIONS TO THE DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE ARE NOT TAX DED
Paid for by the DCCC. The DCCC is a multi-candidate Committee, FEC I.d. C00000935.

EXHIBIT
50
PRICAD Reporting, N.J.

DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE

Paid 10-2-96

DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE
NON-FEDERAL ACCOUNT #1
430 SOUTH CAPITOL STREET, SE
WASHINGTON, DC 20003

NATIONSBANK OF DC, N.A.
WASHINGTON, DC 20005
15-120/540

[redacted]

**********Five Thousand and 00/100 Dollars**********

DATE	AMOUNT
9/30/96	$5,000.00

PAY TO THE ORDER OF:
Sedgwick County Democratic Committee
P.O. Box 1736
Wichita, KS 67201

AUTHORIZED SIGNATURE

07 18 1996 01:54 3162677534 $3 00 DEMOCRATS PAGE 02

THE SEDGWICK COUNTY

Democratic Central Committee

Post Office Box 1736 Wichita, Kansas 67201 Telephone 316-262-7534

Rep. Martin Frost
Chairman, Democratic Congressional Campaign Committee
430 S. Capitol Street
Washington, D.C. 20003

Re: DCCC contribution to state races

Dear Rep. Frost

On behalf of the Sedgwick County Democratic Central Committee, please let the members of the DCCC know how helpful the $5,000 contribution will be in getting our base of support to the polls.

Very truly yours

Jim Lawing
County Chair

October 2, 1996

DEPOSITION EXHIBIT
4 Lawing

EXHIBIT
51

THE SEDGWICK COUNTY
Democratic Central Committee
Post Office Box 1736 Wichita, Kansas 67201 Telephone 316-262-7534

DEPOSITION EXHIBIT
5 Lawing

Mr. Tom Beal
Democratic Coordinated Campaign
Jayhawk Towers
7th and Jackson Streets
Topeka, KS 66612

Dear Tom

This is to acknowledge that the Sedgwick County Democratic Party and the Coordinated Campaign have entered into an agreement under which the local party will receive services from the Coordinated Campaign that will help us get out the vote in those precincts which are not of the highest priority. The Coordinated Campaign will also help us identify those voters who are classified as "persuadables" and contact them through a direct mail campaign. For these services, we will pay $8,500, half of which is enclosed.

The local Party headquarters would very much like to have the individuals who are classified as persuadable on its database, and if it is possible for us to have this information in some automated format we would be most appreciative.

Very truly yours

Jim Lawing

Jim Lawing
County Chair

1027
SEDGWICK COUNTY
DEMOCRATIC CENTRAL COMMITTEE
P.O. BOX 1736
WICHITA, KS 67201
DATE 10-4-96
PAY TO THE ORDER OF Kansas Coordinated Campaign $ 4,250.00
four Thousand Two Hundred and fifty only DOLLARS
AMERICAN NATIONAL BANK
WICHITA · HARPER · HAYFIELD
KANSAS
MEMO GOTV services
Jim Lawing
[redacted]

EXHIBIT
52

WILMER, CUTLER & PICKERING
2445 M STREET, N.W.
WASHINGTON, D.C. 20037-1420

TELEPHONE (202) 663-6000
FACSIMILE (202) 663-6363
HTTP://WWW.WILMER.COM

100 LIGHT STREET
BALTIMORE, MD 21202
TELEPHONE (410) 986-2800
FACSIMILE (410) 986-2828

520 MADISON AVENUE
NEW YORK, NY 10022
TELEPHONE (212) 230-8800
FACSIMILE (212) 230-8888

4 CARLTON GARDENS
LONDON SW1Y 5AA
TELEPHONE 011 (44-20) 872-1000
FACSIMILE 011 (44-20) 839-3537

RUE DE LA LOI 15 WETSTRAAT
B-1040 BRUSSELS
TELEPHONE 011 (32-2) 285-4900
FACSIMILE 011 (32-2) 285-4949

FRIEDRICHSTRASSE 95
D-10117 BERLIN
TELEPHONE 011 (49-30) 2022-6400
FACSIMILE 011 (49-30) 2022-6500

C. BOYDEN GRAY
DIRECT LINE [redacted]
INTERNET [redacted]

September 21, 2000

VIA HAND DELIVERY

The Honorable Dan Burton
Chairman
Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

RE: Draft Staff Report Issued by the Committee on Government Reform Entitled "Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department"

Dear Mr. Chairman:

We assume that the above-referenced draft staff report will either be revised or converted into a committee report in light of the subsequent record developed at the hearing before the Government Reform Committee on July 27, 2000. As you are no doubt aware, many of the statements in the draft must be substantially altered to account for facts developed at the hearing.

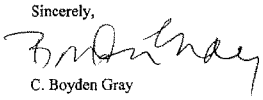
For example, paragraph 1 on page 2 of the report states that "[n]ow that the Committee has brought these facts to light, Rebekah Poston has refused to answer any questions regarding her activities, citing her Fifth Amendment rights." To the contrary, as the report itself makes clear and as the testimony at the hearing confirms, my client fully cooperated with the Committee during its investigation and even traveled to Washington D.C. to meet with representatives of the Committee. During said meeting and again at the subsequent hearing, my client answered the representatives' questions for several hours. At no point did she cite her Fifth Amendment rights, a point repeatedly emphasized at the hearings.

In light of the inaccuracies of the staff draft, we hereby request the right to review a draft of the revision, or of any committee report derived therefrom, before it is finalized. We also request that if there is to be no further draft or report that the above-referenced draft will be officially withdrawn.

Finally, I respectfully request that you include this letter in the record of the above-described report.

Please let us know when our request will be honored.

Sincerely,



C. Boyden Gray

Date: November 2, 1994

To: Phil Manuel

From: Rich Lucas

Re: Rebecca Poston

She called this afternoon asking for assistance on a government inquiry. Her request is unusual and came with the usual promises that it will lead to bigger and better things.

She is attempting to obtain a March 1965 document that substantiates an individual was arrested 30 years ago in Seattle for prostitution. It was confirmed, according to her, through the Federal Bureau of Prisons that they have in there files a reference of this arrest. It is not known if the subject was in the Federal Bureau of Prisons on another matter or if it related to this previous arrest.

The individual is an Oriental male, Japanese but there are no other identifiers but his name: Nobuo Abe. He could of also been under the name of Noburo Abbe. He is not a U.S. citizen and possibly could have been involved in white slavery, but the facts are not clear, according to Poston.

The budget is a few thousand dollars although she prefer not to spend that much. The two key aspects are that time is of the essence and she needs a document.

Please let me know your thoughts.

Date: November 4, 1994

To: Phil Manuel

From: Rich Lucas

Re: Rebecca Poston

As you know we received an assignment from Poston and now I am in a precarious position.

Her request is simple but difficult. She needs to confirm an Oriental male was arrested in March of 1963 in Seattle. She needs some type of document showing this arrest or conviction.

As previously conveyed, she has authorized a budget of $2,000 but would not rather pay that much if avoidable. The other key factor is she needs the information as soon as possible.

The sending of a written request to Customer Service of the King's County Court House in Seattle is not going to satisfy Poston's request for expediency. Unless, we have someone there who has agreed in advance to search for the information promptly.

It appears the two alternatives are to use a confidential source or tell Poston that we do not want the case. The latter will undoubtedly cause ill feelings since we should have informed her on Wednesday but it is better to be up front now than to incur expenses, not get the information and to burn bridges with the our only inroad at Steel Hector Davis.

Please inform me of your thoughts.

If the document exists we can get it but it will take time — That's it She'll have to take it or leave it — let me know

Phil

Date: November 4, 1994

To: Phil Manuel

From: Rich Lucas

Re: Rebecca Poston

EXHIBIT 3

As you know we received an assignment from Poston and now I am in a precarious position.

Her request is simple but difficult. She needs to confirm an Oriental male was arrested in March of 1963 in Seattle. She needs some type of document showing this arrest or conviction.

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Please inform me of your thoughts.

Rich: Poston must realize that SUPERMAN does not Exist. There is no confidential source who will give documentary evidence which is not released through proper channels. On the other hand, we have already sent our request for such documentary evidence to Seattle with a request to expedite. Records going back to 1963 have to be hand searched. It will take time. It might take several days or it might take a week but if she wants a document there is no other way. We have already incurred the small expense but if she [illegible] better way to do it with ~~[illegible]~~ her God speed [illegible] cannot perform miracles.

EXHIBIT 56

To: Phil

From: Rich

Re: Poston

After getting over your insulting tone toward me I would like to remind you I have been in this business for a number of years and have basic common sense on some business and investigative issues.

For an investigative firm this should not be a Superman request. A confidential source will reveal if our request for a document should be undertaken or even worthwhile. If there is no criminal history then why undertake the search. → Can't get it without SSN or DOB via our usual sources!

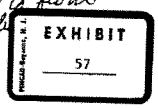
If we receive our request back from Seattle within two weeks it will be a significant victory. The other option is to hire someone in Seattle to do the search for us. This obviously gets into budgetary constraints but will probably result in a more thorough, prompt and accurate search. → This would be true if our investigator had access to the criminal files - Since they are in storage only an insider can retrieve them.

The bottom line is how we treat a client like her. Based upon your prior guidelines if it was someone off the street we wouldn't take the case. The only reason we consider it is because she is with a large law firm.

I am looking for direction and will relay whatever message you want me to. That is the reason I faxed you her request on Wednesday as soon as I received it. She is obviously under pressure from her client, has been around the block herself and is looking for a response if we can respond to her request within her time guidelines. ?? What are her time limits?

Based upon your response I will tell her that we can not have the answer for until November 14, unless you inform otherwise.

Rich - Perhaps my message was not clear - First it was not meant as insulting toward you or your business judgment for which I have respect. I do not know a confidential source in Seattle which has the authority to hand search criminal files that are not on a computer - Remember we have no identifiers like DOB or SSN only a name therefore NCIC sources are useless. Computer files do not go back to 1963. The files must be hand searched by someone with access. When we got the message on Wednesday, I was not aware of any specific date by which she needed this. I still don't know. I agree that it would be nice to have Steve Hector as a client but frankly I think it's unreasonable to expect us to front [illegible] for a record which may not exist. If there is a b[illegible]



Date: November 4, 1994

To: Phil

From: Rich

Re: Poston

I want to make sure we are on the same page as it deals with Poston and her request. First, a recap:

1. I sent you the fax on Wednesday and Phil S. called me back. I explained to him the urgency for the request, hoping to get a response by Friday.

2. Phil S. stated he was sending the request out by Fed Ex with a Fed Ex returned. He asked for identifiers and I told him at the time we did not have a date of birth and that the subject was not a US citizen but a citizen of Japan.

3. It was my understanding, obviously mistaken, that he had arranged to have the research done by a specific individual in the clerk's office in Seattle and he was going to contact that person once the Fed Ex arrived on Thursday.

4. On Thursday Lisa called and asked if I wanted the Fed Ex sent out. She said it would probably not result in a response by Monday but to go ahead anyway. She stated it was not addressed to anyone in particular but Customer ~~the~~ Service Dept.

5. Poston was told of the importance in getting identifiers and told me she would by Thursday evening. She did not call by 6PM so I left. This morning Lisa told me Poston left a date on the recorder last night. I explained to Lisa this is the subject's date of birth.

6. As to fronting of fees, Lisa explained that at most we were fronting $50 for the King County search. I do not recall many cases with my involvement that PMRG has received advance payment on fees. I usually wait 90 days from date of billing to receive payment of billable hours and often that has included advanced costs on my part.

7. As to the arrest records in King County,this is public record. Whether or not these records, due to their date, are accessible to the public is not known.

That having been said and behind us the following is an update:

A. The request being made is for an on-going trial in Japan.

B. Steel Hector represents a Buddhist religious group who purchases significant amounts of real estate in Florida and is considered one of their major real estate clients. There is a scandal involving one of the administrators of the religious group in Japan.

C. She understands the sensitivity of source records but needs some type of response as soon as possible. If the files in Seattle are accessible to the public she is willing to pay for a hand search and is willing to pay, with approval, for information obtained from any other source.

D. I told her we would get back with information from Seattle probably on Monday. She gave me her home phone if anything comes up in the meantime.

E. The information does not have value to her if received by Nov. 14.

THE PHILIP MANUEL RESOURCE GROUP
1730 K Street, Northwest, Washington, D.C. 20006
Tel: (202) 861-0651 FAX: (202) 775-0827

FAX Cover Sheet DOB 12/19/22

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL.

If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone. Thank you.

If problems are encountered with this communication, please call the number above immediately.

To the attention of: Rich

Fax Number: Miami

Remarks:

Rebecca Poston left a message on machine last night. She said

"The date is 12/19/22. There was never any federal time served. I have no idea why that info. is there".

Home phone to call [redacted]

Do you still want me to call Bureau of Prisons?

Number of Pages Including Cover: 1

Date: 11/4/97

Sender: USA

EXHIBIT 59

THE PHILIP MANUEL RESOURCE GROUP LTD.
WASHINGTON, D.C. • MIAMI, FLORIDA • LAS VEGAS, NEVADA

SUITE 1301
1730 K STREET, NORTHWEST
WASHINGTON, D.C. 20006
TEL: (202) 861-0651
FAX: (202) 775-0827

SUITE 501
1200 BRICKELL AVENUE
MIAMI, FLORIDA 33131
TEL: (305) 358-3454
FAX: (305) 358-4415

SUITE 344
4001 SOUTH DECATUR BLVD.
LAS VEGAS, NEVADA 89103
TEL: (702) 963-8046
FAX: (702) 876-0003

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

Date: November 7, 1994

To: Rich Lucas

From: Philip R. Manuel, CFE
The Philip Manuel Resource Group, Ltd.
Washington, D.C.

RE: POSTON Request

I hope we are now on the same page regarding the POSTON matter, but here's how it looks from my perspective.

At 12 noon EST, I have instructed Lisa to get a status report from the Seattle Clerk's Office which has had our expedited Federal Express request with advance payment for a hand search of their old (pre 1978) files.

Lisa will determine:

(1) If the Clerk's Office has received our Federal Express and begun the process of checking old files;

(2) The identity of the person to whom the search is assigned;

(3) An estimate of the time it will take to locate the file (if it exists) and return it to us via Federal Express - prepaid. To save time, this document can be Federal Expressed to you in Miami;

(4) Determine whether an outside investigator would have access to the files in storage, and if so, would it save time to have our person do it. It is not clear at this juncture where the files to be hand searched are located. Hopefully they are filed alphabetically by subject name in the year of arrest and hopefully there is some semblance of order in the system;

(5) Confidential sources, i.e. those with access to NCIC records will not help us in this case since:

(a) We have no complete identifiers (ie. SSN and DOB)
(b) More importantly such a source will not provide documentary evidence (the arrest record in printed form) to be used in litigation for obvious reasons.

This seems to me to be the best we can do under the circumstances, let me know what you think.

Questions

What is the final date by which this documentation has value to POSTON?

If for whatever reason the record either does not exist or cannot be found either by the Clerk's office personnel or our own contractor, if POSTON going to pay our expenses (and fees) for our "best efforts?"

There is no intention to slight either you or POSTON in this request. However, the time constraints, the geographical location, the lack of identifiers, the need for documentation and the 30 year age of the alleged arrest combine to make this a rather difficult assignment.

We should have some word on the status of our request as described above by early this afternoon. Any suggestions or comments, please call.

PHILIP MANUEL RESOURCE GROUP LTD.
WASHINGTON, D.C. • MIAMI, FLORIDA • LAS VEGAS, NEVADA

SUITE 1301
1730 K STREET, NORTHWEST
WASHINGTON, D.C. 20006
TEL: (202) 861-0651
FAX: (202) 775-0827

SUITE 801
1200 BRICKELL AVENUE
MIAMI, FLORIDA 33131
TEL: (305) 358-3434
FAX: (305) 358-4425

SUITE 364
4001 SOUTH DECATUR BLVD.
LAS VEGAS, NEVADA 89103
TEL: (702) 362-8949
FAX: (702) 876-2003

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

Date: November 11, 1994

To: Rebekah Poston
Steel Hector Davis

From: Richard Lucas
Miami, FL

Re: Record Search on Nobuo Abe

A source was contacted and provided the following information:

1. The source was provided with the identifiers of Nobuo Abe and Noburo Abbe, and the date of birth of December 19, 1922. The source was also told there was no social security number due to the subject not being a U.S. citizen.

2. The source relayed that under the data provided there was a reference to "Solicitation of Prostitution, Seattle Police Department, March 1963". The charge was abbreviated and not spelled out.

3. As to the clients request as to the background of N.C.I.C.; it is available to all law enforcement agencies, Federal and State, including the Bureau of Alcohol Tobacco and Firearms. N.C.I.C. is maintained and operated by the Federal Bureau of Investigation in Washington D.C. It is a clearinghouse of information for law enforcement agencies around the world and has greatly expanded its capabilities and data storage since its inception. The mission of

PENGAD Bayonne, N.J.
EXHIBIT
61

N.C.I.C., the type of data retained, the sophistication of the program and the access to data has greatly changed over the last 30 years.

4. Information was also received that in 1963 N.C.I.C. was operated in a different fashion than it is now. At that time there was no immediate access, via computer database, to input or receive information from the N.C.I.C. files. The input of data was accomplished through a telephone and then followed with a written summary. Inquiries as to information available on a third party was also by telephone or in writing. A telephone request in 1963 had to be classified as a "Rush" or an "Emergency" and reserved for special cases. An example; a local police officer could not make a telephone request without the approval of his superiors.

5. A misdemeanor arrest for a morals charge, such as solicitation for prostitution, may not be recorded on N.C.I.C. today. Some local police departments report misdemeanor convictions and others do not. In addition, a subject brought into the police department for questioning on similar charges, or for pandering, indecent exposure or any other similar type of felony would not be recorded unless the subject was arrested and charged with a crime. It is an unusual circumstance to enter data on a subject if an arrest was not made, unless of course the subject is considered a terrorist and a danger to the safety of citizens.

6. The source theorized that if Abe was a Japanese citizen with no U.S. residence or forms of identification, other than a passport, an inquiry might have been made with N.C.I.C. to determine if he was wanted on other charges or had previous encounters with law enforcement. This suspicion would have been compounded if at the time Abe was unable to communicate in English.

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

7. A hand search was done of the King County records in Seattle for the time period 1960-1967. There was no arrest record on the two versions of the name provided. Records for this time period were maintained by written entries and no identifiers, such as date of birth or social security number are needed to conduct the search. If Abe was arrested by the Seattle Police Dept. in 1963 the record of the arrest would have been recorded at the Clerk's office. If he was arrested or brought in for questioning records would be kept by the Seattle Police Department but it is doubtful if the records would be retained 30 years later.

8. Contact was made with the Federal Bureau of Prisons and there is no record of Abe or Abbe ever being in their custody or control.

9. Based upon your fax of November 10, 1994 we will attempt to obtain the following information on November 14, 1994:

A. The exact spelling of the name under which the entry is recorded.

B. Any listing of the date of birth.

C. The exact date referenced as to the incident.

D. The full extent of the data entered as to the interest in Abe.

NOV 11 '94 10:17AM STEEL/HECTOR & DAVIS P.1

STEEL HECTOR & DAVIS

200 S. Biscayne Boulevard
Miami, Florida 33131-2398
(305) 577-7000

Telecopier Cover Sheet

Confirmation # (305) 577-2887

Date: 11-11-94

Send To: Philip Manuel Resources

Firm: Attn. R. Lucas

Telecopier No. 358-4425

Confirmation No.

Total Pages Including Cover Sheet 4

X Letter Size ____ Legal Size

Originator Boston Ext. 305-577-7022

Special Messages

R— Please get answers to as many of these as you can and be specific. This is a matter of serious importance. I hope b/c it is a federal holiday that we can access the necessary research.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the above address via the U.S. Postal Service. We will reimburse you for postage. Thank You.

Client Code 83591.

Matter Code 4501

MIAMI: FAX (305) 577-7001
WEST PALM BEACH: FAX (407) 655-1509
TALLAHASSEE: FAX (904) 222-8410

ORIGINAL: ____ Mailed ____ Overnight Courier ____ Held in File

EXHIBIT 62

NOV 10 '94 10:42PM

Via Facsimile

November 10, 1994

Rebecca Poston, Esq.
Steel, Hector & Davis
200 South Biscayne Blvd.
Miami, Florida 33131-2398

Dear Ms. Rebecca Poston:

I am very grateful for your dedicated efforts concerning my request for the records on Abe.

I have reported the information you have given me to my colleagues in Japan. My colleagues are Japanese attorneys who are presently working for SGI in Japan. Due to the critical importance of your information, they are now flying to Los Angeles from Japan and arriving tomorrow morning. They are requesting for further detailed information regarding Abe's records.

If it is possible, please provide us with the following information when you call us tomorrow:

1. Is the name on the NCIC file Nobuo Abe?

2. According to a witness, the incident in question took place at around midnight on March 19, 1963. How much information about the date of the incident does the data carry? Does it say that it took place on March of 1963, or does it state the exact date.

3. Is the date of birth on the NCIC file December 19, 1922?

4. What does "SOL PROS" mean?

5. Did your source have access to the NCIC file that the FBI kept or was it some other data base.

6. As I have already informed you, the information that our source at the Federal Bureau of Prisons gave us was much more detailed than the one you gave us today. Do you have any idea as to the reason for this difference? Is is possible that the NCIC file that the Federal

Bureau of Prisons keeps is different from the one that the FBI keeps? Please note that according to our source, the data base that he accessed was called NCIC-NATF. We believe that NATF is a data base of Department of Treasury, Bureau of Alcohol, Tobacco and Firearms.

7. What is the basis of your contention that the information we are seeking will not be accessible through the FOIA? What keeps us from getting the information? Any statuatory basis for this?

8. If we try to obtain the information under FOIA, what would be the best way to identify the document/information that we are seeking? Would there be any problem in specifying the data source as NCIC or NCIC-NATF, vis-a-vis keeping our source confidential?

9. Why did you think that the original records were kept at King's county? What was the exact basis of your idea?

Thank you for your continuous efforts and assistance in this regard.

Very truly yours,

George Odano

George Odano

TOTA

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SUITE 701
1747 PENNSYLVANIA AVENUE,
WASHINGTON, D.C. 20006
TEL: (202) 861-0651
FAX: (202) 775-0827

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TOTAL PAGES INCLUDING COVER PAGE 3

Date: 11/17/94

To: Rebekah Poston, Steel Hector Davis

From: Rick Lucas

RE: Nobuo Abe

EXHIBIT
63

To Rebekah Poston
577-7001

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

Date: November 17, 1994

To: Rebekah Poston
Steel, Hector Davis
Miami, FL

From: Richard Lucas
Miami, FL

Re: Record Search on Nobuo Abe

A source within the U.S. government in Washington D.C. was contacted and provided the following information:

1. There is no record or information on Hiroe Clow.

2. There is a record for Nobuo Abe. The record refers to "Suspicion of Solicitation of Prostitution, Seattle Police Department, March 1963". There is no reference to Abe's date of birth nor the exact date of the incident. There was no other significant data as to the facts and circumstances surrounding the incident.

3. The confidential source stated the information on Mr. Abe was an inquiry for information by the Seattle Police Dept. not a recording of an arrest or conviction.

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4. The source in Washington D.C. has access to any inquiries made by third parties on Mr. Abe. According to the computer tracking system there have been more than six inquiries on Mr. Abe from various U.S. cities over the last two weeks.

5. The various inquiries by the different government entities has caused concern in the Washington D.C. central office. The source stated the recorded information should never have been entered on Mr. Abe. The source also stated that if Mr. Abe made an official request the entry under his name would be removed from the record. In addition, it is under consideration that the entire record be removed due to the obvious recent interest by numerous third parties, the date of the alleged incident and the fact it is a "questionable entry".

6. It is our opinion that any effort to obtain the information on Nobuo Abe through an official request be done expeditiously.

FILE COPY

Steel Hector & Davis
Miami, Florida

Rebekah J. Poston
Of Counsel
(305) 577-7022

November 21, 1994

U.S. Department of Justice
Ms. Olga R. Trujillo
Office General Counsel
Department of Justice
633 Indiana Avenue
Room 1245
Washington, D.C. 20531

CERTIFIED-RETURN RECEIPT REQUESTED

EXHIBIT 11

Re: Freedom of Information Act Request on
Mr. Nobuo Abe
DOB: 12/19/1922
Non-resident Alien of Japan

Dear Ms. Trujillo:

Under the provisions of the Freedom of Information Act, 5 U.S.C. § 522, we are requesting access to any records kept by your agency regarding the detention by the Seattle Police Department, on or about March 19-20, 1963, for suspicion of solicitation of prostitution, the following person:

Mr. Nobuo Abe,
DOB: 12/19/22,
a non-resident alien from Japan.

Mr. Abe entered the United States on March 15, 1963 through Honolulu, Hawaii and after travelling to many U.S. cities, departed San Francisco, California for Tokyo on March 29, 1963. He was detained by Seattle Police on or about March 20, 1963.

The public interest in releasing this information is great, and -- following the Reporter's Committee[1] analysis -- the release would not constitute an "unwarranted invasion" of Mr. Abe's personal privacy under FOIA § 522(b)(7)(C).

The general public have an interest in knowing whether this record exists. Mr. Abe is currently bringing a defamation suit using the organization which he represents as plaintiff, in Tokyo

[1] U.S. Dept. of Justice v. Reporters Committee For Freedom of the Press, 489 U.S. 749 (1989).

Miami Office
41st Floor
200 South Biscayne Boulevard
Miami, FL 33131-2398
(305) 577-7000
Fax: (305) 577-7001

West Palm Beach Office
1900 Phillips Point West
777 South Flagler Drive
West Palm Beach, FL 33401-6198
(407) 650-7200
Fax: (407) 655-1509

Tallahassee
Suite 601
215 South M
Tallahassee,
(904) 222-2
Fax: (904) 2

EXHIBIT 64

District Court (Case No. 1993 WA 23821) against our client. This lawsuit was filed when our client's newspaper reported an eyewitness' account that Mr. Abe was detained for suspicion of solicitation of prostitution by the Seattle Police on or about March 19 or 20, 1963. Mr. Abe has denied that he was ever detained by the Seattle Police for this alleged offense. In order to defend this lawsuit, we must prove that the witness' statement is true. The Seattle Police have eliminated this 31-year-old record from their archives. However, it is believed that the Seattle Police made an inquiry of NCIC on March 20, 1963 to check Mr. Abe's background and that evidence of this inquiry is in the NCIC computer. It is believed that this NCIC record is the only record of Mr. Abe's detention in existence in the United States. Thus, information from the NCIC computer or evidence that such a record did or does exist will provide the only way to present dispositive proof against Mr. Abe's claim. Because this litigation has been brought in a public forum, there is substantial public need to access this information. Time is of the essence. We agree to pay any expense connected with the search and document reproduction.

Mr. Abe has the most minimal privacy interest at stake. In fact, by initiating a lawsuit which asks a public system to resolve this issue, he has waived any possible privacy interest. Further, the incident is so old that its disclosure would hardly constitute an invasion.

In sum, the disclosure of information about Mr. Abe's detention in March of 1963 is clearly warranted. Mr. Abe has made the incident one of public concern by bringing a defamation suit about it. He cannot bring a public lawsuit denying the incident, and simultaneously prevent the only agencies with knowledge of it from releasing this information.

In the event you will not grant access to the contents of your files, at the very least, we are entitled access to the fact of whether the record did or does exist. I look forward to hearing from you in ten (10) days as the law stipulates.

Very truly yours,

Rebekah J. Poston
Of Counsel

MIAMI/47824_1

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SUITE 801
1200 BRICKELL AVENUE
MIAMI, FLORIDA 33131
TEL: (305) 358-3434
FAX: (305) 358-4425

SUITE 364
4001 SOUTH DECATUR BLVD.
LAS VEGAS, NEVADA 89103
TEL: (702) 362-8949
FAX: (702) 876-2003

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ATTORNEY WORK PRODUCT

Date: December 2, 1994

To: Rebekah Poston
Steel, Hector & Davis
Miami, FL

From: Richard Lucas
Miami, FL

Re: F.B.I. Criminal Justice Information Services Division

Within the FBI there are at least 10 operating divisions that report to the Director, Deputy Director and Associate Deputy Director. One of these divisions is called the "Criminal Justice Information Services Division". The following are individuals who make-up the management of this division at FBI headquarters in Washington D.C.:

Assistant Director: Steven L. Pomerantz 202 324-8901

Deputy Assistant Directors for:

Administration:	C. David Evans	324-8910
Engineering:	Peter T. Higgins	324-8440
Operations:	Dennis G. Kurre	324-5404

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The Administration Division has a subsection called "Policy Administration & Liaison". This section is headed by Demry Bishop. Mr. Bishop oversees program implementation and development of N.C.I.C. Another section in the Policy Administration & Liaison section is called "Program Support Section" and is managed by Ben Brewer. He has a staff of attorneys who maintain N.C.I.C. His telephone number is 202 324-2606. Other key people within this division and who oversee the operation of N.C.I.C. are Harper Wilson and Virgil Young, 202 324-5084.

For your clients objective contact will have to eventually be made with Ben Brewer or his staff.

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

REBEKAH J POSTON, ESQ
STEEL HECTOR & DAVIS
41ST FLOOR
200 BISCAYNE BOULEVARD, SOUTH
MIAMI, FL 33131-2398

DEC 0 8 1994

FOIA No. 393613

RE: ABE, NOBUO

Dear Requester:

A copy of your letter asking for information maintained by the FBI under the Freedom of Information Act (FOIA) concerning another individual(s) is being returned to you.

Before we can commence processing your request for records pertaining to another individual(s), you must submit to the FBI either proof of death or a notarized authorization (privacy waiver) from that person. Proof of death can be a copy of a death certificate, obituary or a recognized reference source. Death is presumed if the birth date of the subject is more than 100 years ago. Without proof of death or a notarized privacy waiver, the disclosure of law enforcement records or information about another person is considered an unwarranted invasion of personal privacy. Such records, if they exist, are exempt from disclosure pursuant to Exemptions (b)(6) and/or (b)(7)(C) of the FOIA, Title 5, United States Code, Section 552.

Enclosed is a Privacy Waiver and Certification of Identity form. (You may make additional copies if you are requesting information on more than one individual.) The subject of your request should complete this form and then sign it in the presence of a notary. The original notarized privacy waiver must be provided to the FBI.

In order to ensure an accurate search of our records, please provide your subject's complete name, date of birth and place of birth, if you have not already done so.

Upon receipt of the above information, we will conduct a search of our records and advise you of the results.

This response should not be considered an indication of whether or not records responsive to your request exist in FBI files.

EXHIBIT
66

ALL ATTACHED CORRESPONDENCE MUST BE RETURNED TO THE FBI WITH THIS LETTER.

You may submit an appeal from any denial contained herein by writing to the Co-Director, Office of Information and Privacy, Room 7238 MAIN, U. S. Department of Justice, Washington, D. C. 20530, within 30 days from receipt of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIA number assigned to your request so that it may easily be identified.

Sincerely yours,

J. Kevin O'Brien

J. Kevin O'Brien, Chief
Freedom of Information-Privacy
Acts Section
Information Resources Division

Enclosure

DRAFT

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

Date: December 9, 1994

To: Rebekah Poston
Steel Hector & Davis

From: Richard Lucas
Miami, FL

Re: Hypothetical Fact Situation and Recommendation

George ODANO of SGI USA contacted our office, provided a hypothetical fact situation and requested we provide an opinion. The following are the facts provided:

A foreign national has an entry under his name on N.C.I.C. pursuant to an incident in a U.S. city more than 30 years earlier. The incident resulted in the foreign national being questioned and eventually released without arrest pursuant to a morals complaint.

The N.C.I.C. file is crucial evidence, and possibly the only source of evidence, to a U.S. citizen who has been severely harmed by the foreign national.

The entry under the foreign nationals name has been accessed by numerous law enforcement agencies throughout the country over the last three weeks and this unusual amount of inquiry has prompted concern at the FBI office in Washington D.C. Their concern is:

1) there has been at least six recent N.C.I.C. inquiries made on the foreign national who was involved in an incident over 30 years earlier that did not result in an arrest or conviction,

DRAFT

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2) these have been the only inquiries ever made on this individual with N.C.I.C.,

3) the incident recorded in the system 30 years earlier would not be listed under current guidelines,

4) Freedom of Information Requests have recently been made on this individual with a response from the FBI that the information predated the establishment of N.C.I.C. and the information is only obtainable if the individual himself requests it, and

5) in order to avoid possible entanglement in a civil suit guidelines may call for the entire file to be deleted.

Mr. ODANO requested our opinion, based upon our prior experience in working for and dealing with Federal law enforcement agencies, how to prevent the destruction of the records and how to obtain a copy of the record.

IT MUST BE STRESSED WE ARE AN INVESTIGATIVE CONSULTING FIRM AND DO NOT PROVIDE LEGAL CONSULTATION OR ADVICE. THIS OPINION IS NOT INTENEDED TO BE LEGAL ADVICE BUT CONSULTATION BASED ON OUR PRIOR EXPERIENCE.

Based upon our prior experience it is our opinion that the only method to prevent the FBI from destroying a record currently in their files is to obtain an injunction from a judge ordering the agency not to alter the file. It is also our opinion that a current FOIA request on file with the FBI or any other Federal law enforcement agency will not prevent or deter the FBI from permanently deleting the file.

FOIA requests are a common filing with the FBI with scores of employees responding to their requests. Without inside assistance the current average response time to an FOIA request with the FBI

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is ten months. An introduction to FBI management with the intent of informing them of the FOIA request would be unproductive and possibly counter-productive.

On a regular and routine basis the N.C.I.C. files are purged for outdated, incorrect or irrelevant information. The hypothetical file on the foreign national would be irrelevant information to the N.C.I.C. and to any Federal law enforcement agency.

We realize that a court injunction is a difficult objective and can only be obtained if there is existing litigation or if litigation is filed. If an injunction is obtained from on-going litigation the opposing counsel becomes aware of the existence of key information that they may not currently be aware of. An attorney should be consulted to determine if a "John Doe" type law suit would be productive that would not require notification to the foreign national.

Without the consent of the foreign national we are not aware of any other method to obtain the file from N.C.I.C., unless a court injunction is obtained.

Steel Hector & Davis
Miami, Florida

December 9, 1994

Soka Gakkai
32 Shinanomachi
Shinjuku-ku, Tokyo
JAPAN

Gentlemen:

Your organization requested us to investigate whether the United States government has maintained any records of an investigation concerning an individual known as Nobuo Abe, a foreign national, born December 19, 1922.

Subsequent to this request, we engaged The Philip Manuel Resource Group, Ltd. ("PMRG"), a highly-prestigious private investigations firm based in Washington, D.C. Mr. Philip Manuel, as his firm brochure indicates, is the founder and current president of PMRG and has served as Chief Investigator of the Permanent Subcommittee on Investigations, United States Senate, and as a member of the President's Commission on Organized Crime.

PMRG reported to us on November 17, 1994, that a source within the U.S. government in Washington, D.C. was contacted and the source confirmed to PMRG that there is a record for Nobuo Abe. According to PMRG's report to us, the record refers to:

Suspicion of Solicitation of Prostitution
Seattle Police Department
March, 1963

From 1974 to 1979, I served as an Assistant United States Attorney and Special Attorney with the United States Department of Justice. Following my government service, I have been practicing law primarily in the area of criminal defense. Based on my experience, the contents of the record on Nobuo Abe, as revealed to us by PMRG, indicate to me that some type of inquiry or investigation regarding suspicion of solicitation of prostitution was conducted in March, 1963, by the Seattle Police Department on Nobuo Abe.

I am able to testify as to the truthfulness and accuracy of my statements in this letter.

Very truly yours,

Rebekah J. Poston
Of Counsel

EXHIBIT
68

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Miami Office
41st Floor
200 South Biscayne Boulevard
Miami, FL 33131-2398
(305) 577-7000
Fax: (305) 577-7001

West Palm Beach Office
1900 Phillips Point West
777 South Flagler Drive
West Palm Beach, FL 33401-6196
(407) 650-7200
Fax: (407) 655-1509

Tallahassee Office
Suite 601
215 South Monroe
Tallahassee, FL 32301-1804
(904) 222-2500
Fax: (904) 222-8410

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

915 Second Avenue, Room 710
Seattle, WA 98174
December 14, 1994

Rebekah J. Poston
of Counsel
Steel Hector & Davis
200 South Biscayne Blvd.
Miami, Floriad 33131-2398

Dear Ms. Poston: Re: Nobuo Abe

This is in response to your letter dated November 21, 1994, and received by this office November 29, 1994.

If you desire a search of our identification Division records for any arrest record that might pertain to you, please comply with the instructions set forth in Attorney General Order 556-73, a copy of which is enclosed. Original fingerprint impressions are needed for comparison with records in the Identification Division to insure that an individual's record is not disseminated to an unauthorized person.

Effective January 17, 1983, the combined NCIC-CCH file was abolished. Any information which was formally contained in the NCIC-CCH file can be obtained from the Identification Division. However, you must comply with the instructions set forth in Attorney General Order 556-73 attached.

Sincerely,

Thomas M. Kuker
Special Agent in Charge

By:
Thomas A. Harney
Principal Legal Advisor

DOJ-02873

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SUITE 501
1500 BRICKELL AVENUE
MIAMI, FLORIDA 33131
TEL: (305) 358-3434
FAX: (305) 358-4425

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TEL: (702) 363-8649
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Date: December 14, 1994

To: Philip R. Manuel

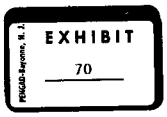
From: L.N. LeGare
The Philip Manuel Resource Group, Ltd.
Washington DC

Subject: Miami/Rebecca Poston Matter

RE: Communication with Criminal Justice Information Service

On December 14, 1994, I had two telephone conversations with Sue STELTNER, an information officer with the Federal Bureau of Investigation, Criminal Justice Information Service (CJIS) Division (202) 324-1140. I informed Ms. STELTNER that I was working on a research project on the communications tools used by federal agencies which administer computer databases to update and educate subscribers on the database and its usage. In particular she was asked about NCIC and communications about NCIC with subscribing agencies. She relayed to me the following information:

(1) The newsletter distributed by the CJIS has a restricted distribution to criminal justice agencies which use the FBI services including NCIC information access. The newsletter, entitled The CJIS Newsletter, is not for public distribution although other publications of CJIS are available to the public, copies of which are being forwarded to us.



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(2) The CJIS newsletter is sent out quarterly and is not limited in content to information on NCIC but rather contains information on all of the services in the CJIS Division and would encompass a wide variety of information on the services of interest to subscribers of numerous CJIS services

(3) She explained that the newsletter is not a technical publication when questioned about the content of the newsletter. Specifically she was asked if the newsletter communicated information on efficient database use, hot issues and new services or updates on the changing characteristics of the database service.

(4) Ms. STELTNER stated that the CJIS Newsletter was not the only publication sent to criminal justice agency subscribers and that other FBI sections advise subscribers on issues of current interest.

Ms. STELTNER was asked if she could gather some information on other persons who may be of assistance in my effort to research the communication methods providing subscriber information about the database services operating within the FBI. She stated that it may take her until tomorrow but that she would try to get me this information.

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FAX: (202) 775-0827

SUITE 801
1200 BRICKELL AVENUE
MIAMI, FLORIDA 33131
TEL: (305) 358-3434
FAX: (305) 358-4425

SUITE 364
4001 SOUTH DECATUR BLVD.
LAS VEGAS, NEVADA 89103
TEL: (702) 362-8849
FAX: (702) 876-3005

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Date: December 22, 1994

To: Rebekah Poston, Esq.

From: Philip R. Manuel, CFE
The Philip Manuel Resource Group, Ltd.
Washington, D.C.

Subject: NCIC and Related Files

RE: Results of Inquiry

This is to report that a highly confidential and reliable source has advised as follows regarding the subject of your inquiry:

(1) Whatever files or references, either in data base form or hard copy form, which were available previously have apparently been purged. There are currently no derogatory references to the subject of your inquiry in any files maintained by or under the control of the Department of Justice or any of its investigative agencies. Specifically, there is no information in NCIC.

(2) Source opines that whatever information existed previously was not entered into NCIC as a possible criminal record. Given the period of time (1963) prior to the establishment of NCIC, any inquiry from an outside police agency would have been transmitted via the Law Enforcement Teletype System (LETS). Normally, if there was no derogatory information available and no fingerprint card was sent by the inquiring agency, the LETS file would not have been retained.

However, in the case of a foreign national of some notoriety the reference may have been preserved for a period of time. LETS information of this type was kept separate from

NCIC information unless fingerprint match-ups occurred. In any event, source advises that at this juncture there is no way to reconstruct what happened in this case since no references currently exist.

(3) Source further opines that the only written reference to this 1963 incident, including data base information, would be on the police blotter of the Seattle Police Department on the day in question, or if the Seattle Police Department kept a separate log of their LETS request to the FBI.

Comment: Answers to questions about this 1963 incident are unclear and the trail of information is murky. What most likely happened in this case is that the Seattle Police Department made a written request for information through the then prominent communications system called the Law Enforcement Teletype System (LETS). It is not known at this juncture whether fingerprints were sent for comparison or not, and this may be an important point to determine from the Seattle Police Department, if possible.

It is likely, however, that whatever information was kept by the FBI was not put in the NCIC, but rather was kept in some LETS repository or more likely in a foreign counter intelligence file of some type. If that is the case, answers will be hard to come by at this point. The only thing that can be reported with relative certainty at this point is that no reference currently exists either in NCIC or LETS regarding this subject.

THE ABOVE INFORMATION IS HIGHLY SENSITIVE REGARDING BOTH SOURCE AND CONTENT. IT IS BEING SUBMITTED AS A CONFIDENTIAL AND PRIVILEGED COMMUNICATION, NOT TO BE DIVULGED TO ANY OUTSIDE PARTY OR USED IN COURT DOCUMENTS.

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TEL: (305) 358-3434
FAX: (305) 358-4425

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TEL: (702) 362-8949
FAX: (702) 876-2003

Date: December 28, 1994

To: Phil Manuel

From: Rich Lucas

Subject: Poston Inquiry

Re: New Assignment

On Tuesday I had a conversation with Rebekah Poston and she provided the following information and request that we undertake a new assignment on the case:

She stated a hand written record was kept by their source at the Federal Bureau of Prisons as to the incident involving ABE. The notes were as follows:

> 3/63, NCIC-NATF, Complaint by four females of possible pandering and solicitation by a bald Oriental, male, no English at 12:40AM, taken in for questioning, at 1:30AM, no English. detained and released at 3:30AM, forwarded by teletype.
>
> The source noted numerous notations on the NCIC inquiry, including but not limited to, NCIC-NATF, NLETS-CJIS, WITSC, SENTRY.

POSTON requested we undertake the following assignments:

1. Confirm the notations from the source are legitimate and determine their meaning.

2. Do these notations reflect data bases that are accessible through the Bureau of Prisons?

3. Can a local law enforcement agency, such as the Seattle Police Department, access the same information through the Bureau of Prisons?

4. If the previous information on N.C.I.C. was deleted and transferred to the FBI foreign counter intelligence file is this information retrievable by ABE through FOIA and Privacy Act requests?

5. Is it possible to determine if the information is recorded in the FBI foreign counter intelligence file?

6. A response was received on an FOIA request. A section of the response stated that "on January 17, 1983 the combined NCIC-CCH file was abolished". What is the NCIC-CCH file and does it have any bearing on our inquiry?

乙第五号証の一

Steel Hector & Davis
Miami, Florida

Rebekah J. Poston
Of Counsel
(305) 577-7022

January 4, 1995

Ms. Hiroe Clow
c/o Barry B. Langberg, Esq.
Langberg, Leslie & Gabriel
2049 Century Park East, Suite 3030
Los Angeles, California 90067

Dear Ms. Clow:

You requested us to investigate whether the United States government has maintained any records of an investigation concerning an individual known as Nobuo Abe, a foreign national, born December 19, 1922.

Subsequent to this request, we engaged The Philip Manuel Resource Group, Ltd. ("PMRG"), a highly-prestigious private investigations firm based in Washington, D.C. Mr. Philip Manuel, as his firm brochure indicates, is the founder and current president of PMRG and has served as Chief Investigator of the Permanent Subcommittee on Investigations, United States Senate, and as a member of the President's Commission on Organized Crime.

PMRG reported to us on November 17, 1994, that a source within the U.S. government in Washington, D.C. was contacted and the source confirmed to PMRG that there is a record for Nobuo Abe. According to PMRG's report to us, the record refers to:

Suspicion of Solicitation of Prostitution
Seattle Police Department
March, 1963

From 1974 to 1979, I served as an Assistant United States Attorney and Special Attorney with the United States Department of Justice. Following my government service, I have been practicing law primarily in the area of criminal defense. Based

Miami Office
41st Floor
200 South Biscayne Boulevard
Miami, FL 33131-2398
(305) 577-7000
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Fax (407) 655-1509

Tallahassee Office
Suite 601
215 South Monroe
Tallahassee, FL 32301-1804
(904) 222-2300
Fax (904) 222-8410

on my experience, the contents of the record on Nobuo Abe, as revealed to us by PMRG, indicate to me that some type of inquiry or investigation regarding suspicion of solicitation of prostitution was conducted in March, 1963, by the Seattle Police Department on Nobuo Abe.

I am able to testify as to the truthfulness and accuracy of my statements in this letter.

Very truly yours,

Rebekah J. Poston
Of Counsel

RJP/sl/83030

The SGI-USA
NEWSLETTER
Vol. 5 No. 1 (29) January 9, 1995

New Evidence Refutes Nikken's Claims About Seattle Incident

SINCE Hiroe Clow first revealed the facts of the so-called "Seattle incident" in 1992, Nikken and ...ous publications under his control have ...ied her allegations and called her a liar in ...nt — both in Japanese and English. To ...deem her reputation and create a forum in ...ich the truth could be aired, Mrs. Clow ...bsequently filed a suit in Los Angeles ...perior Court on Sept. 17, 1992, charging ...kken and several religious organizations ...der his direct control with defamation. ...w evidence has recently been revealed ...t supports her case.

Barry B. Langberg, Mrs. Clow's ...torney, has shared with the *World* ... new evidence his investigation has ...d regarding Nikken Abe's ... during his 1963 visit to Seattle. ...e evidence consists of records of one ...bue Abe being detained by the "Seattle ...lice Department" for "suspicion for ...licitation of prostitution" in "March ...3."

The "Seattle incident" was first brought ...ght in 1992 by Mrs. Clow, a pioneer SGI ...mber now residing in Los Angeles. The ...ident involved Nikken, now high priest of ...chiren Shoshu, and some prostitutes in ...ttle in 1963. At that time, Nikken was ...iting the United States as the Nichiren ...oshu study department chief to conduct the first overseas Gohonzon conferral ...*jukai*) ceremonies. Having kept silent for almost 30 years, Mrs. Clow publicly ...vealed the incident and related events when she became aware of Nikken's plots to ...stroy the SGI, the organization for kosen-rufu she had helped build for many years.

Recently, that lawsuit reached an impasse due to technicalities. The Los Angeles ...perior Court has made procedural rulings that it has no jurisdiction over the case. ...hus the trial concerning the merits of the case will not be taking place for the time being. While Mrs. Clow's attorney has called these rulings incorrect and has launched an appeal, supporters of Nikken and Nichiren Shoshu have been deliberately twisting the meaning of these decisions by claiming that they indicate that Mrs. Clow is lying. By promoting this view, they are further defaming her integrity and dignity.

Mrs. Clow (left) discusses the case with her attorney, Barry B. Langberg (center), and his law partner Joseph M. Gabriel, both of the firm Langberg, Leslie and Gabriel, during an interview with Ted Morino, managing editor for the *World Tribune*.

This is Mrs. Clow's personal lawsuit. However, the lawsuit is of interest to SGI members because Mrs. Clow is a fellow SGI member and because the outcome of the trial will bear directly on Nikken Abe's qualifications as a high priest of Nichiren Shoshu.

At this point, therefore, we would like to present the facts of the case via an interview with Mr. Langberg, Mrs. Clow's attorney, in which he answers questions posed by Ted Morino, managing editor of the *World Tribune*. Mr. Langberg is a prominent defamation attorney in Los Angeles who has handled such noteworthy cases as the defamation suits of comedienne Carol Burnett and actress Shirley Jones.

Inside This Issue: Barry Langberg, Mrs. Clow's attorney, speaks with the *World Tribune*

HE SGI-USA NEWSLETTER is published by the World Tribune Press, 525 Wilshire Boulevard, Santa Monica, California 90401, tel. (310) 451-8811

PINGID-Bayonne, N.J.
EXHIBIT
74

rld Tribune: Mr. Langberg, thank you for ng the time to talk with us today. To begin, d you recap for us what is meant by the "Seattle dent"?

... **B. Langberg:** Yes. The "Seattle dent" refers to an event that occurred in Seattle farch 1963, which Mrs. Clow chose to reveal r many years of keeping knowledge of it to elf. That incident involved Nikken Abe when he e to the United States for religious purposes — onduct a religious ceremony. He was not the priest of Nichiren Shoshu at the time, but a ing priest within the order.

n the occasion of that visit, he was mpanied by Mrs. Clow, who essentially was ned to see to his well-being. As Mrs. Clow has ribed the incident, she was eventually moned by the police to come to a street in ntown Seattle where Nikken had become lved in a dispute with some prostitutes some between the late hours of March 19 and the morning hours of March 20. The particular to which she was summoned in those days was well known for prostitution for being sort of a rough iborhood. At that time, Mrs. had to extricate Nikken Abe a predicament that ultimately is being detained by the police. in brief, is what is referred to Seattle Incident.

oreover, on an airplane while id to Chicago, Mrs. Clow essed Nikken Abe make an dvance toward an airline . And, in addition, he asked Mrs. Clow to tell him e he could find pornographic ials.

We have heard that, while the is still under way, the most decisions by the court have een in Mrs. Clow's favor. you explain these decisions hat they mean?

berg: First, to say that there decisions made against Mrs. s not entirely true, because this imply that the court made a on on the merits or the nce of the case. However, the has never ruled upon the of this case. On the contrary, fendants, who include Nikken, ione everything possible to avoid a decision made on the merits or the substance of the case. are two cases, really, involving defamatory ks made about Mrs. Clow in two separate ren Shoshu-related publications — in the *kuho*, a Japanese publication, and in a special -language edition of the *Dai-Nichiren*. The only ant decision the court has made in either of cases concerns a request by those defendants reside in California — primarily Nikken, Nichiren Shoshu overseas bureau chief) Shoshu in Japan. These defendants asked rt not to proceed with the case against them on unds that they do not have sufficient contact alifornia for the court to have jurisdiction over them.

Being a question of jurisdiction, this, of course, clearly has nothing to do with the merits or facts of the case. In particular, it has absolutely nothing to do with whether Mrs. Clow is telling the truth and nothing at all to do with whether these incidents really happened. The defendants have done everything possible to avoid having the court hear the merits of the case.

All we wish to do is to come in to court, present our evidence before a jury, and have the jury decide who's telling the truth about what really happened in Seattle and what really happened on the airplane. On the other hand, the defendants have avoided this by attempting to convince the court that it doesn't have jurisdiction over them — that the court should not hear this case on the merits.

WT: What kind of approach are you taking to have the court examine the merits of the case?

Langberg: As a matter of fact, Mrs. Clow is so intent on having a chance to present the evidence and clarify the truth that we have recently offered the other side an opportunity to have the evidence presented in the forum of a very simple and quick process. That offer is that we will abandon the current appeals, Mrs. Clow will give up her right to have her case heard by a jury, and the two sides will agree on a retired judge to hear the case. This process has a basis in the California constitution and the decision of the retired judge would have the same effect as a decision of the regular trial court

The retired judge would then be appointed to sit as the trier of fact, and the evidence presented to him to make a decision based on the evidence that he hears. We are confident that any trier of fact, whether it be a judge or a jury will know what the truth is upon hearing the evidence.

> **'Another point worth noting is that these defendants have hindered us from getting at the truth in every possible way.... It's extremely clear that they don't want to have this case heard on the merits in front of a jury. And, in particular, it seems that they don't want it heard in California, where we have reasonable access to the evidence, and where the process can be accomplished in a relatively short period.'**
>
> **Barry B. Langberg**

Of course, the jurisdictional decisions are now on appeal to a higher court, and we believe there's a very good chance that higher court will rule in our favor.

WT: Nikken himself has said that if what Mrs. Clow says is true, he could not remain in his position as high priest and would quit immediately. He has thus confirmed that his status hinges upon the outcome of this lawsuit. It seems that he should therefore definitely accept your proposal. By the way, upon what does the court base its decision that it lacks jurisdiction over the case?

Langberg: To understand this point, let's look at what we and the defendants have been advocating. What they've done so far is to convince the trial court that the State of California lacks sufficient contact with Nikken to exercise jurisdiction over him. They have asserted to the trial court that Nikken really doesn't control the California corporations known as NST (Nichiren Shoshu Temple) and NSH (Nichiren Shoshu Hokkeko), that he has power over them in name only, and that he exercises no practical control over these corporations and no control over the individual Nichiren Shoshu temples here in the United States.

We have, however, presented substantial evidence to the contrary. Nikken, for instance, appoints the chief priest of each temple, makes financial decisions, and makes decisions about acquiring property. We think that we've presented very compelling evidence that he actually personally controls these entities.

In addition, they have made unfounded statements, presenting, for example, a so-called expert on Japanese customs and religions who testified that Nikken not only doesn't have the power to control these entities but that the process by which a person becomes the high priest is one in which he is adopted into the family of the previous high priest. I'm not an expert on Nichiren Shoshu Buddhism, but I have asked some people who are, including people in the family of the previous high priest, and they certainly disagree with this statement — they think it ludicrous that anything like that could be said.

We took the deposition of Jiho Takahashi, the chief priest of the San Francisco temple. On the first day of that deposition, the Rev. Takahashi indicated that he really knows very little about the workings of the California corporation NST and its relationship with the Japanese corporation Nichiren Shoshu. He also indicated that he doesn't know much about the financial aspects of NST — that although he was at the board meetings, he didn't hear much. On the second day of questioning, however, we showed him a two-inch stack of documents, most of which were minutes from board meetings in which he himself had functioned as secretary, taking down minutes containing comments on Nikken's involvement in financial aspects of NST and signing off on them. This was totally contradictory to what he had told us the first day.

his is just a small portion of a tremendous me of evidence showing that California really have jurisdiction over Nikken and Obayashi in .

. then, did the court decide that it has no diction over this case despite such evidence to ontrary?

gberg: The reason, I think, vious, and that is that the trial t has basically misunderstood ase and Mrs. Clow's motives ringing it. This misunder- ding is evident in the court's d position.

e trial court has taken the ion that this case is really part religious conflict between the Gakkai and the Nichiren hu priesthood. As part of that ious conflict, the court held the case should be heard in , which it views as the most opriate venue because that is e the major portion of this ict is occurring.

e believe that the trial court llowed this view to override the evidence that has been ented — and much of that nce is very compelling and ntradicted. In taking this we have to say that the trial has very much misperceived ture of the case.

Could you elaborate further you think the court has come mistaken conclusion by ng the case as part of a larger religious conflict?

gberg: First of all, the act of libel is of a very inal nature. In this case, Nikken and others called Mrs. Clow a liar, thus deeply defaming ersonally. No one else but Mrs. Clow can bring ase to the court.

e second point I want to make involves my nal impression of Mrs. Clow's motivation. Of e, Mrs. Clow can speak for herself, but my rstanding is that she certainly was motivated by religious conflict. In other words, the ground of the religious conflict was ubtedly weighing heavily on her mind when nally decided to make this information public.

t the defamation suit that Mrs. Clow brought court is a matter entirely different from the us conflict between Nichiren Shoshu and the The defamation suit is a response to vile nents that were made about her, that hurt her ation here in California, not in Japan. She lives n California, and her reputation is here in the unity where she lives. Mrs. Clow's personal ation and the damage it has suffered through tatements is in no way related to any religious ct.

is important is the fact that these vere published first in Japanese in the , and then, because Nikken and others not satisfied with these statements being ned only in Japanese — because they wanted ure that people here in California could hear these lies about Mrs. Clow — they published them in English. Why, may I ask, would they publish these statements in English if the whole import of the matter lies solely in Japan, as the defendants claim? It doesn't make any sense, does it? An English publication would not have been necessary to defame Mrs. Clow in Japan; they could have done it entirely in Japanese. They needed an English publication because they intended to direct it here, to California, where Mrs. Clow lives and where it would hurt her the most.

> **'This lawsuit is Mrs. Clow's lawsuit, brought by her to try to redeem her reputation. Anyone who thinks that the lawsuit is being controlled or manufactured by anyone else has been utterly misled. I, as Mrs. Clow's attorney, am the only person making any of the legal decisions in this lawsuit, and I make those decisions based only on Mrs. Clow's interests.'**
>
> **Barry B. Langberg**

To sum up, then, this lawsuit is Mrs. Clow's lawsuit, brought by her to try to redeem her reputation. Anyone who thinks that the lawsuit is being controlled or manufactured by anyone else has been utterly misled. I, as Mrs. Clow's attorney, am the only person making any of the legal decisions in this lawsuit, and I make those decisions based only on Mrs. Clow's interests.

Another point worth noting is that these defendants have hindered us from getting at the truth in every possible way. The jurisdictional objections are one major hindrance. But even when we were conducting discovery (the process of obtaining data or documents that a party to a legal action is compelled to disclose to another party either before or during a proceeding), the other side refused to answer questions and produce documents properly. They refused to the extent that the court had to order them to produce documents and answer certain questions, imposing on them a fine exceeding $6,000 because of their improper refusals. It's extremely clear that they don't want to have this case heard on the merits in front of a jury. And, in particular, it seems that they don't want it heard in California, where we have reasonable access to the evidence, and where the process can be accomplished in a relatively short period.

WT: Nikken Abe flatly denies Mrs. Clow's allegations. Can you share with us your view on the truth of this matter?

Langberg: Certainly. We think that there is very strong evidence to establish that Mrs. Clow, and not Nikken, is telling the truth. First of all, the only evidence that anyone who knows Mrs. Clow's character would need is her word, because she's clearly not the kind of person who would advocate a story like this unless it was true. Also, if you think about it, it's an amazing story for anybody to think up out of the blue. It would take a truly strange imagination for anyone to simply manufacture something like this — something that happened in Seattle in 1963, in which a Buddhist priest solicited prostitutes and was detained by police in the red-light district. Again, knowing Mrs. Clow, you would easily realize that fabricating a story like this would be the last thing she would do.

In case anyone needs additional proof beyond this, however, we have, quite amazingly, been able to locate it. I say amazingly because the length of time that has passed since the incident would normally make it very difficult to come up with any solid evidence. I believe this is what prompted the defendant to deny the charges — his assumption that we would never be able to prove something that happened so long ago. I believe, however, that we will be able to prove it in court. I can say this because we have employed investigators and conducted a tremendous amount of research in order to confirm what Mrs. Clow has said.

WT: Nikken and others claim that the place which Mrs. Clow points out as the site of the incident was not an unsavory area at the time, as she describes. Do you have any evidence to contradict this?

Langberg: It is not difficult at all to refute this claim. The neighborhood of 7th Avenue where the incident took place is within a certain area in Seattle known as the Pike Street area. There is no question that this area was fraught with prostitution and related activities during those years. We have any number of people who lived in the area at the time, who worked in the area at the time, including former Seattle police officers, who can all testify unequivocally that it was an area that hosted a high level of prostitution activities.

WT: Have you obtained any tangible evidence that supports Mrs. Clow's description of the incident?

Langberg: Yes, we have. We retained the assistance of another law firm, a large firm in Miami by the name of Steel, Hector & Davis, and through their contacts and sources they were able to determine that a record exists in government files under the name "Nobuo Abe" reflecting the 1963 event. The detention — the police involvement — is reflected in the file based on a written record that

must have been made at the time by the police officers reflecting Nobuo Abe's involvement with prostitutes. We have received from the above law office a letter that confirms this fact.

Could you share with us any of the contents of the document?

Langberg: Of course. The letter from Steel, Hector & Davis reads:

> Dear Ms. Clow:
> You requested us to investigate whether the United States government has maintained any records of an investigation concerning an individual known as Nobuo Abe, a foreign national, born Dec. 19, 1922. Subsequent to this request, we engaged ... a highly-prestigious private investigation firm.

The letter goes on to cite the reputation and qualifications of the firm and its director, but I will not go into specifics here. The document continues:

> The investigation firm reported to us on Nov. 17, 1994, that a source within the U.S. Government in Washington, D.C. was contacted and the source confirmed to the firm that there is a record for Nobuo Abe. According to the firm's report to us, the record refers to:
>
> Suspicion of Solicitation of Prostitution
> Seattle Police Department
> March, 1963
>
> From 1974 to 1979, I served as an Assistant United States Attorney and Special Attorney with the United States Department of Justice. Following my government service, I have been practicing law primarily in the area of criminal defense. Based on my experience, the contents of the record on Nobuo Abe, as revealed to us by the firm, indicate to me that some type of inquiry or investigation regarding suspicion of solicitation of prostitution was conducted in March, 1963, by the Seattle Police Department on Nobuo Abe.
>
> I am able to testify as to the truthfulness and accuracy of my statements in this letter.
>
> Very truly yours,
> /signed by/ Rebekah J. Poston
> Of Counsel

VT: This is an impressive piece of evidence that seems to prove the truth of Mrs. Clow's statements. However, while the evidence you refer to cites recollections and records pertaining to a Nobuo Abe, I understand that the priesthood has protested that Nikken's name at the time was pronounced Shinno Abe (though the Japanese characters used in the name Shinno could also be pronounced Nobuo). Would this claim present a problem in a trial?

Langberg: This is quite a simple matter. At the time, Mrs. Clow thought Nikken's name was pronounced Nobuo Abe, and this was the name she reported to the police. From the beginning, Mrs. Clow has been consistent about this point. The accuracy of Mrs. Clow's memory is proven by the evidence I have just now shared with you.

In addition, it is my understanding that the Japanese characters for "Shinno," which Nikken claims was his given name at the time, would most naturally be pronounced "Nobuo" by any Japanese person reading them. "Shinno" would be a rather rare and unusual pronunciation of those characters, while "Nobuo" would be usual. Mrs. Clow's only access to Nikken's first name at the time would have been through the written documents provided her, since I understand by Japanese etiquette she would never have addressed him by or inquired about his first name and, therefore, would never have been informed of the way he pronounced it. It is quite obvious that Mrs. Clow's impression at the time, through seeing the name only in written form, was that his name was Nobuo Abe, and this was the name she reported to the police when asked.

I would like to pose the following question: How many Nobuo Abes — or Japanese men whose written name could easily be pronounced Nobuo Abe — were around the Pike Street area of Seattle in March of 1963 and were detained for solicitation of prostitution — a fact also verified by the government file? The truth is obvious. They can say whatever they want about the name, but I think if they do, it will be very superfluous to the fact that the legal evidence clearly indicates that Mrs. Clow is telling the absolute truth.

Lastly, I would like to say that the moment I first heard Mrs. Clow say what she had to say, I was convinced that she was telling the truth. As we continued our investigation, my conviction of her truthfulness steadily deepened. The evidence I have shared with you this time is also proof of her truthfulness. Of course, we do possess further evidence that also supports Mrs. Clow. ❑

The Olympic Hotel in Seattle, where Nikken stayed in 1963 during the first overseas trip conducted for the purpose of conferring Gohonzon.

U.S. Department of Justice

Executive Office for United States Attorneys
Freedom of Information/Privacy Act Unit
600 E Street, N.W., Room 7100
Washington, D.C. 20530
202-616-6757 Fax 202-616-6478

JAN 12 1995

Requester: REBEKAH J. POSTON Request Number: 95-141

Subject of Request: MR. ABE

Dear Requester:

Your recent request for records from the Executive Office for United States Attorneys (EOUSA) has been received. Before the Executive Office can begin processing your request, it is necessary for you to correct one or more deficiencies. Please comply with the paragraph(s) checked below:

1. [X] A requester must provide a notarized example of his/her signature. This insures that information pertaining to an individual is released only to that person. A form is enclosed for your use.
2. [ ] The files and records of United States Attorneys are maintained in over one hundred separate offices throughout the United States. Please identify the specific United States Attorney's office(s), where you believe records may be located. This would be primarily the district(s) in which a prosecution or litigation occurred.
3. [X] To insure that records are properly identified, provide subject's full name, current address, and date and place of birth.
4. [ ] A request must describe the records sought in sufficient detail to allow location of the records with a reasonable amount of effort (i.e., processing the request should not require an unduly burdensome effort or be disruptive of Department operations). Please provide more specific information about the records you seek, such as appropriate dates, locations, names, nature of the records, etc.

Please cite the above EOUSA Request Number in all of your future correspondence. Mail your response to this letter to the address above. If the deficiencies noted are not corrected within 30 days from the date of this letter, we will be unable to process your request, and your FOIA/PA file will be closed.

Sincerely,

Bonnie L. Gay

Bonnie L. Gay
Attorney-In-Charge
FOIA/PA Unit

NOTE: "YOu must complete entire form on behalf of your client."
[ ] Enclosure(s)

Form No. 003 -3/94

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76

JAN 13 '95 11:59AM

January 8, 1995

Nichiren Shoshu Bureau of Religious Affairs (Official Seal)

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION.

To all teachres

NOTICE

ATTORNEY WORK PRODUCT
PRIVILEGED

The revelation of the so called "new evidence" by the Gakkai in the useless struggle for the Clow case.

The criminal prone nature of the Gakkai is exposed again.

The Bureau of Religious Affairs announces the following notice concerning the evil propaganda of the so called decisive evidence in the Clow case, reported in the Seikyo Press dated January 8.

1. The priesthood was well prepared for the Gakkai to make public some material, said to be from the Federal Bureau of Investigation (FBI) of the United States, which could be "interpreted" as "new evidence" that shows the relationship between "Nobuo Abe" and the prostitutes, sometime between January 6 (Friday) and 9 (Monday). This is what was carreled in today's Seikyo Press.

The litigation brought by the Gakkai, using Hiroe Clow as a nominal plaintiff, was entirely dismissed last November. The Gakki was also cornered to a position where it had to prove the truthfulness of the Clow article in the defamaion lawsuit brought by the priesthood against Daisaku Ikeda and the Gakkai, in Tokyo District Court.

Thus, information was relayed to the priesthood that the Gakkai had been involved in some "insane" evidence frame up operation by sending in three Gakkai attorneys to the United States from Japan, assisted by a local Gakkai attorney. When the priesthood asked law firms in Los Angeles and in Seattle to conduct some investigation, it was discovered two weeks ago that:(a) these Gakkai attorneys pretended that

they had acquired an important piece of information from a retired FBI police officer in Washington DC; (b) it was ultimately decided that this would be made public, sometime between January 6 and 9, in a large scale with the head line "new evidence had been found," nevertheless the fact that there were intense confrontation among the Gakkai lawyers concerning the revelation, and; (c) they would allege that the evidence was a data in "NLETS," National Law Enforcement Telecommunication System, a computer system of the FBI. Thus, the revelations made in the SGI organ paper "World Tribune," did not come as a surprise at all.

2. The most important thing to be noted in this revelation is the fact that this was a recent "discovery." In other words, it is now clear that the revelation of Clow's article and filing of her lawsuit was done without any corroborative investigation with the police authorities. Two years ago, around the time when the Gakkai filed the Clow lawsuit, they ran an advertisement in a Seattle police affiliated magazine everymonth, stating "What were you doing on the night of March 19, 1963? Please give us a call," and sent out rumors that informants will be paid a "three dollor bill (since there are no three dollor bills, it means that they will be rewarded greatly)." But, it seems that no former officer responded to this advertisement after all.

3. In fact, it has been confirmed by official investigations conducted on the Seattle Police Department, by the priesthood directly after the revelation of Clow's article that; (a) there are no records that even slightly indicate that some incident happened in March, 1963 that Clow had discribed; (b) if an incident such as the one that Clow had discribed had actually happened, it would most certainly be talked about among the police officers, where, in reality no one has remembered of the incident, and; (c) at the time, the Seattle Police did not conduct investigations in the way that Clow had discribed it.

4. Thus, the Gakkai had to give up on obtaining the testimony of the officer of the local Seattle Police Department, changing its strategy and turning to FBI's "NLETS." However, according to the

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priestood's investigations up to this point, the purpose of this computer system is to investigate the background of spies and foreign fugitives, and the data entered into this computer will be deleted within two weeks after its entry. Therefore, the record of referring to "Suspicion of Solicitation of Prostitution, Seattle Police Department, March, 1963," is not an print out of the data in the present NLETS system. If such an print out exists, it is a copy of something that someone had printed out 30 years ago. And generally speaking, it is quite easy to forge fake copies of computer print outs, as it is easy to make forged facsimile transmissions. It is far more easier than making altered photographs that Gakkai is so good at. We cannot think of any reason why the FBI had to print out and keep for 30 years, some "inquiry" from a local police department concerning one "Nobuo Abe," a traveller, whose real name they did not even try to verify.

Isn't true

They've obtained info from NLETS

5. This is clearly nothing but an international evidence frame up that the Gakkai, which has already lost 100 of its litigations, had plotted, in desperation.

The priesthood, like the altered photo case, is determined to reveal the truth of the so called "new evidence," and to show to the people in the world the terrible criminal prone nature of the Gakkai.

When the international crime of the Gakkai, funded by enormous amout of money collected by deceiving Gakkai members, is revealed, its down fall is inevitable.

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Steel Hector & Davis
Miami, Florida

Rebekah J. Poston
Of Counsel
(305) 577-7022

FOIA
b (A)
95-0283 OUSA,
95-0284 INS/CO
95-0285 FBI - Seattle Dr
95-0286 FBI - HQ
95-0287 NAJ { Treasury, State
Soka Gakkai
App

FREEDOM OF INFORMATION ACT APPEAL

February 3, 1995

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Attorney General
Janet Reno
c/o Richard L. Huff
Co-Director
Office of Information and Privacy
Room 7238
Department of Justice
10th and Constitution, N.W.
Washington, D.C. 20530

EXHIBIT
77

Re: Appeal of Denial of Freedom of Information Act Requests
On Mr. Nobuo Abe subj
FBI FOIA No. 393613
EOUSA Control No. 95-141

Dear Director Huff:

Pursuant to instructions I received from Ms. Peggy Irving, please find enclosed our FOIA appeals. To facilitate your review, I have presented a portion of our appeal in exhibit format. The narrative part of our appeal addresses the law. The exhibits contain a factual accounting (Exhibit A), the FOIA requests and responses (Exhibits B, C), the Wilmer Cutler & Pickering (our outside legal counsel) memorandum on the Privacy Act (Exhibit D), Abe's biographical information (Exhibit E) and Abe's U.S. travel itinerary in March, 1963 (Exhibit F).

Miami Office
41st Floor
200 South Biscayne Boulevard
Miami, FL 33131-2398
(305) 577-7000
Fax: (305) 577-7001

West Palm Beach Office
1900 Phillips Point West
777 South Flagler Drive
West Palm Beach, FL 33401-6198
(407) 650-7200
Fax: (407) 655-1509

Tallahassee Office
Suite 601
215 South Monroe
Tallahassee, FL 32301-1804
(904) 222-2300
Fax: (904) 222-8410

THE LAW

In the interests of clarifying our entitlement to certain public records and avoiding litigation against several component agencies within the Department of Justice, we urge you to reconsider the initial denial of several Freedom of Information Act ("FOIA") requests.

Pursuant to the FOIA, we have served requests to several agencies within the Department of Justice for access to any records regarding the 1963 detention by the Seattle Police Department of a non-resident alien, Mr. Nobuo Abe, presently known as Nikken Abe and hereinafter referred to as Nobuo Abe.[1] We have received a variety of responses from the agencies, generally indicating either that no such record exists, or that the agency will not disclose the existence of a record without a privacy waiver.[2] Because the Privacy Act -- by its terms --

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1/ As discussed in the FOIA letter requests, Mr. Abe (through his religious organization, Nichiren Shoshu, over which he has absolute control) is suing our client, Soka Gakkai, in Tokyo District Court, Japan (Case. No. 1993 WA 23821). The lawsuit alleges that an article in our client's newspaper is libelous. Soka Gakkai is the largest Buddhist organization in Japan, numbering over 10 million members. The article concerns an eyewitness's account that Mr. Abe was detained by the Seattle Police Department for solicitation of prostitution in March of 1963. (The eyewitness has, in turn, filed suit against Mr. Abe in California state court for defamation, based on Mr. Abe's numerous public statements that her account is a "fabrication.") We are informed that all local police records of this event are either missing or have been destroyed. Thus, production of a federal record of this incident will be the only way that our client can present irrefutable proof against Mr. Abe's claim of libel.

2/ Customs responded that there are no responsive records. See Letter to Rebekah Poston (Jan. 5, 1995). I.N.S. responded that "The Microfilm reel which may possibly contain

(continued...)

does not apply to Mr. Abe, and because there is a substantial public interest in these records, we urge you to grant us appropriate access. The decision to disclose is a matter within your discretion, in light of your balancing the relevant policy considerations. See Chrysler Corp. v. Brown, 441 U.S. 281, 294, 99 S. Ct. 1705, 1714 (1979) ("Congress did not limit an agency's discretion to disclose information when it enacted the FOIA."); 28 C.F.R. § 16.1(a) ("To the extent permitted by other laws, the [Justice] Department will also consider making available records which it is permitted to withhold under the FOIA if it determines that such disclosure could be in the public interest.").

"[T]he basic purpose of the [FOIA is] to open agency action to the light of public scrutiny." Dep't of Air Force v. Rose, 425 U.S. 352, 372, 96 S. Ct. 1592, 1604 (1976). "Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose." United States Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773, 109 S. Ct. 1468, 1482 (1989) (internal quotation marks and citations omitted). Subject to several clearly delineated exemptions, the FOIA reflects "a general philosophy of full agency disclosure." Rose, 425 U.S. at 360-61, 96 S. Ct. at 1599.

We have requested that various component agencies disclose records of inquiries made in March of 1963, or some time thereafter, by a local police

---

[2](...continued)
your record is illegible. Please provide any additional information for possible location of another record." See Letter to Rebekah Poston (Dec. [sic, Jan.] 6, 1995). Justice referred it to the F.B.I., I.N.S., and E.O.U.S.A. See Letter to Rebekah Poston (Jan. 3, 1995). The FOIA/PA Unit of Justice indicated that the inquiry was outside of the scope of the FOIA, and must be made to state or local agencies. See Letter to Rebekah Poston (Dec. 1, 1994). The F.B.I. requested a privacy waiver. See Letter to Rebekah Poston (Dec. 8, 1994). Copies of the FOIA requests and the component agency responses are attached.

department concerning a detention of Mr. Abe, a non-resident alien. The applicable exemption under the FOIA is Exemption 7(C). See generally Reporters Committee, 489 U.S. at 762 n. 12, 109 S. Ct. at 1476 n. 12. Under that exemption, an agency need not disclose records or information compiled for law enforcement purposes if production of such materials "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). Even when an exemption applies to a record, however, the agency may still properly disclose it. See Chrysler Corp. v. Brown, 441 U.S. at 293, 99 S. Ct. at 1713 ("Congress did not design the FOIA exemptions to be mandatory bars to disclosure.").

According to the analysis provided by the Supreme Court in Reporters Committee, disclosure of these records is "warranted" if the public interest in disclosure outweighs the relevant personal privacy interests. Reporters Comm., 489 U.S. at 772, 109 S. Ct. at 1481. Here, any privacy interests are slight, because the Privacy Act, 5 U.S.C. § 552a, is wholly inapplicable to non-resident aliens, such as Mr. Abe.[3] The Privacy Act protects information from disclosure only where that information constitutes a "record." 5 U.S.C. § 552a(b). The Act defines "record" as "information about an individual." 5 U.S.C. § 552a(a)(4). "Individual," in turn, is defined as "a citizen of the United States or an alien lawfully admitted for permanent residence." 5 U.S.C. § 552a(a)(2). Therefore, the Privacy Act has no application to records kept by federal agencies of non-resident aliens. Consequently, the agency may, within its discretion, disclose such records. See 28 C.F.R. § 16.1(a).

---

[3] Attached hereto are copies of the certified Japanese records verifying that Mr. Nobuo Abe is a citizen and resident of Japan. We can produce the original certified copies from our files, if necessary.

The case law supports such a narrow reading. See Raven v. Panama Canal Co., 583 F.2d 169, 170 (5th Cir. 1978) (Panamanian citizen not entitled to invoke Privacy Act's civil remedies), cert. denied, 440 U.S. 980 (1979); Dresser Indus., Inc. v. United States, 596 F.2d 1231, 11237 (5th Cir. 1979) (because it was not an "individual," corporation lacked standing to bring a Privacy Act claim), cert. denied, 444 U.S. 1044 (1980); see also St. Michael's Convalescent Hosp. v. California, 643 F.2d 1369, 1373 (9th Cir. 1981); Cell Assocs., Inc. v. Nat'l Insts. of Health, 579 F.2d 1155, 1157 (9th Cir. 1978); O'Rourke v. U.S. Dep't of Justice, 684 F. Supp. 716, 718 (D.D.C. 1988).

Furthermore, Reporters Committee's categorical bar against the release to a third-party of a citizen's rap sheet, does not control the issue presented here. That case did not address the release of a record about a non-citizen. Cf. Reporters Comm., 489 U.S. at 780, 109 S. Ct. at 1485 (holding that third-party's request for law enforcement information about a "private citizen" can reasonably be expected to invade "that citizen's" privacy).

The legislative history also reveals Congress's deliberate intent to narrow the scope of the Privacy Act. The Senate Report accompanying the Act stated that the definition of "individual" had been chosen

> instead of the term "person" throughout the bill in order to distinguish between the rights which are given to the citizen as an individual under this Act and the rights of proprietorships, businesses and corporations which are not intended to be covered by this Act ... [and also] to exempt [from] the coverage of the bill intelligence files and data banks devoted solely to foreign nationals ... .

S. Rep. No. 93-1183, 93rd Cong., 2d Sess. (1974), reprinted in 1974 U.S.C.C.A.N. 6916, 6994 (1974).

Assuming for the sake of argument that Abe had a privacy interest separate from the Privacy Act, he would still not be entitled to raise it to prevent the production of this record to the public. Abe waived his right to privacy by initiating a lawsuit in Japan in the name of the corporation he controls, bringing this issue even further into the public arena. Moreover, Abe is a public figure as the high priest of Nichiren Shoshu. As the religious leader of approximately 60,000 members and one who travels throughout the world giving speeches, newspaper and television interviews, as well as conducting religious ceremonies, he has a limited privacy interest.

On the other side of the balance, because of the international prominence of this issue, and its importance to millions of people, the public interest in the dissemination of this information weighs heavily. Abe is the leader of Nichiren Shoshu, which alleges to have approximately 60,000 members and six temples in the United States. Hiroe Clow, the eyewitness to the 1963 incident in Seattle, is a member of Soka Gakkai International-U.S.A. Soka Gakkai International has over 10 million members and more than 1200 facilities throughout the world. Abe has stated to thousands of his followers in public speeches in the United States and Japan, and disseminated in his publications in English, Japanese and other languages, that the incident with the Seattle police in March of 1963 never occurred. His statements were published in the Nichiren Shoshu and Soka Gakkai newspapers and disseminated to more than 12 million readers throughout the world. In his statements he accused the eyewitness, Hiroe Clow, of "perjury," "venomous lies" and "fabrication" regarding her stated recollection of this incident. Mr. Abe has vociferously denied the allegations of

the incident in Seattle using the print media and other vehicles.[4]

Additionally, the general public in the United States has a right to know that the United States Department of Justice and its component agencies keep and maintain a system of records that monitor the activities of foreign nationals who entered the United States at the height of the Cold War, especially where a state law enforcement agency inquired of a federal agency in its criminal investigation of that person. This information has important significance to the historical study of the implementation of foreign and domestic policy during a time of unprecedented international tensions. Thus the public has a compelling interest in understanding the manner in which the relevant government agencies carried out their official duties in this regard. Similar public interest considerations have led the courts to direct the disclosure of similar information. See e.g., Akron Standard Div. of Eagle-Pitcher Indus., Inc. v. Donovan, 780 F.2d 568, 571 (6th Cir. 1986) (citing public interest in extent and nature of agency's investigation into a charge of retaliatory discharge, and ordering disclosure of OSHA report on discharge of whistle blower), reh'g denied, 788 F.2d 1223 (6th Cir. 1986); Simon v. United States Dep't of Justice, 752 F. Supp. 14 (D.D.C. 1991) (ordering 1951 report of physician's alleged Communist activities to be disclosed with redactions of, among other things, names of federal agents), aff'd, 980 F.2d 782 (D.C. Cir. 1992); Int'l Brotherhood of Elec. Workers v. United States Dep't of Housing and Urban Dev't,

---

Abe's denials of the incident in Seattle were published with his permission on July 16, 1992, and August 1, 1992, in the Daibyakuho, a Nichiren Shoshu newspaper, as well as in a special edition of Dai-Nichiren, another Nichiren Shoshu publication. These publications reach Nichiren Shoshu members throughout the entire world. His denials were also carried by Soka Gakkai International's various publications. Together, these publications reach over 6 million readers. In addition, Abe denied the Seattle incident in a public memorial service on July 22, 1992, and denied the incident in lectures to two different audiences at a teacher's training course on August 28, 1992.

593 F. Supp. 542, 545 (D.D.C. 1984) (holding that the strong public interest in assuring compliance with the law warranted disclosure of HUD documents), aff'd, 763 F.2d 435 (D.C. Cir. 1985).

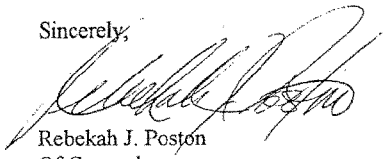
We recognize that the Department of Justice does not wish to become involved in private litigation. Nevertheless, the Code of Federal Regulations provides the public access to records within the government even where the government is not a party to the case. See 28 C.F.R. §16.21 et seq. Access to this system of records is necessary to promote open government and carry out congressional intent.

We first seek the production of this record. In the alternative, we request mere confirmation that such a record exists or did at one time, if it has been deleted or destroyed. It is not so much the nature of the incident that is at stake, but the public's right to know that a record exists or did exist containing the truth. Abe has chosen to take his case to the world public, to openly and notoriously deny the existence of this incident. The federal government appears to hold the only documentary proof that such an incident ever occurred. Permitting Abe to shield himself with the FOIA abuses the very purpose to which the FOIA was enacted.

We request that you now review our exhibits, with particular attention to The Factual Accounting (Exhibit A) and the FOIA responses referring us to the FBI (Exhibit C) . Following that, we greatly appreciate your reconsideration of the initial denial of some of these FOIA requests by the component agencies. We hope to avoid litigation, if at all possible.

I am informed that we can expect a response from you within twenty (20) days of your receipt of our appeal. We anxiously await your response. Thank you for your prompt attention to this matter.

Sincerely,



Rebekah J. Poston
Of Counsel

RJP:mt

Enclosures

MIAMI/105595_2

WILMER, CUTLER & PICKERING
2445 M STREET, N.W.
WASHINGTON, D.C. 20037-1420
TELEPHONE (202) 663-6000
FACSIMILE (202) 663-6363

WASHINGTON
LONDON
BRUSSELS
BERLIN

February 3, 1995

MEMORANDUM FOR REBEKAH J. POSTON (STEEL HECTOR & DAVIS)

From: Stasia D. Kelly

Re: Privacy Act Research

You have asked us to research the question whether federal agencies could be forbidden under the Privacy Act, 5 U.S.C. § 552a, from disclosing information related to non-resident foreign nationals such as Mr. Nobuo Abe.

Conclusion

The plain language of the Privacy Act renders it inapplicable to such cases. The relevant case law and legislative history bolster this conclusion.

The Privacy Act

In appropriate circumstances only, the Privacy Act prevents federal agencies from disclosing information about an "individual" that is contained in a "record." 5 U.S.C. § 552a(b). Under subsection 552a(a)(2), "'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence." Under subsection 552a(a)(4), "'record' means any item, collection, or grouping of information about an individual that is maintained by an agency . . . ."

By its explicit terms, then, the Privacy Act's proscription on disclosure does not apply to any information concerning Mr. Abe -- a foreign national who has never held U.S.-resident alien status.

Both case authority and the legislative history of the Privacy Act support this narrow reading. For instance, Raven v. Panama Canal Co., 583 F.2d 169 (5th Cir. 1978), held that plaintiff Panamanian citizen was not entitled to invoke the Privacy Act's civil remedies to compel disclosure of information relating to her employment with the Panama Canal Company because she was "not an 'individual' within the meaning of the Privacy

Act." Id. at 170; see also Dresser Inds., Inc. v. United States, 596 F.2d 1231, 1237 (5th Cir. 1979) (corporation was not an "individual" and thus lacked standing to bring a Privacy Act claim); Cell Assoc., Inc. v. National Inst. of Health, 579 F.2d 1155, 1157 (9th Cir. 1978) (same).

The legislative history illustrates a deliberate congressional intent to narrow the Privacy Act's scope. The Senate report accompanying the Privacy Act stated that the definition of "individual" had been chosen

> instead of the term 'person' throughout the bill in order to distinguish between the rights which are given to the citizen as an individual under this Act and the rights of proprietorships, businesses and corporations which are not intended to be covered by this Act[,] . . . [and also] to exempt [sic] the coverage of the bill intelligence files and data banks devoted solely to foreign nationals . . . .

S. Rep. No. 93-1183, 93rd Cong., 2d Sess. (1974), reprinted in 1974 U.S.C.C.A.N. 6916, 6993 (1974); see also Stone v. Export-Import Bank, 552 F.2d 132, 136-37 (5th Cir. 1977).

THE PHILIP MANUEL RESOURCE GROUP
1730 K Street, Northwest, Washington, D.C. 20006
Tel: (202) 861-0651 FAX: (202) 775-0827

FAX TRANSMISSION
PRIVILEGED AND CONFIDENTIAL

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If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone. Thank you.

If problems are encountered with this communication, please call the number above immediately.

ATTENTION: RICH LUCAS

COMPANY: MIAMI

FAX NUMBER:

REMARKS: Rich - Here is the engagement letter with indemnification provisions which I sent to Rebekah on Feb 1. I know it was faxed since the red circle appears in the lower left hand of the page + our fax transmittal sheet shows the fax was changed on that date. Please see that she gets a copy and I will refax + also send by mail

Number of Pages Including Cover: 7

Date: Feb 15

Sender: PAM.

Offices in Washington, D.C., Miami, FL, Las Vegas, NV

EXHIBIT
79

The Philip Manuel Resource Group, Ltd.

Washington DC; Miami, FL; and Las Vegas, NV

Facsimile Cover Sheet

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This message is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not the intended recipient, you are hereby notified that any dessimination of this communication is strictly prohibited. If you have received the communication in error, please notify us immediately. Thank you.

To: Rebekah Poston, Esq.
Company: Steel Hector & Davis
Phone:
Fax: (305)/577-7001

From: Phil Manuel
Company: The Philip Manuel Resource Group
Phone: (202) 861-0651
Fax: (202) 775-0827

Date: February 1, 1995
Pages including this cover page: 6

Comments:

SEE ATTACHED

PHILIP MANUEL RESOURCE GROUP LTD.
WASHINGTON, D.C. • MIAMI, FLORIDA • LAS VEGAS, NEVADA

SUITE 1301
1730 K STREET, NORTHWEST
WASHINGTON, D.C. 20006
TEL: (202) 861-0651
FAX: (202) 775-0827

SUITE 801
1200 BRICKELL AVENUE
MIAMI, FLORIDA 33131
TEL: (305) 358-3434
FAX: (305) 358-4425

SUITE 700
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
TEL: (702) 471-7500
FAX: (702) 471-7474

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

February 1, 1995

Rebekah Poston, Esq.
Steel Hector & Davis
200 South Biscayne Blvd.
Miami, Florida 33131-2398

Via FAX (305)/577-7001

Dear Rebekah:

As discussed, I am forwarding a copy of our standard retainer agreement in connection with our services in the Hiroe CLOW v. ABE litigation.

Please observe that paragraph 3 on page 3 deals with the issue of indemnification and source confidentiality. As you know, these provisions are extremely important to us and I would appreciate your comments and ultimate approval so that we can continue to be of service.

If you would prefer to redo the essence of the engagement letter in your own format please let me know.

Best Regards.

Sincerely,

Phil

Philip R. Manuel, CFE
President, PMRG

PHILIP MANUEL RESOURCE GROUP LTD.
WASHINGTON, D.C. • MIAMI, FLORIDA • LAS VEGAS, NEVADA

SUITE 1301
1750 K STREET, NORTHWEST
WASHINGTON, D.C. 20006
TEL: (202) 861-0451
FAX: (202) 775-0857

SUITE 801
1200 BRICKELL AVENUE
MIAMI, FLORIDA 33131
TEL: (305) 358-5454
FAX: (305) 358-4425

SUITE 700
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
TEL: (702) 471-7500
FAX: (702) 471-7474

PRIVILEGED AND CONFIDENTIAL

February 1, 1995

Rebekah Poston, Esq.
Steel Hector & Davis
200 South Biscayne Blvd.
Miami, Florida 33131-2398

Re: THE PHILIP MANUEL RESOURCE GROUP, LTD. (PMRG)
RETAINER AGREEMENT

Dear Ms. Poston:

This letter confirms and ratifies the nature and terms of our assignment with Steel Hector & Davis on behalf of your client Hiroe Clow. For purposes of this Agreement, The Philip Manuel Resource Group, Ltd. shall be referred to as "PMRG," and the combination of Steel Hector & Davis and Hiroe Clow shall be referred to as "Client" and this letter confirms the agreement to retain PMRG to provide services as of November 1994.

We appreciate your decision to retain The Philip Manuel Resource Group (PMRG) as of November 1994 to perform investigation and research regarding matters relevant to current litigation styled Hiroe CLOW v. ABE; and CLOW v. OBAYASHI as directed by your firm. Such investigative and research services shall include: reviewing materials supplied by Client relative to specific assignments, conducting background investigations as to specified individuals and/or companies, and any other services as discussed with you or your client in support of this litigation.

We will bill on a monthly basis throughout the course of the investigation and our monthly invoices are due when rendered. Our invoices consist of a concise summary of hours worked by PMRG personnel on this assignment, as well as the working expenses accumulated during the period mentioned. All time records and receipts for expenses will be kept in the possession of PMRG. For reasons of confidentiality, we prefer not to

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include copies of these items with our invoices, however, they will be made available to you at your request should any questions arise regarding invoice billing amounts. Our assignment is terminable at will by either you or us, subject to payment of all fees for services and expense costs advanced by PMRG through the date of termination.

Our fees for services are established primarily by the estimated time and labor required to thoroughly clarify and/or resolve the problem issues in question. Other appropriate factors taken into consideration are such things as the novelty or difficulty of the issues involved, the investigative and research skill required to perform the particular assignment, time-saving use of resources (including research, analysis, data and documentation) that we have previously developed and stored in quickly retrievable forms, the fee customarily charged by comparable firms for similar special investigative services, the amount of money involved or at risk and the time constraints imposed by either the client or the circumstances. Our fees are charged at the rate of $175 per hour for Philip R. Manuel and other PMRG principals, $135 per hour for special auditors and $75 - $115 per hour for investigative field services. However, fees in this case are expected to average $150 per hour. Please also be advised, that when the situation arises and work is conducted through our Miami, Florida office, a mandatory Florida State Sales Tax of 6% and a .5% Dade County Surtax will be applied to relevant fees only, as directed by the tax laws of the State of Florida.

As stated previously, our invoices will document all expenses incurred during any stage of the assignment. These expenses consist of such items as travel costs, communication costs, hotel and lodging, postage, computer database charges and other miscellaneous expenses and charges that may be accumulated. These amounts will be itemized on each separate invoice.

If our monthly invoices are not paid within sixty (60) days after they are rendered, we reserve the right to discontinue service until your account is brought current. Additionally, if our invoice has not been paid within thirty (30) days from the date of the invoice, we impose an interest charge of 1.5% per month (an 18% annual rate) from the 30th day after the date of issuance until it is paid in full. Interest charges apply to specific monthly invoices on an individual invoice basis. Any payments made on past due statements are applied first to the oldest outstanding statement. We are entitled to attorney's fees and costs if collection activities are necessary.

PMRG will provide Client with confidential written reports, as they are generated, as to the results of the investigation and such other information as Client may reasonably require, including a final report at the end of the investigation. If we receive instruction

and report from you in support of anticipated or pending litigation, all such reports, both written and oral, will be submitted to Steel Hector & Davis with the understanding that it shall be confidential and privileged. All communication and reports shall be submitted as Privileged and Confidential Attorney Work Product and Attorney Client Communications.

In this same regard, any confidential information supplied to PMRG will be mandated appropriately. PMRG agrees to keep such documents and all information contained therein strictly confidential and not reveal such information to any persons other than such agents of PMRG in connection with the performance of their professional duties hereunder and that have agreed to keep the information strictly confidential.

If any person or entity requests, subpoenas, or otherwise seeks to obtain any testimony or materials within PMRG's possession, custody or control or the possession, custody or control of any of PMRG's employees, agents or representatives, which relate or refer in any way to the services contemplated by this Agreement, PMRG shall promptly inform Client of such request or subpoena. Should Client require PMRG to take any legal action to seek protection against disclosure, Client will either represent PMRG and/or the applicable party(ies) in the matter (or furnish such representation) or Client will indemnify PMRG and/or the applicable party for all costs, expenses and liability including attorneys' fees and disbursements. PMRG shall not be liable in any manner whatsoever for any loss or injury to the Client resulting from the obtaining or formulating of any information which the Client directs PMRG to obtain. If any such information furnished is based upon reports and investigations obtained from sources considered by PMRG to be reliable, the Client agrees not to ask this agency to disclose the sources from whom or by which the information was obtained.

This Agreement, together with any prior correspondence between Client and PMRG represents the entire agreement between PMRG and Client. Your signature on this engagement Agreement constitutes your acceptance of the foregoing terms and conditions. If any of the items contained herewith are unacceptable to your, please advise us now so that we can resolve any differences and proceed with a clear, complete, and consistent understanding of our relationship. If you agree to all of the terms and conditions contained herewith, please sign and return this copy to PMRG's headquarters in Washington, D.C.

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We are pleased to provide service to you in connection with this matter and look forward to a mutually beneficial relationship.

Sincerely,

Philip R. Manuel, CFE
President, PMRG

_____
Client's/Representative's Signature

_____
Date

Facsimile Transmission Cover Sheet

TO: PHILLIP MANUAL

COMPANY: PHILLIP MANUAL RESOURCES GROUP

FAX NUMBER: 305-358-4425

DATE: 2/15/95

FROM: JOHN SEBASTIAN

COMPANY:

Pages including cover sheet: 3

Message: TITLE: OUT ON THE LIMB

If any problems occur in the transmission of this information, please call (202) 408-0600.

EXHIBIT

80

THEFT OF NCIC RECORDS

Former police officer gets $1,000 fine, probation

By Jim Price
Express-News Staff Writer

A former Castle Hills police lieutenant was given three years probation and fined $1,000 Wednesday for selling computerized criminal records belonging to the FBI.

U.S. District Judge Ed Prado also ordered John W. Lee II, 44, to make restitution of $600 to the FBI for the printouts.

Lee pleaded guilty Sept. 17 to selling the National Crime Information Center computer printouts to Alcohol Law Enforcement officer.

Lee, a father of four and 11-year veteran of the suburban Police Department before he was fired three months ago, also must serve 300 hours of community service, Prado ordered.

Lee openly admitted in court that what he did was wrong.

"John is paying the price for his actions," said his attorney, Javier Oliva, noting that both Lee and his wife, who also was a Castle Hills employee, have lost their incomes.

Oliva called Lee a community leader, adding his client has been involved with the Red Cross and last summer's Junior Olympic Festival.

Oliva said Lee became involved in selling the reports because another "detective offered as inducement" for the reports.

He did not identify the detective allegedly involved.

Lee has been the only person charged in he case.

Lee admitted selling 18 confidential criminal histories for $240 on June 18 and another 30 for $450 on July 6.

THEFT OF NCIC RECORDS

Fired policeman pleads guilty to printout sales

A fired Castle Hills police lieutenant pleaded guilty Friday in federal court to selling national crime computer printouts.

U.S. District Judge Edward Prado set sentencing for John W. Lee II, 44, for Nov. 17.

The former suburban policeman faces a maximum sentence of 10 years, a fine of $250,000 or both.

Lee, who was allowed to remain free on bond, pleaded guilty to stealing and selling National Crime Information Center computer printouts belonging to the FBI on July 8.

As part of his plea bargain agreement, Lee agreed to make restitution of $890 he received for the printouts.

Last month Castle Hills Police Chief Jose Ponce announced Lee, a 11-year veteran of the department, was fired for unauthorized use of city equipment for personal gain.

"He was a model officer. I never suspected this was going on," Ponce said.

> "He was a model officer. I never suspected this was going on."
>
> — Police Chief Jose Ponce of Castle Hills

Lee, the father of four children, was fired after police were notified by the FBI that agents were investigating Lee in connection with the theft of government property.

Police said the investigation focused on the sale of criminal histories obtained from the national crime computer center and the Texas Crime Information Center.

Lee joined the Castle Hills department in 1980 and at the time of his firing was a detective lieutenant supervising eight people in the detective, investigations and communications sections, Ponce said.

U.S. Department of Justice
Office of Information and Privacy

materials & ~~[illegible]~~ was checking to be sure it hadn't been lost in transit. He said not sent yet but would be soon. I also advised I didn't want to have a meeting in which I heard from just one side. He said he understood. RLH

Please Note:

Dick Huff asked that I put a note on this asking that it be routed to his direct attention.
Pat Carome

U.S. Department of Justice
Office of Information and Privacy

Memo to file

2/24/95

In response to a call yesterday from Pat Carome (663-6010) of Wilmer, Cutler asking me to give him a call if it appeared my action would be adverse on the appeal of his client, Soha Gabbai, I called him so he could submit further arguments. I advised I would not act prior to reviewing his arguments. He said he would submit them next week. RLH

I called Carome to advise that we still haven't received supplemental

DOJ-02919

EXHIBIT
81
PENGAD-Bayonne, N. J.

WILMER, CUTLER & PICKERING
2445 M STREET, N.W.
WASHINGTON, D.C. 20037-1420
TELEPHONE (202) 663-6000
FACSIMILE (202) 663-6363

WASHINGTON
LONDON
BRUSSELS
BERLIN

March 31, 1995

BY HAND

Richard L. Huff, Esq.
Co-Director
Office of Information and Privacy
Department of Justice
Tenth and Constitution Ave., N.W.
Room 7238
Washington, DC 20530

Re: FOIA Appeal Concerning Requests for Information Relating To Nobuo Abe, Appeal Nos. 95-0283 to 95-0288

Dear Richard:

This letter supplements and supports a pending Freedom of Information Act appeal arising out of FOIA requests previously made to the Federal Bureau of Investigation and other offices for any records concerning an incident thirty-two years ago in which a non-resident alien (Nobuo Abe, presently known as Nikken Abe) was detained by the Seattle Police Department. The FOIA requests and appeal were made by the law firm of Steel, Hector & Davis. The appeal was dated February 3 and addressed to Attorney General Reno, c/o your office. The Office of Information and Privacy has denominated the appeal as Appeal Nos. 95-0283 to 95-0288.

The purpose of this letter is to bring to your attention additional information that contributes to the unusually compelling case for disclosure of the information in question. We respectfully request that the Department take this additional information into account in resolving the appeal, and that the Department instruct the FBI to conduct a thorough search for the requested records.

Although the FOIA requests and appeal were submitted by the Steel Hector & Davis firm, the real parties in interest are a woman named Hiroe Clow and an international religious organization (Soka Gakkai) to which Mrs. Clow belongs. Mrs. Clow is a sixty-two-year-old Japanese citizen who has lived in the United States (now in Southern California) for nearly all of the past thirty-five years. She is a permanent resident alien of the United States. Her late husband served in the United States Navy for over twenty-three years, both in Japan and the U.S., and as an officer rose to the rank of Chief Warrant Officer 3. She is the mother of two (now adult) children, both American citizens, whom she raised as a single mother following her husband's death in 1962.

Mrs. Clow has an extraordinarily great need for disclosure of the information sought by the FOIA requests and appeal. She has been the victim of terrible public ridicule and malicious accusations in retaliation for her disclosure to other members of Soka Gakkai that she had witnessed in March 1963 certain public and embarrassing conduct by Mr. Abe, who is now the high priest and leader of Nichiren Shoshu, a prominent and powerful Buddhist denomination based in Japan. (Soka Gakkai was the lay organization of Nichiren Shoshu until Mr. Abe excommunicated it in 1991.) Among other things, Mrs. Clow (who is herself a follower of Nichiren Shoshu) revealed that as a leader of a small Soka Gakkai organization in the Seattle area who was responsible for hosting a visit to Seattle by Mr. Abe in March 1963, she was called by Seattle police to a scene where Mr. Abe was under police detention. Mrs. Clow brought these matters to public light in 1992 as a matter of conscience and out of a deep commitment to her personal religious faith.

As a result of her disclosures, Mrs. Clow has been subjected to a firestorm of vicious public denunciations in newspapers published by Mr. Abe's sect and in public speeches made by Mr. Abe. Mr. Abe and the powerful Nichiren Shoshu sect have categorically denied Mrs. Clow's account of the events she witnessed. But they have not stopped there, and have gone on to defame her by calling her a liar and a perjurer, accusing her of being part of an evil conspiracy, and asserting that she is suffering from a mental disorder. These vituperative attacks, issued by a prominent religious leader -- whose status in the Buddhist sect is not unlike that of the Catholic Pope -- and published in widely read newspapers, have taken an enormous personal toll on Mrs. Clow. Her good name and personal honor, built up over more than six decades, have been severely and perhaps irreparably damaged.

The FBI has been most sympathetic to Mrs. Clow's plight and has expressed a willingness to assist her if at all possible. Thus, Tom Kelly, Deputy Counsel of the FBI, and Leighton W. McFarland III, Chief of the Litigation Section of the FBI's General Counsel's office, met with representatives of Mrs. Clow and the Soka Gakkai on January 23, 1995. The FBI represented that it would be more than willing to search for and release responsive records if only the Department of Justice would provide guidance indicating that doing so would be permissible. We believe that the FBI perceives a need for such guidance on account of a standing FBI practice in which requests for these sorts of law enforcement records concerning living individuals are routinely denied, without acknowledgement of whether responsive records exist, absent a privacy waiver signed by the individual or an overriding public interest. The FBI, we believe, sees a decision to search for and release such a record to be a matter of policy to be resolved through the exercise of the Attorney General's discretion.

We also note, and wish to commend the Department of Justice for, assistance that has already been provided to Mrs. Clow and the Soka Gakkai by both the Immigration and Naturalization Service (another DOJ component) and the FBI in connection with a related FOIA request to INS for records

potentially relating to Mr. Abe. INS not only searched for and located a microfiche record in response to that request, but also collaborated with the FBI in creating an enhanced, more legible version of that record. Ultimately, the enhancement revealed that the INS record pertained to another person named Abe, rather than the Nobuo Abe who is the subject of the FOIA request, and consequently the record was not released. If the record had been responsive to the FOIA request, INS would have released it. Mrs. Clow and the Soka Gakkai appreciate these efforts, and hope that similar openness will prevail with respect to the pending FOIA appeal.

We respectfully submit that in these unusual circumstances, there are compelling interests in favor of searching for and disclosing any responsive records, and no significant interests militating against disclosure. With the equities all pointing toward openness, this is a paradigmatic case for adhering to the "presumption of disclosure" set forth in Attorney General Reno's Memorandum for Heads of Departments and Agencies of October 4, 1993, which announced new policies of openness under the FOIA. As you know, that memorandum declared that "[f]irst and foremost, we must ensure that the principle of openness in government is applied in each and every disclosure and non-disclosure decision that is required under the Act," and that the Department of Justice will "defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption." These guiding principles plainly warrant disclosure in this case.

First, as articulated in the appeal itself, there are strong and overriding "public interests" favoring disclosure, both because these records (if they exist) may shed light on the historical activities of government law enforcement agencies in monitoring the activities of a foreign official of a religious sect, and because disclosure would help to elucidate a matter of great public controversy in religious society in Japan and elsewhere, including the United States.

Second, as articulated in more detail in the appeal, there are no significant privacy interests to be protected by maintaining secrecy in this case. As a threshold matter, because Mr. Abe is not an American citizen, the Privacy Act is inapplicable here, and thus there can be no question that, at a minimum, the FBI has discretion to disclose in these circumstances. In addition, since Mr. Abe is a highly prominent public figure who has made numerous public statements on the events in question, and whose organization has initiated defamation litigation in Japan challenging the truth of Mrs. Clow's account, he does not possess, or has waived, any significant privacy interest relating to this subject. Thus, even if you were to determine that the requested information technically falls within the privacy exemption due to privacy interests other than those protected by the Privacy Act, Mr. Abe's conduct clearly calls for discretionary disclosure, a measure which Attorney General Reno "strongly encourage[d]" all agencies to take in her October 1993 memorandum.

Third, as set forth in this letter, Mrs. Clow has an unparalleled interest in disclosure as a result of the public attacks levied against her by Mr. Abe and his sect: restoration of her good name, reputation, and personal dignity is dependent upon the uncovering of some objective independent evidence to corroborate her account of the March 1963 detention incident. Even if the FBI might in other circumstances be permitted to withhold such records (or decline to acknowledge whether such records exist) pursuant to the FOIA's privacy exemptions, we submit that the interests of Mrs. Clow, together with the other attendant public interests, make those exemptions inapplicable or, at a minimum, warrant the FBI's exercise of discretion to disclose.

In sum, in addition to all of the other factors supporting disclosure set out in the appeal itself, there are profound issues of justice and fairness favoring openness in this instance. In the spirit of openness announced in the Attorney General's October 1993 memorandum, we ask that you instruct the FBI to conduct a thorough search for records in response to the FOIA requests and to disclose, at a minimum, whether any responsive records are found by such search.

We very much appreciate your attention to this matter. Because this matter affects ongoing litigation and continuing attacks on Mrs. Clow, we respectfully request as prompt a response as practicable.

Sincerely,

Russell J. Bruemmer
Patrick J. Carome

cc:

The Honorable Janet Reno
Attorney General of the United States
Department of Justice
Tenth & Constitution Ave., N.W.
Room 4400
Washington, D.C. 20530

Nancy E. McFadden, Esq.
Principal Deputy Associate Attorney General
Department of Justice
Tenth & Constitution Ave., N.W.
Room 5215
Washington, D.C. 20530

John R. Schmidt, Esq.
Associate Attorney General
Department of Justice
Room 5214
Tenth and Constitution Ave., N.W.
Washington, DC 20530

John M. Hogan, Esq.
Counselor to the Attorney General
Department of Justice
Room 5119
Tenth and Constitution Ave., N.W.
Washington, DC 20530

bcc: Mr. George Odano
Rebekah J. Poston, Esq.
Barry Langberg, Esq.

U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642 *Washington, D.C. 20530*

APR 25 1995

Rebekah J. Poston, Esq.
Steel, Hector & Davis
200 South Biscayne Boulevard
Miami, FL 33131-2398

Re: Appeal Nos. 95-0283
thru 95-0287
RLH:DAH

Dear Ms. Poston:

This responds to your letter of February 3, 1995, and to Patrick J. Carome's letter of March 31, 1995, regarding your request to the Executive Office for United States Attorneys, the Immigration and Naturalization Service, the Federal Bureau of Investigation, the Department of the Treasury, and the Department of State on behalf of your client, Soka Gakkai, for access to records pertaining to Nobuo Abe. I note that you have not furnished a notarized authorization from Mr. Abe as required by 28 C.F.R. § 16.41, or a sworn statement pursuant to 28 U.S.C. § 1746.

While I understand Ms. Clow's need for the requested records, I find the Supreme Court's holding in United States Department of Justice v. Reporter's Committee for Freedom of the Press, 489 U.S. 749 (1989) to be controlling in this case. Thus, in the absence of such authorization, and after careful consideration of your appeals from the actions of the EOUSA and the FBI, I have decided to affirm the initial action of these components in refusing to confirm or deny the existence of records responsive to your request. Lacking an individual's consent, proof of death, official acknowledgement of an investigation, or an overriding public interest, even to acknowledge the existence of law enforcement records pertaining to an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(7)(C).

I note that Mr. Carome's letter indicates that you were advised by the INS that no records pertaining to Mr. Abe could be located in its files. It has been determined that this response is correct.

With regard to your appeals from the actions of the Department of the Treasury and the Department of State, the Department of Justice has no jurisdiction over records maintained by other federal agencies, nor will it become involved in disputes over the withholding of documents until after the agency has completed its initial processing of documents and rendered its subsequent administrative appeal decision. Accordingly, this Office is

EXHIBIT
83

unable to assist you in this matter at this time, and I am closing these administrative appeals in this Office.

Judicial review of my action on your appeals pertaining to the EOUSA, the INS and the FBI is available to your client in the United States District Court for the judicial district in which your client resides, or in the District of Columbia, or in the Western District of Washington, which is where the records sought, if they exist, would be located.

Sincerely,

Richard L. Huff
Co-Director

cc: Russell J. Bruemmer
Wilmer, Cutler & Pickering
2445 M Street NW.
Washington, D.C. 20037-1420

Office of the Attorney General
Washington, D. C. 20530

April 28, 1995

MEMORANDUM FOR THE STAFF OF THE ATTORNEY GENERAL

FROM: THE ATTORNEY GENERAL

SUBJECT: Recusal from the FOIA Appeal for Information on Nobuo Abe

This is to inform you that I have recused myself from participation in the FOIA appeal made to the Department concerning requests for information relating to Nobuo Abe, a prominent religious leader, on behalf of Mrs. Hiroe Clow.

Apparently, an attorney, who is a close personal friend of mine and participated in my confirmation hearing preparation, has requested my intervention in the matter and I want to make it very clear that I have chosen to disqualify myself from any participation and request that no information regarding this matter be brought to my attention.

cc: The Associate Attorney General

Attachment

MAY 12 '95 11:06AM STEEL HECTOR & DAVIS P.1

STEEL HECTOR & DAVIS

200 South Biscayne Blvd.
Miami, Florida 33131-2398
(305)577-7000

Telecopier Cover Sheet

Confirmation #(305) 577-2887

Date:	**May 12, 1995** **11:05 a.m.**
Send To:	**John Hogan, Counselor to the Attorney General**
Firm:	**Department of Justice**
Telecopier No:	**(202) 616-5117**
Confirmation No:	**(202) 514-3892**

Total Pages Including Cover Sheet: 5

X Letter Size ____ Legal Size

Originator: **Rebekah J. Poston** Ext 305-577- **7022**

Special Messages:

Crystal: Please deliver to John as soon as possible. Thanks.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the above address via the U.S. Postal Service. We will reimburse you for postage. Thank you.

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WEST PALM BEACH: FAX (407) 655-1509

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Client Code: **27158** Matter Code: **3358**

EXHIBIT 85

DOJ-03120

Steel Hector & Davis
Miami, Florida

Rebekah J. Poston
Of Counsel
(305) 577-7022

PERSONAL AND CONFIDENTIAL

VIA TELECOPIER

May 12, 1995

John Hogan
Counselor to the Attorney General
Department of Justice
10th and Constitution Avenue, N.W.
Room 5119
Washington, D.C. 20530

Dear John:

I am enclosing a copy of Richard Huff's response to our FOIA appeal. I must say that I am rather disappointed. He failed to address many of the substantive issues that we raised, not the least of which is the Clinton administration's commitment to opening records to public scrutiny, particularly where no legitimate privacy rights exist.

Consequently, John Smith, Russell Bruemmer and I believe we must take one last step before deciding whether to initiate litigation on these issues. Believe me, we do not want to bring unnecessary or senseless litigation. Unfortunately, however, we are lacking an understanding, given our arguments and the failure of anyone in the Office of Information and Privacy to address them head on, as to why our appeal has been denied. If you could assist the three of us in scheduling a meeting with Mr. Schmidt, we would like to address our concerns with him. We have not yet attempted to contact Mr. Schmidt.

DOJ-03121

Miami Office
41st Floor
200 South Biscayne Boulevard
Miami, FL 33131-2398
(305) 577-7000
Fax: (305) 577-7001

West Palm Beach Office
1900 Phillips Point West
777 South Flagler Drive
West Palm Beach, FL 33401-6198
(407) 650-7200
Fax: (407) 655-1509

Tallahassee Office
Suite 601
215 South Monroe
Tallahassee, FL 32301-1804
(904) 222-2300
Fax: (904) 222-8410

Steel Hector & Davis

We trust that Mr. Schmidt will agree to one final conference on this matter; we will of course work with his schedule on a convenient date and time.

I harken back to the beginning of this matter when you and I first spoke. You commented that you didn't understand why they just could not tell whether they have a record or not. Frankly, we would be satisfied with such a response. As you know, Immigration and other agencies informed us that they have no records. Even information that the record once existed and was subsequently deleted, would suffice. These are the messages that we want to convey to Mr. Schmidt.

I wanted you to understand our approach and what we are trying to accomplish so that you have a comfort level in helping us secure a meeting with Mr. Schmidt. I know you said that you would assist us in trying to get a meeting, but that you could not make any promises. With that understanding, I am requesting your assistance at this time.

I will call you in a day or so after you have had an opportunity to read my letter and think about my proposal. I look forward to speaking with you soon.

Sincerely,

Rebekah J. Poston
Of Counsel

RJP:ch

Enclosure

cc: Russell J. Bruemmer, Esq.

MIAMI/145682_1

U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642 *Washington, D.C. 20530*

APR 25 1995

Rebekah J. Poston, Esq.
Steel, Hector & Davis
200 South Biscayne Boulevard
Miami, FL 33131-2398

Re: Appeal Nos. 95-0283
thru 95-0287
RLH:DAH

Dear Ms. Poston:

This responds to your letter of February 3, 1995, and to Patrick J. Carome's letter of March 31, 1995, regarding your request to the Executive Office for United States Attorneys, the Immigration and Naturalization Service, the Federal Bureau of Investigation, the Department of the Treasury, and the Department of State on behalf of your client, Soka Gakkai, for access to records pertaining to Nobuo Abe. I note that you have not furnished a notarized authorization from Mr. Abe as required by 28 C.F.R. § 16.41, or a sworn statement pursuant to 28 U.S.C. § 1746.

While I understand Ms. Clow's need for the requested records, I find the Supreme Court's holding in United States Department of Justice v. Reporter's Committee for Freedom of the Press, 489 U.S. 749 (1989) to be controlling in this case. Thus, in the absence of such authorization, and after careful consideration of your appeals from the actions of the EOUSA and the FBI, I have decided to affirm the initial action of these components in refusing to confirm or deny the existence of records responsive to your request. Lacking an individual's consent, proof of death, official acknowledgement of an investigation, or an overriding public interest, even to acknowledge the existence of law enforcement records pertaining to an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(7)(C).

I note that Mr. Carome's letter indicates that you were advised by the INS that no records pertaining to Mr. Abe could be located in its files. It has been determined that this response is correct.

With regard to your appeals from the actions of the Department of the Treasury and the Department of State, the Department of Justice has no jurisdiction over records maintained by other federal agencies, nor will it become involved in disputes over the withholding of documents until after the agency has completed its initial processing of documents and rendered its subsequent administrative appeal decision. Accordingly, this Office is

unable to assist you in this matter at this time, and I am closing these administrative appeals in this Office.

Judicial review of my action on your appeals pertaining to the EOUSA, the INS and the FBI is available to your client in the United States District Court for the judicial district in which your client resides, or in the District of Columbia, or in the Western District of Washington, which is where the records sought, if they exist, would be located.

Sincerely,

Richard L. Huff
Co-Director

cc: Russell J. Bruemmer
Wilmer, Cutler & Pickering
2445 M Street NW.
Washington, D.C. 20037-1420

HE PHILIP MANUEL RESOURCE GROUP LTD.
WASHINGTON, D.C. • MIAMI, FLORIDA

Suite 701
1747 Pennsylvania Avenue
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Tel: (202) 861-0651
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TOTAL PAGES INCLUDING COVER PAGE 3

Date: 5/1/95

To: Rebekah Poston Steel Hector Davis

From: Rich Lucas

RE: Observations on Justice Department Rep't

EXHIBIT
86

E PHILIP MANUEL RESOURCE GROUP LTD.
WASHINGTON, D.C. • MIAMI, FLORIDA • LAS VEGAS, NEVADA

SUITE 1301
1730 K STREET, NORTHWEST
WASHINGTON, D.C. 20006
TEL: (202) 861-0651
FAX: (202) 775-0827

SUITE 801
1200 BRICKELL AVENUE
MIAMI, FLORIDA 33131
TEL: (305) 358-3434
FAX: (305) 358-4425

SUITE 364
4001 SOUTH DECATUR BLVD.
LAS VEGAS, NEVADA 89103
TEL: (702) 362-8949
FAX: (702) 876-2003

Date: May 1, 1995

To: Rebekah Poston
Steel, Hector & Davis

From: Richard Lucas
Miami, FL

Re: Nobuo Abe Request With The U.S. Justice Department

The following are my observations on the response by Richard L. Huff of the U.S. Justice Department:

1. Huff ignores the issue that Abe should not have an expected right to privacy since he is not a U.S. citizen.

2. He does not reference public policy statements as mentioned in your appeal and supplemental appeal as to the right to know and the public good versus an aliens right to privacy.

3. Huff undertook the task of attempting to verify information on file with the INS. He admitted there is no information on file with that agency. The obvious question is did he attempt to verify information on file with the FBI and/or NCIC. If he did, with whom at the FBI did he have contact? What was Huff told as to the available information?

4. Huff concludes with a statement that the records, **if they exist**, would be located in the Western District of Washington. This is contrary to information previously obtained that the records exist in Washington D.C. In addition a past inquiry indicated the records do not exist in the state of Washington.

5. Are you interested in additional contacts, specifically in the state of Washington? Even if there is no information in the Western District of Washington a recent inquiry by Huff may have left a trail.

June 2, 1995

Honorable John Schmidt
Associate Attorney General
U.S. Department of Justice
10 Constitution Avenue, N.W.
Room 5214
Washington, D.C. 20530

Re: FOIA Appeal Nos. 95-0283 through 95-0287

Dear Mr. Schmidt:

This letter will confirm our appointment with you at your office at 3:30 p.m., on Thursday, June 15, 1995. Attending the meeting will be John Smith, Russell Bruemmer of Wilmer, Cutler and Pickering and myself. We will be prepared to utilize our half hour and we do not intend to run over our allotted time. Pursuant to your request, I am enclosing the materials we have filed to date which are pertinent to our meeting. The enclosed materials consist of the following:

(1) FOIA Appeal addressed to Attorney General Janet Reno, dated February 3, 1995;

(2) Wilmer, Cutler and Pickering letter supplementing and supporting our FOIA appeal, addressed to Richard L. Huff, Esq., dated March 31, 1995;

(3) Richard L. Huff letter, dated April 25, 1995, addressed to myself responding to our FOIA appeal of February 3, 1995 and our Wilmer, Cutler and Pickering letter of March 31, 1995.

Before we can appropriately advise our clients as to whether or not they should pursue litigation in the courts regarding the denial of their FOIA requests, we want to exhaust absolutely every administrative avenue available to us. We believe we will accomplish that following our visit with you.

We were disappointed in Mr. Huff's failure to address many of the substantive issues that we raised, not the least of which is the Clinton administration's commitment to opening records to public scrutiny, particularly where no legitimate privacy rights exist. We lack an understanding, given our arguments and the failure of anyone in the Office of Information and Privacy to address them head on, as to why our appeal was denied.

These are a few of the basic issues that we would like to discuss at our meeting. We look forward to seeing you then.

Very truly yours,

Rebekah J. Poston
Of Counsel

Enclosures

RJP/da/MIAMI/152948-1

August 1995						
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Week Ending June 25

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6:45	6:45 Richard L. Huff's	
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EXHIBIT 88

DOJ-03012

U.S. Department of Justice
Office of Information and Privacy

Telephone: (202) 514-3642 *Washington, D.C. 20530*

June 26, 1995

MEMORANDUM

TO: J. Kevin O'Brien
Chief, FOIA/PA Unit
Federal Bureau of Investigation

FROM: Richard L. Huff
Co-Director
Office of Information and Privacy

Subject: Possible Discretionary Disclosure Concerning Nobuo Abe

I am writing at the request of Associate Attorney General John R. Schmidt, who is considering whether it might be appropriate to make a discretionary disclosure of records (or of the fact of no responsive records) concerning Mr. Nobuo Abe. In order to be fully informed on this matter, it is necessary for him to be aware of what, if any, records exist. Therefore, please cause a search to be conducted for records concerning a detention by the Seattle Police Department, on or about March 19-20, 1963, for suspicion of solicitation of prostitution by Nobuo Abe, DOB 12/19/22, a nonresident alien from Japan. The search should include the files of the Criminal Justice Information Services Division and the central records system of FBI Headquarters and the Seattle Field Office. I am attaching correspondence from Headquarters and the Seattle Field Office, as well as my action on the administrative appeal, to facilitate this matter.

Thank you for your prompt assistance.

Attachment

EXHIBIT
89

U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

July 11, 1995

Rebekah J. Poston, Esq.
Steel, Hector & Davis
200 South Biscayne Boulevard
Miami, FL 33131-2398

Re: Appeal Nos. 95-0283,
95-0285, 95-0286

Dear Ms. Poston:

This is in further response to your administrative appeals on behalf of your client, Soka Gakkai, from the actions of the Federal Bureau of Investigation and the Executive Office for United States Attorneys pertaining to its request for access to any records concerning a detention by the Seattle Police Department of Mr. Nobuo Abe on or about March 19-20, 1963.

After considering your Freedom of Information Act request under Attorney General Reno's policy of undertaking discretionary disclosure of information whenever no foreseeable harm would result, Associate Attorney General John R. Schmidt has determined that it is appropriate to disclose the fact that neither the Federal Bureau of Investigation nor the Executive Office for United States Attorneys maintains, or has any evidence of ever maintaining, any record within the scope of your request. In coming to this factual conclusion, the Federal Bureau of Investigation searched the index to its Criminal Justice Information Services Division, which maintains criminal history records ("rap sheets"), and the indices to its central records system for its Seattle Field Office and Headquarters Office. The Executive Office for United States Attorneys searched the index to the files of the United States Attorney's Office for the Western District of Washington.

I am required to advise you that if your client considers this an adverse determination, it has the right to seek judicial review in the United States District Court for the judicial district in which it has its principal place of business (if within the United States), or in the District of Columbia or in the Western District of Washington.

Sincerely,

Richard L. Huff
Co-Director

cc: Russell J. Bruemmer, Esq.
Wilmer, Cutler & Pickering
2445 M Street NW
Washington, D.C. 20037-1420

EXHIBIT
90

STEEL HECTOR & DAVIS

200 South Biscayne Blvd
Miami, Florida 33131-2398
(305)577-7000

Telecopier Cover Sheet

Confirmation #(305) 577-2887

Date: July 12, 1995

Send To: Richard Lucas

Firm:

Telecopier No: 305 340-8578

Confirmation No:

Total Pages Including Cover Sheet: 3

_____/ Letter Size _____ Legal Size

Originator: Rebekah J. Poston, Esq. Ext 305-577-7022

Special Message:

Please maintain the utmost confidentiality with respect to this document. We do not want this document to be the discoverable piece of evidence in any of the litigation within the United States therefore, you should not permit anyone to copy this document nor permit anyone to keep or maintain this document. Also, you are not disclose the identity of the client to anyone. What I would like each of you to do is simply verify to the extent of your abilities what the phrase: "... or has any evidence of ever maintaining," means with respect to the various records that were searched. I also think there needs to be clarification as to whether the headquarters office "HO" refers to an FBI office in the state of Washington or in D.C. I would ask all of you to give this matter your immediate attention. If you have any questions, please contact me.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the above address via the U.S. Postal Service. We will reimburse you for postage. Thank you.

MIAMI: FAX (305) 577-7001

Client Code: 83591 Matter Code: 4501

Steel Hector & Davis
Miami, Florida

Rebekah J. Poston
Of Counsel
(305) 577-7022

July 19, 1995

Mr. Philip Manuel
Philip Manuel Resource Group Ltd.
Suite 1301
1730 K Street, N.W.
Washington, D.C. 20006

Mr. Richard M. Lucas
7200 Griffin Road
Suite 2A
Davie, Florida 33314

EXHIBIT
92

Dear Phil and Rich:

I need your assistance in helping me explain to my clients the apparent inconsistencies between the letter we received from Richard L. Huff, dated July 11, 1995 (a copy of which was previously faxed to you) and your investigative reports of November 11 and 17, 1994. (Copies attached). I direct your attention to Huff's letter which states "... it is appropriate to disclose the fact that neither the Federal Bureau of Investigation nor the Executive Office for United States Attorneys maintains, or has any evidence of ever maintaining, any record within the scope of your request."

Our personal meeting with Deputy Associate Attorney General, John Schmidt, resulted in a policy decision by the Attorney General to reverse the original position of the Department of Justice by authorizing release of the requested record or a statement as to whether it existed in the past. That is a major accomplishment and victory. The result, however, is quite perplexing.

I can only conclude that since a record existed, which your two independent sources verified, the places searched enumerated in Huff's letter must not have been the proper locations. Any other conclusion means that the sources are either not telling the truth or that the record was deleted (a real possibility according to the source in the November 17, 1994 report) without a trace, an impossibility according to former, FBI, S/A Lawler, if the record was ever in NCIC. Of course, no one has ever indicated where the record is or was. That is part of the problem.

Our client views this letter as an absolute defeat for them in Japan. Moreover, we must assume the opposition may have such a letter of their own, or at least similar results, from their own investigation. This seems possible considering they made strong

public statements in Japan one week prior to our receiving Huff's letter that our client does not have the record and has not produced a record.

I am advised that a judge in Japan will ask me to explain my letter and why I believe my investigator's report. I need all of your support helping me to prepare how to answer such a question. Considering the record was from 1963, before the computerization of FBI files, could it be that the record your sources located was off-line? Do the areas searched in Huff's letter exclude off-line records? These are a few of the questions that come to mind.

Our client is requesting that each of you ask your sources for an explanation or where they found the record. The Attorney General's position is clear - its existence and/or its deletion is authorized to be disclosed.

I have the utmost confidence in your reports. We must try our very best to resolve this critical issue for our client. Please give this matter your immediate attention. Leave no stone unturned.

One last point, in reviewing Mrs. Clow's California attorney's FOIA requests, I note four were filed before November 11, and six, inclusive of the four, were filed before November 17, 1994. However, the responses from these agencies indicate only one (U.S. Attorney's Office in the Western District of Washington) actually searched their records. Thus, any reflection in the November 17, 1994 report of inquiries from more than six different government entities in various cities must be from other sources. This is the FOIA information. Review it and give me your thoughts relative to the November 17, 1994 report.

1. October 31, 1994 FOIA to FBI-DC
   November 7, 1994 FBI Response - need Privacy Waiver to proceed

2. November 7, 1994 FOIA to DOJ - U.S. Attorney W.D. Washington
   November 9, 1994 Response referring it to their office in D.C.

Steel Hector & Davis

Mr. Phil Manuel
Mr. Richard M. Lucas
July 19, 1995
Page 3

3. November 9, 1994 FOIA to Bureau of Prisons
   November 16, 1994 Response that Bureau of Prisons needs Prisoner ID

4. November 16, 1994 FOIA to DOJ - D.C.
   December 1, 1994 Response referring it back to local authorities in the State of Washington.

5. December 15, 1994 FOIA to DOJ - D.C.
   January 30, 1995 Response-searched records of U.S. Attorney in W.D. Washington and found nothing.

Obviously, this matter must be treated with the utmost confidentiality. You are authorized to share the content of Huff's letter with your sources. It is important for them to know that the Attorney General has sanctioned disclosure. You must not permit the letter to be copied, reveal the appeal numbers or identify the client. Good luck.

I anxiously await your response.

Very truly yours,

Rebekah J. Poston
Of Counsel

Enclosures

MIAMI/RJP/rd/172273-1

August 2, 1995

Rebekah Poston
Steel Hector & Davis
200 S. Biscayne Blvd.
41st Floor
Miami, FL 33131

Dear Rebekah:

I have reviewed your July 19, 1995 letter requesting a response to the statements by Richard L. Huff that the Federal Bureau of Investigation and the Executive Office for United States Attorneys does not maintain or has evidence of ever maintaining any record within the scope of your Freedom of Information Request.

Attached to your July 19 letter were two reports sent by me to your attention while I was in the employment of The Philip Manuel Resource Group. The circumstances surrounding the first report dated November 11, 1994 accurately reflects conversations with a reliable confidential source. Currently, the confidential source will not retrace his/her steps to reconfirm the information previously provided due to the recent developments.

The report dated November 19, 1994 was sent to your office for discussion purposes and not placed on the firms letterhead. This information was relayed by Philip Manuel to me for conveyance to you. It is an accurate and complete summary of the information as it was relayed by Philip Manuel. He subsequently submitted another report to your office on December 22, 1994, which we recently reviewed in your office, which provides greater detail on his inquiries.

Please be advised that I am currently available to assist you in legal proceedings in Japan but that due to a contractual relationship I must first receive the approval of The Philip Manuel Resource Group as to testifying on assignments from your office prior to March 1, 1995.

If I could be of further assistance please do not hesitate to call.

Regards,

Richard M. Lucas

August 4, 1995

Rebekah Poston
Steel Hector & Davis
41st Floor
200 S. Biscayne Blvd.
Miami, FL 33131

INVOICE

Re: Japanese Inquiry

4 Hours @ $125.00 per hour $500.00

Please Make Payable to: Richard Lucas
P.O. Box 970188
Boca Raton, FL 33497-0188

SUMMARY OF TIME

1995
July 14: Discuss letter of Richard Huff with Al LaManna, 1 Hour

July 19: Meet with Rebekah Poston and discuss letter from Richard Huff and strategize on future action, 2 Hours

July 21: Re-contact third parties on content of letter, 1 Hour

Total: 4 Hours

Steel Hector & Davis
Miami, Florida

Rebekah J. Poston
Of Counsel
(305) 577-7022

September 8, 1995

Via Federal Express

Mr. Philip Manuel
The Philip Manuel Resource Group Ltd.
1730 K Street, N.W., Suite 1301
Washington, D.C. 20006

Mr. Richard M. Lucas
Lucas & Associates
7200 Griffin Road, Suite 2A
Davie, Florida 33314

Re: Hiroe Clow

Dear Phil and Rich:

Please look over your respective affidavits and be certain that they are consistent with your recollection of the facts and are true and correct. If so, execute them before a notary public and return them to me as quickly as possible. If you have changes, please advise Mark Reeves of them immediately. You can reach Mark at (305) 577-2923. Obviously, I cannot stress enough the importance of maintaining the confidentiality of these affidavits. They are protected by the attorney work product doctrine and privileged and confidential under the attorney-client privilege. Consequently, until the client waives the privilege by presenting them officially, we must not violate that privilege.

Very truly yours,

Rebekah J. Poston
Of Counsel

Enclosure

RJP/da/MIAMI/185851-1

EXHIBIT
94

Miami Office
41st Floor
200 South Biscayne Boulevard
Miami, FL 33131-2398
(305) 577-7000
Fax: (305) 577-7001

West Palm Beach Office
1900 Phillips Point West
777 South Flagler Drive
West Palm Beach, FL 33401-6198
(407) 650-7200
Fax: (407) 655-1509

Tallahassee Office
Suite 601
215 South Monroe
Tallahassee, FL 32301-1804
(904) 222-2300
Fax: (904) 222-8410

乙第八号証の一

AFFIDAVIT OF PHILIP R. MANUEL

DISTRICT OF COLUMBIA) SS:

BEFORE ME, the undersigned authority personally appeared PHILIP R. MANUEL, who, being placed under oath, said, as follows:

1. My name is Philip R. Manuel and the statements contained in this affidavit are true, correct and based upon my personal knowledge.

2. I am a native of Washington, D.C., and a graduate of Georgetown University, School of Foreign Service, with a degree in International Economics and Business Management. I am a Certified Fraud Examiner.

3. I am the founder and president of the Philip Manuel Resource Group, Ltd. (PMRG), an international management consulting firm based in Washington, D.C. with branch offices in Miami, Florida, and Las Vegas, Nevada. The company began operations in November 1979.

4. Principal activities of the firm include the detection and prevention of economic crime, trademark infringement, product diversion, industrial espionage and international fraud. In addition, the firm has specialized in advising corporate management and legal counsel on matters relating to risk assessment, loss prevention and the coordination of complex investigations. PMRG also provides Washington representation and liaison with appropriate government agencies on many issues.

5. I am a nationally recognized expert in economic crime and multi-national fraud investigations. In July 1983, I was appointed by President Ronald Reagan to be a member of the President's Commission on Organized Crime.

6. From 1968 to 1979, I served as Chief Investigator of the Permanent Subcommittee on Investigations, United States Senate. In this capacity, I directed nationwide and international inquiries relating to organized crime, fraud, terrorism, and waste and corruption in government programs. As a result of these investigations, I assisted in drafting federal legislation, including the Securities Protection Act of 1975 and the Federal Computer Systems Protection Act of 1977.

EXHIBIT
95

7. From 1964 to 1968, I served as investigator for the Internal Security Committee, U.S. House of Representatives, where I was responsible for conducting inquiries into the activities of subversive and terrorist organizations as well as hostile foreign intelligence activities against the United States.

8. From 1960 to 1964, I was a counter-intelligence agent assigned to the 902nd Intelligence Corps Group, Washington, D.C. In this capacity, I was involved in counter-espionage and security investigations in the United States and abroad.

9. I have also served as chairman of the White Collar Crime Committee of the American Society for Industrial Security, and served on the Editorial Board of Money Laundering Alert, a publication with wide circulation in the banking, insurance and law professions.

10. Steel Hector & Davis, a law firm in Miami, Florida, engaged PMRG to investigate the likelihood of the existence of any documentary evidence that would corroborate eyewitness accounts of an incident that occurred in Seattle, Washington, on or about March 19 and 20, 1963, involving an individual by the name of Nobuo Abe.

11. As a part of PMRG's investigation, I contacted a confidential and highly reliable source who I believed would be able to determine whether the federal government had the documentary evidence.

12. My source told me that there was a federal government record for Nobuo Abe which referred to "Suspicion of Solicitation of Prostitution, Seattle Police Department, March 1963."

13. My source further told me that the record concerning Mr. Abe reflected that the Seattle Police Department had made an inquiry for information.

14. My source also told me that if Mr. Abe made an official request for the information under his name to be removed from the record, it could be removed.

15. Sometime later, my source informed me that the record concerning Mr. Abe apparently had been purged.

16. I am confident that the information provided to me by the source is accurate and reliable.

FURTHER AFFIANT SAYETH NAUGHT.

PHILIP R. MANUEL

I HEREBY CERTIFY that on this ___ day of September, 1995, before me, an officer fully authorized in the District of Columbia aforesaid to take acknowledgments and to administer oaths, personally appeared PHILIP R. MANUEL, who produced his FLA Driver's License (No. M 540676364090) as identification, who acknowledged before me that he executed the foregoing affidavit as his free act and deed and who did take an oath.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in the District of Columbia aforesaid as of this 28th day of September, 1995.

Name: MARTHA JEAN MACLEOD
Notary Public, ~~State of~~ District of Columbia
Commission No.: _____
My Commission Expires: My Commission Expires On March 31, 1

(Notary Seal)

AFFIDAVIT OF RICHARD LUCAS

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

BEFORE ME, the undersigned authority, personally appeared **RICHARD LUCAS**, who, being placed under oath, said as follows:

1. My name is Richard Lucas and the statements contained in this affidavit are true, correct and based upon my personal knowledge.

2. I hold a Bachelor of Arts degree from the University of Illinois and a Master of Taxation degree from De Paul University. I am a Certified Public Accountant and a Certified Fraud Examiner.

3. I served as a Special Agent of the Internal Revenue Service ("IRS") Investigations Division for seven years. In my work for the IRS, I was assigned to numerous investigations pertaining to Chicago organized crime involvement in money laundering activities with Las Vegas casinos, involvement in union pension fund activities, and infiltration into legitimate businesses. I received letters of commendation and incentive awards from the IRS District Director in Chicago for the development of key informants in the Chicago crime syndicate.

4. I became licensed as a private investigator in Illinois in January 1983 through January 1990, in Florida in 1989 through 1991 and again in Florida in September 1993 through April 1995. I have served as an investigative consultant for over ten years, specializing in money laundering, franchise fraud, corporate embezzlement, and financial institution investigations. I have been certified as an expert witness by federal courts in the Northern District of Illinois and the Middle District of Florida.

5. I am currently the President of Florida Federal Property Management, Inc. ("FFPM").

6. On May 1, 1993, FFPM entered into an agreement with the Philip Manuel Resources Group, Ltd. ("PMRG"). Under this agreement, FFPM became responsible for management, administration, and marketing for PMRG's office in Miami, Florida, as well as certain investigative functions.

7. PMRG is a private investigation firm with offices in Miami, Florida, Las Vegas, Nevada, and Washington, D.C.

8. Steel Hector & Davis, a law firm in Miami, Florida, engaged PMRG to investigate the likelihood of the existence of any documentary evidence that would corroborate eyewitness accounts of an incident that occurred in Seattle, Washington, on or about March 19 and 20, 1963,

9. As part of my investigation for PMRG, I contacted a highly reliable source and advised the source that I was attempting to confirm the existence and the whereabouts of documents in the possession of the federal government related to Mr. Abe. I told this source that Mr. Abe's name is "Nobuo Abe" and that his date of birth is December 19, 1922. I also told the source that Mr. Abe had no social security number because he was not a U.S. citizen.

10. The source later reported to me that he had determined that the federal government did have a record regarding a Nobuo Abe which referred to solicitation of prostitution, Seattle Police Department, March 1963.

11. I am confident that the information provided to me by the source is accurate and reliable.

FURTHER AFFIANT SAYETH NAUGHT.

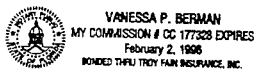
Richard Lucas
RICHARD LUCAS

I HEREBY CERTIFY that on this 22nd day of September, 1995, before me, an officer fully authorized in the State and County aforesaid to take acknowledgments and to administer oaths, personally appeared RICHARD LUCAS, who produced his Florida Driver's License (No. L220-753-53-302-0) as identification, who acknowledged before me that he executed the foregoing affidavit as his free act and deed and who did take an oath.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in the State and County aforesaid as of this 22nd day of September, 1995.

Vanessa P. Berman
Name: _____
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____

(Notary Seal)



November 19, 1996

Facsimile Transmission: 2 Pages

To: John Gibbons

From: Michael Wilson

Re: Recent Developments

I was contacted by Poston by telephone today. She put me on a conference call with an individual identified as Emil Moshela (phonetic). He claimed to be a former attorney with the FBI general counsel's office and in the FOIA section. He recently left the FBI but did not define recent.

He asked if I could come to Miami today and I stated it was not possible. He had a 1:30PM flight back to Washington D.C today and asked to schedule an appointment in the next few weeks. We exchanged phone numbers. His phone number is 703 242-7508. He stated he wanted to talk to me before he met with Phil Manuel.

Poston said that he had in his possession all of the Philip Manuel Resource Group reports and that he had been retained by Barry Landberg as an attorney for Hiroe Clowe. Poston stated her firm also represented Clowe. I pointed out Clowe was dead and she stated they both represented the estate.

He first asked if I knew if the record was possibly not in NCIC or the FBI but some other agency. I stated I didn't know but that Manuel had indicated in one report that the record may possibly have been in a counter-intelligence file. Moshela stated that would probably still be the FBI.

Moshela said he was very familiar with the NCIC staff at D.C. headquarters and asked my opinion of the disposition of the Abe record. I explained that I believed Phil Manuel's version that the record was removed by Brewer after Manuel made the inquiry, Brewer determined their had been 5-6 recent inquiries and the record (wherever it was) did not belong since there was no arrest. Brewer then removed it and advised Manuel that he did so. Moshela asked if I talked to Brewer and I stated I had not.

Moshela asked what I would recommend as to the current situation. I stated Brewer should be approached and asked about the incident. If the record existed Brewer did the right thing by removing it and he should not be adverse to saying so.

Moshela stated he should be back in contact with me in about a week to schedule an appointment.

I called Poston back a few hours later and asked why Moshela wanted to meet me alone and that I thought Poston should be present. Poston expressed appreciation for the call. She said Landberg called her two weeks ago and advised Moshela had been retained. Poston then called George Odano for confirmation, which he did. Odano stated they wanted to look at the situation from a

different perspective.

Landberg had asked Poston if she had been taken in by her investigators and she stated absolutely not. She explained her firm did a time line of all the activity and the story could not have been possibly made up and there was no incentive for The Manuel firm to make anything up since they did not even submit an invoice or receive any payment until after the key contacts were made and reports issued.

Poston stated there was always a suspicion by Manuel and others that Paladino had set them up by planting false information, Manuel's firm reporting on it and then the information was removed.

Poston asked if it was possible that when the inquiries were made, the FBI contacts reported back that there was a record but what they meant was that there had been numerous inquiries in a short period of time all with the same details and allegations. I stated I didn't think so.

She stated the case in Tokyo with the former police officers is going well. She added anything is possible since both sides take the attitude that money is not an issue.

Al LaManna was contacted by Poston and he came back with a good report on Moshela, that he was high up in the FBI and very well regarded among his contemporaries. She asked if the litigation with Manuel was settled and I responded not even close.

She stated that after the "Huff letter" was made available to the other side there was concern there was a mole. She said Huff was contacted and he stated he sent a copy of the letter to the other side and that it was sometimes a standard procedure to do so. This relieved a lot of concern. The Huff letter was a huge let down but he qualified his statement by listing the files that were searched.

Poston stated Moshela told her he knows Brewer and he is very straight laced and closed minded. Moshela stated that if the facts transpired as Manuel reported, Brewer would have just erased the record from the file and believed he did the right thing.

She added that before Moshela left he told her it probably wasn't necessary for him to come back to Florida since he got the information he needed. He was going to talk to Manuel. (There was an indication there may be some friction between Manuel and Poston).

415 362-3153

Rough Draft

November 27, 1996

To: John Gibbons

From: Mike Wilson

A meeting was held between Rebecca Poston and Emil Moschella in Miami on November 26, 1996.

Pre and Post Meeting Observations:
Emil has been hired by the estate of Hiroe Clowe as a consultant. He reports to Barry Landberg. He was hired by George Odano. He has recently traveled to the West Coast at least twice on this matter.

Poston is not overall pleased with the hiring of Emil. She claims attacking the same problem consistently from different angles can only cause waves and potential problems. She states "it is possible the client will eventually find something they don't like".

Emil apparently does not have affidavits of Manuel and Lucas. The documents are kept in the safe of Steel Hector Davis.

Poston is leery of Barry Landberg and is suspicious of his motives. She confirmed with Odano on the hiring of Emil. He came recommended by Wilmer Cutler. She expressed the lack of candor by Landberg with Emil.

Poston was recently in Washington D.C. reportedly on another matter and met with Wilmer Cutler lawyers. They all spoke highly of Emil.

Poston had a recent chance meeting with Janet Reno on a plane and had a brief and friendly conversation. Emil later confirmed that Steel Hector was hired due to the relationship with the Attorney General. Reno and Poston's sister are good friends.

Emil explained he was recently retired from the FBI and his immediate supervisor was Howard Shapiro. His son, a Washington D.C. police officer will soon be

joining the FBI, which pleases Emil.

Meeting:
Emil had a series of reports by The Philip Manuel Resource Group (PMRG). He asked a few questions as to the timing of the inquiries and if all inquiries were done through the FBI.

One of Manuel's reports states that in December 1994 there were reportedly six inquiries on file with the NCIC office in Washington over a two month period on the name Abe. He asked how many were PMRG responsible for and it was answered at the most two and possibly only one. Manuel's direct contact with the NCIC source did not count as one of the six inquiries.

Emil and Poston agreed it may have been Abe's people who made some of the inquiries. Poston stated Abe will stop at nothing to defend himself in this case, money is no object. She added they are very resourceful and cunning. Emil added that the litigation in Japan is a matter of honor not damages or money.

One report by PMRG reflected a record of "Solicitation of Prostitution" and shortly thereafter a subsequent report stated "Suspicion of Solicitation of Prostitution". Emil asked for explanation and one was provided that a clarification was asked for from the initial contact.

Poston got into that the initial source for Landberg, Bureau of Prisons employee, had a much more detailed explanation. This was shown to Emil who acted as if he never saw it but never took notes as to what the document said. He stated this long reiteration of what this Bureau of Prison employee saw did not make any sense. He did not elaborate on this inquiry but Poston kept coming back to it as the basis for her firm's initial inquiry.

Emil wanted to know how Manuel would react if he contacted him. Poston stated not good for the following reasons:
1. If Manuel knows Emil talked to Lucas it would upset him. Manuel believe Lucas should not be having any dealings with Poston due to the current litigation the two are involved in.

2. Manuel is convinced Paladino set him up and no one is going to change is mind.
3. Manuel will not identify his source to Emil but will contact the source and tell him Emil is involved. (Emil stated he wants to contact the source without Manuel's or anyone else's knowledge. Manuel does not know that Emil knows the identity of the source and Emil gives a strong impression he knows the source from when he was with the Bureau.)
4. Manuel stated he will stand by his affidavit, nothing more nothing less.

Emil gives an impression he knew much about the FOIA requests by both sides that were filed when he was with the Bureau. Poston stated during the meeting it helps that Emil has FOIA experience on these matters.

After a review of other facts Emil stated it was his opinion that it was a situation of a dog chasing his own tail. The inquiries by PMRG and others caused a report to be generated based on the inquiries not on the initial incident. The source at NCIC saw this was the case, knew the report did not belong on the system and erased the report.

Emil believes he can determine if a report was erased but he does not know on which system the report was kept that Manuel had identified. Discussion centered on foreign intelligence files and that Manuel had insinuated to Poston on more than one occasion the report was in a foreign counter-intelligence file. Emil asked about Manuel's background and he was told in the 1960's Manuel was in a military intelligence position before joining the Senate as an investigator.

Poston stated the key is the Bureau of Prison employee and that Manuel and Lucas had previously expressed concern they were set up. Emil never made any mention if he would contact her. Poston stated she was told the Bureau of Prison employee would not come forward due to her pension may be at risk if she was exposed. She added an offer may have been made as to severance pay by the client if that resulted. Emil did not follow-up after Poston the statement.

Poston also stated that the investigative activities are divided into east coast and west coast and that the west coast investigative findings are not shared with attorneys in Miami or Washington D.C. She finds this frustrating and can not believe that with all the time Paladino put in on this case prior to November 1994 that he never checked NCIC for the record and if he did, what did he find.

Lucas explained PMRG would have never taken the case if there was knowledge as to what was going to be done with the information, the issuance of the Poston letter and the law suits in Japan and California. The initial inquiry was done for Poston as a favor to her based upon past assignments and her joining a new firm.

Emil stated his objective was to determine if:
1. The FBI will admit it erased a record,
2. Determine what was erased, and
3. Determine when the record was entered.

(It is believed Emil only wants to get an admission on No. 1 above.)

Poston stated accomplishing 1. was beneficial to the client. Emil added 2. and 3. are much more difficult to accomplish and may not be possible.

Emil asked Lucas' opinion of Paladino. He stated he did not know him personally and only by reputation, which was not to flattering.

Poston stated she believes Manuel will testify if asked in Japan but not in the US. Emil stated the US litigation is a problem if the alleged record has to be substantiated.

Emil asked permission from Poston to contact Lucas again and she gave it.

Emil and Poston then met privately.

Friday
February

10

February 1996

Mo		5	13	20	27
Tu		7	14	21	28
We	1	8	15	22	
Th	2	9	16	23	
Fr	3	10	17	24	
Sa	4	11	18	25	
Su	**5**	**12**	**19**	**26**	

8 A.M.

9

REDACTED

10

11

REDACTED

12

1 P.M.

REDACTED

2 2:30 G. Hogan

3

4

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6 41-324

May 1995

Su		12	19	26	
Mo	1	8	15	22	29
Tu	2	9	16	23	30
We	3	10	17	24	31
Th	4	11	18	25	
Fr	5	12	19	26	
Sa	6	13	20	27	
Su	**7**	**14**	**21**	**28**	

7

Friday
April

8 A.M.

REDACTED

9

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4

1 P.M.

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97-268 14

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1995

15

Thursday
June

REDACTED

DC:
11:30 Ely - lunch
~~2445 M St. NW~~ Atchison 1201

REDACTED REDACTED

15 Mayitt Ave: Cultura
AG JR
5 PM

REDACTED

30 Schmidt

REDACTED

3-199 24

000028

REPORT D 07/26/99 12:36 pm
REPORT I . WIP60 05.30.01
PRODUCED BY: RH9

STEEL HECTO DAVIS LLP
Legal Accou ng System
Work In Process List

PA 1

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R-RECEIVABLE, F=FIRMTIME

WORK OFC	WORK DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB WK AMOUNT	DISB CD	VENDOR NUMBER	PRE/BIL NUMBER	WORK ID
1	10	RJP	83599	1333	11/09/94	F	3185017	.30	260.00 R	78.00		1		117812B	RJP
			Return conference call with representative of client												
1	10	RJP	83599	1333	11/10/94	F	3185040	.30	260.00 R	78.00		1		117812B	RJP
			Conference with representative of client												
1	10	RJP	83599	1333	11/14/94	F	3185058	.70	260.00 R	182.00		1		117812B	RJP
1	10	RJP	83599	1333	11/17/94	F	3185107	.30	260.00 R	78.00		1		117812B	RJP
			Conference call to client :												
1	10	RJP	83599	1333	11/17/94	F	3185110	1.00	260.00 R	260.00		1		117812B	RJP
			Conference call with repesentatives of client.												
1	10	RJP	83599	1333	11/18/94	F	3212466	.90	260.00 R	234.00		1		117812B	RJP
			: Confer with representative of client												
1	10	RJP	83599	1333	11/18/94	F	3212475	.30	260.00 R	78.00		1		117812B	RJP
1	10	RJP	83599	1333	11/20/94	F	3212480	.30	260.00 R	78.00		1		117812B	RJP
1	10	RJP	83599	1333	11/28/94	F	3212536	1.80	260.00 R	468.00		1		117812B	RJP
			Conference with representative of client.												
1	10	RJP	83599	1333	11/30/94	F	3212546	3.20	260.00 R	832.00		1		117812B	RJP
			Follow up with investigator.												
1	10	RJP	83599	1333	12/01/94	F	3231607	.50	260.00 R	130.00		1		117812B	RJP
1	10	RJP	83599	1333	12/03/94	F	3231703	.80	260.00 R	208.00		1		117812B	RJP
1	10	RJP	83599	1333	12/05/94	F	3231780	1.20	260.00 R	312.00		1		117812B	RJP
			Call to representative of client;												
1	10	RJP	83599	1333	12/07/94	F	3231890	5.40	260.00 R	1404.00		1		117812B	RJP
			Meeting with client;												
1	10	RJP	83599	1333	12/12/94	F	3233050	2.20	260.00 R	572.00		1		117812B	RJP
			Conference call representative of client.												

REDACTED

PENGAD-Bayonne, N. J.
EXHIBIT
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REPORT 2: 07/26/99 12:36 pm
REPORT ID : WIP60 05.30.01
PRODUCED BY: RH9

STEEL HECT\ . DAVIS LLP
Legal Accounting System
Work In Process List

1 : 2

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRMTIME

WORK OFC	DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *		VALUE	DISB WK AMOUNT	DSB CD	VENDOR NUMBER	PRE/BIL NUMBER	WORK ID
1	10	RJP	83599	1333	12/13/94	F	3233137	.80	260.00	R	208.00		1		117812B	RJP
			Conference call with representative of client;													
1	10	RJP	83599	1333	12/14/94	F	3233145	2.50	260.00	R	650.00		1		117812B	RJP
			Conference with representatives of client.													
1	10	RJP	83599	1333	12/15/94	F	3233157	5.00	260.00	R	1300.00		1		117812B	RJP
			Conference with clients;													
1	10	RJP	83599	1333	12/16/94	F	3233167	2.50	260.00	R	650.00		1		117812B	RJP
1	10	RJP	83599	1333	12/20/94	F	3261864	1.00	260.00	R	260.00		1		117812B	RJP
			Two conference calls with investigators;													
1	10	RJP	83599	1333	12/20/94	F	3320143	.90	260.00	R	234.00		1		117812B	RJP
			Two conference calls with investigators;													
1	10	RJP	83599	1333	12/27/94	F	3320144	2.50	260.00	R	650.00		1		117812B	RJP
			Conference with representative of client;													
1	10	RJP	83599	1333	12/30/94	F	3320145	1.00	260.00	R	260.00		1		117812B	RJP
1	10	RJP	83599	1333	02/06/95	F	3362761	1.60	260.00	R	416.00		1		120423B	RJP
1	10	RJP	83599	1333	02/08/95	F	3362824	.80	260.00	R	208.00		1		120423B	RJP
									Call to Attorney General's office regarding same.							
1	10	RJP	83599	1333	02/10/95	F	3362851	1.30	260.00	R	338.00		1		120423B	RJP
									Conference calls with investigators; Conference call with Attorney							
			General's office;						Conference call with client							
1	10	RJP	83599	1333	03/03/95	F	3388921	1.90	260.00	R	494.00		1		120425B	RJP
			Conference call with client													
1	10	RJP	83599	1333	03/13/95	F	3388983	.30	260.00	R	78.00		1		121703B	RJP
1	10	RJP	83599	1333	03/17/95	F	3406708	.60	260.00	R	156.00		1		120425B	RJP

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REPORT 2: 07/26/99 12:36 pm
REPORT : WIP60 05.30.01
PRODUCE. 2: RH9

STEEL HECT DAVIS LLP
Legal Acc ing System
Work In Process List

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRMTIME

WORK OFC	WORK DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *		VALUE	DISB AMOUNT	WK/DSB CD	VENDOR NUMBER	PRE/BIL NUMBER	WORK ID
1	10	RJP	83599	1333	03/20/95	F	3406714	.30	260.00	R	78.00		1		120425B	RJP
			Conference call with representative of client REDACTED													
1	10	RJP	83599	1333	03/28/95	F	3431974	1.40	260.00	R	364.00		1		120425B	RJP
			REDACTED													
1	10	RJP	83599	1333	03/31/95	F	3432245	.90	260.00	R	234.00		1		120425B	RJP
			REDACTED													
1	10	RJP	83599	1333	04/05/95	F	3436127	.30	260.00	R	78.00		1		129740B	RJP
			Conference call with investigator REDACTED													
1	10	RJP	83599	1333	04/25/95	F	3475057	.30	260.00	R	78.00		1		129740B	RJP
			REDACTED													
1	10	RJP	83599	1333	04/27/95	F	3475049	.90	260.00	R	234.00		1		129740B	RJP
			Conference with REDACTED representative of client.													
1	10	RJP	83599	1333	04/28/95	F	3481063	.30	260.00	R	78.00		1		129740B	RJP
			REDACTED Conference with investigator.													
1	10	RJP	83599	1333	04/30/95	SF	3487666			R	1549.71		1		121386B	RJP
								1 General Representation								
1	10	RJP	83599	1333	05/01/95	F	REDACTED	.80	260.00	R	208.00		1		126262B	RJP
			Review fax with representative of client. Send fax to representative of client;													
1	10	RJP	83599	1333	05/02/95	F	3486900	.30	260.00	R	78.00		1		126262B	RJP
			REDACTED													
1	10	RJP	83599	1333	05/05/95	F	3495260	.70	260.00	R	182.00		1		126262B	RJP
			REDACTED Conference call to co-counsel													
1	10	RJP	83599	1333	05/08/95	F	3495278	2.30	260.00	R	598.00		1		126262B	RJP
			REDACTED													
1	10	RJP	83599	1333	05/11/95	F	3507409	.30	260.00	R	78.00		1		126262B	RJP
			Conference calls to investigators; REDACTED													
1	10	RJP	83599	1333	05/22/95	F	3534790	.80	260.00	R	208.00		1		126262B	RJP
			Conference with representative of client REDACTED													

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WORK ORG	WORK DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB WK/DEB AMOUNT	CD	VENDOR NUMBER	PRE/BIL NUMBER	WORK ID
1	10	RJP	83599	1333	05/30/95	F	3535362	.80	260.00 R	208.00		1		126262B	RJP
			Conference call to staff at Attorney General's office; Confer with representative of client; Follow-up with client.												
1	10	RJP	83599	1333	05/31/95	F	3535553	.90	260.00 R	234.00		1		126262B	RJP
			Call to Attorney General's office; Confer with representative of client												
1	10	RJP	83599	1333	06/01/95	F	3541753	2.00	260.00 R	520.00		1		126902B	RJP
			Conference call with staff at Attorney General's office Conference call with Associate Attorney General;												
1	10	RJP	83599	1333	06/02/95	F	3541933	1.70	260.00 R	442.00		1		126902B	RJP
			Conference call to J. Schmidt to change appointment; Call to Hogan; Letter to J. Schmidt; Call to client												
1	10	RJP	83599	1333	06/12/95	F	3556812	1.50	260.00 R	390.00		1		126902B	RJP
1	10	RJP	83599	1333	06/14/95	F	3558226	2.00	260.00 R	520.00		1		126902B	RJP
1	10	RJP	83599	1333	06/15/95	F	3566486	10.50	260.00 R	2730.00		1		126902B	RJP
			Conference with Associate Attorney General regarding appeal; Two meetings with client												
1	10	RJP	83599	1333	06/23/95	F	3579626	.30	260.00 R	78.00		1		126902B	RJP
			Two conference calls to client												
1	10	RJP	83599	1333	07/12/95	F	3612265	1.60	260.00 R	416.00		1		129740B	RJP
			client Follow-up conference calls to all investigators.											Conference with	
1	10	RJP	83599	1333	07/13/95	F	3612260	.80	260.00 R	208.00		1		129740B	RJP
			Conference with investigators.												
1	10	RJP	83599	1333	07/14/95	F	3619454	2.20	260.00 R	572.00		1		129740B	RJP
			Conference call with investigators; Conference calls with client.												
1	10	RJP	83599	1333	07/17/95	F	3621199	.30	260.00 R	78.00		1		129740B	RJP
			Conference with investigator												
1	10	RJP	83599	1333	07/17/95	F	3621210	1.30	260.00 R	338.00		1		129740B	RJP

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WORK OFC	WORK DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB WK AMOUNT	DSB CD	VENDOR NUMBER	PRE BIL NUMBER	WORK ID
1	10	RJP	83599	1333	07/18/95	F	3622349	2.60	260.00 R	676.00		1		129740B	RJP
										Conference call with client; Conference call with investigator.					
1	10	RJP	83599	1333	07/19/95	F	3622564	1.50	260.00 R	390.00		1		129740B	RJP
										Conference with investigator					
1	10	RJP	83599	1333	07/20/95	F	3625195	.30	260.00 R	78.00		1		129740B	RJP
										Conference call with investigator.					
1	10	RJP	83599	1333	07/21/95	F	3630368	.80	260.00 R	208.00		1		129740B	RJP
										Conference with investigator , Follow-up with client					
1	10	RJP	83599	1333	07/26/95	F	3636104	.30	260.00 R	78.00		1		129740B	RJP
1	10	RJP	83599	1333	08/03/95	F	3649030	.30	260.00 R	78.00		1		129740B	RJP
										Telephone conference with investigator					
1	10	RJP	83599	1333	08/08/95	F	3653646	6.30	275.00 R	1732.50		1		129740B	RJP
										Conference with investigator;					
1	10	RJP	83599	1333	08/11/95	F	3659242	.60	275.00 R	165.00		1		129740B	RJP
										Conference call with investigator; Follow-up with client.					
1	10	RJP	83599	1333	08/23/95	F	3680408	.60	275.00 R	165.00		1		129740B	RJP
										Conference call with client Letter to investigator					
1	10	RJP	83599	1333	08/25/95	F	3687496	.90	275.00 R	247.50		1		129740B	RJP
										Two conference calls with client; Conference with investigator.					
1	10	RJP	83599	1333	08/28/95	F	3691721	2.30	275.00 R	632.50		1		129740B	RJP
										Conference with client;					
1	10	RJP	83599	1333	08/29/95	F	3693091	3.00	275.00 R	825.00		1		129740B	RJP
										Conference with client					
1	10	RJP	83599	1333	08/30/95	F	3697463	1.50	275.00 R	412.50		1		129740B	RJP
										Conference with client					
1	10	RJP	83599	1333	08/31/95	F	3699933	.80	275.00 R	220.00		1		129740B	RJP
										Conference with client; Calls to investigator.					
1	10	RJP	83599	1333	09/01/95	F	3706062	.30	275.00 R	82.50		1		129740B	RJP

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1	10	RJP	83599	1333	09/05/95	F	3706079	2.00	275.00 R	550.00		1		130495B	RJP
			Two conference calls with client; Two conference calls to investigator; Meeting with investigator.												
1	10	RJP	83599	1333	09/06/95	F	3707257	13.50	275.00 R	3712.50		1		130495B	RJP
			Conference with clients;												
1	10	RJP	83599	1333	09/07/95	F	3708523	2.50	275.00 R	687.50		1		130495B	RJP
			Confer with clients.												
1	10	RJP	83599	1333	09/14/95	F	3720819	3.40	275.00 R	935.00		1		130495B	RJP
			: Conference call with investigator and client.												
1	10	RJP	83599	1333	09/15/95	F	3720989	.90	275.00 R	247.50		1		130495B	RJP
			Call to client;												
1	10	RJP	83599	1333	09/19/95	F	3729616	.30	275.00 R	82.50		1		130495B	RJP
1	10	RJP	83599	1333	09/20/95	F	3729617	.30	275.00 R	82.50		1		130495B	RJP
1	10	RJP	83599	1333	09/25/95	F	3735912	2.60	275.00 R	715.00		1		130495B	RJP
			Contact client; Conference call with investigator.												
1	10	RJP	83599	1333	09/28/95	F	3747337	1.20	275.00 R	330.00		1		130495B	RJP
			Two conference calls investigator; : Conference call with client.												
1	10	RJP	83599	1333	10/03/95	F	3754110	.30	275.00 R	82.50		1		133769B	RJP
			Conference call with investigator.												
1	10	RJP	83599	1333	10/25/95	F	3797075	2.00	275.00 R	550.00		1		133769B	RJP
1	10	RJP	83599	1333	10/26/95	F	3797454	.30	275.00 R	82.50		1		133769B	RJP
			Conference call with investigator.												
1	10	RJP	83599	1333	11/01/95	F	3807587	1.50	275.00 R	412.50		1		134975B	RJP
1	10	RJP	83599	1333	11/01/95	F	3807598	.30	275.00 R	82.50		1		134975B	RJP
			Conference call to investigator												
1	10	RJP	83599	1333	11/26/95	F	3843826	.30	275.00 R	82.50		1		134975B	RJP

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1	10	RJP	83599	1333	11/27/95	F	3850073	.50	275.00	R	137.50		1		134975B	RJP
											Conference call with G. Odano					
1	10	RJP	83599	1333	12/07/95	F	3871558	.30	275.00	R	82.50		1		137465B	RJP
											Conference call to representative of client;					
1	10	RJP	83599	1333	12/11/95	F	3877099	2.50	275.00	R	687.50		1		137465B	RJP
											Conference with clients.					
1	10	RJP	83599	1333	12/12/95	F	3877111	1.00	275.00	R	275.00		1		137465B	RJP
1	10	RJP	83599	1333	12/19/95	F	3895072	.80	275.00	R	220.00		1		137465B	RJP
1	10	RJP	83599	1333	01/04/96	F	3917980	.40	275.00	R	110.00		1		139626B	RJP
											Conference call with G. Odano					
1	10	RJP	83599	1333	01/05/96	F	3919526	1.50	275.00	R	412.50		1		139626B	RJP
1	10	RJP	83599	1333	01/10/96	F	3928682	.50	275.00	R	137.50		1		139626B	RJP
											Conference call with G. Odano					
1	10	RJP	83599	1333	04/05/96	F	4140690	.60	275.00	R	165.00		1		152299B	RJP
1	10	RJP	83599	1333	05/23/96	F	4218511	.30	275.00	R	82.50		1		152299B	RJP
											Conference call with T. Kelley regarding status.					
1	10	RJP	83599	1333	05/24/96	F	4218506	.50	275.00	R	137.50		1		152299B	RJP
											Conference with client representative.					
1	10	RJP	83599	1333	05/28/96	F	4226810	.30	275.00	R	82.50		1		152299B	RJP
											Conference with client representative.					
1	10	RJP	83599	1333	10/03/96	F	4454628	.30	275.00	R	82.50		1		195663B	RJP
1	10	RJP	83599	1333	10/04/96	F	4455098	.90	275.00	R	247.50		1		168763B	RJP
											with G. Odano and investigator.			Conference call		
1	10	RJP	83599	1333	11/05/96	F	4506295	.30	284.00	R	85.20		1		195663B	RJP
											Conference call with B. Langberg					

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WORK OFC	DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB WK/DSB AMOUNT	CD	VENDOR NUMBER	PRE/BIL NUMBER	WORK ID
1	10	RJP	83599	1333	11/06/96	F	4507701	.80	284.00 R	227.20		1		195663B	RJP
			Conference call with G. Odano and B. Langberg; Conference call with investigator.												
1	10	RJP	83599	1333	11/07/96	F	4512802	1.00	284.00 R	284.00		1		195663B	RJP
			Calls to G. Odano and B. Moschella; REDACTED												
1	10	RJP	83599	1333	11/13/96	F	4522944	.40	284.00 R	113.60		1		195663B	RJP
			Conference call with investigator REDACTED												
1	10	RJP	83599	1333	11/14/96	F	4522934	.50	284.00 R	142.00		1		195663B	RJP
			REDACTED												
1	10	RJP	83599	1333	11/16/96	F	4522863	1.30	284.00 R	369.20		1		195663B	RJP
			REDACTED												
1	10	RJP	83599	1333	11/19/96	F	4525961	2.50	284.00 R	710.00		1		195663B	RJP
			Meeting with investigators.												
1	10	RJP	83599	1333	11/19/96	F	4525968	.30	284.00 R	85.20		1		195663B	RJP
			Conference call with investigator.												
1	10	RJP	83599	1333	11/22/96	F	4534032	.30	284.00 R	85.20		1		195663B	RJP
			Conference call with investigator.												
1	10	RJP	83599	1333	11/23/96	F	4534033	.30	284.00 R	85.20		1		195663B	RJP
			Conference call with investigators REDACTED												
1	10	RJP	83599	1333	11/26/96	F	4541683	2.00	284.00 R	568.00		1		195663B	RJP
			Meeting with investigators.												
1	10	RJP	83599	1333	02/21/97	F	4672946	1.00	275.00 R	275.00		1		168763B	RJP
			Conference with G. Odano REDACTED												
1	10	RJP	83599	1333	04/01/97	F	4739405	.30	275.00 R	82.50		1		168763B	RJP
			Conference with G. Odano REDACTED												
1	10	RJP	83599	1333	05/11/98	F	5406156	.30	284.00 R	85.20		1		196533B	RJP
			Conference call with to client REDACTED												
1	10	RJP	83599	1333	06/24/98	F	5491713	.60	284.00 R	170.40		1		196533B	RJP
			Conference with to client REDACTED												
1	10	RJP	83599	1333	07/09/98	F	5511367	.60	284.00 R	170.40		1		196533B	RJP
			REDACTED confer with to client; REDACTED												
1	10	RJP	83599	1333	08/13/98	F	5560590	7.00	284.00 R	1988.00		1		196533B	RJP

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRMTIME

WORK OFC	WORK DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *		VALUE	DISB AMOUNT	WK/DSB CD	VENDOR NUMBER	PRE/BIL NUMBER	WORK ID
			Meet with clients.													
1	10	RJP	83599	1333	08/14/98	F	5560591	6.50	284.00	R	1846.00		1		196533B	RJP
			REDACTED				; conference calls with investigators; follow up with client.									
1	10	RJP	83599	1333	08/18/98	F	5576531	1.20	284.00	R	340.80		1		196533B	RJP
			Conference calls with investigator and legal counsel, client								REDACTED					
1	10	RJP	83599	1333	08/18/98	F	5576532	1.00	284.00	R	284.00		1		196533B	RJP
			Conference call with investigator and legal counsel.													
1	10	RJP	83599	1333	08/19/98	F	5576533	.30	284.00	R	85.20		1		196533B	RJP
			REDACTED													
1	10	RJP	83599	1333	08/20/98	F	5576534	.50	284.00	R	142.00		1		196533B	RJP
			REDACTED													
1	10	RJP	83599	1333	09/02/98	F	5599744	11.00	284.00	R	3124.00		1		198676B	RJP
			REDACTED	meet with investigator.												
1	10	RJP	83599	1333	09/09/98	F	5602569	1.00	284.00	R	284.00		1		198676B	RJP
			REDACTED													
1	10	RJP	83599	1333	09/14/98	F	5614247	.30	284.00	R	85.20		1		198676B	RJP
			REDACTED													
1	10	RJP	83599	1333	09/17/98	F	5617338	1.50	284.00	R	426.00		1		198676B	RJP
			REDACTED					forward same.								
1	10	RJP	83599	1333	10/09/98	F	5656448	.60	284.00	R	170.40		1		200286B	RJP
			Conference call with G. Odano.													
1	10	RJP	83599	1333	10/12/98	F	5656449	.60	284.00	R	170.40		1		200286B	RJP
			Conference calls with client and investigator.													
1	10	RJP	83599	1333	10/13/98	F	5656450	1.30	284.00	R	369.20		1		200286B	RJP
			Conference calls with client and investigator.													
1	10	RJP	83599	1333	11/13/98	F	5714380	1.00	284.00	R	284.00		1		202363B	RJP
			Meet with G. Odano; conference call to investigator;								REDACTED					
1	10	RJP	83599	1333	11/19/98	F	5723092	10.50	284.00	R	2982.00		1		202363B	RJP
			Travel to Washington, D.C. to meet with client and various attorneys.													
1	10	RJP	83599	1333	12/17/98	F	5765426	.60	284.00	R	170.40		1		203975B	RJP
			REDACTED													

602

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R-RECEIVABLE, F=FIRMTIME

WORK OFC	DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB WK/DSB AMOUNT	CD	VENDOR NUMBER	PRE/BIL NUMBER	WORK ID
1	10	RJP	83599	1333	12/17/98	F	5765427	1.60	284.00 R	454.40		1		203975B	RJP
			Conference call with investigator REDACTED ; inform co-counsel												
1	10	RJP	83599	1333	12/17/98	F	5766635	.60	284.00 R	170.40		1		203975B	RJP
			REDACTED												
1	10	RJP	83599	1333	12/23/98	F	5776321	.30	284.00 R	85.20		1		203975B	RJP
			REDACTED ; conference call with client.												
1	10	RJP	83599	1333	01/07/99	F	5792436	.60	299.00 R	179.40		1		205995B	RJP
			Conference calls to investigators and [redacted] client.												
1	10	RJP	83599	1333	01/12/99	F	5801849	.30	299.00 R	89.70		1		205995B	RJP
			Conference call with investigator.												
1	10	RJP	83599	1333	02/16/99	F	5853455	.30	299.00 R	89.70		1		208680B	RJP
			Conference call with G. Odano REDACTED												
1	10	RJP	83599	1333	02/22/99	F	5862569	2.50	299.00 R	747.50		1		208680B	RJP
			REDACTED												
1	10	RJP	83599	1333	02/23/99	F	5862570	3.00	299.00 R	897.00		1		208680B	RJP
			REDACTED												
1	10	RJP	83599	1333	02/24/99	F	5862571	.60	299.00 R	179.40		1		208680B	RJP
			REDACTED												
1	10	RJP	83599	1333	02/26/99	F	5875447	2.00	299.00 R	598.00		1		209773B	RJP
			REDACTED												
1	10	RJP	83599	1333	03/01/99	F	5875448	2.00	299.00 R	598.00		1		209773B	RJP
			REDACTED												
1	10	RJP	83599	1333	03/07/99	F	5881421	4.00	299.00 R	1196.00		1		209773B	RJP
			REDACTED												
1	10	RJP	83599	1333	03/08/99	F	5881422	1.00	299.00 R	299.00		1		209773B	RJP
			REDACTED												
1	10	RJP	83599	1333	03/15/99	F	5896751	.60	299.00 R	179.40		1		209773B	RJP
			REDACTED follow up with REDACTED B. Langberg and G. Odano.												
1	10	RJP	83599	1333	03/16/99	F	5896752	2.80	299.00 R	837.20		1		209773B	RJP
			Conference calls with B. Langberg, REDACTED and G. Odano; REDACTED												

603

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRMTIME

WORK OFC	DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB AMOUNT	WK/DSB CD	VENDOR NUMBER	PRE/BIL NUMBER	WORK ID
1	10	RJP	83599	1333	03/17/99	F	5896753	1.50	299.00 R	448.50		1		209773B	RJP
			Confer with G. Odano;					REDACTED							
1	10	RJP	83599	1333	03/18/99	F	5901877	1.60	299.00 R	478.40		1		209773B	RJP
							REDACTED								
1	10	RJP	83599	1333	03/22/99	F	5901878	2.00	299.00 R	598.00		1		209773B	RJP
			Update client on meeting;					REDACTED							
1	10	RJP	83599	1333	04/15/99	F	5947662	.80	299.00 R	239.20		1		210691B	RJP
			Conference call with B. Langberg					REDACTED							

604

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRMTIME

WORK OFC	DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB AMOUNT	WF CD	VENDOR NUMBER	PRE/BIL NUMBER	WORK ID
1	10	RJP	27158	3358	11/02/94	F	3165808	.50	260.00 R	130.00		1		117813B	RJP
			Conference call with representative of client REDACTED Follow-up with investigator.												
1	10	RJP	27158	3358	11/03/94	F	3165814	.50	260.00 R	130.00		1		117813B	RJP
			Conference call with investigator; Conference call with representative of client REDACTED REDACTED												
1	10	RJP	27158	3358	11/04/94	F	3168066	1.30	260.00 R	338.00		1		117813B	RJP
			Three conference calls with investigator; Two conference calls with representative of client.												
1	10	RJP	27158	3358	11/07/94	F	3184712	.30	260.00 R	78.00		1		117813B	RJP
			Conference call with investigator REDACTED												
1	10	RJP	27158	3358	11/09/94	F	3185016	.50	260.00 R	130.00		1		117813B	RJP
			Conference with investigator REDACTED												
1	10	RJP	27158	3358	11/10/94	F	3320412	.30	260.00 R	78.00		1		117813B	RJP
			Conference call with investigator REDACTED												
1	10	RJP	27158	3358	11/11/94	F	3185048	3.50	260.00 R	910.00		1		117813B	RJP
			REDACTED : Conference calls with representatives of client; Conference calls with investigators.												
1	10	RJP	27158	3358	11/14/94	F	3320413	.60	260.00 R	156.00		1		117813B	RJP
			Two conference calls with REDACTED Conference call with REDACTED												
1	10	RJP	27158	3358	11/15/94	F	3185059	.30	260.00 R	78.00		1		117813B	RJP
			Conference call with representative of client and investigator.												
1	10	RJP	27158	3358	11/16/94	F	3185095	.30	260.00 R	78.00		1		117813B	RJP
			Update representative of client; Contact investigator.												
1	10	RJP	27158	3358	11/17/94	F	3320416	1.00	260.00 R	260.00		1		117813B	RJP
			Conference call with investigator; Two conference calls to representative of client; REDACTED REDACTED												
1	10	RJP	27158	3358	11/29/94	F	3212539	1.60	260.00 R	416.00		1		117813B	RJP
			REDACTED Conference with investigator; Conference call with representative of FBI.												
1	10	RJP	27158	3358	11/30/94	F	3320426	3.30	260.00 R	858.00		1		117813B	RJP
			REDACTED Follow-up with investigator.												
1	10	RJP	27158	3358	12/01/94	F	3320446	.50	260.00 R	130.00		1		117813B	RJP
			Conference call with investigator.												
1	10	RJP	27158	3358	12/04/94	F	3231717	.80	260.00 R	208.00		1		117813B	RJP

DETAIL FORMAT (FROM: 09/04/94 THRU 0[illegible]/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRMTIME

WORK OFC	WORK DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB AMOUNT	WE DSB CD	VENDOR NUMBER	PRE BIL NUMBER	WORK ID
1	10	RJP	27158	3358	12/06/94	F	3231882	.30	260.00 R	78.00		1		117813B	RJP
1	10	RJP	27158	3358	12/08/94	F	3232218	1.00	260.00 R	260.00		1		117813B	RJP
1	10	RJP	27158	3358	12/08/94	F	3232973	3.50	260.00 R	910.00		1		117813B	RJP
1	10	RJP	27158	3358	12/09/94	F	3233011	2.00	260.00 R	520.00		1		117813B	RJP
1	10	RJP	27158	3358	12/19/94	F	3261852	18.50	260.00 R	4810.00		1		117813B	RJP
1	10	RJP	27158	3358	12/21/94	F	3261874	1.30	260.00 R	338.00		1		117813B	RJP
1	10	RJP	27158	3358	12/22/94	F	3262368	2.30	260.00 R	598.00		1		117813B	RJP
1	10	RJP	27158	3358	12/27/94	F	3262397	2.40	260.00 R	624.00		1		117813B	RJP
1	10	RJP	27158	3358	12/28/94	F	3262418	.90	260.00 R	234.00		1		117813B	RJP
1	10	RJP	27158	3358	12/29/94	F	3262456	1.60	260.00 R	416.00		1		117813B	RJP
1	10	RJP	27158	3358	12/30/94	F	3262457	3.50	260.00 R	910.00		1		117813B	RJP
1	10	RJP	27158	3358	01/03/95	F	3292673	6.30	260.00 R	1638.00		1		117813B	RJP
1	10	RJP	27158	3358	01/04/95	F	3267061	2.00	260.00 R	520.00		1		117813B	RJP
1	10	RJP	27158	3358	01/05/95	F	3265931	.90	260.00 R	234.00		1		117813B	RJP

REDACTED ; Conference call with investigator.

Conference call with investigator. .

REDACTED

REDACTED Numerous conference calls with client; Conference with investigator.

Conference calls with representative of client; Conference calls with investigator; REDACTED

Meeting with representatives of client REDACTED

Two conference calls with investigator; Conference call with representatives client REDACTED

REDACTED

Conference with investigator; Two conference calls with representative of client.

Conference with representative of client; REDACTED ; Conference call with investigators.

Conference call to FBI; Conference call with investigator; REDACTED

Conference call with representatives of client REDACTED

Conference with representative of client Confer with representative of client and B. Langberg; REDACTED

Conference with client; REDACTED

REDACTED Conference with representative of client.

609

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRMTIME

WORK ORG	WORK DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB WR AMOUNT	BCH	VENDOR NUMBER	PRE BIL NUMBER	WORK ID
			Conference call with investigators												
1	10	RJP	27158	3358	01/09/95	F	3319770	3.80	260.00 R	988.00			1	117813B	RJP
			Conference with client.												
1	10	RJP	27158	3358	01/10/95	F	3319778	7.50	260.00 R	1950.00			1	117813B	RJP
			Conference with investigator; Numerous calls to Los Angeles counsel; Confer with client and investigator.												
1	10	RJP	27158	3358	01/11/95	F	3319782	1.00	260.00 R	260.00			1	117813B	RJP
1	10	RJP	27158	3358	01/11/95	F	3319789	2.80	260.00 R	728.00			1	117813B	RJP
			Conference with attorneys; Conference with B. Langberg;												
1	10	RJP	27158	3358	01/12/95	F	3319800	2.30	260.00 R	598.00			1	117813B	RJP
			; Conference calls with investigator.												
1	10	RJP	27158	3358	01/12/95	F	3319801	.50	260.00 R	130.00			1	117813B	RJP
			with Larry Doss, FBI.												
1	10	RJP	27158	3358	01/13/95	F	3319810	11.00	260.00 R	2860.00			1	117813B	RJP
			Travel to Washington, D.C. and attend meeting with investigators.												
1	10	RJP	27158	3358	01/17/95	F	3319809	2.30	260.00 R	598.00			1	117813B	RJP
			Conference call with investigator of client												
1	10	RJP	27158	3358	01/17/95	F	3319815	.50	260.00 R	130.00			1	117813B	RJP
			Conference call with California counsel and investigator												
1	10	RJP	27158	3358	01/18/95	F	3319830	1.30	260.00 R	338.00			1	117813B	RJP
			Conference												
1	10	RJP	27158	3358	01/18/95	F	3319840	.50	260.00 R	130.00			1	117813B	RJP
1	10	RJP	27158	3358	01/19/95	F	3319842	1.50	260.00 R	390.00			1	117813B	RJP
			letter to FBI.												
1	10	RJP	27158	3358	01/19/95	F	3319861	2.00	260.00 R	520.00			1	117813B	RJP

REDACTED

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRMTIME

WORK OFC	WORK DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB AMOUNT	WK CD	VENDOR NUMBER	PRE BIL NUMBER	WORK ID
1	10	RJP	27158	3358	01/20/95	F	3319894	3.30	260.00 R	858.00		1		117813B	RJP
							REDACTED								
											Conference calls		REDACTED		
							investigator; Call FBI to confirm.								
1	10	RJP	27158	3358	01/21/95	F	3319980	.80	260.00 R	208.00		1		117813B	RJP
							REDACTED								
1	10	RJP	27158	3358	01/23/95	F	3319982	11.50	260.00 R	2990.00		1		117813B	RJP
							Conference with FBI; Conference calls to B. Langberg.								
1	10	RJP	27158	3358	01/24/95	F	3319987	.50	260.00 R	130.00		1		117813B	RJP
							REDACTED								
1	10	RJP	27158	3358	01/24/95	F	3319996	4.80	260.00 R	1248.00		1		117813B	RJP
							Two conference calls with investigator;								
							investigator;		REDACTED		Conference call with				
1	10	RJP	27158	3358	01/25/95	F	3320003	.30	260.00 R	78.00		1		117813B	RJP
							Conference call with investigator.								
1	10	RJP	27158	3358	01/25/95	F	3320009	3.50	260.00 R	910.00		1		117813B	RJP
										Conference with client;			REDACTED		
							REDACTED			; Conference call with investigator; Conference call with investigator.					
1	10	RJP	27158	3358	01/26/95	F	3320034	2.00	260.00 R	520.00		1		117813B	RJP
							Conference call with investigator			Conference with Attorney General's office;					
								REDACTED					Conference with		
							investigator.								
1	10	RJP	27158	3358	01/27/95	F	3320046	7.30	260.00 R	1898.00		1		117813B	RJP
								REDACTED		; Conference withAttorney General's offices					
							and office of Information and Privacy; Conference calls with investigator						Conference		
							calls with investigator;			REDACTED					
1	10	RJP	27158	3358	01/27/95	F	3320058	.30	260.00 R	78.00		1		117813B	RJP
							Conference call with investigator		REDACTED						
1	10	RJP	27158	3358	01/30/95	F	3320093	6.80	260.00 R	1768.00		1		117813B	RJP
								REDACTED						; Calls to B.	
							Langberg; Two conference calls with investigators.								
1	10	RJP	27158	3358	01/31/95	F	3320102	4.50	260.00 R	1170.00		1		117813B	RJP
							Conference with investigators; Conference with client;				REDACTED				
1	10	RJP	27158	3358	02/01/95	F	3320112	2.50	260.00 R	650.00		1		120424B	RJP
									Conference call with investigator		REDACTED				
							REDACTED								

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRMTIME

WORK OFC	DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB WK AMOUNT	DEB CD	VENDOR NUMBER	PRE BIL NUMBER	WORK ID
			REDACTED												
1	10	RJP	27158	3358	02/02/95	F	3320123	1.80	260.00 R	468.00		1		120424B	RJP
								REDACTED							
			Conference call with AG's office;							Conference call with investigator; Conference call with investigators.					
1	10	RJP	27158	3358	02/03/95	F	3320127	.50	260.00 R	130.00		1		120424B	RJP
			Conference call with investigator; Conference call with client.												
1	10	RJP	27158	3358	02/06/95	F	3362758	1.90	260.00 R	494.00		1		120424B	RJP
								REDACTED							
1	10	RJP	27158	3358	02/10/95	F	3362841	2.90	260.00 R	754.00		1		120424B	RJP
										; Conference calls with investigators; Conference call with Attorney					
			General's office; REDACTED							Conference call with client REDACTED					
										Three calls with investigators.					
1	10	RJP	27158	3358	02/13/95	F	3362933	1.40	260.00 R	364.00		1		120424B	RJP
			Conference with investigators;							REDACTED					
1	10	RJP	27158	3358	02/14/95	F	3362953	1.30	260.00 R	338.00		1		120424B	RJP
			Conference calls with investigators.												
1	10	RJP	27158	3358	02/15/95	F	3363913	2.40	260.00 R	624.00		1		120424B	RJP
			REDACTED							Conference calls with investigators;					
												Conference call to			
			Conference call with client; REDACTED												
			investigator												
1	10	RJP	27158	3358	02/16/95	F	3365227	3.00	260.00 R	780.00		1		120424B	RJP
												Conference with			
			client;					REDACTED							
1	10	RJP	27158	3358	02/17/95	F	3365504	2.50	260.00 R	650.00		1		120424B	RJP
								Conference call with investigators							
			REDACTED				Conference call with client			REDACTED					
1	10	RJP	27158	3358	02/20/95	F	3365506	1.20	260.00 R	312.00		1		120424B	RJP
							REDACTED								
1	10	RJP	27158	3358	02/21/95	F	3365509	5.50	260.00 R	1430.00		1		120424B	RJP
			REDACTED					Conference with client; '		REDACTED			Follow up		
			Conference call with J. Hogan; Follow up with investigator												
1	10	RJP	27158	3358	02/22/95	F	3365523	.90	260.00 R	234.00		1		120424B	RJP
									; Call J. Hogan;						
			REDACTED							REDACTED					

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R-RECEIVABLE, F=FIRMTIME

WORK Grp	WORK DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB AMOUNT	WE CD	DSB CD	VENDOR NUMBER	PRE/BIL NUMBER	WORK ID
1	10	RJP	27158	3358	02/23/95	F	3365532	1.50	260.00 R	390.00			1		120424B	RJP
			Conference call with J. Hogan; Conference call with client													
1	10	RJP	27158	3358	02/24/95	F	3365550	1.50	260.00 R	390.00			1		120424B	RJP
1	10	RJP	27158	3358	02/27/95	F	3365551	3.80	260.00 R	988.00			1		120424B	RJP
1	10	RJP	27158	3358	02/28/95	F	3365569	2.10	260.00 R	546.00			1		120424B	RJP
			Conference call with AG' office;													
1	10	RJP	27158	3358	03/01/95	F	3372571	1.20	260.00 R	312.00			1		120426B	RJP
									Follow up with client;							
1	10	RJP	27158	3358	03/02/95	F	3375597	.50	260.00 R	130.00			1		120426B	RJP
			Conference call with client													
1	10	RJP	27158	3358	03/03/95	F	3388868	.30	260.00 R	78.00			1		120426B	RJP
1	10	RJP	27158	3358	03/06/95	F	3402542	.60	260.00 R	156.00			1		120426B	RJP
			Meeting with Mr. Hall.													
1	10	RJP	27158	3358	03/06/95	F	3402550	1.10	260.00 R	286.00			1		120426B	RJP
			Conference call with representative of client													
1	10	RJP	27158	3358	03/07/95	F	3402572	1.30	260.00 R	338.00			1		120426B	RJP
			Conference with							investigators.						
1	10	RJP	27158	3358	03/07/95	F	3402599	2.60	260.00 R	676.00			1		120426B	RJP
			Conference with investigator;							Conference call with investigators.						
1	10	RJP	27158	3358	03/08/95	F	3402653	.60	260.00 R	156.00			1		120426B	RJP
			with H. Clow										Conference call			
1	10	RJP	27158	3358	03/09/95	F	3402732	.90	260.00 R	234.00			1		120426B	RJP

REDACTED

REPORT : 07/26/99 12:40 pm
REPORT : WIP60 05.30.01
PRODUCED BY: RH9

STEEL HECTOR DAVIS LLP
Legal Accounting System
Work In Process List

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRMTIME

WORK OPC	WORK DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB AMOUNT	WK/DSB CD	VENDOR NUMBER	PRE/BIL NUMBER	WORK ID
1	10	RJP	27158	3358	03/10/95	F	3388911	.60	260.00 R	156.00		1		120426B	RJP
			Conference call with investigator; REDACTED												
1	10	RJP	27158	3358	03/13/95	F	3388979	.30	260.00 R	78.00		1		120426B	RJP
			Conference call with attorneys for H. Clow REDACTED												
1	10	RJP	27158	3358	03/13/95	F	3389004	.80	260.00 R	208.00		1		120426B	RJP
			REDACTED												
1	10	RJP	27158	3358	03/14/95	F	3406688	3.50	260.00 R	910.00		1		120426B	RJP
			REDACTED conference call to ; Conference call with client; client												
1	10	RJP	27158	3358	03/15/95	F	3406697	.30	260.00 R	78.00		1		120426B	RJP
			REDACTED												
1	10	RJP	27158	3358	03/16/95	F	3406704	2.00	260.00 R	520.00		1		120426B	RJP
			REDACTED client, Calls to												
1	10	RJP	27158	3358	03/20/95	F	3406718	.80	260.00 R	208.00		1		120426B	RJP
			REDACTED and follow-up with client REDACTED												
1	10	RJP	27158	3358	03/22/95	F	3406730	3.00	260.00 R	780.00		1		120426B	RJP
			Two conference calls with representative of client; REDACTED with Langberg REDACTED , Conference call with staff at Attorney General's office. Conference call												
1	10	RJP	27158	3358	03/23/95	F	3406733	.60	260.00 R	156.00		1		120426B	RJP
			Conference call with representative of client in D.C. and counsel; REDACTED												
1	10	RJP	27158	3358	03/24/95	F	3408745	2.50	260.00 R	650.00		1		120426B	RJP
			Two conference calls with staff at Attorney General's office; Conference call with representative of client; REDACTED												
1	10	RJP	27158	3358	03/27/95	F	3429927	4.80	260.00 R	1248.00		1		120426B	RJP
			REDACTED call with representative of client Two conference calls with B. Langberg; Conference call with representative of client. Conference												
1	10	RJP	27158	3358	03/28/95	F	3431953	1.10	260.00 R	286.00		1		120426B	RJP
			REDACTED Conference with investigator.												
1	10	RJP	27158	3358	03/29/95	F	3432058	.30	260.00 R	78.00		1		120426B	RJP
			Conference call with investigator REDACTED												

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRMTIME

WORK OFC	WORK DEPT	WORK ID	CLIENT NUMBER	MATTER NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB AMOUNT	WK/DSB CD	VENDOR NUMBER	PRE/BIL NUMBER	WORK ID
1	10	RJP	27158	3358	03/30/95	F	3432091	1.90	260.00 R	494.00		1		120426B	RJP

Conference call with staff at Attorney General's office;
. Two conference calls with investigators.

REDACTED

THE OSO GROUP, LTD.
433 CALIFORNIA STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE: (415) 616-8822
FACSIMILE: (415) 362-3153

COPY

February 13, 1997

**PRIVILEGED ATTORNEY/CLIENT
WORK PRODUCT PREPARED AT
THE DIRECTION AND UNDER THE
SUPERVISION OF COUNSEL**

VIA FACSIMILE

Mr. Michael A. DeFeo
Unit Chief
Office of Professional Responsibility
Federal Bureau of Investigation
Washington, D.C.

Re: Nichiren Shoshu/Soka Gakkai

Dear Mr. DeFeo:

It was a pleasure speaking with you several weeks ago. I wanted to let you know that I will be in Washington, D.C., during the week of February 24. I know that the issues aired in my December 13, 1996, letter to Mr. Mislock are complicated and at times can be somewhat convoluted. If you would like, I will make myself available to you so that we might discuss with you our concerns regarding the allegations contained in our papers.

I expect to be traveling quite extensively over the next 10 days or so and you can have your secretary inform my secretary here in San Francisco what day and time would be convenient to you.

I look forward to getting together with you in Washington in the near future.

Very truly yours,

John C. Gibbons

JCG:mg

NEW YORK
909 Third Avenue
Suite 900
New York, NY 10022
Telephone: (212) 572-2940
Facsimile: (212) 572-2951

WASHINGTON, D.C.
1899 L Street, N.W.
Suite 500
Washington, D.C. 20036
Telephone: (202) 463-3651
Facsimile: (202) 872-0896

EXHIBIT
101

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

February 19, 1997

VIA FACSIMILIE

The OSO Group, Ltd.
433 California Street
Suite 800
San Francisco, California 94104-2012

Attn: Mr. John C. Gibbons

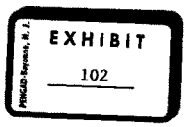
Re: Nichiren Shoshu/Soka Gakkai

Dear Mr. Gibbons:

Mr. DeFeo has referred your letter dated February 13, 1997, regarding referenced matter to me for response. Because of your prior relationship with Mr. DeFeo, he felt it was more appropriate that he recuse himself from this matter and so he has referred it to me for future handling.

I have reviewed the documents that you provided to Special Agent in Charge, Raymond A. Mislock, Jr., of our Washington Field Office on December 13, 1996. I have also reviewed various documents that have been provided to the FBI in regard to referenced matter over the past couple of years. Additionally, I have spoken with Mr. Thomas A. Kelley, Inspector - Deputy General Counsel, Office of the General Counsel, in regard to his knowledge of captioned matter.

Based on my review, your concerns regarding possible falsification of FBI records, to include NCIC entries, have no merit. However, we are not opposed to re-visiting this issue if provided a specific factual predicate which would justify such a course of action. To that end, I request that you have your



confidential source prepare a comprehensive, detailed written document articulating all information that he/she possesses regarding this matter for our review. If, after this review, we believe an interview of your confidential source is warranted, we will recontact you to arrange for such an interview. Prior to receipt of a detailed exposition from the confidential source, I see no point in meeting to discuss this matter further.

Sincerely,

David V. Ries
Deputy Chief,
Office of Professional
Responsibility

433 CALIFORNIA STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE: (415) 616-8822
FACSIMILE: (415) 362-3153

May 28, 1997

PRIVILEGED ATTORNEY/CLIENT
WORK PRODUCT PREPARED AT
THE DIRECTION AND UNDER THE
SUPERVISION OF COUNSEL

VIA FEDERAL EXPRESS

David V. Ries, Esq.
Deputy Chief, Office of
Professional Responsibility
Federal Bureau of Investigation
Washington, D. C. 20535

Re: Nichiren Shoshu/Soka Gakkai

Dear Mr. Ries:

This is in response to your letter of February 19, 1997, sent to our offices via facsimile, with regard to the above-referenced matter. This submission is made for the purpose of assisting the government in any investigation that might arise from the facts described below, and is submitted with the understanding that confidentiality will be protected to the fullest extent possible under the applicable federal laws and regulations, including without limitation, 28 CFR 0.39b.

I apologize for the delay in our response, however, your request necessitated communication and meetings with counsel and the client in this matter in Japan. Further, we were awaiting translation of various articles and legal documents which we wanted to include with this submission to you.

Subsequent to our discussions with counsel and client, we were authorized to proceed and, indeed, have fully debriefed our confidential source. He has authorized us to identify himself to you and has provided documentation from his files, which we are enclosing. The documents standing alone clearly expose the active participation of the Phillip Manuel Resource Group, Ltd. (PMRG), PMRG's employees, the law firm which retained and directed the PMRG firm, various lawyers for the SGI and members of the SGI in scheme and activities we have previously alleged.

NEW YORK
909 Third Avenue
Suite 900
New York, NY 10022
Telephone: (212) 572-2940
Facsimile: (212) 572-2951

WASHINGTON, D.C.
1899 L Street, N.W.
Suite 500
Washington, D.C. 20036
Telephone: (202) 463-3651
Facsimile: (202) 872-0896

PENGAD-Bayonne, N. J.
EXHIBIT
103

Because of the nature of our relationship with the confidential source, he did not personally prepare a detailed written document in his own hand, however, he did provide me and Alan Garretson with details and documentation; and as we have previously mentioned, he will make himself available for interview at any time at any location at your request. The statements he has made to us are clearly against his penal interest which he personally acknowledges.

Based on our collective professional experience and opinion, we did not push the informant for a detailed written document because we thought it more appropriate in light of his volunteering the attached exhibits that you or other Special Agents would prefer to review and proceed with the initial debriefing of Mr. Lucas.

Our confidential source is Mr. Richard M. Lucas. His address is 6031, N.W. 68th Manor, Pompano Beach, Florida 33067; Pager: (954) 676-1416; Telephone: (954) 340-8578. We believe that his telephone number is a nonpublished residential listing.

Mr. Lucas was debriefed for a substantial period of time by me and Mr. Garretson at our offices in San Francisco. As you may recall from our previous submission, Mr. Lucas has acknowledged that he is well aware that the statements he has made were against his penal interest, indeed he reiterated that to Mr. Garretson and myself at our recent meetings, and that he chose to cooperate with the FBI and would be available for interview at the Bureau's convenience should the Bureau decide to pursue this matter. Mr. Lucas indicated that it was his opinion that these actions directed by counsel and SGI to the PMRG were more than likely criminal in nature and were not privileged because of ongoing violations of federal laws and statutes. Mr. Lucas brought with him to our offices in San Francisco, his personal files from PMRG. Several items are included as exhibits. In discussing these exhibits, Mr. Lucas indicated that they were obtained during the course of his employment/engagement at PMRG on behalf of Rebekah Poston, a partner in the firm of Steel Hector & Davis, Miami, Florida. These exhibits clearly suggest that at the very least, FBI Headquarters personnel may have abused their responsibilities and official office on behalf of PMRG, the counsel who engaged them and various parts of the Soka Gakkai. These acts were instigated and, indeed, committed with the ultimate goal in mind to advance a litigants strategic position in ongoing litigation in Japan. Taken in its very worst light, there may very well be violations of Title 18, United States Code § 371, violation of 18 United States Code § 641 and violations of Title 18, United States Code § 207, et seq. Mr. Lucas indicated to us that in 1991 he was employed by PMRG to work on inquiries concerning part of the BCCI matter that was an investigation being pursued by PMRG on behalf of a law firm. Mr. Lucas informed us that he is a former Special Agent of the Internal Revenue Service and a licensed CPA. He indicated that in November 1994, Ms. Poston of Steel Hector & Davis retained PMRG to verify if an FBI record existed in FBI files with regard to a Nobou Abe. Ms. Poston apparently had been informed by her client, Soka Gakkai International (SGI), that they had identified information from the United States

Department of Justice, Bureau of Prisons files that indicated that Mr. Abe had been detained in Seattle on suspicion of solicitation of prostitution in March 1963. Ms. Poston in turn retained PMRG to verify this data. Mr. Lucas indicated to us that in early November 1994, he personally, through a source in Chicago, Illinois, found that there was such a record of the detention of Abe. (His later conclusion is that this data was illegally placed in FBI files.) This information was transmitted to Ms. Poston and she in turn transmitted it to her client, Mr. George Odano of the SGI in Santa Monica, CA. Mr. Odano responded on November 10, 1994, indicating the SGI's great interest in this partial verification. Mr. Lucas further indicated that Mr. Odano requested an explanation from Ms. Poston as to why Mr. Lucas' source did not provide the level of detail of information that Mr. Odano had previously obtained from the United States Department of Justice, Bureau of Prisons source (Exhibit 1).

As a result of the November 1994 communication, Ms. Poston retasked and further requested PMRG to redouble their efforts to verify the FBI record. This was done and was reflected in a report dated November 17, 1994. Mr. Lucas indicated to us that the data contained in the 11/17/94 report was generated by inquiries made into the FBI headquarters by Phillip Manuel personally to a Special Agent Benny Brewer. Mr. Lucas indicated that this can not only be verified by him but also by the staff Secretary/Researcher, Lisa E. Legare, in the PMRG Washington, D.C. office (Exhibit 2). Mr. Lucas further indicated to us that as a result of the information obtained by the Soka Gakkai (Bureau of Prisons data) and the PMRG, independently of each other, a meeting was held at the offices of Steel Hector and Davis on November 30, 1994. In attendance were six individuals (Exhibit 3).

After the meeting of November 30, 1994, Mr. Lucas indicated that Ms. Poston requested an explanation of the FBI CJIS Service Division (Exhibit 4). Mr. Lucas related that this information was provided by Ms. Legare with personal input from Phillip Manuel. Mr. Lucas further indicated that in early December 1994, Ms. Poston began to exchange drafts of a letter for the SGI which did confirm the so called discovery of an official United States Government record (Exhibit 5). The substance of this December 9, 1994, letter was eventually published in the SGI publications beginning in January 1995 (in previous submissions was Exhibit 7, 11/28/94). Mr. Lucas provided us with a document authored by Mr. Manuel that related to Mr. Manuel's personal findings as a result of his direct contact with Special Agent Brewer (Exhibit 6).

Mr. Lucas further provided us with a memorandum dated December 28, 1994, which refers to content of the written record allegedly made by the Bureau of Prisons employee. Mr. Manuel was directed to make further inquiry concerning this information (Exhibit 7).

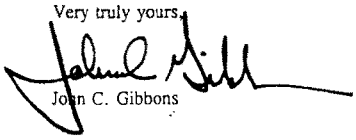
Mr. Lucas indicated that in direct conversations with Ms. Poston, she commented about her concern that the activities of the unknown Bureau of Prisons employee and the actions taken

by PMRG on her behalf could be illegal and as a prophylactic measure she had the Wilmer Cutler law firm prepare a legal memorandum with respect to the Privacy Act (Exhibit 8).

We have not enclosed copies of any of our previously submitted documentation but we believe when taken as a whole with the newly provided exhibits taken from Mr. Lucas' file an investigation should commence. At the very least, Mr. Lucas should be interviewed to get to the bottom of what happened here. Clearly, his admissions of wrongful acts and participating in those wrongful acts with others which allegedly involve personnel within the Department of Justice should be looked into. As we have indicated previously, it is our belief that somehow data was illicitly placed within U.S. Government databases and then an attempt was made to extract those entries via Freedom of Information Act requests, thereby legitimizing the illegitimate entries.

To give and your colleagues an idea of the impact upon the Nicherin Shoshu in Tokyo, we are including actual copies with translations of some of the original articles published by the Soka Gakkai (Exhibits 9 and 10). In addition, we are enclosing for your own edification, copies of selected media clippings that clearly illustrate the size and extraordinary financial resources behind the Soka Gakkai, their political influence and strength both here and in Japan. Should you have any questions for myself or Al Garretson, please don't hesitate to contact us at your convenience (Exhibit 11).

Very truly yours,



John C. Gibbons

JCG:mg
Enclosures

CONFIDENTIAL

PRIVILEGED ATTORNEY/CLIENT
WORK PRODUCT PREPARED AT
THE DIRECTION AND UNDER THE
SUPERVISION OF COUNSEL

SOKA GAKKAI SUBMISSION

TO: David V. Ries, Esq.
Federal Bureau of Investigation

FROM: John C. Gibbons
The OSO Group, Ltd.

DATE: May 28, 1997

CONFIDENTIAL

July 30, 1997

**PRIVILEGED ATTORNEY/CLIENT
WORK PRODUCT PREPARED AT
THE DIRECTION AND UNDER
THE SUPERVISION OF COUNSEL**

Special Agent Athena Varounis
Headquarters Supervisor
Office of Professional Responsibility
Federal Bureau of Investigation
935 Pennsylvania Ave., NW
Washington, D.C. 20535

Re: Nichiren Shoshu/Soka Gakkai

Dear Agent Varounis:

Pursuant to our conversation, I am providing this overview with the hope that it will serve as some assistance to you and your review of the previously submitted information. This submission is made for the purpose of assisting the government in any investigation that might arise from the facts described below, and is submitted with the understanding that confidentiality will be protected to the fullest extent possible under the applicable federal laws and regulations, including without limitation, 28 CFR 0.39b.

I think it appropriate to try to start at the beginning of this saga. The Nichiren Shoshu was involved in litigation brought against its High Priest, the Reverend Nikken Abe, and related organizations by a Soka Gakkai member, Ms. Hiroe Clow, in the Los Angeles County Superior Court. The litigation had been filed in September 1992. You have previously been provided with a copy of that complaint. By way of explanation, the Nichiren Shoshu is a 700 year old Japanese Buddhist religious group and is the largest Buddhist sect in Japan. In addition, the Nichiren Shoshu maintains temples in a number of countries throughout the world, including six in the United States, operating as Nichiren Shoshu Temple, a California religious corporation ("NST"). It is headquartered in Japan. In a previous submission, we have provided you with a description of the Nichiren Shoshu denomination

SAN FRANCISCO
433 CALIFORNIA STREET
SUITE 805
SAN FRANCISCO, CA 94104
TEL 415 616 9922
FAX 415 362 3153

NEW YORK
45 ROCKEFELLER PLAZA
SUITE 2000
NEW YORK, NY 10111
TEL 212 664 7900
FAX 212 664 0666

WASHINGTON, D.C.
1899 L STREET N.W.
SUITE 500
WASHINGTON, DC 20036
TEL 202 463 3651
FAX 202 872 0896

DUBLIN
NORTHUMBERLAND HOUSE
44 NORTHUMBERLAND ROAD
DUBLIN 4, REP. OF IRELAND
TEL 353 1 668 8244
FAX 353 1 628 1578

Beginning in about 1933, the Soka Gakkai, a lay organization, has been associated with the Nichiren Shoshu. Over the last 65 years, the Soka Gakkai has spread into a worldwide organization which has become very rich and powerful in various countries. It claims over 10 million members and has extensive property holdings throughout the world. In addition, the Soka Gakkai owns, operates and controls tens of publishing entities which publish in many languages and has distribution in the millions. The Soka Gakkai also has been very much involved in politics in Japan. Until very recently, the political party in which they were involved was referred to as the Komeito Party. Various press reports estimate that they are the third or fourth most powerful political party in Japan.

In recent years, beginning in the late 1980's friction developed between the Nichiren Shoshu Priests and the Soka Gakkai lay leaders. The background of the dispute is well developed in the attached *Chicago Tribune* and *New York Times* articles. As a result of the dynamics of this dispute, the High Priest, Reverend Nikken Abe, excommunicated the Soka Gakkai in November 1991. The excommunication resulted in a series of multiple lawsuits brought by Soka Gakkai members against the Nichiren Shoshu for various alleged wrongs. Every such lawsuit that has proceeded to judgment has ended in favor of the Nichiren Shoshu. In addition, the Soka Gakkai owned press/media has barraged its readers, viewer and listeners with a highly critical campaign against the Priests of the Nichiren Shoshu, especially the High Priest, Nikken Abe. A number of the allegations in the media included assertions of high living and immoral behavior by the Priests.

The most noteworthy and the subject of this and our other submissions was the allegation that in March 1963, before becoming the High Priest, Reverend Abe, while on a religious mission to the United States, engaged in immoral conduct with prostitutes in a rough and tumble area of Seattle, Washington; and that, indeed, the police had apprehended him. At first the Soka Gakkai media did not identify any witnesses to this alleged incident, but eventually a Soka Gakkai "eyewitness" to the event came forward. That person was later identified as Ms. Hiroe Clow, a Soka Gakkai member who had allegedly escorted Reverend Abe during his Seattle visit in 1963. You have been provided with a copy of the Soka Gakkai, U.S. publication, *The SGI-US Newsletter*, dated January 9, 1995. I have attached a copy for your convenience and I would direct your attention to page four of that document, which I have highlighted. This was the first time, in print, we were made aware that the Soka Gakkai through counsel had indeed tasked the Phillip Manual Resource Group to conduct, what we believe was, an illegal and inappropriate penetration of FBI databases. As we have previously indicated, we believe information was actually entered into FBI databases as a result of a number of inquiries instigated by the Soka Gakkai prior to Phillip Manuel's inquiries reflected in his November 17, 1994, report and that when Manuel made his inquiry through Special Agent Brewer, he was able to report that, indeed, there was a record in FBI files. All the while, prior to these so-called revelations, up until the present day, the Reverend Abe has consistently denied that these events ever took place.

In mid December 1994, counsel for the Nichiren Shoshu was approached by an anonymous informant (Richard Lucas). Mr. Lucas was able to relate to us, over a period of time, that he was personally involved in making the initial inquiries through FBI sources in Chicago, while employed at

the Phillip Manuel Resource Group offices in Miami. This was done at the direction of Ms. Poston. He further indicated that Ms. Poston had related to him that the "West Coast lawyers" referring to Barry Langberg and his associates, through their investigator, a Mr. Jack Palladino, of Palladino & Sutherland, had developed a source who was at the time an employee of the U.S. Department of Justice, Bureau of Prisons, in Seattle, Washington. That person was about to retire and was a Soka Gakkai member. The Bureau of Prisons employee had given detailed information to Mr. Palladino. That information is evidenced by our Exhibit 1 in the submission of May 28 1997, which is a letter from George O'Dano to Ms. Poston. We were never able to identify the Bureau of Prisons employee but found the information provided to be highly suspect because of its form and content, which I think the FBI has also found highly suspect. This could very well be data made up out of whole cloth by an overzealous co-religionist in an attempt to substantiate Ms. Clow's allegations. Langberg and Palladino have never surfaced this so-called Bureau of Prisons source. Apparently, Poston was very suspect of the Bureau of Prisons information which caused her to seek independent verification via the Phillip Manuel Resource Group which, indeed, she did.

In addition to these activities, Ms. Poston initiated broad ranging meetings and inquiries within the Department of Justice at Attorney General Reno's offices and at the FBI Headquarters, Washington, D.C. Indeed, in January 1995, Ms. Poston met with representatives of the FBI in an attempt to accelerate a Freedom of Information Act request that she had caused to be made with the Bureau. It is our understanding that the FBI indicated to Ms. Poston that her request could not be accelerated and that disclosure of their findings to her and Ms. Clow might not be appropriate under the Act. Apparently, Ms. Poston redoubled her efforts and made a series of applications and requests through the Department of Justice and a former colleague of hers at Steel, Hector & Davis, who was then employed at the Department of Justice. After a denial of her Freedom of Information Act requests was handed down, she made an appeal in February 1995 and eventually was granted her request after a meeting with John R. Schmidt, Esq., the then Associate Attorney General. It is our opinion that Ms. Poston willingly or unwittingly was attempting to retrieve data that had been entered into an FBI database as a result of inquiries instigated by her client which appeared to be "real FBI records", which, of course, would then corroborate, to some extent, Ms. Clow's allegations. After Associate Attorney General Schmidt granted Ms. Poston's appeal, she then received Richard L. Huff's letter dated July 11, 1995, indicating that, indeed, there was no record with the FBI or the Department of Justice (attached for your convenience).

Curiously, when one reviews Ms. Poston's Freedom of Information Act appeal of February 3, 1995, at her attached Exhibit list, page four, she very gratuitously requests that if the FBI had determined that, indeed, there was no record or any record of deletion of a record, she disingenuously requests that the FBI communicate that result orally and not in writing.

Upon publication of Mr. Huff's, July 11, 1995, letter, which we obtained through our own Freedom of Information Act request, the "other side" was silenced.

Our client, however, still feels that these inappropriate inquiries and reports by Phillip Manuel and his firm have caused extraordinary litigation expenses and public humiliation, which was quite unnecessary and a violation of United States law. As you know, most recently Mr. Lucas has provided us and, in turn, you, the FBI, with internal documentation corroborating his statements concerning actions taken at Poston's direction. Most recently, a Mr. Emil P. Moschella was employed by the Soka Gakkai to further make inquiry with FBI personnel concerning this incident. We were informed about this by Mr. Lucas and we fully believe with a high degree of certainty that Mr. Moschella has more than likely contacted FBI employees so that he might elicit some sort of a statement that would be admissible in the Tokyo court that would corroborate to some extent Ms. Poston's letter published January 9, 1995.

You should be aware that one could practically file the kitchen sink as an exhibit in a Japanese court without any objection. Hearsay, double hearsay and triple hearsay is admissible via affidavit and our client is now again faced with another scenario where still another document will be published indicating that there were "FBI records".

As we have indicated previously, there were inappropriate contacts made with Bureau personnel. Apparently, inappropriate disclosures were made by Bureau personnel to unauthorized individuals. This was orchestrated by counsel which is evidenced by the documentation provided on May 28, 1997, the January 9, 1995, publication and Lucas's statements. At all times, we have attempted to be straight forward and above board in indicating what our position was and relating the extraordinary damage our clients have suffered as a result of these illegal activities.

In my former life, as an Assistant United States Attorney in various districts and as the Chief of the Criminal Division in two separate districts, this would not be a hard case to put together for violations of Title 18 U.S.C. §§371, 641, 134.

Mr. Lucas has indicated he will make himself available to you at Headquarters should you require his presence for interview at your convenience. If you have any questions, please do not hesitate to contact me.

Very truly yours,

John C. Gibbons

JCG:mg
Enclosures

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

September 4, 1997

The OSO Group, LTD
433 California Street
Suite 800
San Franciso, California 94104-2012

Attn: Mr. John C. Gibbons

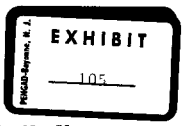
RE: Nichiren Shoshu/Soka Gakkai

Dear Mr. Gibbons:

The Office of Professional Responsibility (OPR) has conducted a thorough review of prior and recent correspondence from you and other individuals representing referenced parties regarding allegations of improprieties concerning FBI computerized criminal records.

The allegations presented by you and others have been repeatedly brought to the attention of the FBI by numerous individuals in various communications and in various meetings, for a number of years. In my communication to you dated February 19, 1997, I indicated that absent a specific, factual predicate, no further investigation would be conducted in this matter. A review was conducted of the documentation you provided by communication dated May 28, 1997. This review indicates the allegations remain without merit.

The conclusion of OPR is based on objective investigative results. However, no specific information regarding the substance of the FBI's actions or findings in this matter can be released to you.



The OSO Group, LTD

Further correspondence concerning this matter, absent articulable, independently verifiable information, is not necessary and will not be considered by this office.

Thank you for bringing your concerns to our attention.

Sincerely yours,

David V. Ries
Deputy Assistant Director
Office of Professional
Responsibility

September 26, 1997

PRIVILEGED ATTORNEY/CLIENT WORK PRODUCT PREPARED AT THE DIRECTION AND UNDER THE SUPERVISION OF COUNSEL

VIA FEDERAL EXPRESS

David V. Ries, Esq.
Deputy Chief, Office of
Professional Responsibility
Federal Bureau of Investigation
935 Pennsylvania Ave. N.W.
Washington, D. C. 20535

Re: Nichiren Shoshu/Soka Gakkai

Dear Mr. Ries:

I am sorry it has taken me a few weeks to respond to your letter of September 4, 1997, which was received in our offices on September 8th. However, I have been traveling and this is the first opportunity I have had to consider what you had to say in that communication.

This submission is made for the purpose of assisting the government in any investigation that might arise from the facts described below, and is submitted with the understanding that confidentiality will be protected to the fullest extent possible under the applicable federal laws and regulations, including without limitation, 28 CFR 0.39b.

I would like to thank you for the attention you have given this matter, along with your colleagues. I know you consider these matters to be important to the integrity and fabric of the FBI and I know this matter, as you point out, has been brought to your attention on several occasions previously.

After discussing your letter of September 4th with my colleagues, who are former Federal prosecutors and former FBI special agents, I think it is incumbent upon us to point out that Mr. Lucas was a percipient witness in this matter, and has not been interviewed by the

SAN FRANCISCO
433 California Street
Suite 300
San Francisco, CA 94104
Tel 415 818 6822
Fax 415 362 3153

NEW YORK
45 Rockefeller Plaza
Suite 2000
New York, NY 10111
Tel 212 664 7900
Fax 212 664 0666

WASHINGTON, D.C.
1899 L Street N.W.
Suite 500
Washington, DC 20036
Tel 202 463 3851
Fax 202 872 0898

DUBLIN
Northumberland House
44 Northumberland Road
Dublin 4, Rep. of Ireland
Tel 353 1 668 6244
Fax 353 1 628 1878

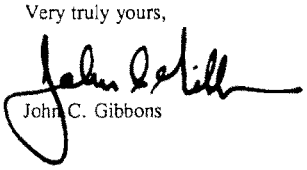
260 East Main Street
Suite 100
Smithtown, NY 11787
Tel 516 366 1300
Fax 516 366 1309

government. If interviewed, as we have pointed out in previous communications of May 28, 1997, and July 30, 1997, Mr. Lucas would give a statement against his penal interest that he indeed participated with Mr. Philip Manual of the Philip Manual Resource Group, his then employer, in penetrating the FBI by making inquiry with an agent of the FBI and publishing his response after that agent reviewed confidential data within the Bureau. In addition, Mr. Lucas would shed light upon possible violations Title 18 U.S. Code Section 207, et. seq. Reflecting that a present practicing lawyer/recently retired special agent was conducting interviews on behalf of the Soka Gakkai on this matter that was indeed a matter within the FBI at the time of his employment at headquarters, and in a section within which he served.

Needless to say, I have been extremely reluctant to reiterate these concerns, but I sincerely believe that this matter is one that should be examined at least with the interview of a percipient witness who has first-hand knowledge and can provide original documentation of these allegations.

Your consideration and attention in this matter will be greatly appreciated.

Very truly yours,



John C. Gibbons

JCG:sjc

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

October 16, 1997

The OSO Group, Ltd.
433 California Street
Suite 800
San Francisco, CA 94104-2012

Attn: John C. Gibbons

Re: Nichiren Shoshu/Soka Gakkai

Dear Mr. Gibbons:

Reference my letter to you dated September 4, 1997, and your letter to me dated September 26, 1997, received by facsimile on October 15, 1997.

As I indicated in my letter of September 4, 1997, a thorough review was conducted of the information that you provided by communication dated May 28, 1997. Based on this review we believe your allegations remain without merit. Your letter of September 26, 1997, provides no basis to change our opinion. OPR will conduct no further investigation regarding this matter.

Regarding your comments as to a possible violation of Title 18 U.S. Code Section 207 et seq., by a former FBI Special Agent, OPR has jurisdiction only over on-board FBI employees. If you have specific information regarding possible criminal violations by a former FBI employee, I suggest that you provide this information to the appropriate FBI field office within whose territory the alleged violations occurred.

Sincerely,

David V. Ries
Deputy Assistant Director
Office of Professional
Responsibility

EXHIBIT
107

ORIGINAL

RIORDAN & McKINZIE
A PROFESSIONAL LAW CORPORATION

ORANGE COUNTY OFFICE
696 TOWN CENTER DRIVE
SUITE 1500
COSTA MESA, CALIFORNIA 92626
(714) 433-2900
FAX (714) 549-3244

LOUISE A. LAMOTHE
DIRECT DIAL
(213) 229-8563

CALIFORNIA PLAZA
300 SOUTH GRAND AVENUE
TWENTY-NINTH FLOOR
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 629-4824
FAX (213) 229-8550

WESTLAKE OFFICE
5743 CORSA AVENUE, SUITE 116
WESTLAKE VILLAGE, CA 91362
(818) 706-1800 (805) 496-4888
FAX (818) 706-2956

RICHARD J. RIORDAN
(RETIRED)

FILE NO.

July 25, 1995

FOIA REQUEST LETTER

Freedom of Information Act Officer
Office of the Attorney General
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Sir or Madam:

This is a request under the Freedom of Information Act.

I represent the requester Nichiren Shoshu Temple, a California religious corporation. I request that a copy of all documents containing the following information be provided to me:

1. All FOIA requests since 1993 for information about Mr. or Rev. Nobuo Abe, or Mr. or Rev. Nikken Abe, born December 19, 1922;

2. All appeals of any denials of FOIA requests for the above information; and

3. All correspondence to and from the Department of Justice and/or its subordinate agencies and all requesters regarding the FOIA requests and appeals listed above.

My client is willing to pay fees for this request. If you estimate that the fees will exceed $1,000.00, please inform me first.

OFFICE OF INFORMATION AND PRIVACY
AUG 1 1995
RECEIVED

EXHIBIT
108

RIORDAN & McKINZIE
A PROFESSIONAL LAW CORPORATION

I look forward to your response within 10 days or earlier if possible. Thank you for your consideration of this request.

I declare under penalty of perjury that the foregoing is true and correct. Executed within the United States on July 25, 1995.

Very truly yours,

Louise A. LaMothe

LAL/zch

63299.1

YASUHIRO FUJITA
ADMITTED IN
JAPAN & CALIFORNIA

YASUHIRO FUJITA
A LAW CORPORATION
445 SOUTH FIGUEROA STREET, SUITE 2570
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 627-9001
FACSIMILE (213) 627-9007

November 19, 1999

Mr. David A. Cass
Deputy Counsel
GOVERNMENT REFORM & OVERSIGHT COMMITTEE
HOUSE OF REPRESENTATIVES
2157 Rayburn House Office Bldg.
Washington,. D. C. 20515

Dear Mr. Cass:

This firm has been representing Nichiren Shoshu (a denomination of Japanese Buddhism) and its High Priest Nikken Abe (formerly known as Shinno Abe or Nobuo Abe) since 1991. Neither Nichiren Shoshu nor the High Priest has ever authorized or consented to anyone to obtain, or to have access to, any information about him (Nobuo Abe) in the U. S. government files or databases.

As a result of the Soka Gakkai's defamatory publication of the so-called " record of the ' 1963 Seattle Incident ' existing in the U. S. government files, " Nichiren Shoshu and the High Priest have suffered extraordinary damage to their reputation, and incurred substantial legal expenses to defend themselves against such false publication.

We appreciate your concern and would be happy to discuss this matter, and to answer any questions you may have.

Very truly yours,

Yasuhiro Fujita

YF:ma

cc: Rev. Kogaku Akimoto, Nichiren Shoshu, General Counsel

b6

[redacted]

March 21, 1995

Ms. Janet Reno
Attorney General
Department of Justice
10th & Constitutional Ave., N.W.
Washington, D.C. 20530

Dear Ms. Attorney General:

Please permit me to briefly introduce myself to you. My name is Hiroe Clow. I am [redacted] I was married to Leslie Elton Clow. My husband passed away December 30, 1962. We had [redacted]

b6

My husband served proudly in the U.S. Navy for 23 years, achieving the high rank of Chief Warrant Officer. We lived in Washington because he was stationed at the nearby Bremerton Naval Base.

I am writing to you personally because I know you stand for the protection of individual rights, fairness and justice and open government. I have followed your service to our President Clinton with great interest. I have read newspaper and magazine articles about you and admire your courage. You are correct to fight for safe streets for the protection of our children. They are our country's future. You stand as a shining example to those who strive to make something out of themselves from humble beginnings.

I write to you because I believe that our government should serve the people and be open to inspection by those of us who obey its laws and had served to protect it. I know you believe in open government. You have said so in public. It is this belief that brings me to the point of why I seek your help.

In March, 1963, in Seattle, Washington, I witnessed and participated in a criminal investigation of a prominent priest of my Buddhist faith. I was his hostess in Seattle where he had come from Japan to perform a religious ceremony. I was called to the scene late at night by the Seattle Police, who were holding the priest in detention. The police told me he had been involved in an altercation with prostitutes. I was shocked! Such conduct by a priest in our faith would immediately disqualify him from such a respectable position. Nevertheless, I pleaded with the police to release the priest to me. Upon my promise to take him back to his hotel and return myself to the police station to answer their questions, I agreed.

When I arrived at the police station, a plain clothes officer and the same two police officers who were at the scene were waiting for me. I was required to sign several documents. In one of the documents, I wrote down more information about me, my husband, and his rank and station in the U.S. Navy, using my Naval I.D. card and license.

As time passed, this prominent priest rose to that of high priest in my Buddhist sect. Once he became high priest, he forgot his religious mission as a priest and started to lead questionable lifestyles both ethically and worldly. He persecuted his followers and the lay organizations that did not obey his will, by using his tremendous economic resources. When I saw his deeds, I realized that what he did 30 years ago was not just an accident, but was something that arose from his impious nature as a priest who took his position only as a job. At the same time, I realized that it was wrong and inappropriate to keep my recollection a secret, and decided to let the truth be made public.

The high priest has now declared in a public lawsuit in Japan, through public speeches at his temples in Japan, to newspapers whose papers are distributed to millions of members of the several Buddhist sects throughout

the U.S. and the world, that the Seattle incident never occurred. The high priest has not only called me a liar and a perjurer in the newspapers but also had my picture carried in their newspaper and had me called mentally ill. He has sent emissaries from his temples in the U.S. to distribute these speeches in my own neighborhood. He has disgraced me and my children. My honor, my integrity, my soul have been irreparably damaged.

My goal is to prove I spoke the truth. Toward this end, I have retained legal counsel. I have filed a defamation suit in the U.S. against the priest. I am desperately seeking any physical evidence that might exist corroborating this incident with the Seattle Police in March 1963. My attorneys, on my behalf, have hired investigators, obtained the full cooperation of the Seattle Police Dept., contacted the Bremerton Naval Base, spoken with attorneys for the FBI, seeking the production of any record about this night. We believe that such a record may exist in some federal agency in Washington, D.C. based upon the viewpoint of how information involving prominent foreign nationals and military families was recorded and stored back in 1963. My attorneys have filed F.O.I.A. requests to the Justice Department and its constituent agencies, as well as to other federal agencies.

Several of the other agencies we wrote to, like the Customs and the State Dept. referred us to the FBI. My lawyers met with the FBI, and they said that the request will be denied because the high priest has not waived his privacy interests but that whether or not the record should be disclosed is a matter of policy, and that this policy is decided by the Attorney General. It is my lawyers opinion, having met with FBI counsel, that FBI is willing to fully cooperate in searching for this record once you make a decision at the policy level.

My lawyers tell me that things don't look so good on the F.O.I.A. request if decided in accordance with previous practices. I don't know all these things about the law or actual practices. I do know that if my President says records of government should be open to the people, that if you believe that too, then fairness and justice should require the government to carry out this policy and look for this record.

The only way to prove that I spoke the truth and that justice lies on my side rests with you. Ms. Attorney General, you were selected by President Clinton to carry out his policies of free access to our government, to be fair and just. My attorneys share the view with the FBI's attorneys that you have the power to decide whether a certain F.O.I.A. request should be granted and the information disclosed, and that you have the discretion to change previous practices if necessary. I ask you to help me. I am just telling what actually happened and what I actually saw. Besides, I was the one who helped the priest to be released. I pleaded with the police to win his release and fully cooperated with the police. They made reports of it all. Now, I stand humiliated and totally disgraced by a man who is in a position of power and financial wealth, calling me crazy, a liar, using his religious position and finances to defame me and deny the truth.

It is he who sought to become criminally involved with prostitutes while in the U.S. It is he who sought to ignore our Buddhist teachings and lead an immoral life despite his being a priest. Now, he takes to the world public my statements and says they are lies. Such a person has no privacy interest to waive. Justice could only be realized by disclosing the truth. Such "privacy interests" would only deny justice. Under such desperate circumstances as these, I beg you, Ms. Attorney General, to let our laws carry out justice and fairness. I ask you to personally exercise your power of discretion and let the truth be set free. For it is in your domain that I believe the truth lies.

Thank you for caring enough about me to read my entire letter.

Sincerely,

Hiroe Clow