THE NEED FOR AN INDEPENDENT COUNSEL IN THE CAMPAIGN FINANCE INVESTIGATION

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

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THE NEED FOR AN INDEPENDENT COUNSEL IN THE CAMPAIGN FINANCE INVESTIGATION

TUESDAY, AUGUST 4, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Gilman, Hastert, Morella, Shays, Cox, Ros-Lehtinen, McHugh, Horn, Mica, Davis of Virginia, McIntosh, Souder, Scarborough, Shadegg, LaTourette, Sanford, Sununu, Sessions, Pappas, Snowbarger, Barr, Miller, Lewis, Waxman, Lantos, Owens, Kanjorski, Condit, Maloney, Barrett, Norton, Fattah, Cummings, Kucinich, Blagojevich, Davis of Illinois, Tierney, Turner, Allen, Ford, and Sanders.

Staff present: Kevin Binger, staff director; Barbara Comstock, chief counsel; David A. Kass, deputy counsel and parliamentarian; Judith McCoy, chief clerk; Teresa Austin, assistant clerk/calendar clerk; Will Dwyer, director of communications; Bill Hanka, deputy director of communications; John Williams, press secretary; James C. Wilson, chief investigative counsel; Michael Bopp and Timothy Griffin, senior investigative counsels; Kristi Remington, investigative counsel; Rae Oliver, Elliott Berke, and Jason Hopfer, investigative attorneys; Matt Tallmer, investigator; Robin Butler, office manager; Tom Bossert, investigative staff assistant; Phil Schiliro, staff director; Phil Barnett, minority chief counsel; Kenneth Ballen, minority chief investigative counsel; Kristin Amerling, Christopher Lu, Elizabeth Mundinger, David Sadkin, and Michael Yang, minority counsels; Ellen Rayner, minority chief clerk; Jean Gosa, Earley Green, and Andrew Su, minority staff assistants.

Mr. BURTON. Good morning. A quorum being present, the Committee on Government Reform and Oversight will come to order.

Before the distinguished ranking member and I deliver our opening statements, the committee must first dispose of some procedural issues. I ask unanimous consent that all Members' and witnesses' written opening statements be included in the record. Without objection, so ordered.

[The prepared statement of Hon. Danny K. Davis follows:]

Danny K. Davis

Statement of Danny K. Davis
Government Reform and Oversight Committee
August 4, 1998

Mr. Chairman, thank you very much for allowing me the time to speak and address my concerns. I cannot underestimate the seriousness of today's subject matter, "The need to Appoint and Independent Counsel for Campaign Finance Reform."

I do not object to the possibility of further reviewing the need for appointing an independent counsel. However, I would hope that we would follow the appropriate process and procedures for a matter as important as this.

I do not think we should be "backing someone into a corner" before taking the time out to weigh all of our options; and "taking inventory" of all of our fact-finding that has been done over the past year or so. As a practice of good public policy, shouldn't we make sure that we are dotting all of our I's and crossing our t's, before we embark down this road.

Finally, I conclude by echoing the comments of Mr. Waxman, the Ranking Minority Member, in reference to whether Janet Reno, the United States Attorney General, should appoint an independent counsel or not " . . . Your decision should be made on the merits—not tainted by intimidation . . ."

Thank you very much and I yield back the balance of my time.

Mr. BURTON. I ask unanimous consent that all articles, exhibits and extraneous or tabular material referred to be included in the record. Without objection——

Mr. WAXMAN. Reserving the right to object. What is that request?

Mr. BURTON. It is that all articles, exhibits and extraneous or tabular material referred to be included in the record.

Mr. WAXMAN. We have no objection.

Mr. BURTON. Without objection, so ordered.

I ask unanimous consent that questioning in the matter under consideration proceed under clause 2(j)(2), of House Rule XI and Committee Rule 14 in which the chairman and ranking minority member allocate time to an equal number of majority and minority members for extending questioning not to exceed 60 minutes divided equally between the majority and the minority. Without objection, so ordered.

I ask unanimous consent that the depositions of Truman Arnold, Brian Bailey, Mark Bartholemew, Jackie Bellanti, Chuck Benjamin, Joseph Birkenstock, Erskine Bowles, Ann Braziel, Jerry Carlsen, Bryan Daines, Jim Dorskind, Donald Dunn, Nancy Friedman, Karen Hancox, Karl Heissner, Al Hurst, Harold Ickes, Phil Lader, Evelyn Lieberman, Ranelle Lopez, Percy Malone, Alice Pushkar, Frank Reeder, Marsha Scott, Ann Stock, Brooke Stroud, Richard Sullivan, Ari Swiller, Laura Tayman, Patsy Thomasson, Jodie Torkelson, Don Upson, Erich Vaden, Kimberly Widdess, James Wright, Johnny Ma, Glenville Stuart, Robert Prins, Matt Fong volumes 1 and 2, Daniel Wong, Joseph Sandler, Steven Walker, Gary Locke, Hune Hoa Bang, Haddi Kurniawan, Lily Wong and Cary Ching be made publicly available. Without objection, so ordered.

Mr. LANTOS. Reserving the right to object.

Mr. BURTON. The gentleman will state his reservation.

Mr. LANTOS. You have read a lengthy list, Mr. Chairman, of the names of individuals whose statements you wish to be made public; is that correct?

Mr. BURTON. That is correct.

Mr. LANTOS. Would you kindly read the list of depositions that you do not wish to have made public?

Mr. BURTON. I don't think that is necessary at the present time.

Mr. LANTOS. I believe it is very necessary, because some of us believe that all of the depositions should be made public, and I personally object to the selective release of depositions. We feel that this is an inquiry which should be as open as possible.

You read a list of two dozen or so names. I have no objections to any of those depositions being made public. Since you are the one who selected these names for public disclosure, it is a legitimate inquiry on my part as to why you have chosen not to make the rest of the names public.

Mr. BURTON. It is my understanding that we have consulted with the minority and they have asked that some of these depositions be included. We have tried to accommodate the minority, so this is an agreed-upon list of depositions to be released. And I didn't know of any objections from the minority on this, because we have tried to accommodate them.

Mr. WAXMAN. Will the gentleman yield?

Mr. LANTOS. I would be happy to yield.

Mr. WAXMAN. These depositions, as I understand it, relate to the issue of the White House data base; is that correct?

Mr. BURTON. Well, as I understand it, some are related to Ted Sioeng.

Mr. WAXMAN. Ted Sioeng. We were consulted about the release of those depositions—we on minority staff—and we have no objection to these depositions. We will ask later that other depositions be made public as well, but we have no objection to these being made public.

Mr. LANTOS. I have no objection to these being made public, and I will be pleased to have a discussion later on about other depositions being made public. And I withdraw my objection.

Mr. BURTON. I thank the gentleman.

Without objection, so ordered.

Mr. TURNER. Mr. Chairman, would it be appropriate at this time to make a unanimous consent request that we make available the depositions that were taken of Irene Wu, Nancy Lee and Larry Wong?

As the Chair is aware, we spent considerable time in this committee discussing taking the depositions and the public testimony of four witnesses, which this committee deadlocked over for several weeks because we were engaged in a dispute over the rules under which this committee operates; and there was a lot said at the time regarding the importance of those four witnesses.

I know Mr. Boehner on the floor of the House said that those four witnesses had direct knowledge about how the Chinese Government made illegal campaign contributions in an apparent attempt to influence our foreign policy. And I know Representative Shadegg said that each of those witnesses has substantial, significant information which was relevant to the committee's investigation. So the public had the impression that those four witnesses had something important to say to this committee.

And I know that the depositions of those witnesses have been taken; and that, with the exception of one of them which the Justice Department has voiced an objection to releasing, that there is no objection to releasing the depositions of the other three.

I personally would have thought that after we went through the debate in this committee regarding the rules and reached an accord and that since the issue involved those four witnesses' testimonies that we would have at least brought those four witnesses before the committee so that the American people could know what those four witnesses had to say that this committee seems to be engaged in a deadlock over for several weeks. So I would like to see them come and testify before the committee.

But, at a minimum, it seems that we should add the three witnesses to the list that the Chair has laid out and that we have agreed to release, so that the public can have the opportunity to know whether or not these witnesses had anything to add to our investigation of alleged illegal campaign activities in the elections.

Mr. BURTON. We just concluded depositions on two of those people this past week. Those depositions are being reviewed right now. As you stated, Kent La's deposition, the Justice Department has re-

quested that we not release that until they have further reviewed it.

We anticipate having hearings in early September, which would include the people you are talking about, and we will be releasing those depositions at the proper time. But until we are prepared for the hearings, we don't think they should be released, because we are reviewing all of the things that they said in their depositions. But it is our intention to release those later.

Mr. WAXMAN. Will the gentleman yield?

Mr. TURNER. I would yield to Mr. Waxman.

Mr. WAXMAN. I can respect the fact that we wouldn't want to have something that may jeopardize our investigation. But our hearing today is to go into questions on a memo by Mr. La Bella to the Attorney General, and the Attorney General has made it clear that she doesn't want her investigation jeopardized. And her investigation leads to criminal prosecutions, and we wouldn't want the ability to bring criminal actions against those who have committed wrongdoing to be in any way hindered. So I just point out this inconsistency.

But as I understand the depositions we have already taken of these witnesses for whom there was such a great to-do about giving them immunity because they would fill in all of the gaps showing what was going on and the conspiracy, I would—I think those depositions that have been taken, from my understanding, and I am not going to reveal anything that was in the depositions, but they do not support any of the claims that were made for those witnesses being deposed. And I think the public ought to have that information out there.

I think we ought to know now what they had to say and have it done on the public record, just as we are now releasing the depositions of people, others who had knowledge about Ted Sioeng or the White House data base.

I don't know if the chairman plans hearings on those issues, but we spent a lot of time deposing a lot of people in secret behind closed doors. The public ought to have available to them what was said, especially since I contend what we had was an enormous fishing expedition where people's rights were trampled on as they were forced to come in to be deposed hour after hour with enormous expense to them as a result of those intrusions on their privacy and time.

I support your request.

Mr. SOUDER. Reserving the right to object.

Mr. TURNER. Mr. Chairman, let me just state it real simply. When we on this committee, on this side of the aisle took the opportunity when the chairman wanted to immunize these witnesses to use that as our opportunity to try to exact from the Chair some fair rules for the operation of this committee, which the Chair eventually agreed to, and we appreciated your willingness to work with us and arrive at a fair set of rules to proceed under, during that period of time, your side of the aisle was accusing the Democrats of trying to hide something by refusing to immunize these four witnesses. And we were not hiding anything.

And we think it is very, very important for the Chair to acknowledge that now that we had reached an agreement, the witnesses

have been immunized, their testimony has been taken, that those who accused us of hiding something need to come forth and let the public know what these witnesses had to say, because we were not hiding anything. And we would like to have you join with us——

Mr. SOUDER. Reserving the right to——

Mr. TURNER [continuing]. Allowing the witnesses to be heard.

Mr. BURTON. I think the gentleman made his point very clear twice now. The Chair will state one more time. It is our intention to release those depositions after they have been thoroughly reviewed. We plan to have hearings in September, right after the break, and those depositions will be released at that time. But it is premature to release those right now, as we are not prepared for the hearings and we are reviewing those depositions, which were taken just last week. These other depositions were taken some time ago and have been thoroughly reviewed.

Mr. SOUDER. Mr. Chairman?

Mr. BURTON. The gentleman from Indiana, Mr. Souder.

Mr. SOUDER. I am disappointed that this is the way this process has started this morning. I think history is not going to look kindly on those who have tried to obstruct these hearings and have tried in one way or another to slow us down rather than cooperating and moving this ahead.

The chairman gave a specific proposal that he would go ahead with the hearing and that we are going to release the proposed depositions. If the Attorney General had made a similar commitment that within the next few weeks or even by early September that her document would be released, that certain progress would be made, we wouldn't be here today.

Mr. WAXMAN. Gentleman yield?

Mr. SOUDER. And it is imparity. It is a double standard, in my opinion. It is just a move this morning to try to once again slow down a process that we have had 112 people flee this country or plead the fifth.

People wonder why we haven't had more success. It is because people come up here and say constantly and tell us that they aren't going to participate. Then when we finally pushed it on the floor—they weren't major players. They were minor players in pieces that you have to put together to make a major case. And at least we have some people willing and able finally to take some of these depositions.

Then we are going to go ahead, but it takes a while to move that process. What we haven't seen from the administration is that same commitment.

I yield to the gentleman.

Mr. WAXMAN. I thank you for yielding.

I think you misunderstood the reality of the situations. First of all, we want the facts to get out there. We aren't trying to hide anything. Those of you who are refusing to make the deposition public, it seems to me you have to bear the burden of appearing to keep the public from knowing what was said, especially by people who claimed that if we would only give them immunity, they would give us the whole blueprint as to what was going on.

Now we have taken their depositions, we ought to make that public, because I would contend that their depositions would lead no reasonable person to reach that conclusion.

The second point I want to make to you is that the Attorney General has made a commitment that, in the course of 3 weeks, she will decide the issue of an independent counsel; and she will then be willing to meet with the chairman of this committee and Mr. Hyde and Mr. Hatch, who are the chairmen of the committees of jurisdiction in the House and the Senate, to talk about her decision and to brief them on the memo. The chairman refused to give her just 3 weeks and is now suggesting that she's in contempt.

Mr. SOUDER. Reclaiming my——

Mr. WAXMAN. The gentleman yielded to me, and if he continues to yield to me he would hear some fact that he may not want to know.

Mr. SOUDER. I want to reclaim my time. The major point I want to hear is the chairman has said multiple times we are going to release these—one was not—the Justice Department chooses not to release, or rather have us not release, several we just completed. We are now going through a process of what should be bipartisan hearings and looking into the problem of violations of the law, and I object to the unanimous consent.

Mr. BURTON. The objection is heard.

Mr. TURNER. Mr. Chairman, since objections have been made to the unanimous consent, I would like to be recognized for a motion.

Mr. BURTON. You may make your motion.

Mr. MICA. Mr. Chairman, a parliamentary inquiry before you reach that. Was the unanimous consent request that the Chair made regarding the releasing of the depositions recited by the Chair, was that approved, without objection?

Mr. BURTON. Yes.

Mr. MICA. Thank you.

Mr. BURTON. The gentleman will state his motion.

Mr. TURNER. Mr. Chairman, respecting the fact that the Chair would like a little time before releasing the three depositions, I would make the following motion: I move under House Rule XI, clause 2(k)(7) and committee Document Protocol clause C.2. that the committee release the depositions of Irene Wu, Nancy Lee and Larry Wong on or before August 14, 1998, and have these depositions included in the committee record.

Mr. BURTON. I heard the motion.

[The motion referred to follows:]

Motion of Mr. Turner of Texas
to Release Committee Depositions

August 4, 1998

Mr. Turner of Texas moves that on, or before, August 14, 1998, the Committee release the depositions of Irene Wu, Nancy Lee, and Larry Wong, and to have these depositions included in the Committee record.

Mr. WAXMAN. Mr. Chairman.

Mr. BURTON. The gentleman from California.

Mr. WAXMAN. I seek to be recognized in support of this motion. I want to——

Mr. BURTON. The gentleman is recognized.

Mr. WAXMAN [continuing]. Say to the gentleman from Indiana and those who have accused the Democrats of trying to slow things down, we have never once objected to any request by the chairman to make any information public. We even agreed to the unanimous consent request made a minute ago to make public depositions of people taken by our committee with regard to the White House data base and inquiries about Ted Sioeng.

But let me also point out that the Republicans on this committee have never once agreed to the request that we have made to make information public.

I want to ask, who is trying to slow things down? Who is trying to keep the public from knowing the facts?

I think the Republicans are going to be embarrassed that, after hyping and grandstanding the significance of those four witnesses to whom we granted immunity, that they, for all practical purposes, had nothing to add to this inquiry. They did not live up to the hype that they were going to fill in all the blanks, give us the road map, tell us the connections to the Democratic administration and the conspiracy with the Chinese Government.

These witnesses did not live up to that billing. And we ought to make their depositions public now so that there would be no doubt about it.

The chairman has said he wants to make it public later. Well, I see no reason to make it public later. Let's make it public now. The public has a right to know. Let's not slow down the public's information flow about this very important issue.

I support the gentleman's motion.

Mr. SUNUNU. I move the previous question.

Mr. BURTON. Would the gentleman move the question and hold a second, please?

Mr. SUNUNU. I will withhold the motion.

Mr. SOUDER. Mr. Chairman?

Mr. BURTON. Just 1 second.

Mr. SOUDER. May I make a brief comment?

Mr. BURTON. You want to be recognized?

Mr. SOUDER. Yes.

Mr. BURTON. Real brief, while we confer.

Mr. SOUDER. I wanted to have a brief response to one point that Mr. Waxman made.

I am not going to say or maintain that there weren't individual Members on the floor, who are not on this committee, who may have overstated what the specific things that these four witnesses were going to offer—three witnesses—but I believe the Members in this committee knew roughly what they were proffering. And I think it is unfair to characterize the Republican position on this committee as saying that these witnesses were going to make points that were major points, as opposed to pieces in a larger puzzle.

Therefore, the word significant or—and words that were used by some of our Members were not for the end case but were for pieces of a puzzle of which any piece missing in a puzzle is significant.

And that I believe that when the day is done and if these depositions and when these depositions are released and when the hearings are and when we see the next hearings after that, just reading these testimonies now or depositions now will not necessarily shed much light. But as the thing progresses and if we can see that the memo that was sent to the Attorney General—then as we see other pieces of the puzzle that come forth, anywhere from 3 to maybe 12 months when people start to talk, will see the importance of these depositions.

It is way premature to state that they are not valuable or they are valuable based on where we were currently. They wouldn't have taken the fifth and we wouldn't have gone into this if there wasn't something most likely that they feared would incriminate themselves.

Mr. WAXMAN. Will the gentleman yield?

Mr. BURTON. Would the gentleman yield to me?

Mr. SOUDER. I yield to the chairman.

Mr. BURTON. We talked to legal counsel, and while there were things we would prefer not be released to the public domain until we have the hearings, I don't think it is going to do irreparable damage. It would be better if we didn't release those, but in the spirit of comity we will allow the motion to be made to release these documents along with the others on August 14th as requested.

Mr. WAXMAN. Mr. Chairman?

Mr. BURTON. The gentleman from—are you finished with your time?

Mr. SOUDER. I will yield to you.

Mr. WAXMAN. I thank you for yielding, and I appreciate the chairman's willingness to agree to our request. But I want to read from the statement given by our colleague—I want to read from a quote from one of our colleagues: "They," meaning those witnesses, "are key to various aspects of what some have decided seem to be troubling in some parts of our investigations about various aspects of who paid whom with what money. Was it Chinese money? Was it businessmen within China? Was it overseas Chinese? Who was it? The immunization of this particular set of witnesses is absolutely essential."

That was the claim made by Representative Stephen Horn. We have the statement made as well by Majority Whip Tom DeLay: "Irene Wu. Wu was Johnny Chung's office manager and has first-hand knowledge of Chung's fund-raising activities and ties to foreign nationals."

John Shadegg said, "It is clear to me that each of these witnesses have substantive, significant information which could help us in our investigation."

Mr. SOUDER. Reclaiming my time.

Mr. WAXMAN. These claims were made. Let's let the public read their deposition.

Mr. BURTON. The gentleman reclaims his time. We have agreed to that.

Mr. SOUDER. Reclaiming my time. It says John Shadegg, Congressman Shadegg, was very explicit, saying will help us lead to. Congressman Horn on this committee said it will be a part of. I stand on what I said earlier, that some people may have overstated in this committee. We understood it was a piece leading to larger pieces.

I yield back to the gentleman.

Mr. BURTON. The question is on the motion from the gentleman from Texas.

Mr. TURNER. Mr. Chairman, in light of the Chair's comments regarding your willingness to accept my motion, I only included the provision that the depositions be released on or before August 14th as an accommodation to the Chair. If you would like for me to restate it and withdraw that and allow the depositions to be released immediately, I would be happy to restate it if you would.

Mr. BURTON. We will let your motion stand.

The question is on the motion by the gentleman from Texas. All those in favor will signify by saying aye. Those opposed?

The motion carries.

We spent quite a bit of time on this. The Director of the FBI and Mr. La Bella, former head of the Task Force, are waiting to testify and we don't want to keep them here all day. I hope we can have an agreement to limit the debate on these upcoming motions, which are going to be before the committee preceding their testimony. I would like to have unanimous consent to limit the debate on each of those to half an hour.

Mr. WAXMAN. Mr. Chairman, I don't know why they should take—the debate should—reserving the right to object—should take any more than half an hour, but I am always reluctant to have a time set, if Members want to speak. We have a large committee. I don't think Members ought to be cutoff. But I would hope all Members try to comply with the wish that you are expressing and that I concur that, in the debate on any motion, not to exceed it, any half hour period. But I do object to an agreement to gag Members, not giving them a chance to speak.

Mr. BURTON. The objection is heard. But it is not a motion to gag Members. It is a motion that was made to try to accommodate two very important people, the head of the FBI and the head of the Task Force, former head of the Task Force. The objection is heard.

I ask unanimous consent that certain documents relating to Ted Sioeng, Charlie Trie, and Future Tech International be made publicly available. These documents have previously been provided to the committee minority for review. Without objection, so ordered.

Mr. WAXMAN. Reserving the right to object.

Mr. BURTON. The gentleman reserves the right to object.

Mr. WAXMAN. Mr. Chairman, as I understand it, we didn't even get 24 hours notice about the proposed release. We think that the Justice Department may have some concerns about the release of these particular documents. I would request of you that we put off the release of these documents, to at least have a chance to talk about it in the next couple of days. And if there is no objection by the Justice Department, I won't object. But I do think that we ought to be able to hear from them and to be able to review these documents, not be taken by surprise as to what may be in it and

later regret that we released something that could jeopardize law enforcement and criminal prosecutions.

So I would make the objection with the request that we have a couple of days to talk further and then act after that.

Mr. BURTON. So do you object?

Mr. WAXMAN. I do object.

Mr. BURTON. I move that certain documents relating to Ted Sioeng, Charlie Trie and Future Tech International be made publicly available. These documents have been provided to the minority for their review.

Mr. WAXMAN. I reserve a point of order. And——

Mr. BURTON. The gentleman will state his point of order.

Mr. WAXMAN. Mr. Chairman, under section C.3.(a) of the Protocol under which we are operating, "The Chairman and the Ranking Minority Member shall share their views about a proposal and shall endeavor to reach consensus about the issue. The Ranking Minority Member shall notify the Chairman within 24 hours whether he agrees or object to the proposed release."

In this situation, the chairman has not endeavored to reach consensus about the issue as required under the Protocol. In addition, the minority has not been given the minimum 24 hours notice to consider the release. In fact, the minority did not even receive the Sioeng and Jimenez documents that the chairman proposes to release until after 3 p.m., yesterday afternoon.

Committee Rule 2 is also violated. It requires that every Member receive a memorandum 3 days in advance of a hearing or a meeting specifying the purpose of the hearing or meeting, and the required notice was not provided in this case. So I would make the point of order that a motion to release these documents would not be permitted under the Protocol under which we are operating.

I would also argue to you it is inappropriate to release the Trie documents because DOJ has indicated that it opposes the release of these documents. According to the Department of Justice, "Release of the checks now would inevitably compromise our ability to develop new evidence by alerting witnesses and conspirators about the nature and direction of the investigation."

And that is from a letter from Mark Richard, Deputy Attorney General, to you, Mr. Chairman, July 30, 1998.

It is inappropriate to release the Sioeng documents at this time. Before these documents are released, the committee should first ask for the Department of Justice's view on the documents. In particular, the committee should seek DOJ's views on a number of documents relating to Kent La under an earlier agreement reached between DOJ and this committee. The deposition testimony of Mr. La would not be made public if DOJ opposes the release.

In a letter dated August 3, 1998, DOJ indicated that public release of the transcript would compromise the Department's ongoing criminal investigation. And in light of DOJ's concern, this committee should not release any documents related to Kent La without first checking with the Department of Justice.

So I make a point of order that, under our rules, such a motion would not be in order. And I make an argument against it on the merits as well that we may be jeopardizing criminal prosecutions.

Mr. BURTON. I have been informed by the counsel that during any committee hearing documents can be released; and, therefore, the point of order is not well taken and overruled.

Today, the committee is going to vote on the release of documents relating to Ted Sioeng, Mark Middleton and Yah Lin "Charlie" Trie. The Department of Justice has not expressed any objections to the release of the Sioeng or Middleton documents. However, both the minority and the Department of Justice have expressed reservations about the release of the documents relating to Charlie Trie. As a result, I would like to take a few minutes to address the release of these documents.

The Trie documents are composed primarily of financial records that were gathered by this committee as part of its investigation of illegal contributions made to the Democratic National Committee at the direction of Charlie Trie. These records were subpoenaed and analyzed by committee majority staff.

The committee did not seek or receive any assistance, any assistance from the Department of Justice in locating or analyzing these financial records. These records were not produced to the committee by the Department of Justice, and as far as I know, no such claim has been made by the Department of Justice. At their most fundamental level, these financial records are congressional documents.

The financial records that the committee seeks to release to the American people today are important for a number of reasons. Through the committee's analysis of these records, we have identified a previously unknown source of foreign funds which was used to make illegal contributions to the Democratic National Committee. This is the first time that this committee has traced funds used for conduit contributions directly back to Indonesia. These funds were provided to Trie and ex-Lippo-executive Antonio Pan in the form of $200,000 in Bank Central Asia travelers checks originating in Djakarta, Indonesia, the home of the Riadys and the Lippo Group.

The American people have a right to know who was circumventing our election laws and funneling money into our political system. Time and time again, this committee has sought the assistance of the Clinton administration in identifying the source of foreign funds by obtaining foreign bank records. However, the committee has heard nothing but deafening silence in response. If the President really wants to get at the truth, he should use the full might of the Federal Government to determine the ultimate source of the funds that illegally influenced our elections.

This committee has been stonewalled at every turn, so now we appeal to the public to help us make the progress that only public pressure can produce. While both the Department of Justice and the minority have expressed objections to the release of these travelers checks, the minority's objections appear to be based entirely upon the Department's objections. As a result, I will address them simultaneously.

According to the Department of Justice "release of the checks now would inevitably compromise our ability to develop new evidence by alerting witnesses and conspirators about the nature and direction of the investigation."

While, first, whether to release congressional documents is a decision to be made by Congress. Second, many, if not most, of the witnesses named on the travelers checks have already been contacted by the majority staff, the minority staff, and/or the Department of Justice. The committee's possession of the travelers checks is not a well-kept secret to the witnesses involved.

Third, the facts indicate that the leads provided in the travelers checks have not been a top priority for the Justice Department. For example, one individual in New York who received $35,000 in these funds was interviewed by the majority staff on July 15, 1998. Despite having possession of the checks for at least a month prior to the committee's receipt, the Department of Justice only contacted the witness on July 22, 1998, immediately after the Democratic staff of this committee notified the Department of Justice about the interview.

Equally troubling is the attitude of the Department of Justice's investigators. According to this witness, the Department's investigators minimized the importance of cooperating with congressional investigators by stating that, and this is what the fellow that was interviewed said: He was told Congress is not important. The Department of Justice is more important. This was from a DOJ and an FBI agent, according to the witness. He further indicated that he was told he does not have to talk to congressional investigators.

One thing is clear to this Congressman, the allegations are further evidence that the Justice Department is an impediment to progress in this investigation. It should be noted that this isn't the first time that the committee has been disappointed and disturbed at the slow pace of the Justice Department's investigation.

In August of last year, this committee's majority investigators located Charlie Trie's sister, Manlin Foung, and her boyfriend, Joseph Landon, both of whom served as conduit contributors on behalf of Charlie Trie. The committee also located David Wang, another conduit contributor. At the time of the committee's interviews of Foung, Landon and Wang, the Department of Justice had yet to contact any of them.

Upon informing the Department of these witnesses, they were immediately called to testify in front of the Federal grand jury here in Washington. Again, the committee acts and then the Department of Justice reacts.

Fourth, on prior occasions the Department has objected to the release of documents, and this committee has respected that request. One such example involves the deposition of Kent La, a witness who was granted immunity by this committee a few weeks ago. Just yesterday, on August 3, 1998, the Department of Justice wrote the committee and objected to the release of Mr. La's deposition, because "the release would compromise the Department's ongoing criminal investigation."

In that instance, the Department's objections were made in a timely fashion pursuant to a prior agreement and were deemed reasonable by the committee, in contrast to the present situation.

On Tuesday, July 22nd, the majority staff met with minority staff to discuss the release of the travelers checks. At the conclusion of that meeting, a member of the minority staff indicated that

he would consult with the Department of Justice concerning the release of the checks.

Discussions with the minority and the Department indicate that the Department learned of the committee's desire to release the records no later than Wednesday, July 23, 1998. Despite that fact, the Department did not express its objections to the release of the checks until Friday, July 31st, a week and a half after they were brought to the Department's attention. The Department waited until the 11th hour before sending its letter of objection and instead relied upon numerous last-minute telephone calls to emphasize its objections, an additional indication that leads contained in these financial documents were not a top priority for the Department.

Finally, when determining whether to release documents, the committee must weigh the need for confidentiality against the American people's right to know. We take very seriously our mission to inform the public, and the public has been in the dark too long. The American people have a right to know——

Mr. WAXMAN. Mr. Chairman?

Mr. BURTON. The gentleman from California.

Mr. WAXMAN. I want to talk about this in two respects. There is the rule of law. There is the rules of the committee. Rules are to be followed even if they lead to a conclusion you may not like.

The rules of the committee say that the minority ought to get notice, 24-hour notice, before something can be brought up for purposes of a release to the public. That is what the rules say. That was the point of order I made.

The chairman said, well, that point of order doesn't apply, because there is another rule that says, if there is a hearing, you could release information in the course of the hearing. Well, that doesn't apply to a motion. That applies to any Member in the course of interrogating witnesses to refer to documents in interrogating that witness.

These documents that the chairman seeks to release are not documents that any Member is going to use at this hearing. The chairman proposes to release these documents after this hearing. So that is really not what we are talking about.

The rules say he has got to give notice. Now why do the rules say the chairman should give notice? Because people ought to know before we agree to release something that we are not doing any damage in making information public.

Well, I think that the rules are being run roughshod over and that the chairman's decision to not abide by the rule in forcing this to a vote——

Mr. BURTON. Would the gentleman yield?

Mr. WAXMAN. Not yet. I will in a minute.

Mr. BURTON. Thank you.

Mr. WAXMAN. He wants to force this to a vote because the public has a right to know. I agree the public has a right to know. But he has in his hands a letter from the Justice Department, where it says release of the checks now would inevitably compromise our ability to develop new evidence by alerting witnesses and conspirators about the nature and direction of the investigation. The Jus-

tice Department is objecting to release of those checks for that reason.

Now, maybe they are right and maybe they are wrong, but I will tell you I am going to go along with the prosecutors when they say they don't want their case jeopardized by release of information. I think it is irresponsible to, not withstanding this letter, release documents that Justice thinks will hurt its case.

The chairman points out Justice didn't object to some of the other documents being released. But it didn't object for good reason. It didn't know that the chairman was going to release them. That is why we have a notice requirement, so that we can seek the opinion of the Justice Department before documents are released and information is made public.

The chairman has made an incorrect ruling permitting his motion to be made. So what is new about that? The chairman has ignored the clear statement of the rules that would prohibit this motion from being brought up. What is new about that?

Now we are going to see, I expect, a Republican majority vote to release these documents, notwithstanding the fact that Justice says they may jeopardize their investigation. Well, if the Republicans want to vote to jeopardize an investigation, to quote Mr. Souder, history is not going to look very well on them. And we do know that congressional committees can foul up criminal prosecutions. Just remember what happened in the Iran Contra investigation, where the Congress in its actions kept the Justice Department and the courts from bringing to justice those who acted improperly.

So I oppose your motion. I think your ruling was incorrect. I am not going to appeal the decision and have you bring out your Republican majority to support you. I think you made a wrong decision on the ruling.

But notwithstanding that, it is improper, I think, for us to vote to release these documents where the Justice Department objects and where the Justice Department hasn't even been given an opportunity to advise us as to whether they think it is going to be detrimental to their prosecution and criminal investigation.

Mr. BURTON. Will the gentleman yield briefly?

Mr. WAXMAN. Yes, I yield to you.

Mr. BURTON. First of all, regarding the Charlie Trie documents, the minority has had the Charlie Trie documents for 2 weeks. Second, we do intend to use some of the checks that we are talking about in the hearing today. That is why it is relevant, and that is why the ruling was made as it was.

Mr. WAXMAN. Reclaiming my time. The chairman is making the point that these are Congress' documents. I believe they are not Congress' documents. And that the Justice Department documents that have been given to us——

Mr. BURTON. No, they weren't given to us. We got the documents ourselves.

Mr. WAXMAN. They are documents that Justice is relying on in the prosecution of criminal actions, and I don't think that we ought to be in any way interfering with those criminal actions.

I do dispute your statement that you have given us notice. The fact that staffs may have talked about the certain documents did not mean to us that you were going to come in today and release

them, and we only were informed that you are going to make that request at 3 o'clock yesterday. I don't think that is a fair way to proceed, and I think it also violates your own rules.

Mr. BURTON. The question comes on the motion made by the Chair. All those in favor will signify by saying aye. All those opposed will signify by saying no.

In the opinion of the Chair the ayes have it, and the motion carries.

I now move that the committee ratify the chairman's letter to Attorney General Janet Reno dated August 3, 1998, and adopt it as the committee's position——

[The letter referred to follows:]

Congress of the United States

House of Representatives

August 3, 1998

The Honorable Janet Reno
Attorney General
United States Department of Justice
Washington, D.C. 20530

Dear General Reno:

I am writing in response to the July 28, 1998 letter from you in which you indicated you will not comply with the Committee subpoena served upon you on July 24, 1998, returnable on July 27, 1998. I also write to address issues raised in our meeting with you and Director Freeh on July 31, 1998.

I am disappointed in the letter response of July 28, 1998. As you know, we have subpoenaed the Freeh and La Bella memoranda, both of which reportedly outline the strong legal and factual reasons why the appointment of an independent counsel in the campaign finance investigation is essential. According to news reports, both of these memos from your top two law enforcement officials in charge of this investigation indicate you are not following the law in this matter. Our own investigation in this matter has led the majority of the members of this committee to the same conclusions. This is a very serious issue.

While you claim that your July 28 letter responds to the Committee's subpoena, it does not. This Committee cannot accept a recitation of policy arguments and a recapitulation of points made in correspondence many months ago in the place of compliance with its subpoena. Furthermore, no privilege claims have been asserted in withholding the memoranda.

Your letter relies heavily on the opinion drafted by Assistant Attorney General Charles Cooper. However, as that opinion makes perfectly clear, the only potentially

valid ground for refusing to comply with a Congressional subpoena is a claim of executive privilege:

> [executive] privilege itself need not be claimed formally vis-a-vis Congress except in response to a lawful subpoena; in responding to an informal congressional request for information, the Executive Branch is not necessarily bound by the limits of executive privilege.
>
> Memorandum for the Attorney General from Charles J. Cooper, Response to Congressional Requests for Information Made Under the Independent Counsel Act, 10 Op. O.L.C. 68, 75 (1986).

Your letter cites a number of concerns about providing the subpoenaed documents to the Committee. You state in your response that "disclosure of information such as is contained in this report could significantly impede the Task Force's criminal investigation[.]" However, in this case, it appears that your own actions are far more prejudicial to the activities of the Task Force. The hopeless conflicts inherent in your continued investigation of these matters undermines public confidence in this investigation both within and outside of the Department. The bureaucratic infighting between those who think this would be handled by an outside counsel free of any political appointees' meddling must certainly have daily impact upon the investigation.

Both Mr. La Bella's and Mr. Freeh's memoranda already have been discussed extensively in the media. It is particularly troubling that the Department would give the media greater access to information the Department claims is sensitive than it would to elected Members of Congress charged with oversight responsibilities. Sunday's Washington Post reports additional troubling information which suggests you have not followed the appropriate procedures in having Mr. La Bella's report reviewed under the 30 day review process for new information.

Your letter also claims that the Freeh and La Bella memoranda rely heavily on grand jury information. First, as you acknowledge, the Committee's subpoena does not call for any grand jury information. Second, in our meeting on July 31, Director Freeh stated that 6(e) information was "a very small part" of both memoranda. In addition, you yourself, indicated that you have widely disseminated the La Bella memorandum throughout the Department, thus, increasing the likelihood that any "road map" to the investigation is widely known to many Department officials – including many political appointees.

The Committee is sensitive to the concerns raised in your letter, but this is an extraordinary case, and those concerns must yield to this Committee's legitimate oversight role. The Committee has already attempted to accommodate your concerns, and for seven months, has withheld from enforcing its earlier subpoena for Mr. Freeh's memorandum. But now, in light of the fact that Mr. La Bella has reached the same

conclusion as Mr. Freeh, this Committee must take action and assert its proper oversight functions.

More important than the issues you have cited is the concern of this Committee, and the American people at large, that you have disregarded the advice of your two most senior people working on the campaign finance investigation regarding both the facts of the case and the interpretation of the Independent Counsel statute. The Independent Counsel statute was designed explicitly because the Attorney General was perceived to have a potential conflict of interest in matters involving wrongdoing by high-level executive officials. In your own testimony supporting the reauthorization of the independent counsel statute in May 1993, you quoted Archibald Cox on the importance of the statute in order to avoid conflicting loyalties of political appointees:

> The pressure, the 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.

Upon reading that quote, you added, "Now, nearly two decades later, I could not state it more clearly, and it is this point that the Act's critics most often ignore." Now, it appears it is you who is ignoring this guidance.

It would be inconsistent with Congress' core oversight responsibilities to simply accept your assurances that you have adequately considered the recommendations of your advisors without looking beneath the surface of those assurances. Our investigation of the Department's nonfeasance in this case is consistent with Congress' oversight duties. In the past, precisely this kind of oversight has uncovered serious wrongdoing in the Department of Justice.

Moreover, while your letter is concerned with the policy arguments against complying with the Committee's subpoena, it fails to address the numerous precedents for the Committee's action. As I pointed out in our correspondence of December 1997, Congressional committees have often demanded and received precisely this type of information from the Department of Justice. In your letter to me dated December 8, 1997, you made the assertion that "[i]t is unprecedented for a Congressional committee to demand internal decisionmaking memoranda generated during an ongoing criminal investigation." This is simply inaccurate. There are a number of cases where Congressional committees have not only demanded, but also received exactly this type of information. In cases dating from the 1920s, Congressional committees have demanded and received investigative memoranda, records, and other documents relating to open investigations.

In one of the earliest examples of this type of request, in the Teapot Dome scandal, a Congressional committee demanded and received access to a wide range of DOJ materials, including prosecutorial memoranda regarding open cases. See McGrain

v. Daugherty, 273 U.S. 135, 151 (1927). A more recent example of similar Justice Department compliance with Congressional requests, was in the Iran-Contra matter, where the Department furnished investigating committees with DOJ investigative materials regarding an open investigation. See Report of the Congressional Committees Investigating the Iran-Contra Affair, H.R. Rep. No. 433 and S. Rep. No. 216, 100th Cong., 1st Sess. 310, 317, 314, 317-18, 647 (1987). In the Iran-Contra example, the Department even made a number of its top officials, including the Attorney General, available for depositions regarding the adequacy of its investigation. These two cases are representative of a number of cases, ranging from the Palmer Raids in the 1920s, to the Rocky Flats investigation, where Congressional committees have obtained internal decisionmaking material from the Department. The Committee's present request is consistent with these precedents, and this Committee deserves an equal degree of compliance with its request.

Therefore, I have considered and rejected all of the objections raised in your letter of July 28, 1998. As you have failed to provide the subpoenaed documents or assert a valid claim of privilege, I have recommended that the Committee continue to assert its constitutional oversight responsibilities in pursuing these matters.

Sincerely,

Dan Burton
Chairman

Mr. WAXMAN. Reserving the right to object. I don't know what you are talking about. And why do we have to accept your letter as the committee's position?

Mr. BURTON. As I understand it, when a contempt citation—just 1 second. The House counsel has said that a letter showing intent solidifies the position of the committee regarding a contempt citation, which will be coming later in the week, on Thursday. This motion is at the suggestion of the House counsel.

Mr. WAXMAN. Well, I do object to unanimous consent.

Mr. BURTON. OK. Well, then I move that the committee ratify the chairman's letter to Attorney General Janet Reno dated August 3rd, and adopt it as the committee's position. I have moved that the committee ratify my letter of August 3rd to the Attorney General, and I adopt it as the committee's position.

This letter responds to the Attorney General's refusal to comply with the committee's subpoena for the Freeh and La Bella memoranda. As most of you know, the Attorney General refused to comply with the committee's subpoena of July 24th claiming that it would violate a long-standing Justice Department position to produce the Freeh and La Bella memoranda. However, as my letter points out, this committee is conducting oversight of the Justice Department and is seeking to find out whether the Attorney General is following the law when she refuses to appoint an independent counsel. That is why we have subpoenaed the Freeh and La Bella memoranda, and that is why we will enforce the subpoena.

The Attorney General has never raised a valid claim of privilege in refusing to comply with the subpoena. She has never raised a valid claim of privilege. Rather, she just lists all of the reasons why she is ignoring the subpoena.

I have studied these objections and found they were either baseless or inapplicable in this case. When the Attorney General claims that the committee's request is unprecedented, she is simply wrong, incorrect.

I have been working with the House General Counsel and the nonpartisan Congressional Research Service, and they have confirmed that this committee's subpoena is consistent with the practice of many other committees. We can cite a number of cases, ranging from the Teapot Dome scandal to Iran Contra, where congressional committees have demanded and received documents just like the documents that we are talking about now.

The Attorney General has raised a number of other complaints about the committee's subpoena, and my letter of August 3rd responds to them all. She claims that the subpoena will threaten their investigation. However, she may not want you to know that the subpoena specifically required the Justice Department to redact, cross out, eliminate all grand jury information from the memos. We don't want any grand jury testimony that might jeopardize this investigation.

The Attorney General has also claimed that the disclosure of the memos will have a chilling effect on her advisers' willingness to render their advice. I ask you, what will have a greater chilling effect, the disclosure of the memos or the fact that the Attorney General seems to disregard her advisers?

We have learned that the Deputy Attorney General and other members of the Attorney General's staff have been calling majority members, trying to keep them from voting in favor of a contempt citation against the Attorney General. I want the committee to adopt this letter as its official position to show that we take our oversight responsibility seriously and to show that no one, including the Attorney General, can ignore a lawful congressional subpoena.

Mr. WAXMAN. Mr. Chairman?

Mr. BURTON. Who seeks recognition?

Mr. WAXMAN. I do.

Mr. BURTON. The gentleman from California.

Mr. WAXMAN. Mr. Chairman, we have had no notice that you were going to make this motion to have the committee adopt your letter as our official position. I think that you are trying to build a case to hold the Attorney General in contempt of Congress.

This is not a frivolous matter, and I don't think it ought to be handled in this way, but it is not inconsistent with the kangaroo court atmosphere that we have seen in this committee in the past and continue to see today.

The chairman is trying to have us take his letter as our catechism—as our official doctrine. Well, that has been the way that the committee Republicans have treated this investigation. They gave the chairman all the power, and he has abused the power. And let me give everybody an example of an abuse of power.

We met last Friday with the Attorney General, and the Attorney General asked the chairman for a 3-week period during which she would have an opportunity to review the La Bella memo, talk to her advisers in the Justice Department and reach a conclusion as to whether she would appoint an independent investigator.

She asked that the La Bella memo not be turned over, not just because certain facts might be extracted, but Louis Freeh, who is the Director of the FBI, pointed out that it wasn't just the facts that might be extracted, that the turning over of the memo may in other ways jeopardize the criminal prosecution. So both the Director of the FBI and the Attorney General asked that they be given 3 weeks.

Now, Chairman Hatch and Chairman Hyde, the chairmen of the Judiciary Committees that have jurisdiction over the independent counsel law, have agreed to give her 3 weeks and have her, at the end of that period of time, come in and brief them. I think this is a reasonable request by the Attorney General of the United States.

Our chairman said he would not go along with that. He was going to hold her in contempt. He said at that meeting he would vote, assuming his Members on the Republican side would support him, to hold her in contempt, but he wouldn't move that contempt citation to the House floor until after the recess. But if she decided, the chairman said to the Attorney General, to appoint an independent counsel, he would not pursue contempt.

I have been in the Congress for 24 years and I have never seen as blatant a strong-arm tactic by any chairman or any Member as I saw with our chairman making this threat. What this amounts to is to tell the Attorney General that, when she has an issue over which she may have some discretionary decisionmaking, that if she

didn't decide as the chairman wanted she would be held in contempt. That is a strong-arm tactic. It is an intimidation. It is improper. I believe it is a violation of the House ethics rules, and it is just the kind of behavior and abuse of power that should not be permitted.

Now, Mr. Chairman, you may have the Republicans willing again, to give you this authority. But I hope they wouldn't. I hope they would follow the example of Chairman Hyde and Chairman Hatch, who are also good Republicans and who are acting reasonably and responsibly and not to go to the point now where holding an Attorney General in contempt would be so frivolously entered into.

I oppose this motion, Mr. Chairman. I will oppose your attempt to hold the Attorney General in contempt. I will oppose these efforts to undermine the investigation and prosecution by the people who have the authority to take criminal action, the people at the Department of Justice. Let the Attorney General decide the issue of independent counsel, but don't intimate her to come to the conclusion you want, if that is not the appropriate conclusion, as she must decide it for herself.

So I would ask my colleagues on both sides of the aisle to reject this motion.

Mr. BURTON. Before I yield further, I would like to submit for the record a letter that I sent to the Honorable Henry Waxman responding to the inaccurate charges that he just made. And this is a matter of public record. Anybody in the media that wants to see it can. So, without objection, so ordered.

Mr. WAXMAN. Reserving the right to object, only to make the unanimous consent request that my letter to you be made a part of the record.

Mr. BURTON. That is absolutely fine. Both letters will be submitted for the record.

[The letters referred to follow:]

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
MINORITY (202) 225–5051
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August 3, 1998

The Honorable Henry A. Waxman
U.S. House of Representatives
Washington, D.C. 20510

Dear Congressman Waxman:

I write in response to your purposefully inaccurate letter of July 31, 1998. In this letter you misrepresent statements made during the meeting we both attended with Attorney General Janet Reno and FBI Director Louis Freeh. Specifically, you suggest that I will seek to hold the Attorney General in contempt if she fails to appoint an Independent Counsel to investigate campaign finance matters. Nothing could be further from the truth, and I deeply resent your mischaracterization of what took place in the meeting.

In the course of our meeting, both Attorney General Reno and Director Freeh expressed their concerns about providing the Freeh and La Bella memoranda to Congress and Attorney General Reno indicated she would not comply with the Committee's subpoena for the records. I understand their concerns; nevertheless, in the context of the Department of Justice campaign finance investigation, I believe that the oversight interests of Congress are greater than the institutional policy concerns of the Department of Justice. In conjunction with a review by House Counsel and the Congressional Research Service, our analysis shows there is clearly precedent for obtaining records such as these. What is unprecedented, is for an Attorney General to fail to follow the law when her two key investigators have so strongly indicated she has no other choice.

In addition to making the fundamental point about her reluctance to turn the two memoranda over to Congress, the Attorney General also stated that she was three weeks away from completing her evaluation of the La Bella memorandum which she has already had for over two weeks. In the context of this discussion, you suggested that it would be better to wait for this three week period before making any decisions on pursuing the memos, how to pursue them, or

whether to hold the Attorney General in contempt for failing to provide them. I explained that I proposed to have a vote on contempt next week in Committee and that a vote on the House floor could not take place until September, due to our schedule.

Your observations and attacks do not square with what actually took place. In fact, the meeting was cordial with the Attorney General and FBI Director, I believe recognizing our institutional concerns, even if not agreeing with them. Mr. Freeh, in particular, stated that we had "exercised [our] oversight responsibilities very responsibly to date."

My reluctance to wait for three weeks for the Attorney General's additional review of the La Bella memoranda before taking further action comes from my serious reservation about any additional delay. Time and again, this Committee has been faced with obstruction and delaying tactics. The Attorney General seeks to keep from the American people the memos of her own designated investigators who believe she is not following the law. In addition, the Attorney General has failed to assert any relevant privilege to do so. There could not be a more compelling case for congressional oversight.

As you well know, my decision to begin contempt proceedings is tied to this Committee's legitimate oversight interests in the Freeh and La Bella memoranda to determine if the Attorney General is following the law. I would certainly prefer to have the documents to review, rather than hold the Attorney General in contempt for refusing Congress' legitimate oversight in these matters. Obviously a decision to appoint an Independent Counsel might make the oversight of the Justice Department's investigation moot since a Justice Department investigation would no longer exist under Ms. Reno's control if there were to be an independent counsel. (I use the word "might" because the inordinate delay, and the Attorney General's highly questionable and unsupported interpretation of the Independent Counsel statute, will continue to cause concern even if an Independent Counsel is appointed. In the context of what has taken place over the past two years, it may be appropriate for Congress to continue its investigation of the Department of Justice decisionmaking process even if an Independent Counsel is appointed. You may recall this is exactly what was done in the Iran-Contra investigation when then-Attorney General Ed Meese took all of one month to appoint an independent counsel; yet Congress subsequently investigated and reviewed his investigative decisions.)

It is the failure of the Attorney General to turn over subpoenaed records which brings us to possible contempt action – records in which her own investigators indicate she should apply the independent counsel statute to the campaign finance investigation. Yesterday's *Washington Post* indicates that Mr. La Bella's memorandum advises the Attorney General that "she must seek an independent counsel if she herself is going to obey the law, according to officials familiar with the document...." *The Washington Post* story also indicates that there is concern that the Attorney General has not treated Mr. La Bella's information as new information that needs to be put to the "specific and credible" test defined by the statute This would require a review within 30 days – which is beyond the time the Attorney General has asked for her review.

Director Freeh and Mr. La Bella have indicated that this investigation reaches the highest levels of the White House and Democratic National Committee as well as close associates of the

President who appointed her. This is a very serious issue – is the Attorney General following or defying the law? And, furthermore, why is the news media being provided with more access to Mr. La Bella's memo than is Congress?

We are holding a hearing this week to address these matters. The Justice Department has already committed that the witnesses will appear without our committee having to issue subpoenas. I accepted this representation from the Deputy Attorney General. In our meeting on Friday, you encouraged the Attorney General to renege on this agreement and tell the witnesses not to appear. Your continued efforts to stymie review of important matters is regrettable, but certainly consistent.

Our hearings will however, proceed. The Attorney General's failure to turn over the memos will obviously hamper our ability to discuss the key issues. Director Freeh has written: "It is difficult to imagine a more compelling situation for appointing an independent counsel." Mr. La Bella reportedly has indicated that he believes the Attorney General has "no choice" but to appoint an independent counsel. Both have indicated that the statute is triggered under both the mandatory and discretionary sections of the law. It is for these reasons, that in the course of proper oversight we seek to review these memos which indicate the Attorney General is not following the law.

In conclusion, I deeply resent your mischaracterization of our meeting on Friday. We met to discuss whether the Department would provide the Committee with the Freeh and La Bella memoranda. The fact that the Department has indicated that it intends to ignore the legitimate oversight interests of Congress cannot be met with a lack of response from the appropriate oversight committee. While it might suit your partisan interests to support yet another lengthy delay and divert attention by continued attacks on me personally, I believe that your interests and those of the American people are not in accord.

Sincerely,

Dan Burton
Chairman

cc: Attorney General Janet Reno
FBI Director Louis Freeh

August 3, 1998

The Honorable Dan Burton
Chairman
House Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Burton:

My letter of July 31, 1998, was not "purposefully inaccurate" as you claim in the letter you sent me today. Your actions on July 31 were deplorable, and I described them accurately in my July 31 letter. Indeed, notwithstanding the tone of the letter you sent me today, you apparently do not dispute the essential facts.

In your letter to me, you assert that you did not tell the Attorney General that you would seek to hold her in contempt if she fails to appoint an Independent Counsel. I agree -- and I never alleged that that is what you said to the Attorney General.

What you did say, however, was equally objectionable. You told the Attorney General (1) that you intended to hold her in contempt for failure to turn over the La Bella memorandum and (2) that you would drop your efforts to hold her in contempt if she would seek appointment of an Independent Counsel. As I wrote in my July 31 letter, you explicitly informed the Attorney General that she could avoid contempt by appointing an Independent Counsel.

Your letter to me does not dispute these key facts. Indeed, your spokesman confirmed these facts in his comments to the Washington Post. As reported in the Washington Post on August 1, Will Dwyer, the Committee spokesman, stated:

> "[T]he one real objective here is getting an independent counsel, as these documents advise her to do. ... If she follows that advice, there will be no need for the documents."

As I stated in my letter of July 31, your actions were a blatant and improper attempt to influence the Attorney General's decision. They would seem to violate House ethical standards

because they make an explicit linkage between the Attorney General's decision in a discretionary matter and your continued efforts to hold her in contempt.

Rather than sending letters that seem designed to obfuscate, I urge you to apologize to the Attorney General for what was clearly unacceptable conduct.

Sincerely,

Henry A. Waxman
Ranking Minority Member

cc: The Honorable Janet Reno
The Honorable Louis J. Freeh
Members of the Committee on Government Reform and Oversight

ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON DC 20515–6143

July 31, 1998

The Honorable Janet Reno
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Madame Attorney General:

I am writing regarding the meeting you, FBI Director Freeh, and I attended today in Chairman Burton's office. During this meeting, Mr. Burton told you that he would not seek to hold you in contempt of Congress if you sought the appointment of an Independent Counsel to investigate the President. I was concerned by Mr. Burton's comments and believe that they should not be allowed to taint your decision making process.

As you know, you and FBI Director Freeh requested a meeting with Mr. Burton and me today to discuss Mr. Burton's threat to hold you in contempt of Congress unless you turn over the memorandum written by Charles La Bella, the out-going head of the Justice Department campaign finance task force. At the meeting, you and Director Freeh explained that you opposed turning over the memorandum because of the damage it would do to your criminal investigation and the chilling effect it would have on future criminal prosecutions.

Mr. Burton informed you that he disagreed with your decision not to appoint an Independent Counsel and that he thought you were trying to protect the President. He stated that if you do not turn over the memorandum, he would hold a Committee meeting next week at which he would seek to have you held in contempt of Congress. He said that he was sure he would have the votes to prevail at the Committee level. He also said that he would ask the full House of Representatives to vote on the Committee's contempt recommendation when the House reconvenes in September after the August recess.

During the meeting, you proposed an alternative to Mr. Burton. You said that you were still considering the La Bella memorandum, that you wanted other lawyers in the Department to review the memorandum, and that you wanted to make the best decision possible. You stated that your review of the issues would take you about three weeks to complete. You offered to meet with Mr. Burton and me after you had made your decision to explain your decision. You

indicated that you would be prepared to discuss the contents of the La Bella memorandum with Mr. Burton at that time, but that it would be inappropriate to do so before a decision was made.

I stated my view that the Committee should not ask Mr. La Bella and Director Freeh to testify at the scheduled hearing on August 3 and that Mr. Burton should not seek to hold you in contempt next week. Instead, I urged him to wait for three weeks to allow you to make your decision about whether to appoint an Independent Counsel on the merits.

Mr. Burton rejected these proposals. He reiterated that the Committee would vote next week to hold you in contempt and that the full House would consider the matter in September. He then expressly stated that he would not insist on seeing the La Bella memorandum and would not seek a House vote on contempt if you decided to seek appointment of an Independent Counsel before the House reconvenes in September.

It is obviously inappropriate -- and at a minimum a clear violation of the House ethics rules -- for a member of Congress to seek to coerce an executive branch official to reach a predetermined conclusion on a discretionary matter. But that is exactly what happened today.

The Chairman's remarks were a blatant attempt to influence your decision. You were told that you could avoid being held in contempt of Congress if you acceded to Mr. Burton's demands that you seek appointment of an Independent Counsel. Conditioning a contempt citation on your willingness to appoint an Independent Counsel is clearly coercive -- and I urge you not to be influenced by the Chairman's threat.

The ethics rules of the House provide unambiguous guidance. The opinions of the Committee on Standards of Official Conduct state that in communicating with the Executive Branch: "Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role."[1] In this case, Mr. Burton made a direct statement that he would cease his efforts to hold you in contempt if you appointed the Independent Counsel he seeks. As the ethics opinion indicates, this is an unacceptable abuse of power.

Mr. Burton's tactics are not subtle. He knows that you cannot turn over the La Bella memorandum. For the last 100 years, the consistent precedent of the Department of Justice has been to refuse congressional requests for internal memoranda that contain the recommendations of federal prosecutors. As the Reagan Justice Department wrote, "the Department of Justice has an obligation flowing from the Due Process Clause to ensure that the fairness of the decision making with respect to the prosecutorial function is not compromised by excessive congressional

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[1]Committee on Standards of Official Conduct, Advisory Opinion No. 1 (Jan. 26, 1970).

pressure."[2] This fundamental obligation would be violated if members of Congress were briefed and consulted about prosecutorial decisions before these decisions are made. Moreover, if you violated the longstanding Justice Department precedent in this instance, you and future Attorneys General would be compelled to do so in countless future cases.

Thus, Mr. Burton is seeking to place you in an untenable position. In effect, he has given you only two choices: (1) become the first Attorney General in history to be held in contempt of Congress because you cannot turn over the La Bella memorandum or (2) appoint the Independent Counsel that he demands.

I do not know whether you should appoint an Independent Counsel or not. Early last year, as your investigation was just beginning, I called upon you to appoint an Independent Counsel. Because I am not privy to the extensive evidence you have gathered since then, I do not know whether it is still appropriate to do so. But what I do know is that your decision should be made on the merits -- not tainted by intimidation from Chairman Burton.

Sincerely,

Henry A. Waxman
Ranking Minority Member

cc: The Honorable Dan Burton
The Honorable Louis J. Freeh
Members of the Committee on Government Reform and Oversight

[2]Opinion of Assistant Attorney General Cooper (Apr. 28, 1986).

Mr. MICA. Mr. Chairman?

Mr. TIERNEY. Mr. Chairman?

Mr. BURTON. I just want you to—I will yield, but I think it is important, since we have Mr. Freeh and Mr. La Bella here waiting, that we try to restrict our comments as much as possible, because we are going to be keeping them here all day.

Mr. TIERNEY. I seek recognition to make a motion.

Mr. BURTON. Mr. Mica?

Mr. MICA. I would be glad to make a motion for the previous question on this and limit—but I don't want to limit debate if the other side doesn't want to do that. Otherwise, I would like to comment on the need for including this in the record.

Mr. BURTON. The gentleman is recognized.

Mr. MICA. I move the previous question.

Mr. LANTOS. Mr. Chairman, I ask to be recognized prior to that if Mr. Mica would withdraw that.

Mr. BURTON. I want to keep a spirit of comity as much as possible. If we move the previous question, we could have problems that we experienced before.

Mr. MICA. Then, Mr. Chairman, thank you. I withdraw my motion and ask to be recognized.

Mr. Chairman, I believe this is a very serious matter and predicament that we find ourselves in. Holding the Attorney General in contempt is a serious action and should be very carefully considered and should be considered by this committee.

This is really the second action. If you will recall, we had Mr. Freeh and the Attorney General before us before. And in somewhat an embarrassing situation, this committee has really read what's in these reports. First, last December I believe it was, in the New York Times. We have read this, the alleged statements of the FBI Director who reviewed the matter at that point and said he had never seen a more compelling situation for which there should be appointed an independent counsel. Now this committee is again faced with reading in the newspaper information that we are trying to obtain.

Again, Mr. La Bella who, after discussions with this committee was put in charge of that investigation, has done a job and we are learning that he, too, is recommending an independent counsel. Almost every newspaper in the United States, and not particularly friends of our side of the aisle, have commented. Let now read just a few of them.

The New York Times, July 23rd, "The two people in American government who know most about this case, the lead prosecutor and the top investigator, are convinced that the trail of potentially illegal money leads so clearly toward the White House that Ms. Reno cannot under Federal law be allowed to supervise the investigation of her own boss. Either she has to come forward and make the impossible argument that they are incompetent or bow to the law's requirement."

Around the country, the Seattle Times said, "La Bella's conclusion shreds Reno's long-held arguments against a special prosecutor for Clinton fund-raising. Plainly she is wrong. She must invoke the act or consider whether a different Attorney General should make the call."

The Dallas Morning News, "So why does Ms. Reno still resist appointing an independent counsel to examine this worsening affair? Her own Justice Department has even turned up a smoldering pile of trash."

The Philadelphia Inquirer, "She", Reno, "should long ago have called for an independent counsel not simply to look into those trivial phone calls but take the whole sleazy, dispiriting story of how the 1996 races for the White House was financed."

The Arkansas Democrat, "In conclusion: You don't have to like independent counsels to see this is the kind of investigation they were made for."

This is a very serious matter before an investigation and oversight committee of Congress. There is certainly sufficient record and evidence for requesting this type of information from other executive officers of government. And we should clearly set the record with the chairman's statement. It should be approved as our position and then move forward on Thursday as we have the obligation and right to do. Thank you. And I yield back my time.

Mr. BURTON. The gentleman yields back his time. The gentleman from California.

Mr. LANTOS. Just a couple of points, Mr. Chairman. I think your threatening the Attorney General is the arrogance of power run amuck. And I believe that your attempt to have your letter declared the view of this committee, which is made up of independent individuals elected by their constituents, some of whom do not share your view, is palpably absurd. This is not our letter. This is your letter. And if there will be a vote on it, we will see what that vote is. Presumably you will have the majority agree with you that it is their letter. You will get a no vote from me, because it surely is not my letter.

But to get on with the job of this morning's hearing, I would like to point out an incredible degree of hypocrisy which we can set straight in 1 minute. You are complaining that the FBI Director is kept waiting. The FBI Director is kept waiting because you are bringing up one controversial issue after another which you want to bulldoze through this committee, and you are not going to succeed.

So I would like to suggest, to accommodate the distinguished director of the FBI, that you withdraw your motion, we invite the FBI Director to testify, and after we have heard from him and others, you will be free to reintroduce your motion.

But the hypocrisy that you display by presenting these emotionally charged and highly controversial issues and objecting to our discussing these, and then complaining that we are blocking the appearance of the FBI Director, boggles the mind. You withdraw your motion, we invite the FBI Director to testify, and he won't have to spend the whole day here. But if you keep raising one controversial issue after another and want to railroad this through without debate and without objection, the FBI Director will be here the whole day and maybe tomorrow. So I ask you to withdraw your motion.

Mr. BURTON. Is there further discussion?

Mr. HASTERT. Mr. Chairman.

Mr. BURTON. Mr. Hastert.

Mr. HASTERT. Thanks, Mr. Chairman. I am going to be very brief, hopefully plain spoken. You know, a long time ago, at the beginning of this session of Congress, we talked about working in comity. We talked about working to follow and meet the ends and the purposes of our committees. Clearly, we have heard words like hypocrisy and sham and all types of a mode of language today. It certainly doesn't help us get our job done here.

I would hope that with the jurisdiction that this committee has, we do have oversight of this issue. We need to go forward and see who is doing their job and who is not doing their job in this very focused issue of the recommendations made to the Attorney General and whether she takes those recommendations or not. We need to know what those recommendations are. We need to hear the testimony.

I think, certainly in my opinion, that the chairman of this committee has done what he has been counseled to do, especially in this last motion. It's something that certainly will probably come down to a partisan roll call vote. If that is the case, let's move on and take the vote. And to posture and to debate and to delay the purpose of this committee today is certainly not in anybody's best interest, whether you are the head of the FBI or you happen to be head of another committee in this Congress.

We need to move forward. We need to get this job done at hand. And to delay and to debate and to fluster about this certainly doesn't get the job done that we are here to do. So I would hope, Mr. Chairman, that we could take this vote as soon as possible and move forward.

Mr. WAXMAN. Would the gentleman yield?

Mr. HASTERT. I would be happy to yield to my friend from California.

Mr. WAXMAN. Before you go to the vote, and as you say perhaps on a party line basis, I would like to show you a clip of Senator Hatch, what he had to say on this issue because I think——

Mr. HASTERT. Let me reclaim my time. If you want to do that, I think you probably——

Mr. WAXMAN. I thought we maybe could avoid some of the further debate.

Mr. HASTERT. If that's the agreement, we will do that.

Mr. WAXMAN. I am not making an agreement on anybody's else's right, but I think it's important if we could see it.

Mr. HASTERT. I would yield to the gentleman.

Mr. BURTON. Let me just say that before you show the tape—and that is fine with me, I know it is not very long—I talked with Chairman Hyde yesterday. Chairman Hyde is supportive of what this committee is doing. He told me that in an unqualified way. He said that yesterday. I have talked to, or my staff has talked to former Attorneys General who concur with the actions that we are taking.

So while I have great respect for the chairman of the Senate Judiciary Committee, Mr. Hatch, his view is not necessarily the only view. We do have Congressman Hyde. And we do have former Attorneys General that agree with the actions that we are taking. With that, I will yield back to the gentleman.

Mr. WAXMAN. If the gentleman would permit.

Mr. HASTERT. I would permit.

[Video shown.]

Mr. HASTERT. I reclaim my time. I would just like to say that certainly we have had the testimony from the gentleman from the other body. And they have their opinions and we have ours, and I think we need to move forward and I yield back my time.

Mr. BURTON. I would just like to say to the ranking minority member, I hope that did expedite this a little bit and maybe we can move on to the vote as quickly as possible.

Mr. Fattah I think is the next Member.

Mr. FATTAH. Thank you, Mr. Chairman. I will try to be as concise as possible. I will speak in opposition to the motion offered by the chairman. I think that the Senator and his comments, and also what we come to know of this whole matter, is that Janet Reno has not been averse to appointing independent counsels in the past in this administration. She has a view of the statute. It is the statute that was crafted by this Congress that gave her the ultimate decisionmaking in this matter. And I think that it is unfortunate that the recommendations of some of her top assistants and aides have become so public.

But nonetheless, if it is true that she met with you and she has asked for a few weeks, I think, given her service to this country, given the high esteem that the American public holds her in, that we would do a disservice to the reputation of this committee and to the Members thereon if we would act in a rash and what may seem to be reckless manner.

I know we have been accused of that as a committee in the past and I don't think that we should put ourselves in front of the Judiciary Committees in the House and in the Senate who have principal oversight responsibilities for the Justice Department, nor do I think that we should automatically assume that the Attorney General is not interested in aggressively pursuing these matters.

It is of note that there have been two major high-profile convictions with both jail and multimillion-dollar penalties assessed for illegal campaign contributions in the 1996 Presidential election, both of them in the matter of assisting the Republican Presidential campaign and campaign organizations. It is of note that the Republican National Committee has tried to withhold some 95 documents from the grand jury that the Justice Department has seated looking into this matter. So there seems to be some aggressiveness in the Justice Department looking for wrongdoing. Maybe it's not as partisan in its focus as this committee has been accused of in the past. They seem to be looking for people who are doing things that are illegal, irrespective of party. This committee has not found time to look at the Triad Management organization or any of the allegations relative to Republican wrongdoing. And I think that that's done a disservice to our reputation. I think favorable consideration to this motion would do further damage to this committee's representation.

Mr. WAXMAN. Would the gentleman yield?

Mr. FATTAH. I would be glad to yield.

Mr. WAXMAN. I thank you for yielding. I don't want this committee to be a committee out of control and recklessly careen into a confrontation with the Attorney General that is unnecessary. The

only thing I ask that our Republican colleagues do is to consider the words and actions of Senator Hatch; at least, in the spirit of comity, give the Attorney General a chance to make a reasonable decision before you criticize her. She ought to decide the issue first.

And I just think it's important to note that the chairman of this committee strong-armed and tried to intimidate the Attorney General. That's an abuse of power. Let's get on the right track and let Senator Hatch be the model for this committee and the committee's actions. And I urge my Republican colleagues to defeat this motion. I thank you for yielding.

Mr. BURTON. Does the gentleman yield back the balance of his time? Does the gentleman, Mr. Fattah, do you yield back the balance of your time?

Mr. FATTAH. Absolutely.

Mr. SCARBOROUGH. Mr. Chairman.

Mr. BURTON. Mr. Scarborough.

Mr. SCARBOROUGH. Just a couple of comments. I can't help but think it's dèjá vu all over again when I hear the, quotes, "committee out of control," "abuse of power," "strong-arm tactics." These were the exact terms that were used several years ago when Bill Clinger was chairman of this committee and we tried to get some information from the White House. The exact terms being used.

What we found out after we got those documents, when we had to threaten contempt charges, was that this White House illegally seized 900 FBI files of its political enemies. I mean, we have been there; we have done that. I heard every Member on the Democratic side make the same arguments, though they voted unanimously to stop us from getting the information that led to the trail that helped us uncover the 900 FBI files being seized. And yet we hear about strong-arm tactics. The ranking member, whom I have respect for, said that these are the worst strong-arm tactics he's ever seen. Mr. Chairman, I suppose you should be docile like former Chairman Dingell, Jack Brooks, Dan Rostenkowski and the like.

Also we hear about the high reputation for Ms. Reno. The New York Times recently editorialized that her chief legacy could be obstructing justice, quote, "in the most serious fund-raising scandal since Watergate." I don't know that she's held in high esteem across the country on editorial boards on the left or the right on this matter. I think you would have to reach very far to find an editorial board that agrees with her. I also think you would have to reach a long, long distance to try to find—maybe up in Vermont you might be able to find an editorial board that would cite a moral equivalency between Republican fund-raising abuses of 1996 and the Democratic fund-raising abuses of 1996. That's also quite a stretch.

I think, like my friend from Indiana has said before, history will not be friendly to those who continue to stand in the way of these investigations, and have continued to since we tried to get FBI file information several years ago under Bill Clinger's leadership, and are now trying to get to the bottom of what the New York Times calls the most serious fund-raising scandal since Watergate. And I don't think, like the New York Times said, history will be very kind to Ms. Reno either.

I am glad that my Democratic friends do think that we should follow the leadership of Chairman Hatch, who said 1 week ago on one of these Sunday talk shows, that if Ms. Reno didn't step forward and appoint this independent counsel, then she may be forced to resign.

With that, I yield to the gentleman from Indiana.

Mr. BURTON. Let me just say when new information comes to the Attorney General regarding an independent counsel, I think the statute says she is supposed to make a decision within 30 days. She has had well over 2 weeks now since the La Bella memo got to her and maybe a little bit more than 2 weeks, maybe 3 weeks. She is asking for 3 more weeks. We should make it 6 weeks. We'll be out of session for 2 weeks after that, which makes it 8 weeks. So we are looking at the earliest that Congress can take any action, 9 weeks.

The concern that I have had from day one when the investigation started was the White House and everybody concerned with this investigation on the other side has been dragging it out, dragging it out, and dragging it out. You know, she can make her decision. She can make her decision if she chooses to do so.

What we are talking about today is a contempt citation because she is not obeying a subpoena, a legal subpoena that has legal precedent, from the Congress of the United States. That's what we are talking about. I thank the gentleman for yielding.

Mr. HASTERT. Would the gentleman yield just for a second, just for a bit of perspective? We saw the videotape from our friend from the Senate. But you know, you need to put the Senate in perspective, in good humor. The same chairman that we just had, which is a good friend of mine, has been sitting on the drug czar reauthorization for over a year before they moved that bill up. I think they run on 6-year terms. I mean, their time is a relative thing. It's different from how we see time here.

And you know, I just think we need to move forward and do the business of the House. It's different from the business of the Senate. And let's do it in a reasonable way so that we can move forward and get things done.

I yield back to the gentleman from Florida.

Mr. BURTON. The gentleman yields back the balance of his time. Could we just take one more person, and then vote on this?

Mr. TIERNEY. I am the one more person.

Mr. BURTON. I yield to the gentleman.

Mr. TIERNEY. Mr. Chairman, I think Mr. Mica had it right when he said this is a serious action that you are asking us to consider, and it should be seriously considered by this committee.

I don't think that showing us a letter that was dated yesterday and made available to us today is actually giving us the opportunity to take seriously this action. And seriously consider, particularly when in that letter you assert that the majority members of the committee have come to a conclusion that you believe you have arrived at, when I'm not aware of any vote of this committee establishing that.

Given the comments of Mr. Waxman and the two underlying letters that you and he have exchanged and an attempt by the Chair to obtain a vote on the letter based on yesterday, I think is pre-

mature, and it doesn't give this committee the opportunity . should.

But, beyond that, talking about comity and talking about giving people in the executive branch the opportunity to conduct their business even within the time they're allotted, you are trying to move forward and shorten up the 30 days that the Attorney General would ordinarily have to make a decision on this.

I have great concern and I think the committee should be concerned, that we may be interfering with the exercise of her discretion and the consideration of the advice and the facts before her. She has asked for 3 weeks to review a 100-page legal document and the FBI Director's previous memorandum. Chairman Hyde and Senator Hatch, the operative committees, believe that is reasonable. It doesn't seem to me that we are asking anything unreasonable to be saying she should be given that deference in view of her position and in view of the seriousness and importance of this matter.

I suspect that we should do that, and we should not be put in the position of, by surprise, voting on a presumption that you probably improperly made or, I would suggest, inaccurately made in your letter trying to verify or ratify those incorrect conclusions.

Mr. Chairman, I would move that we lay upon the table your motion.

Mr. BURTON. The motion has been made.

Mr. SHAYS. I move to table the motion.

Mr. BURTON. Do you move to table the tabling motion? I don't think that's—the motion made by Mr. Tierney to lay the motion I have made on the table is nondebatable.

All those in favor of Mr. Tierney's motion will signify by saying aye.

Those opposed will signify by saying no.

In the opinion of the Chair, the noes have it.

Mr. TIERNEY. I would ask for a roll call vote, Mr. Chairman.

I will withdraw that. Apparently the ranking member can count.

Mr. BURTON. The question now comes on the motion made by the Chair.

All those in favor will signify by saying aye.

Mr. WAXMAN. On this, we need to have a roll call.

Mr. BURTON. Just 1 second.

All those in favor, signify by saying no.

Those opposed.

In the opinion of the Chair, the ayes have it.

The gentleman from California.

Mr. WAXMAN. Roll call vote.

Mr. BURTON. Request a roll call vote, and a roll call vote will be granted. The clerk will call the roll.

The CLERK. Mr. Burton.

Mr. BURTON. Aye.

The CLERK. Mr. Burton votes aye.

Mr. Gilman.

[No response.]

The CLERK. Mr. Hastert.

Mr. HASTERT. Aye.

The CLERK. Mr. Hastert votes aye.

Mrs. Morella.
Mrs. MORELLA. Aye.
The CLERK. Mrs. Morella votes aye.
Mr. Shays.
Mr. SHAYS. Aye.
The CLERK. Mr. Shays votes aye.
Mr. Cox.
[No response.]
The CLERK. Ms. Ros-Lehtinen.
Ms. ROS-LEHTINEN. Aye.
The CLERK. Ms. Ros-Lehtinen votes aye.
Mr. McHugh.
Mr. MCHUGH. Aye.
The CLERK. Mr. McHugh votes aye.
Mr. Horn.
Mr. HORN. Aye.
The CLERK. Mr. Horn votes aye.
Mr. Mica.
Mr. MICA. Aye.
The CLERK. Mr. Mica votes aye.
Mr. Davis of Virginia.
Mr. DAVIS OF VIRGINIA. Aye.
The CLERK. Mr. Davis of Virginia votes aye.
Mr. McIntosh.
Mr. MCINTOSH. Aye.
The CLERK. Mr. McIntosh votes aye.
Mr. Souder.
Mr. SOUDER. Aye.
The CLERK. Mr. Souder votes aye.
Mr. Scarborough.
Mr. SCARBOROUGH. Aye.
The CLERK. Mr. Scarborough votes aye.
Mr. Shadegg.
Mr. SHADEGG. Aye.
The CLERK. Mr. Shadegg votes aye.
Mr. LaTourette.
Mr. LATOURETTE. Aye.
The CLERK. Mr. LaTourette votes aye.
Mr. Sanford.
Mr. SANFORD. Aye.
The CLERK. Mr. Sanford votes aye.
Mr. Sununu.
Mr. SUNUNU. Aye.
The CLERK. Mr. Sununu votes aye.
Mr. Sessions.
Mr. SESSIONS. Aye.
The CLERK. Mr. Sessions votes aye.
Mr. Pappas.
[No response.]
The CLERK. Mr. Snowbarger.
Mr. SNOWBARGER. Aye.
The CLERK. Mr. Snowbarger votes aye.
Mr. Barr.
Mr. BARR. Aye.

The CLERK. Mr. Barr votes aye.
Mr. Miller.
Mr. MILLER. Aye.
The CLERK. Mr. Miller votes aye.
Mr. Lewis.
Mr. LEWIS. Aye.
The CLERK. Mr. Lewis votes aye.
Mr. Waxman.
Mr. WAXMAN. No.
The CLERK. Mr. Waxman votes no.
Mr. Lantos.
Mr. LANTOS. No.
The CLERK. Mr. Lantos votes no.
Mr. Wise.
[No response.]
The CLERK. Mr. Owens.
Mr. OWENS. No.
The CLERK. Mr. Owens votes no.
Mr. Towns.
[No response.]
The CLERK. Mr. Kanjorski.
[No response.]
The CLERK. Mr. Condit.
[No response.]
The CLERK. Mr. Sanders.
Mr. SANDERS. No.
The CLERK. Mr. Sanders votes no.
Mrs. Maloney.
[No response.]
The CLERK. Mr. Barrett.
Mr. BARRETT. No.
The CLERK. Mr. Barrett votes no.
Ms. Norton.
Ms. NORTON. No.
The CLERK. Ms. Norton votes no.
Mr. Fattah.
Mr. FATTAH. No.
The CLERK. Mr. Fattah votes no.
Mr. Cummings.
Mr. CUMMINGS. No.
The CLERK. Mr. Cummings votes no.
Mr. Kucinich.
Mr. KUCINICH. No.
The CLERK. Mr. Kucinich votes no.
Mr. Blagojevich.
Mr. BLAGOJEVICH. No.
The CLERK. Mr. Blagojevich votes no.
Mr. Davis of Illinois.
Mr. DAVIS OF ILLINOIS. No.
The CLERK. Mr. Davis of Illinois votes no.
Mr. Tierney.
Mr. TIERNEY. No.
The CLERK. Mr. Tierney votes no.
Mr. Turner.

Mr. TURNER. No.
The CLERK. Mr. Turner votes no.
Mr. Allen.
Mr. ALLEN. No.
The CLERK. Mr. Allen votes no.
Mr. Ford.
Mr. FORD. No.
The CLERK. Mr. Ford votes no.
Mr. Gilman.
[No response.]
The CLERK. Mr. Cox.
Mr. COX. Aye.
The CLERK. Mr. Cox votes aye.
Mr. Pappas.
Mr. PAPPAS. Aye.
The CLERK. Mr. Pappas votes aye.
Mr. Wise.
[No response.]
The CLERK. Mr. Towns.
[No response.]
The CLERK. Mr. Kanjorski.
[No response.]
The CLERK. Mr. Condit.
[No response.]
The CLERK. Mrs. Maloney.
[No response.]
Mr. BURTON. The clerk will report the tally.
The CLERK. Mr. Chairman, there are 23 ayes and 15 nays.
Mr. BURTON. The motion has carried. We will now move to the witnesses that we have to appear before us today. Would you ask the witnesses to come in, please?

I want to welcome my good friend Louis Freeh and Mr. La Bella and Mr. DeSarno. I apologize for keeping you waiting. I hope the people in the back treated you well and brought you a Coke or something. So I apologize for the length of your wait. Before we ask you to be sworn in, I would like to make an opening statement and I presume Mr. Waxman will as well.

Today, we are meeting for the second time in 8 months to review Attorney General Janet Reno's handling of the independent counsel law. Over the last 8 months, the two Justice Department officials who are closest to the investigation of illegal fund-raising have told the Attorney General that she must appoint an independent counsel. To date, she has stubbornly refused. Last November, FBI Director Louis Freeh wrote a 27-page memo urging Ms. Reno to appoint an independent counsel. In his own words, he said, quote, It is difficult to imagine a more compelling situation for appointing an independent counsel, end quote.

Louis Freeh is not just another face in the crowd. He is a former FBI agent. He is a former Federal prosecutor. He is a former Federal judge. And Attorney Janet Reno dismissed his advice. Two weeks ago, Assistant U.S. Attorney Charles La Bella again urged Janet Reno to appoint an independent counsel. He has run the Task Force investigation of foreign money in our elections for the last 10 months. Janet Reno handpicked Mr. La Bella for his job be-

cause of his sparkling credentials and his reputation as an outstanding prosecutor. I can't think of anyone in America who is in a better position to know the facts.

Now Mr. La Bella wrote the Attorney General a detailed 120-page report with 55 exhibits, explaining why an independent counsel is needed. According to the press, Mr. La Bella's memo makes the case that this investigation goes to the highest levels of the White House. The Wall Street Journal reported yesterday that Mr. La Bella's report focuses heavily on Harold Ickes, the former Deputy White House Chief of Staff. Let me quote what one senior Government official told the Wall Street Journal. Quote, It's not exactly that we presented her with a smoking gun, but she showed her significant threads of evidence that went right into the White House and to the upper levels of the Democrat National Committee, end quote.

Two weeks have gone by and there is absolutely no sign that the Attorney General has budged an inch. The press has reported that the FBI agent in charge of the Task Force, James DeSarno, also believes that an independent counsel should be appointed. I don't know if this is true or not, but Mr. DeSarno is here today and we are going to ask him.

So let's look at what we have. The 12 career law enforcement officials, and maybe 3 with the most extensive knowledge of this case, have urged the Attorney General to seek an independent counsel. They have both told her that criminal conduct in this case could go all the way to the highest levels of the White House. And Janet Reno has stood like Horatius at the bridge and refused to move this investigation out of the Justice Department. It looks to me like the Attorney General is ignoring the advice of the career professionals running this investigation. It looks to me like she is only listening to the political appointees that have surrounded her. Time and again we are seeing career professionals being ignored. We are seeing long memos written. We are seeing details from these memos showing up in the newspapers again and again. And let's be honest here, these aren't memos, these are cries for help. The sad thing is it should never have gotten to this point. It is painfully obvious that you cannot investigate your own boss. The Attorney General cannot credibly investigate the President who appointed her.

Look at how the same situation was handled during the Reagan administration. When Iran Contra came to light in the fall of 1996, within 1 month Attorney General Meese applied for an independent counsel. And the President, President Reagan, publicly asked him to do so.

Now look at the same situation and how it's handled in the Clinton administration. The Attorney General has blocked an independent counsel for over a year and a half. The President remains silent. FBI Director Louis Freeh recommended an independent counsel, and she rejected him out of hand. When Director Freeh's memo came to light, he was greeted with a smear campaign from the White House and anonymous aides of the President sniping at him in the press. That's just shameful.

Look at the list of people who have called for an independent counsel: President Jimmy Carter, Senator Daniel Patrick Moy-

nihan, Senator Russell Feingold. And the ranking member of this committee, Mr. Waxman, called for an independent counsel over a year ago. Former Deputy Attorney General Philip Heymann called for an independent counsel. He was quoted in the press as saying that he served in seven administrations and that he had never seen a Justice Department so dominated by the White House.

I will tell you what it looks like to me—and I think it looks this way to a lot of people—it looks like to me that the Attorney General is trying to protect the President. As everyone knows by now, I have issued a subpoena for the Freeh memo and the La Bella memo. The Attorney General has refused to comply, even though the subpoena clearly states that grand jury evidence can be removed.

Yesterday, I filed a contempt report, and I have scheduled a committee meeting for Thursday morning to consider a resolution of contempt for failure to turn over subpoenaed documents to Congress. We have talked to some former Attorneys General who concur with our thinking.

The Department has said that it is their longstanding policy not to provide materials on open cases to Congress. In most cases, that's probably a pretty good policy. However, as a matter of law, Congress' needs in exercising oversight of the executive branch outweigh any agency's internal policies. The only alternative to complying with the lawful congressional subpoena is to claim executive privilege, and that has not happened.

It has been said that this subpoena is unprecedented. I have been told that the Justice Department has never turned over material like this before. Now, that is wrong. That is flat-out wrong.

I ask unanimous consent to enter into the record a study prepared by the Congressional Research Service. In this study, you will see a litany of instances in which the Justice Department was required to turn over even more extensive materials to the Congress. The list stretches as far back as the Teapot Dome scandal in the twenties. Similar documents were turned over to Congress during the investigation of Billy Carter's ties to Libya. Similar information was turned over to Congress during the ABSCAM investigation. During the Iran Contra investigation, the House and Senate Iran Contra committees which were controlled by the Democrats ordered the Justice Department to turn over all of its files about Attorney General Meese's preliminary investigation. The Justice Department objected, but Congress prevailed.

So it is clear to see that this subpoena to turn over two memos is far from unprecedented. It is clear that when wrongdoing has been alleged at the Department of Justice, Congress has an obligation to investigate. And Congress has received exactly this kind of information before. Under normal circumstances, I probably wouldn't ask the Justice Department to turn over this kind of information. But these are not normal circumstances.

Let's take a minute to review what's happened. Last December, Director Freeh testified before this committee that he believed that both sections of the Independent Counsel Act had been triggered—discretionary and mandatory. In other words, he believed that the Department had received specific and credible information about covered individuals and that she had to appoint an independent

counsel under the law. According to what we read in the press, Mr. La Bella's memo again states that both the discretionary and mandatory provisions in the law have been triggered.

According to the New York Times, Mr. La Bella concluded that the Attorney General has created an artificially high standard of evidence to avoid triggering the law. This is pretty shocking. If the Director of the FBI says the Attorney General must apply for the independent counsel under the mandatory provisions of the law, and if he is correct, and if the prosecutor who runs the Task Force says she must apply for an independent counsel under the mandatory provisions of the law. And if he is correct, then this is not just a case of bad judgment. If this is true, then the Attorney General of the United States is breaking the law. If the Attorney General is not obeying the law, then the Congress and the American people have a right to know it. And we have an obligation to get the facts. That is why we need these memos.

I know that when Director Freeh and Mr. La Bella testify today, they will say they do not want Congress to have these memos. I understand their concerns. They are institutional concerns. And I respect them. But I have to say that we have an unprecedented situation here. We have never seen a situation like this in which an Attorney General has refused repeated pleas from her professional advisors to appoint an independent counsel. In this situation, Congress has an obligation to conduct oversight. The legitimate needs of Congress must take precedence over the institutional concerns of any agency.

So I respect the concerns of Mr. Freeh and Mr. La Bella, but the committee has an obligation to pursue this matter. It is inexcusable that the newspapers know more about these memos than the members of this committee. The Attorney General has to follow the law and she has to respect the lawful authority of Congress.

When the gentleman from California makes his opening statement in a minute, he is going to say that I strong-armed the Attorney General last week. In fact, he's already said that. He is going to tell everyone that I threatened to hold her in contempt if she does not appoint an independent counsel. I feel a little bit like Yogi Berra when he said, "This is dèjá vu all over again." Every time things get a little heated around here, I get attacked by somebody. Well let's set the record straight.

First, I issued the subpoena for the Freeh and La Bella memos, nothing else.

Second, the Attorney General has refused to comply with the subpoena despite the fact that it clearly states that grand jury material can be redacted, crossed out.

Third, this committee will vote on a resolution of contempt this Thursday, solely because the Attorney General refused to turn over the documents, period. End of story. Everything else is just heated rhetoric.

Now the Attorney General has asked us to give her 3 more weeks while she reviews this memo. Because the August recess is approaching and because the session will wind down very quickly when we return, I am not willing to let this matter sit for long.

Given Ms. Reno's track record, I am very skeptical she is going to change her mind. I quote the Washington Post from July 24th,

"'Janet Reno appears no closer to supporting such an outside probe than when the idea was first suggested 21 months ago,' Justice Department officials said yesterday."

I quote the New York Times from July 23rd, "There was no indication today that the Attorney General seemed likely to reconsider her position in any of these instances."

This subpoena is not unprecedented. It is necessary and it is proper. The Attorney General knows that any grand jury information may be deleted from the memo. We don't want grand jury information. All we want are the reasons Director Freeh and Mr. La Bella told the Attorney General why they told her she should appoint an independent counsel. The Justice Department has an obligation to comply with lawful congressional subpoenas, and we have an obligation to hold them to that standard unless they claim executive privilege, which has not taken place.

Let me conclude by quoting a short passage from a New York Times editorial from July 23rd. I think it says it all about the importance of this issue and why Congress cannot sit idly by. Quote, . . . that two people in the American Government who know most about this case, the lead prosecutor and the top investigator, are convinced that the trail of potentially illegal money leads so clearly toward the White House that Ms. Reno cannot under Federal law be allowed to supervise the investigation of her own boss. When it comes to campaign law, this is the most serious moment since Watergate, end quote.

I look forward to hearing from our witnesses today and I yield to my colleague from California.

[The Congressional Research Service report referred to follows:]

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December 5, 1997

TO : House Committee on Government Reform and Oversight
Attention: Will Moschella

FROM : American Law Division

SUBJECT : Selected Congressional Investigations of the Department of Justice Since 1920

You have asked that we compile instances of congressional investigations of the Department of Justice which involved both open and closed investigations in which the Department agreed to supply documents pertaining to those investigations, including litigation memoranda and correspondence, and to provide Department line attorneys and investigative personnel for staff interviews and for testimony before committees. In response, we submit the following.

In addition, due to the short deadline for this request, we were unable to include in the compilation a summary of the most significant recent investigation of the Department, by the House Committee on Energy and Commerce between 1992 and 1994 involving the Department's Enviromental Crimes Section, during which numerous investigative material and line attorneys and other investigative personnel were provided to the Committee. A full recounting of the history and accomplishments of that inquiry may be found in "Damaging Disarray: Organizational Breakdown and Reform in the Justice Department's Enviromental Crimes Program", Staff Report for the House Subcommittee on Oversight and Investigations, Committee on Energy and Commerce (Committee Print No. 103-T, December 1994).

Palmer Raids

In 1920 and 1921, investigations were held in the Senate and House into the so-called "Palmer raids" in which, under the direction of Attorney General A. Mitchell Palmer, thousands of suspected Communists and others allegedly advocating the overthrow of the government were arrested and deported. See Charges of Illegal Practices of the Department of Justice: Hearings Before a Subcommittee of the Senate Committee on the Judiciary, 66th Congress, 3d Session (1921)(hereinafter "Senate Palmer Hearings"); Attorney General A. Mitchell Palmer on Charges Made Against Department of Justice by Louis F. Post and Others: Hearings Before the House Committee on Rules, 66th Congress, 2d Session (1920)(hereinafter "House Palmer Hearings"). Attorney

General Palmer, accompanied by his Special Assistant, J. Edgar Hoover, during three days of testimony at the Senate hearings discussed the details of numerous deportation cases, including cases which were on appeal. Senate Palmer Hearings at 38-98, 421-86, 539-63. House Palmer Hearings at 3-209. In support of his testimony, Palmer provided the Subcommittee with various Department memoranda and correspondence, including Bureau of Investigation reports concerning the deportation cases. *E.g.*, Senate Palmer Hearings at 431-43, 458-69, 472-76. Among the materials provided were the Department's confidential instructions to the Bureau outlining the procedures to be followed in the surveillance and arrest of the suspected Communists, *id.* at 12-14, 18-19, and a lengthy "memorandum of comments and analysis" prepared by one of Palmer's special assistants, which responded to a District Court opinion, at the time under appeal, critical of the Department's actions in these deportation cases, *id.* at 484-538.

Teapot Dome

Several years later, the Senate conducted an investigation of the Teapot Dome Scandal. While the Senate Committee on Public Lands and Surveys focused on the actions of the Department of the Interior in leasing naval oil reserves, a Senate select committee was constituted to investigate "charges of misfeasance and nonfeasance in the Department of Justice," *McGrain v. Daugherty*, 273 U.S. 135, 151 (1927), in failing to prosecute the malefactors in the Department of the Interior, as well as other cases. Investigation of Hon. Harry M. Daughtery, Formerly Attorney General of the United States: Hearings Before the Senate Select Committee on Investigation of the Attorney General, vols. 1-3, 68th Congress, 1st Session (1924). The select committee heard from scores of present and former attorneys and agents of the Department and its Bureau of Investigation, who offered detailed testimony about specific instances of the Department's failure to prosecute alleged meritorious cases. Not all of the cases upon which testimony was offered were closed, as one of the committee's goals in its questioning was to identify cases in which the statute of limitations had not run out and prosecution was still possible. *See, e.g., id.* at 1495-1503, 1529-30, 2295-96.

The committee also obtained access to Department documentation, including prosecutorial memoranda, on a wide range of matters. However, although Attorney General Daugherty had promised cooperation with the committee, and had agreed to provide access to at least the files of closed cases, *id.* at 1120, such cooperation apparently was not forthcoming, *id.* at 1078-79.

In two instances immediately following Daugherty's resignation, the committee was refused access to confidential Bureau of Investigation investigative reports pending the appointment of a new Attorney General who could advise the President about such production, *id.* at 1015-16 and 1159-60, though witnesses from the Department were permitted to testify about the investigations that were the subject of the investigative reports and even to read at the hearings from the investigative reports. With the appointment of the new Attorney General, Harlan F. Stone, the committee was granted broad access to Department files. Committee Chairman Smith Brookhard remarked that "[Stone] is furnishing us with all the files we want, whereas the former Attorney General, Mr. Daugherty, refused nearly all that we asked." *Id.* at 2389. For

example, with the authorization of the new Attorney General, an accountant with the Department who had led an investigation of fraudulent sales of property by the Alien Property Custodian's office appeared and produced his confidential reports to the Bureau of Investigation. The reports described the factual findings from his investigation and his recommendations for further action, and included the names of companies and individuals suspected of making false claims. The Department had not acted on those recommendations, though the cases had not been closed. *Id.* at 1495-1547. A similar investigative report, concerning an inquiry into the disappearance of large quantities of liquor under the control of the Department during the prior administration of President Harding, was also produced. *Id.* at 1790.

As part of its investigation, the select committee issued a subpoena for the testimony of Mally S. Daugherty, the brother of the Attorney General. After Mally Daugherty failed to respond to the subpoena, the Senate sent its Deputy Sergeant at Arms to take him into custody and bring him before the Senate. Daugherty petitioned in federal court for a writ of *habeas corpus*, arguing that the Senate in its investigation had exceeded its constitutional powers. The case ultimately reached the Supreme Court, where, in a landmark decision, *McGrain v. Daugherty*, 273 U.S. 135 (1927), the Court upheld the Senate's authority to investigate these charges concerning the Department:

> [T]he subject to be investigated was the administration of the Department of Justice--whether its functions were being properly discharged or were being neglected or misdirected, and particularly whether the Attorney General and his assistants were performing or neglecting their duties in respect of the institution and prosecution of proceedings to punish crimes and enforce appropriate remedies against the wrongdoers--specific instances of alleged neglect being recited. Plainly the subject was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit.

273 U.S. at 177.

In another Teapot Dome case that reached the Supreme Court, *Sinclair v. United States*, 279 U.S. 263 (1929), a different witness at the Congressional hearings refused to provide answers, and was prosecuted for contempt of Congress. The witness had noted that a lawsuit had been commenced between the government and the Mammoth Oil Company, and declared, "I shall reserve any evidence I may be able to give for those courts... and shall respectfully decline to answer any questions propounded by your committee." *Id.* at 290. The Supreme Court upheld the witness' conviction for contempt of Congress. The Court considered and rejected in unequivocal terms the witness's contention

that the pendency of lawsuits gave an excuse for withholding information. Neither the laws directing that such lawsuits be instituted, nor the lawsuits themselves, "operated to divest the Senate, or the committee, of power further to investigate the actual administration of the land laws." *Id.* at 295.

The Court further explained: "It may be conceded that Congress is without authority to compel disclosure for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits." *Id.* at 295.

Investigations of DOJ During The 1950's

In 1952, a special House subcommittee was constituted to conduct an inquiry into the administration of the Department of Justice. The subcommittee conducted a lengthy investigation from 1952 to 1953, developing thousands of pages of testimony on a range of allegations of abuses and inefficiencies in the Department. Investigations of the Department of Justice: Hearings Before the Special Subcommittee to Investigate the Department of Justice of the House Committee on the Judiciary, parts 1 and 2, 82d Congress, 2d Session (1952), parts 1 and 2, 83d Congress, 1st Session (1953)(hereafter "DOJ Investigation Hearings"). The subcommittee summarized its conclusions about its inquiries during the 82d Congress in Investigation of the Department of Justice, H.R. Rep. No. 1079, 83d Congress, 1st Session (1953)(hereinafter "DOJ Investigation Report"). Among the subjects of inquiry considered during these hearings were the following:

1. Grand Jury Curbing

Extensive testimony was heard about a charge that the Department had attempted improperly to curb a grand jury inquiry in St. Louis into the failure to enforce federal tax fraud laws. After taking testimony in executive session from one witness, the subcommittee suspended its hearings on this subject pending the discharge of the grand jury. *Id.* at 753. The subcommittee resumed its hearings several months later, at which time testimony was taken from the former Attorney General, a former Assistant Attorney General, the Chief of the appellate section of the Tax Division, and an Assistant U.S. Attorney. Several members of the St. Louis grand jury also testified before the subcommittee. In addition to intradepartmental correspondence, *see id.* at 1256-57, 1270-71, among the materials that the subcommittee reviewed and included in the public record were transcripts of telephone conversations between various Department attorneys concerning the grand jury investigation. *Id.* at 759-66.[1]

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[1] Other memoranda and documents from the Department were reviewed by the subcommittee and kept in its confidential files, for example, a letter of instruction from the Attorney General to the Department attorney that had been sent to St. Louis. *Id.*

(continued...)

The subcommittee's questions to the grand jurors focused on efforts by Department attorneys to prevent them from conducting a thorough investigation and on whether the grand jury had been pressured by those attorneys to issue a report absolving the government of impropriety in its handling of tax fraud cases. *Id.* at 766-808. Similar questions were asked of the present and former Department attorneys who testified, *id.* at 808-894, 1064-1117, 1256-1318, and at one point the subcommittee asked for, and an Assistant U.S. Attorney provided, the names of certain witnesses who had appeared before the grand jury. *Id.* at 811. Later that same year, the subcommittee examined similar charges of interference by the Department with another grand jury, which had been investigating Communist infiltration of the United Nations. The subcommittee received testimony from a number of grand jurors and Department attorneys, including then Criminal Division attorney Roy Cohn. *Id.* at 1653-1812. The subcommittee's chief counsel again cautioned that "[t]he sanctity of the grand jury as a process of American justice must be protected at all costs," and stated that the subcommittee was seeking information solely relating to attempts to delay or otherwise influence the grand jurors' deliberations, not which would reveal the actual testimony of witnesses appearing before them. *Id.* at 1579-80.

2. Prosecution of Routine Cases

Attorney General McGrath resigned in April 1952, in part in response to the evidence uncovered by the subcommittee of corruption in the Department, particularly in the Tax Division. As a result of the replacement of McGrath by James P. McGranery, and the Administration's concern about these reports of corruption, the subcommittee observed "a new and refreshing attitude of cooperation which soon appeared at all levels in the Department of Justice." DOJ Investigation Report at 69. The subcommittee declared that "its work has been limited only by the capacity of its staff to digest the sheer volume of available fact and documentary evidence relating to the Department's work. Everything that has been requested has been furnished, including file materials and administrative memoranda which had previously been withheld." *Id.*

For example, in investigating charges that the Department was often dilatory in its handling of routine cases, the subcommittee staff undertook a detailed analysis of a number of cases in which delay was alleged to have occurred. To demonstrate publicly the nature of this problem, the subcommittee chose a procurement fraud case that had been recently closed, and conducted a "public file review" of the case at a subcommittee hearing. Attorneys from the Department at the hearing went document by document through the Department's file in the case. DOJ Investigative Hearings (82d Congress) at

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[1](...continued)
at 890. In addition, the district court judge that had convened the grand jury gave the subcommittee permission to use the notes of the U.S. Attorney in St. Louis and of one of the grand jurors, with all names deleted. *Id.* The judge also submitted a deposition to the subcommittee about the Department's interference with the grand jury. *Id.* at 891-93.

895-964. The subcommittee was granted access to all of the documentation collected in the case, with the exception of confidential FBI reports which the subcommittee had agreed not to seek. However, certain FBI communications from the FBI to the Department concerning the prosecution of the case were provided. *Id.* at 897.

3. New York City Police Brutality

During the 83d Congress, the subcommittee turned to allegations that the Criminal Division has entered into an agreement with the New York City Police Department not to prosecute instances of police brutality by New York police officers that might be violations of federal civil rights statutes. The subcommittee stated that its purpose was not to inquire into the merits of particular cases, only to ascertain whether such an arrangement had been entered into between the Justice Department and the New York City police. DOJ Investigation Hearings (83d Congress) at 26.

Department witnesses included a former Attorney General, several present and former Assistant Attorneys General, as well as other Department attorneys and FBI agents. *Id.* at 25-294. The substance of earlier meetings between Department officials and the New York City Police Commissioner in which this arrangement was allegedly agreed to was probed in depth. Although questions concerning the merits of specific cases were avoided, the subcommittee obtained from these witnesses a chronology of the Department's actions in a number of cases. The subcommittee received Department memoranda and correspondence, as well as telephone transcripts of the intradepartmental conversations of a United States Attorney. *Id.* at 62-63, 233-34, 239-41, 258-59, 262, 269-73.

Investigation of Consent Decree Program

In 1957 and 1958, the Antitrust Subcommittee of the House Judiciary Committee conducted an inquiry into the negotiation and enforcement of consent decrees by the Antitrust Division, and their competitive effect, with particular emphasis on consent decrees that had been recently entered into with the oil-pipeline industry and AT&T. See Consent Degree Program of the Department of Justice: Hearings before the Antitrust Subcomm. (Subcomm. No. 5) of the House Comm. on the Judiciary, parts I & II, 85th Cong., 1st & 2d Sess. (1957-58)(hereafter "Consent Decree Hearings"); Antitrust Subcomm. (Subcomm. No. 5), 86th Cong., 1st Sess., Report on Consent Decree Program of the Department of Justice (Comm. Print 1959)(hereafter "Consent Decree Report"). The subcommittee developed a 4492 page hearing record, holding seventeen days of hearings on the AT&T consent decree and four days of hearings on the oil pipeline consent decree.

The subcommittee experienced what it viewed as a lack of cooperation from the Department throughout its investigation, stating that "[t]he extent to which the Department of Justice went to withhold information from the committee in this investigation is unparalleled in the committee's experience." Consent

Decree Report at xiii. With respect to the AT&T consent decree, DOJ unconditionally refused to make available to the subcommittee information from its files of that case. The subcommittee's chairman initially had written the Attorney General, requesting that he make available "all files in the Department of Justice relating to the negotiations for, and signing of, a consent decree in this case." Consent Decree Hearings at 1674.

Deputy Attorney General William P. Rogers asserted two grounds to support the Department's refusal to provide the subcommittee with such access. First, that the files contained information voluntarily submitted by AT&T in the course of consent decree negotiations. Rogers wrote the subcommittee chairman that "[w]ere [the files] made available to your subcommittee, this Department would violate the confidential nature of settlement negotiations and, in the process, discourage defendants, present and future, from entering into such negotiations." *Id.* at 1674-75. In a later letter, the head of the Antitrust Division, Victor Hansen, added that "[t]hose considerations which require that the Department treat on a confidential basis communications with a defendant during consent decree negotiations also apply to the enforcement of a decree." *Id.* at 3706.

The second reason given by Rogers for the Department's refusal to provide the subcommittee access to the AT&T files was that they contained memoranda and recommendations prepared by staff of the Antitrust Division, and the "essential process of full and flexible exchange might be seriously endangered were staff members hampered by the knowledge they might at some later date be forced to explain before Congress intermediate positions taken." *Id.* at 1675. Rogers stated that this action was being taken in accordance with in an earlier directive from the President to the Department to that effect, which provided:

> Because it is essential to efficient and effective administration that employees of the executive branch be in a position to be completely candid in advising with each other on official matters, and because it is not in the public interest that any of their conversations or communications, or any documents or reproductions, concerning such advice be disclosed, you will instruct employees of your Department that in all of their appearances before [congressional] committees not to testify to any such conversations or communications or to produce any such document or reproductions. This principle must be maintained regardless of who would be benefitted by such disclosures.

Id.

The subcommittee in its final report asserted that the "Attorney General refused access to the files of the Department of Justice primarily in order to

prevent disclosure of facts that might prove embarrassing to the Department." Consent Decree Report at 42. The subcommittee further concluded that such withholding had "materially hampered the committee's investigation." However, it may be noted that the subcommittee was ultimately able to obtain much of the material concerning the AT&T consent decree that DOJ refused to provide directly from AT&T itself. *Id.*

The Department was, however, somewhat more forthcoming in permitting testimony of its attorneys about the AT&T consent decree. For example, the head of the Antitrust Division instructed two Division attorneys who had dissented from the decision to enter into the AT&T consent decree and had been called to testify before the subcommittee that "we do not at the present time think it appropriate...to...assert any privilege on behalf of the Department with regard to any information within [your] knowledge which is relevant to the negotiations of the decree in the Western Electric case." Consent Decree Hearings at 3647. These two attorneys later testified about those negotiations, including their reasons for differing with the Department's decision to enter into the consent decree. *Id.* at 3711-44.

Cointelpro and Related Investigations of FBI-DOJ Misconduct

Over the period 1974-1978, Senate and House committees examined the intelligence operations of a number of federal agencies, including the domestic intelligence operations of the FBI and various units of the Justice Department such as the Interdivision Information Unit. See S. Rep. No. 755, Books 1-3, 94th Cong., 2d Sess. (1976)(hereafter "Senate Intelligence Report"); Intelligence Activities, Senate Resolution 21: Hearings Before the Senate Select Comm. to Study Governmental Operations with Respect to Intelligence Activities, vols. 1-6, 94th Cong., 1st Sess. (1975)(hereafter "Senate Intelligence Hearings"); FBI Oversight: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. of the Judiciary, parts 1-3, 94th Cong., 1st & 2d Sess. (1975-1976), parts 1-2, 95th Cong., 1st & 2d Sess. (1978)(hereafter "House FBI Hearings"). A select Senate committee examined 800 witnesses: 50 in public session, 250 in executive sessions and the balance in interviews. Senate Intelligence Report, Book II, at ix n.7. A number of those providing public testimony were present and former officials of the FBI and the Department of Justice.

The Select Committee estimated that in the course of its investigation it had obtained from these intelligence agencies and other sources approximately 110,000 pages of documents (still more were preliminarily reviewed at the agencies). *Id.* Hundreds of FBI documents were reprinted as hearing exhibits, though "[u]nder criteria determined by the Committee, in consultation with the Federal Bureau of Investigation, certain materials have been deleted from these exhibits to maintain the integrity of the internal operating procedures of the FBI. Further deletions were made with respect to protecting the privacy of certain individuals and groups. These deletions do not change the material

content of these exhibits." Senate Intelligence Hearings at iv n.1. The select committee concluded in its final report that the "most important lesson" learned from its investigation was that "effective oversight is impossible without regular access to the underlying working documents of the intelligence community. Top level briefings do not adequately describe the realities. For that the documents are a necessary supplement and at times the only source." Senate Intelligence Report, Book II, ix n.7.

Hearings on FBI domestic intelligence operations also were held before the House Judiciary Subcommittee on Civil and Constitutional Rights beginning in 1975. A number of Department of Justice and FBI officials testified, including Attorneys General Levi and Bell and FBI Director Kelly. At the request of the Chairman of the Judiciary Committee, the General Accounting Office in 1974 began a review of FBI operations in this area. FBI Oversight Hearings (94th Congress), par 5 2, at 1-2. In an attempt to analyze current FBI practices, the GAO chose ten FBI offices involved in varying levels of domestic intelligence activity, and randomly selected for review 899 cases (ultimately reduced to 797) in those offices that were acted on that year. *Id.* at 3.

The FBI agreed to GAO's proposal to have FBI agents prepare a summary of the information contained in the files of each of the selected cases. These summaries described the information that led to opening the investigation, methods and sources of collecting of information for the case, instructions from FBI Headquarters, and a brief summary of each document in the file. After reviewing the summaries, GAO staff held interviews with the FBI agents involved with the cases, as well as the agents who prepared the summaries. *Id.* at 3-4.

These hearings were continued in 1977 to hear the results of a similar GAO review of the FBI's domestic intelligence operations under new domestic security guidelines established by the Attorney General in 1976. In its follow-up investigation GAO reviewed 319 additional randomly selected cases. As in its earlier review, GAO utilized FBI case summaries followed by agent interviews. This time, however, the Department also granted GAO access to copies of selected documents for verification purposes, with the names of informers and other sensitive data excised. House FBI Oversight Hearings (95th Congress), part 1, at 103.

White Collar Crime In The Oil Industry

In 1979, joint hearings were held by the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce and the Subcommittee on Crime of the House Judiciary Committee to conduct an inquiry into allegations of fraudulent pricing of fuel in the oil industry and the failure of the Department of Energy and DOJ to effectively investigate and prosecute alleged criminality. 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 Commerce on the Judiciary, 96th Cong., 1st Sess. (1979)(hereinafter "White Collar Crime Hearings). During the course of the hearing testimony and evidence were received in closed hearings regarding open cases in which indictments were pending and criminal proceedings were in progressing. In addition, a DOJ staff attorney testified in open session as to the reason for not going forward with a particular criminal prosecution. Although a civil prosecution of the same matter was then pending, DOJ agreed to supply the committees with documents leading to the decision not to prosecute. *Id.* at 156-57. The Department agreed to turn over documents regarding the determination not to prosecute and acknowledged they could be made public if "the committee has some compelling need." White Collar Crime Hearings at 157.

The hearing record evidenced the sensitivity of the subcommittees to the due process implications of their inquiry and the acquiescence of the Department in the manner in which the subcommittees received and handled the open-case criminal and civil materials. The Chairman of the Subcommittee on Energy and Power remarked: "We know indictments are outstanding. We do not wish to interfere with rights of any parties to a fair trial. To this end we have scrupulously avoided any actions that might have effected the indictment of any party. In these hearings we will restrict our questions to the process and the general schemes to defraud and the failure of the Government to pursue these cases. Evidence and comments on specific cases must be left to the prosecutors in the cases they bring to trial." *Id.* at 2. DOJ's Deputy Attorney General, Criminal Division, praised the Chairmen for their discreet conduct of the hearings: "I would like to commend Chairman Conyers, Chairman Dingell, and all other members of the committee and staff for the sensitivity which they have shown during the course of these hearings to the fact that we have ongoing criminal investigations and proceedings, and the appropriate handling of the question in order not to interfere with those investigations and criminal trials." *Id.* at 134. At the time, Mr. Civiletti was the Attorney General.

Billy Carter/Libya Investigation

A special subcommittee of the Senate Committee on the Judiciary was constituted in 1980 to investigate the activities of individuals representing the interests of foreign governments. Due to the short time frame which it was given to report its conclusions to the Senate, the subcommittee narrowed the focus of its inquiry to the activities of the President's brother, Billy Carter, on behalf of the Libyan government. See Inquiry into the Matter of Billy Carter and Libya: Hearings Before the Subcomm. to Investigate the Activities of Individuals Representing the Interests of Foreign Governments of the Senate Comm. on the Judiciary, vols. I-III, 96th Cong., 2d Sess. (1980)(hereafter "Billy Carter Hearings");Inquiry into the Matter of Billy Carter and Libya, S. Rep. No. 1015, 96th Cong., 2d Sess. (1980)(hereafter "Billy Carter Report"). A significant

portion of this inquiry concerned the Department's handling of its investigation of the Billy Carter matter, in particular whether Attorney General Benjamin R. Civiletti had acted improperly in withholding certain intelligence information about Billy Carter's contacts with Libya from the attorneys in the Criminal Division responsible for the investigation, or had otherwise sought to influence the disposition of the case.

Although there was early disagreement as to the extent of the subcommittee's access to certain information from the White House, there was no attempt by the Department to limit access to its attorneys involved with the Billy Carter case. The subcommittee heard testimony from several representatives of the Department, including Attorney General Civiletti, the Assistant Attorney General in charge of the Criminal Division, Philip B. Heymann, and three of his assistants. These witnesses testified about the general structure of decisionmaking in the Department, the nature of the investigation of Billy Carter's Libyan ties, the Attorney General's failure to immediately communicate intelligence information concerning Billy Carter to the Criminal Division attorneys conducting the investigation, the decision to proceed civilly and not criminally against Carter, and the effect of various actions of the Attorney General and the White House on that prosecutorial decision. Billy Carter Hearings at 116-30, 683-1153. The subcommittee also took depositions from some of these witnesses. Pursuant to a Senate Resolution providing it with such power, subcommittee staff took 35 depositions, totalling 2,646 pages. *Id.* at 1741-42.

The subcommittee also was given access to documents from the Department's files on the Billy Carter case. The materials obtained included prosecutorial memoranda, correspondence between the Department and Billy Carter, the handwritten notes of the attorney in charge of the foreign agents registration unit of the Criminal Division, and FBI investigative reports and summaries of interviews with Billy Carter and his associates. *Id.* at 755-978. Not included in the public record were a number of classified documents, which were forwarded to and kept in the files of the Senate Intelligence Committee. These classified documents were available for examination by designated staff members of the subcommittee and the Intelligence Committee, and some of the documents were later used by the subcommittee in executive session.

Undercover Law Enforcement Activities (ABSCAM)

In 1982, the Senate established a select committee to study the law enforcement undercover activities of the FBI and other components of the Department of Justice. See Law Enforcement Undercover Activities: Hearings Before the Senate Select Comm. to Study Law Enforcement Undercover Activities of Components of the Department of Justice, 97th Cong., 2d Sess. (1982)(hereafter "Abscam Hearings"); Final Report of the Senate Select Comm. to Study Undercover Activities of Components of the Department of Justice, S. Rep. No. 682, 97th Cong., 2d Sess. (1982). Representatives from the Department, including FBI Director William Webster, testified generally about

the history of undercover operations engaged in by the Department, their benefits and costs, and the policies governing the institution and supervision of such operations, including several sets of guidelines promulgated by the Attorney General. These witnesses also testified about Abscam and several other specific undercover operations conducted by the FBI and other units of the Department. Abscam Hearings at 10-85, 153-226, 255-559, 895-924, 1031-70.

In addition to the witnesses from the Department providing public testimony, committee staff conducted interviews with a number of present and former Department attorneys and FBI agents. Abscam Report at 8-10. Among those testifying or interviewed were several present and former members of the Department's Brooklyn Organized Crime Strike Force. The Department wrote the committee that it "does not normally permit Strike Force attorneys to testify before congressional committees [and]....have traditionally resisted questioning of this kind because it tends to inhibit prosecutors from proceeding through their normal tasks free from the fear that they may be second-guessed, with the benefit of hindsight, long after they take actions and make difficult judgements in the course of their duties." *Id.* at 486. The Department, nevertheless, agreed to this testimony, "because of their value to you as fact witnesses and because you have assured us that they will be asked to testify solely as to matters of fact within their personal knowledge and not conclusions or matters of policy." *Id.*

The most extensive focus of the committee's inquiry was on the FBI's Abscam operation, which lasted from early 1978 through January 1980, and resulted in the criminal conviction of one Senator, six Members of the House of Representatives, several local officials, and others. As part of this review, the subcommittee was "given access to almost all of the confidential documents generated during the covert stage of the undercover operation known as Abscam." *Id.* at v. In all, the committee reviewed more than 20,000 pages of Abscam documents, as well as video and audio tapes and tape transcripts, *id.* at 9, provided under the terms of an elaborate access agreement negotiated with the Department.

Pursuant to the agreement, the subcommittee was provided copies of confidential Abscam materials and certain prosecutorial memoranda from the Abscam cases. Under the agreement, the Department was also permitted to withhold from the committee documents that might compromise ongoing investigations or reveal sensitive sources or investigative techniques, though the Department was required to describe each such document withheld, explain the basis of the denial, and give the committee an opportunity to propose conditions under which the documents might be provided. The committee further agreed to a "pledge of confidentiality" under which it could use and publicly disclose information derived from the confidential documents and state that the information came from Department files, but was prohibited from publicly identifying the specific documents from which the information was obtained. All confidential documents were kept in a secure room, with access limited to the committee's members, its two counsel, and several designed document custodians. See generally, *id.* at v, 472-84. Later, DOJ agreed to grant access to those materials by other committee attorneys as well.

In addition to the documents to which it was given direct access, the committee received extensive oral briefings, including direct quotations, on basic factual material from the prosecutorial memoranda that were withheld, as well as from documents prepared or compiled by the Department's Office of Professional Responsibility as part of an internal investigation of possible misconduct in the Abscam operations and prosecutions. *Id.* at v.

Under the general framework established by this agreement, there was considerable give and take between the committee and the Department as to the degree of access that would be provided to specific documents. For example, the committee's counsel and sought access to a report prepared in the Criminal Division on FBI undercover operations. Abscam Hearings at 514. The committee's chairman had also written the Attorney General requesting access to that report. Abscam Report at 485. An agreement was reached whereby the report could be examined by committee members or counsel at the Department and notes taken on its contents, but it could neither be copied or removed from the Department. *Id.* at 494. Committee counsel utilized this procedure, but the committee determined that such limited access made it impractical for its members to personally review the report, and the committee's chairman again wrote the Attorney General asking for release of a copy. *Id.* at 498. The Department ultimately agreed to provide a copy of the report to each member of the committee, with the understanding that the report would not be disseminated beyond the members of the committee and its counsel, no additional copies would be made, and the copies provided by the Department would be returned at the conclusion of the committee's work. *Id.* at 501.

Finally, the committee retained the right under the access agreement to seek unrestricted access to documents if it determined that the limited access set forth in the agreement was insufficient to permit it to effectively conduct its investigation. *Id.* at v, 484. However, the committee ultimately concluded that it was able to adequately perform its mandate with the materials it had obtained pursuant to the access agreement, and thus did not attempt to obtain additional documents by subpoena or litigation. *Id.* at v.

A similar investigation was conducted by the House Judiciary Subcommittee on Civil and Constitutional Rights, which held a total of twenty-one hearings over a period of four years. See FBI Undercover Activities, Authorization;, and H.R. 3232: Oversight Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 98th Cong., 1st Sess. (1983); FBI Undercover Operations: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 97th Cong., 1st Sess. (1981); FBI Oversight: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 96th Cong., 1st & 2d Sess. (1979-80). The subcommittee examined in detail the FBI's Operation Corkscrew undercover operation, an investigation of alleged corruption in the Cleveland Municipal Court, with access to confidential Department documents provided to it under an agreement patterned after the access agreement negotiated by the Senate select committee. Subcomm. on Civil and

Constitutional Rights of the House Comm. on the Judiciary, FBI Undercover Operations, 98th Cong., 2d Sess. 91-93 (Comm. Print 1984).

Investigation of Withholding of EPA Documents

One of the most prominent Congressional investigations of the Department grew out of the highly charged confrontation at the end of the 97th Congress concerning the refusal of Environmental Protection Agency Administrator Ann Gorsuch Burford, under orders from the President, to comply with a House subcommittee subpoena requiring the production of documentation about EPA's enforcement of the hazardous waste cleanup legislation. This dispute culminated in the House of Representative's citation of Burford for contempt of Congress, the first head of an Executive branch agency ever to have been so cited by a House of Congress. It also resulted in the filing of an unprecedented legal action by the Department, in the name of the United States, against the House of Representatives and a number of its officials to obtain a judicial declaration that Burford had acted lawfully in refusing to comply with the subpoena.

Ultimately, the lawsuit was dismissed, *U.S. v. House of Representatives*, 557 F.Supp. 150 (D.D.C. 1983), the documents were provided to Congress, and the contempt citation was dropped. However, a number of questions about the role of the Department during the controversy remained: whether the Department, not EPA, had made the decision to persuade the President to assert executive privilege; whether the Department had directed the United States Attorney for the District of Columbia not to present the contempt certification of Burford to the grand jury for prosecution and had made the decision to sue the House; and, generally, whether there was a conflict of interest in the Department's simultaneously advising the President, representing Burford, investigating alleged Executive branch wrongdoing, and enforcing the Congressional criminal contempt statute. These and related questions raised by the Department's actions were the subject of an investigation by the House Judiciary Committee beginning in early 1983. The committee issued a final report on its investigation in December 1985. See Report of the House Comm. on the Judiciary on Investigation of the Role of the Department of Justice in the Withholding of Environmental Protection Agency Documents from Congress in 1982-1983, H.R. Rep. No. 99-435, 99th Cong., 1st Sess (1985) ("EPA Withholding Report").

Although the Judiciary Committee ultimately was able to obtain access to virtually all of the documentation and other information it sought from the Department, in many respects this investigation proved as contentious as the earlier EPA controversy from which it arose. In its final report, the committee concluded that:

> [T]he Department of Justice, through many of the same senior officials who were most involved in the

> EPA controversy, consciously prevented the Judiciary Committee from obtaining information in the Department's possession that was essential to the Committee's inquiry into the Department's role in that controversy. Most notably, the Department deliberately, and without advising the Committee, withheld a massive volume of vital handwritten notes and chronologies for over one year. These materials, which the Department knew came within the Committee's February 1983 document request, contained the bulk of the relevant documentary information about the Department's activities outlined in this report and provided a basis for many of the Committee's findings.

EPA Withholding Report at 1163; *see* also 1234-38. Among the other abuses cited by the committee were the withholding of a number of other relevant documents until the committee had independently learned of their existence, *id.* at 1164, as well as materially "false and misleading" testimony before the committee by the head of the Department's Office of Legal Counsel, *id.* at 1164-65 & 1191-1231.

The committee's initial request for documentation was contained in a February 1983 letter from its chairman, Peter Rodino, to Attorney General William French Smith. The committee requested the Department to "supply all documents prepared by or in the possession of the Department in any way relating to the withholding of documents that Congressional committees have subpoenaed from the EPA." *Id.* at 1167 & 1182-83. The letter also specifically requested, among other things, a narrative description of the activities of each division or other unit of the Department relating to the withholding of the EPA materials, information about the Department's apparent conflict of interest in simultaneously advising the Executive branch while being responsible for prosecuting the Burford contempt citation, and any instructions given by the Department to the United States Attorney for the District of Columbia not to present the Burford contempt to the grand jury.

At first the Department provided only publicly available documents in response to this and other document requests of the committee. *Id.* at 1184. However, after a series of meetings between committee staff and senior Department officials, an agreement was reached whereby committee staff were permitted to review the materials responsive to these requests at the Department to determine which documents the committee would need for its inquiry. *Id.* at 1168 & 1233. Committee staff reviewed thousands of documents from the Land and Natural Resources Division, the Civil Division, the Office of Legal Counsel, the Office of Legislative Affairs, the Office of Legal Counsel, the Office of Legislative Affairs, the Office of Public Affairs, and the offices of the Attorney General, the Deputy Attorney General, and the Solicitor General. *Id.* at 1168.

In July 1983 the committee chairman wrote to the Attorney General requesting copies of 105 documents that committee staff had identified in its review as particularly important to the committee's inquiry. *Id.* at 1169. By May 1984, only a few of those documents had been provided to the committee, and the chairman again wrote to the Attorney General requesting the Department's cooperation in the investigation. In that letter, the chairman advised the Attorney General that the committee's preliminary investigation had raised serious questions of misconduct, including potential criminal misconduct, in the actions of the Department in the withholding of the EPA documents. *Id.* at 1172. The committee finally received all of the 105 documents in July 1984, a full year after it had initially requested access in July 1983. The committee at that time also obtained the written notes and a number of other documents that had been earlier withheld. *Id.* at 1173.

There was also disagreement about the access that would be provided to Department employees for interviews with committee staff. The Department demanded that it be permitted to have one or more Department attorneys present at each interview. The committee feared that the presence of Department representatives might intimidate the Department employees in their interviews and stated that it was willing to permit a Department representative to be present only if the representative was "walled-off" from Department officials involved with the controversy, if the substance of interviews was not revealed to subsequent interviewees, and if employees could be interviewed without a Department representative present if so requested. The Department ultimately agreed to permit the interviews to go forward without its attorneys present. If a Department employee requested representation, the Department employed private counsel for that purpose. In all, committee staff interviewed twenty-six current and former Department employees, including four Assistant Attorney Generals, under this agreement. *Id.* at 1174-76.

Partly as a result of these interviews, as well as from information in the handwritten notes that had been initially withheld, the committee concluded that it also required access to Criminal Division documents concerning the origins of the criminal investigation of former EPA Assistant Administrator Rita Lavelle in order to determine if the Department had considered instituting the investigation to obstruct the committee's inquiry. The committee also requested information about the Department's earlier withholding of the handwritten notes and other documents to determine whether Department officials had deliberately withheld the documents in an attempt to obstruct the committee's investigation. *Id.* at 1176-77 & 1263-64. The Department at first refused to provide the committee with documents relating to its Lavelle investigation "[c]onsistent with the longstanding practice of the Department" not to provide "access to active criminal files." *Id.* at 1265. The Department also refused to provide the committee with access to documentation related to the Department's handling of the committee's inquiry, objecting to the committee's "ever-broadening scope of ... inquiry." *Id.* at 1265.

The committee chairman wrote the Attorney General and objected that the Department was denying the committee access even though no claim of Executive privilege had been asserted. *Id.* at 1266. The chairman also maintained that "[i]n this case, of course, no claim of executive privilege could lie because of the interest of the committee in determining whether the documents contain evidence of misconduct by executive branch officials." *Id.* With respect to the documents relating to the Department's handling of the committee inquiry, the chairman demanded that the Department prepare a detailed index of the withheld documents, including the title, date, and length of each document, its author and all who had seen it, a summary of its contents, an explanation of why it was being withheld, and a certification that the Department intended to recommend to the President the assertion of executive privilege as to each withheld document and that each document contained no evidence of misconduct. *Id.* at 1268-69. With respect to the Lavelle documents, the chairman narrowed the committee's request to "predicate" documents relating to the opening of the investigation and prosecution of Lavelle, as opposed to FBI and other investigative reports reflecting actual investigative work conducted after the opening of the investigation. *Id.* at 1269-70. In response, after a period of more than three months since the committee's initial request, the Department produced those two categories of materials. *Id.* at 1270.

Iran-Contra

Even more receptly, in the late 1980s, an intense Congressional investigation focused, in part, on Attorney General Meese's conduct during the Iran-Contra scandal. The House and Senate created their Iran-Contra committees in January, 1987. The Iran-Contra committees demanded the production of the Justice Department's files, to which Assistant Attorney General John Bolton responded, on behalf of Attorney General Meese, by attempting to withhold the documents on the claim that providing them would prejudice the pending or anticipated litigation by the Independent Counsel. The Iran-Contra committees overruled that contention, required the furnishing of all Justice Department documents, and questioned all knowledgeable Justice Department officers up to, and including, Attorney General Meese.

One major aspect of the Iran-Contra Committees' investigation focused on the inadequacies of the so-called "Meese Inquiry," the team led by Attorney General Meese which looked into the NSC staff in late November, 1987. As the Iran-Contra Committees found, this so-called inquiry had the effect that by their questioning, the NSC staff was forewarned to shred their records and fix upon an agreed false story, and by the Meese Team's methods was foreclosed the last vital opportunity to uncover the obscured aspects of the scandal. The Congressional investigation uncovered extensive documentary evidence regarding incompetence, at best, by the Attorney General's inquiry team during the Meese Inquiry. The Congressional report summed up such matters as the Attorney General's taking no notes and remembering no details of his crucial interviews of CIA Director Casey and others, the Justice Department inquiry's

not taking any steps to secure the remaining unshredded documents, and the Justice Department team's even allowing the shredding to occur while the team was in the room; the inquiry team excluded the Criminal Division and the FBI from the case until it was too late, and then the Attorney General gave his press conference of November 25, 1986, with an account that in key respect misstated and concealed embarrassing information which had been furnished to him. See, Report of the Congressional Committees Investigating the Iran-Contra Affair, H.R. Rep. No. 433 and S. Rep. No. 216, 100th Cong., 1st Sess. 310, 317, 314, 317-18, 647 (1987).

Rocky Flats Environmental Crimes Plea Bargain

In June 1992 the Subcommittee on Investigations and Oversight of the House Committee on Science, Space, and Technology commenced a review of the plea bargain settlement by the Department of Justice of the government's investigation and prosecution of environmental crimes committed by Rockwell International Corporation in its capacity as manager and operating contractor at the Department of Energy's (DOE) Rocky Flats nuclear weapons facility. See Environmental Crimes at the Rocky Flats Nuclear Weapons Facility: Hearings Before the Subcomm. on Investigations and Oversight of the House Committee on Science, Space and Technology, 102d Cong., 2d Sess., Vols. I and II (1992) ("Rocky Flats Hearings"); Meetings: To Subpoena Appearance by Employees of the Department of Justice And the FBI and To Subpoena Production Of Documents From Rockwell International Corporation, Before the Subcomm. on Investigations and Oversight of the House Comm. on Science, Space, and Technology, 102d Congress, 2d Sess., (1992)("Subpoena Meetings").

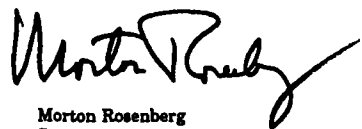
The settlement was a culmination of a five-year investigation of environmental crimes at the facility, conducted by a joint government task force involving the FBI, the Department of Justice, the Environmental Protection Agency (EPA), EPA's National Enforcement Investigation Centers, and the DOE Inspector General. The subcommittee was concerned with the size of the fine agreed to relative to the profits made by the contractor and the damage caused by inappropriate activities; the lack of personal indictments of either Rockwell or DOE personnel despite a DOJ finding that the crimes were "institutional crimes" that "were the result of a culture, substantially encouraged and nurtured by DOE, where environmental compliance was a much lower priority than the production and recovery of plutonium and the manufacture of nuclear 'triggers'"; and that reimbursements provided by the government to Rockwell for expenses in the cases and the contractual arrangements between Rockwell and DOE may have created disincentives for environmental compliance and aggressive prosecution of the case.

The subcommittee held ten days of hearings, seven in executive session, in which it took testimony from the United States Attorney for the District of Colorado; an assistant U.S. Attorney for the District of Colorado; a DOJ line attorney from Main Justice; and an FBI field agent; and received voluminous

FBI field investigative reports and interview summaries, and documents submitted to the grand jury not subject to Rule 6(e). *E.g.*, Rocky Flats Hearing, Vol. I, at 389-1009, 1111-1251; Vol. II.

At one point in the proceedings all the witnesses who were under subpoena upon written instructions from the Acting Assistant Attorney General, Criminal Division, refused to answer questions concerning internal deliberations in which decisions were made about the investigation and prosecution of Rockwell, the DOE and their employees. Two of the witnesses advised that they had information and, but for the DOJ directive, would have answered the subcommittee's inquiries. Faced with the imminent adjournment of the Congress, the subcommittee members unanimously authorized the chairman to send a letter to President Bush requesting that he either personally assert executive privilege as the basis for directing the witnesses to withhold the information or direct DOJ to retract its instructions to the witnesses. The President took neither course and the DOJ subsequently reiterated its position that the matter sought would chill Department personnel. The subcommittee then moved to hold the U.S. Attorney in contempt of Congress.

A last minute agreement forestalled the contempt citation. Under the agreement (1) DOJ issued a new instruction to all personnel under subpoena to answer all questions put to them by the subcommittee, including those which related to internal deliberations with respect to the plea bargain. Those instructions were to apply as well to all Department witnesses, including FBI personnel, who might be called in the future. (2) Transcripts were to be made of all interviews and provided to the witnesses. They were not to be made public except to the extent they needed to be used to refresh the recollection or impeach the testimony of other witnesses called before the subcommittee in a public hearing. (3) Witnesses were to be interviewed by staff under oath. (4) The subcommittee reserved the right to hold further hearings in the future at which time it could call other Department witnesses who would be instructed not to invoke the deliberative process privilege as a reason for not answering subcommittee questions. Rocky Flats Hearings, Vol. I at 9-10, 25-31, 1673-1737; Subpoena Hearings, at 1-3, 82-86, 143-51.



Morton Rosenberg
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Mr. WAXMAN. Mr. Chairman, over a year and a half ago, I recommended that we have an independent counsel and that we have one committee in the House and the Senate conduct an investigation about the campaign system wrongdoing, abuses, and hopefully leading to reform. If that recommendation had been accepted, we would have saved millions of taxpayers' dollars, which have been wasted by this committee, particularly by the redundancy of two committees doing the same job.

Now that was my recommendation for an independent counsel under that context which I thought made sense. But there is an independent counsel law. And under some circumstances the Attorney General is required to appoint an independent counsel. Under some other circumstances she has a discretion. She has advisers telling her what they think is appropriate.

She is now in the process of evaluating further recommendations to her. She asked for 3 weeks so that she could review these issues and make her own decision. Senator Hatch and Congressman Hyde have both thought that 3 weeks was a reasonable request. Evidently our chairman thinks it is unreasonable to give her 3 weeks because, he says, it may be wrongdoing if she decides that she does not think an independent counsel is required.

Well, there are disputes lawyers have that are often honest and legitimate. It is not wrongdoing to conclude one way as opposed to another. It may not suit your political purposes, but it is not wrongdoing.

But I think the chairman's view is instructive as to what is going on, because there was no ambiguity at that meeting last Friday with the Attorney General. Mr. Burton told Attorney General Reno that he would hold her in contempt by a vote of this committee, but he wouldn't pursue the matter if she appointed an independent counsel. That, to me, is not ambiguous in any way. The message was very clear. She could avoid contempt by reaching the decision that Chairman Burton wanted. I think that's an abuse of power. To my knowledge, he has become the first chairman in the history of the Congress to use the contempt power to try to improperly influence a decision in a pending criminal investigation.

Now, it appears that this committee may be intent on following its chairman to the conclusion of reaching a contempt vote on Thursday. I would say to the Attorney General that contempt is almost always a serious matter that Congress handles responsibly. But if the chairman is intent on pursuing this matter, I would tell her to consider the source. This isn't Chairman Hyde. This isn't Chairman Hatch moving to contempt. It is not the committee which has been given the jurisdiction over those matters. This is the committee that I believe has been thoroughly discredited. This committee has been discredited by a series of mistakes, bad judgment, partisan overreaching, and extremism. Someone told me our committee has become the congressional equivalent of the crazy aunt in the attic. So I would tell the Attorney General to consider the source.

The Attorney General even called the chairman this morning and requested to testify because the three witnesses that are here today serve under her. And she said if those people that serve under her as part of this criminal investigation are going to be questioned,

she wanted to be here to respond as well. The chairman even refused that request.

The chairman insisted on releasing information that Mr. Freeh and Mr. La Bella oppose releasing this morning. The chairman will emphasize the judgment and experience of Mr. Freeh and Mr. La Bella in endorsing their call for an independent counsel, but he ignores their views when it comes to safeguarding the case that they are managing.

The chairman mentioned that several previous Attorneys General have been consulted. I would hope that he would tell us the name of one, even one, let alone the several Attorneys General that have been consulted on this matter. I don't believe that statement is accurate.

Mr. BURTON. It is.

Mr. WAXMAN. I will in a minute yield to you. I just want to reemphasize what we have seen in this morning's hearing, let alone what we have seen in the past experience of our committee. We have seen partisan grandstanding.

We recall we were told that if we didn't grant immunity to the four witnesses, we would never know from those people who have direct knowledge about how the Chinese Government made illegal campaign contributions in an apparent attempt to influence our policy. We granted immunity. We have taken those depositions. We are going to have the release finally, begrudgingly but nevertheless finally, of three of those witnesses. The four witnesses, I believe, don't know anything about transferring technology to China. They don't know anything about possible campaign contributions from the Chinese Government. And they don't know anything that is of relevance to this committee's investigation. But that appears to be of apparently little concern to our chairman, because it is grandstanding, not the truth, that invariably grabs headlines.

Mr. Chairman, I am looking forward to the testimony of these witnesses. I think this matter ought to be pursued with seriousness and competence and fairness. I regret that our committee is not handling itself in that manner.

Mr. BURTON. Would the gentleman yield?

Mr. WAXMAN. I would be pleased to yield to you.

Mr. BURTON. The Attorney General called us about 15 minutes before the hearing was to begin to ask if she could testify. I told her we would certainly grant her wish at some future date, but as a courtesy to the Members on both sides of the aisle, we didn't think that we should spring that on them as they might not be prepared to ask her questions.

What I would like to ask the gentleman from California is if she called me at 15 minutes till 10, how did you know that she requested to come before the committee?

Mr. WAXMAN. I would be pleased to give you that information. She called me in advance and asked whether she should call you to make that request or whether she ought to show up. I suggested she call you.

She also said last Friday that she would like you not to have this hearing and not to ask these three witnesses to come forward, but if you were going to have the hearing, to have her deputy here. But you denied her that.

But I yielded to you for another purpose and I will yield to you again for another purpose. You have claimed that you have talked to former Attorneys General to advise you on this matter, and I would like to know which Attorneys General you talked to.

Mr. BURTON. My staff talked to at least three, and I am not going to divulge their names, but I will tell you that that is a very accurate statement.

Mr. WAXMAN. There can't be that many Attorneys General.

Mr. BURTON. Well, then you can figure it out.

Mr. WAXMAN. I don't know if you are trying to withhold their names for their privacy or security or protection or because, perhaps, that the fact of your consultation is not accurate.

Mr. Chairman, I won't go any further on this opening statement. I think these witnesses have waited an extraordinary amount of time. I regret that we had these issues sprung on us this morning, without notice, as you tried to prepare your case. I think the House will fully consider where this case is coming from and not take your recommendations, if you should ever pursue a contempt citation. I yield back the balance.

Mr. BURTON. The Chair recognizes the gentleman from New York, Mr. Gilman.

Mr. GILMAN. Mr. Chairman, thank you for recognizing me. I want to make a statement for the record that I was unduly delayed at a meeting of the Intelligence Committee on the taking of motion, the vote on motion 4 by Chairman Burton, and had I been present I would have voted in support of the chairman's motion. Thank you, Mr. Chairman.

Mr. BURTON. Thank you, Mr. Chairman.

Would you gentlemen please rise?

[Witnesses sworn.]

Mr. BURTON. Mr. Freeh, I understand that you wanted to start with an opening statement, is that correct?

Mr. FREEH. Yes, Mr. Chairman, with your permission.

Mr. BURTON. Proceed.

STATEMENT OF LOUIS J. FREEH, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION; CHARLES G. LA BELLA, FORMER CHIEF OF THE DEPARTMENT OF JUSTICE CAMPAIGN FINANCE TASK FORCE; AND JAMES V. DESARNO, ASSISTANT DIRECTOR OF THE CRIMINAL JUSTICE INFORMATION SERVICES DIVISION OF THE FBI, SPECIAL AGENT IN CHARGE OF THE DEPARTMENT OF JUSTICE CAMPAIGN FINANCE TASK FORCE

Mr. FREEH. Good morning to you, Mr. Waxman, members of the committee. I have submitted a written statement, but with your permission I would like to just summarize very quickly what is contained therein.

First of all, I appreciate the opportunity again to appear before the committee. I would also like to begin just by expressing my condolences again to the families of Officers Chestnut and Gibson, which I know put all of us, but particularly the Congress and those of us in law enforcement, in just a very sad and mournful mood last week. And I think it is a great tribute to them and their families, the turnout and the support that they were given by the Mem-

bers. Many of the officers expressed that to me and I just wanted to briefly mention that this morning.

I would also like to thank the committee, everyone on the committee and your staff, for handling a lot of the very sensitive and classified information that we have provided to you over the last few months, and particularly the briefing which we provided which summarized the memo at issue, at least between myself and the Attorney General. I want to thank you, Mr. Chairman, and Mr. Waxman, for the very confidential way in which that was handled. And we appreciate that very much.

When I appeared before you last December I did, as you know, state and discuss during the questions and answers my recommendation to our Attorney General, which was a recommendation that she do appoint an independent counsel, as you noted, Mr. Chairman, both on the discretionary grounds as well as the mandatory grounds under the independent counsel statute.

You also know that I talked about that with great reservations in December, and I did not, prior to that time, in any public way disclose that recommendation. And I still have great reservations not only about discussing the recommendation, but certainly supplying the details and the arguments that support that, for all the reasons that I set forth in December.

With respect to my written memorandum to the Attorney General, it should be noted that we had additional discussions between the committee, the FBI, and the Department of Justice, and really worked out what I thought was a commendable agreement and compromise, to the credit of this committee.

We decided and the committee decided, after very, I thought, laudatory conversations, that we would deal with the matter by supplying to the committee leadership here that set forth in some detail the contents of my memorandum, without having the public disclosure of both those summarized contents as well as the underlying details. And I think that balance was important both for the purposes of achieving the committee's necessary oversight, but also balancing the reasons and the concerns that I still have about making the details of that recommendation public.

When I gave my recommendation itself to the Attorney General, my only objective was to give her candid, honest advice, including my conclusions and my recommendations. However, I think that we have to be concerned, all of us, as I mentioned in December, about the implications of forcing the public disclosure of those memorandums, particularly at this critical time. And the implications go, not only to the matters that have been cited here, the 6(e) materials which of course could be redacted, the "road map," as I call it, which my memoranda would provide to the subjects of the investigation; but the other aspect, which is an institutional one you cited, Mr. Chairman, I think requires a few comments by myself.

In the process of investigations and prosecutions, and this is from my years as an FBI agent but also my 10 years as a prosecutor, the business of law enforcement is continuously the preparation of memorandums. In fact we call them "pros" memos in our trade, meaning prosecution memos.

And innumerable times, investigating both sensational cases as well as routine cases, prosecutors and investigators set forth in writing their reasons, either for recommending prosecutions or, in many cases, for withholding as a discretionary basis the decision to prosecute.

FBI agents, assistant U.S. attorneys around the country depend on that process; and there is a critical institutional value in protecting the confidentiality of that process. Even under our rules of Federal criminal procedure, those, the deliberative memorandum, are not discovered, and we have probably the broadest criminal discovery of any country that I've ever heard of. But those deliberative memos, to the extent that they don't include exculpatory material and Brady material, are preserved for confidentiality reasons as the work product and the deliberative product of prosecutors and attorneys.

If we were to set a precedent, where—an unnecessary precedent, where prosecution memos—and these are, in effect, prosecution memos—are disclosed and publicly discussed, the chilling effect that that would have on prosecutors, assistant U.S. attorneys and investigators, in my professional judgment, would be very severe.

Your subpoena is not an unprecedented one, but it is an extraordinary one. To ask for these documents in the ongoing context of a sensitive criminal investigation is an extraordinary one; and I just ask the committee and all of you to just carefully calculate the impact that this may have on many, many other cases. Also, the impact that it will have on future FBI Directors, perhaps, on future Attorney Generals.

One of the attorneys who's working in the Task Force just the other day expressed a concern about whether or not he should put into writing a recommendation that he was about to make, and his concern stemmed directly from the fact that he was unsure whether that recommendation would later be discovered and subpoenaed and something that would require him to appear here today and discuss and/or explain.

I just think, leaving aside the constitutional arguments for a moment, and I think the arguments that you make are cogent with respect to privileges and the lack of a privilege, perhaps facilitating the litigation of such a subpoena, all of those constitutional issues, notwithstanding the practical impact this will have on, I believe, future FBI Directors, but, more importantly, line prosecutors, line agents, line investigators, I think is severe.

It doesn't impact on me. This FBI Director, if I had to do it all over again, would write the same memorandum. But I think it is an issue that you need to consider with respect to all people in our law enforcement business who may be very, very concerned and reluctant to give their superiors the very necessary and honest and sometimes hard advice that's required in our business.

The reason that I emphasize that is the content not just of these documents but other such documents. We are very concerned about protecting the privacy, the reputation, all of the precious constitutional rights that inevitably are involved when we start analyzing subjects and evidence and making charging decisions or not making charging decisions. All of that information is the most sensitive information that I can imagine.

Forget about 6(e) and forget about chilling prosecutors, but a lot of misunderstanding could easily be discerned from discussions in there which sometimes rely on evidence which may not even be admissible in a court of law but which would impact, I think, very severely on privacy, due process, constitutional rights and, really, people's reputation.

So I think there's a lot really here at issue. I don't think you want an FBI Director or an assistant U.S. attorney or a lead investigator easily discussing in public evidence, theories of prosecution, all of the things which go into the formula for writing prosecution memos.

So, again, my concern is institutionalize, as you refer to it, but I think it's a very strong and a very fundamental one, and we ought to move very carefully before we set a precedent which comes back to disturb all of us in many other contexts.

Let me also say that my recommendation last year certainly led to some speculation about a rift or some type of personal disagreement between the Attorney General and I. As I said in December, and as I repeat to you now, that is simply not the case. I have tremendous respect for our Attorney General. I have tremendous affection for our Attorney General. I do not believe for one moment that any of her decisions, but particularly her decisions in this matter, have been motivated by anything other than the facts and the law which she is obligated to follow. If I thought anything differently, I would not be sitting here today as the FBI Director.

I think in all of the matters that I have dealt with her, and this is over 5 years, you get to know a person pretty well. She has always brought honesty and integrity to the table. And I just wanted to make that very, very clear from my point of view here this morning.

It's also important to repeat again that the decision on whether to appoint independent counsel is clearly that of the Attorney General. It's not mine, it's not Mr. La Bella, it's not any of the other people who have been advising the Attorney General.

That is the statute which this Congress has enacted. If you wish to change that, it certainly will become the subject of hearings and discussions next year. Maybe you want to make co-decisionmakers, maybe you want to have checks and balances which are not currently in the statute. But as the statute now stands, which is your statute, you give that obligation to the Attorney General of the United States.

And the best that I can do and the best that Mr. La Bella can do is to give her our honest, frank advice, even if that advice is not followed. It is her decision to make, and she is now in the process of doing that again.

I've been in Government now for almost 25 years. I've served under every Attorney General since Attorney General Levi. I've done as, you said, a number of things in the public service represented by those years. I've always followed the same simple rule, to investigate the matters under my jurisdiction fully and fairly without any favor. I let the chips fall where they may.

It's not my job to be a loyal subordinate or a team player when that conflicts with my duties as FBI Director. That's why you've given the FBI Director a 10-year term, to insulate him or her a lit-

tle bit more from the dynamics of decisionmaking in government than other public officials. I fully understand and respect that and respect the oversight job that this committee is charged with performing. And, as I said, I compliment this committee, at least from my perspective, on the way in which you've handled very sensitive information, including briefings, which were dealing with classified materials.

We are in a very unique situation. We have parallel investigations going on, in the context of the grand jury and the context of this committee's oversight, as well as other committees. That is a somewhat unique situation.

I read your letter very carefully, the cases that you cited, including the Supreme Court case and the Second Circuit case. Some of them are distinguishable. In some of those instances, there was not a pending criminal investigation. Rocky Flats and Teapot Dome were situations where the oversight subpoena was exercised outside of the context of an ongoing criminal investigation.

And as I said before, this is not unprecedented, but it is extraordinary. And I ask that you really think very, very carefully about the step that we take here, because it has an impact on many things beyond this case, although this case is very important to all of us.

As in December, both the Attorney General and I are willing to work with this committee as best we can. We have offered a confidential briefing with respect to Mr. La Bella's memo. The Attorney General has only asked that that be considered after she has the opportunity to make a decision.

We are right in the middle of her decisionmaking process. She has asked for a very short period of time to make a decision. I think that it's prudent, with all due respect, to allow the Attorney General that period of time to make a decision. I don't think anybody is prejudiced, whether it's the investigation going to an independent counsel or not or further action by this committee, by waiting a relatively short period of time to let her make her decision. And Mr. La Bella and I will be working during that process with her, trying to persuade her to do what we've recommended her to do.

But I think that internal process ought to occur without any external interference, at least during this very short period of time.

We still have 102 FBI personnel assigned to this investigation. We have people all over the world who have been assisting in our investigation. We've conducted over 3,100 interviews, and we've served more than 1,900 subpoenas. This is an active investigation that has not seen the light at the end of the tunnel.

One very brief point I would like to make before I close. And I'm happy to answer your questions.

I just wanted to publicly thank and commend Chuck La Bella, who is sitting next to me, for what I would consider just exemplary service in the Task Force, at great sacrifice to his family and also to his previous obligations as the Deputy Assistant U.S. Attorney. Came to Washington and undertook probably one of the most difficult prosecutorial assignments that I could conceive of—and I've been in this business inside or outside of it for about 25 years. The vigor, the integrity, the intelligence, and the force by his leadership

which he brought to this investigation was really a great testament to him. And I just wanted to publicly thank him and his family for doing just a tremendous job and putting us in I think a very good position to conclude the matters that we have to conclude.

Thank you very much.

Mr. BURTON. Thank you, Mr. Freeh.

[The prepared statement of Mr. Freeh follows:]

I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THE COMMITTEE TODAY. AT THE OUTSET, MR. CHAIRMAN, I WANT TO THANK YOU AND THE OTHER MEMBERS OF THE COMMITTEE FOR THE COOPERATION YOU HAVE PROVIDED AS WE HAVE CARRIED OUT OUR RESPECTIVE INQUIRIES. IN PARTICULAR, WE HAVE OFTEN SHARED SENSITIVE AND CLASSIFIED INVESTIGATIVE INFORMATION TO AID YOUR REVIEW OF THE CAMPAIGN FINANCE MATTER, AND YOU HAVE INVARIABLY HANDLED THIS INFORMATION CAREFULLY AND CONFIDENTIALLY. FOR THAT, YOU HAVE EARNED OUR RESPECT AND GRATITUDE.

WHEN I APPEARED BEFORE YOUR COMMITTEE LAST DECEMBER, I WAS ASKED TO DISCUSS MY RECOMMENDATION TO THE ATTORNEY GENERAL REGARDING THE POSSIBLE APPOINTMENT OF AN INDEPENDENT COUNSEL IN THE CAMPAIGN FINANCE INVESTIGATION. AT THAT TIME, I DESCRIBED MY ULTIMATE RECOMMENDATION -- THAT THE ATTORNEY SHOULD SEEK AN INDEPENDENT COUNSEL -- BUT I DID NOT DISCUSS ANYTHING BEYOND THE RECOMMENDATION ITSELF.

EVEN WITH RESPECT TO MY ULTIMATE RECOMMENDATION, I TESTIFIED WITH GREAT RESERVATION. AS I TOLD THE COMMITTEE, PRIOR TO THE DECEMBER 1997 HEARING I HAD NOT -- IN ANY PUBLIC WAY -- DISCUSSED MY RECOMMENDATION. I FELT VERY STRONGLY, AS I STILL DO, THAT MY ADVICE TO THE ATTORNEY GENERAL ON SUCH AN ISSUE SHOULD BE A CONFIDENTIAL MATTER BETWEEN THOSE CHARGED WITH INVESTIGATING AND PROSECUTING CRIMES. I DESCRIBED MY CONCLUSION BEFORE THIS COMMITTEE ONLY BECAUSE THERE HAD BEEN SUCH WIDESPREAD REPORTING

OF WHAT I RECOMMENDED, AND THEN ONLY AFTER DISCUSSING THE MATTER AT LENGTH WITH THE ATTORNEY GENERAL.

AS TO MY WRITTEN MEMORANDUM TO THE ATTORNEY GENERAL, IT SHOULD BE NOTED THAT WE HAD ADDITIONAL DISCUSSIONS WITH THE COMMITTEE FOLLOWING THE DECEMBER 8 HEARING. YOUR COMMITTEE HAD SUBPOENAED THAT MEMORANDUM, AND THE SUBPOENA REMAINED OUTSTANDING. IN A JOINT EFFORT TO AVOID A SIGNIFICANT CLASH BETWEEN THE LEGISLATIVE AND EXECUTIVE BRANCHES OF GOVERNMENT, WE WORKED CONSTRUCTIVELY WITH THE CHAIRMAN AND RANKING MINORITY MEMBER TO COME UP WITH A FAIR SOLUTION THAT ADDRESSED THE NEEDS OF BOTH BRANCHES.

THE COMPROMISE WE REACHED -- AFTER AMICABLE, BIPARTISAN DISCUSSIONS -- WAS THAT WE WOULD NOT TURN OVER THE MEMORANDUM ITSELF BUT WE WOULD PROVIDE A CONFIDENTIAL JOINT BRIEFING TO CHAIRMAN BURTON AND RANKING MINORITY MEMBER WAXMAN. WE GAVE YOU THAT BRIEFING IN JANUARY 1998, PROVIDING A DETAILED DESCRIPTION OF MY INDEPENDENT COUNSEL ANALYSIS WITHOUT COMPROMISING THE SENSITIVE CRIMINAL INVESTIGATIVE MATERIAL THAT IS ALSO CONTAINED IN THE MEMORANDUM. I BELIEVE THE BALANCE WE REACHED TOGETHER WAS AN APPROPRIATE ONE, BUT I ALSO BELIEVE THAT IT WAS AN EXTRAORDINARY ACCOMMODATION BY THE EXECUTIVE BRANCH.

LET ME ADD THAT YOU, MR. WAXMAN AND THE ENTIRE COMMITTEE HANDLED THAT BRIEFING AND INFORMATION IN TOTAL CONFIDENTIALITY AND I SINCERELY APPRECIATE YOUR TREATMENT OF THIS IMPORTANT AND SENSITIVE ISSUE.

WHEN I GAVE MY RECOMMENDATION TO THE ATTORNEY GENERAL, MY SOLE OBJECTIVE WAS TO GIVE HER MY CANDID, UNVARNISHED ANALYSIS, CONCLUSIONS AND RECOMMENDATION. EVERY ATTORNEY GENERAL IS ENTITLED TO THAT FROM THE FBI DIRECTOR. I HAVE FREELY GIVEN SUCH ADVICE TO ATTORNEY GENERAL RENO, AND WILL CONTINUE TO DO SO.

HOWEVER, WE MUST ALL BE CAREFUL NOT TO CREATE A SITUATION IN WHICH A FUTURE FBI DIRECTOR OR OTHER DEPARTMENT OF JUSTICE OFFICIAL WILL BE RELUCTANT TO GIVE THE ATTORNEY GENERAL HIS OR HER HONEST VIEWS FOR FEAR THAT THOSE VIEWS WILL BE INAPPROPRIATELY DISSECTED IN A PUBLIC FORUM.

THE ABILITY TO GIVE AND RECEIVE CANDID ADVICE OFTEN RESTS UPON CONFIDENTIALITY. IN THIS INSTANCE, I GAVE MY RECOMMENDATION TO ATTORNEY GENERAL RENO IN CONFIDENCE AND EXPECTED IT TO REMAIN THAT WAY. MY MEMORANDUM WAS HELD VERY CLOSELY WITHIN THE FBI AND I TOOK SPECIAL MEASURES TO KEEP IT CONFIDENTIAL. AS IT TURNED OUT, THOSE MEASURES WERE NOT ENOUGH, AND THE MEMORANDUM'S EXISTENCE QUICKLY BECAME KNOWN PUBLICLY. HOWEVER, THAT INAPPROPRIATE LEAK DID NOT JUSTIFY A WHOLESALE DISCLOSURE OF THE MEMORANDUM'S CONTENTS.

THE NEED FOR CONFIDENTIALITY IS ESPECIALLY IMPORTANT DURING AN ONGOING CRIMINAL INVESTIGATION. AS YOU KNOW, IN MOST CASES, NEITHER THE FBI NOR THE DEPARTMENT OF JUSTICE EVEN CONFIRMS THE EXISTENCE OF A PENDING INVESTIGATION. THAT IS LONGSTANDING DEPARTMENT POLICY. WHILE OBVIOUSLY IT WOULD BE UNREASONABLE AND IMPRACTICAL TO TAKE SUCH A POSITION WITH RESPECT TO THE CAMPAIGN FINANCE INVESTIGATION, THE GENERAL POLICY ILLUSTRATES AN IMPORTANT POINT: IT IS RARELY APPROPRIATE TO PUBLICLY DISCUSS A PENDING CRIMINAL INVESTIGATION.

THE REASONS ARE SIMPLE: NOT ONLY MUST WE PROTECT THE INTEGRITY OF THE INVESTIGATION ITSELF, WE MUST PROTECT THE RIGHTS AND REPUTATIONS OF THOSE WHO BECOME THE SUBJECT OF INQUIRY. I KNOW, MR. CHAIRMAN, THAT YOU AND THE OTHER MEMBERS OF THIS COMMITTEE HAVE A DEEP AND ABIDING RESPECT FOR THE PRINCIPLES INHERENT IN OUR CRIMINAL JUSTICE SYSTEM. AGAIN, YOUR CAREFUL HANDLING OF THE SENSITIVE INFORMATION WE HAVE PROVIDED TO THE COMMITTEE DEMONSTRATES THAT RESPECT.

I KNOW THAT NEITHER YOU NOR ANY OTHER MEMBER OF THE COMMITTEE WANTS AN FBI DIRECTOR WHO PUBLICLY TALKS ABOUT EVIDENCE THAT RELATES TO INDIVIDUALS, EITHER CHARGED OR UNCHARGED; WHO DISCLOSES THEORIES OF INVESTIGATION; WHO DISCLOSES MATTERS BEFORE THE GRAND JURY; OR NAMES PEOPLE WHO ARE EITHER BEING INVESTIGATED OR HAVE CHOSEN TO ASSIST THE GOVERNMENT BY PROVIDING INFORMATION.

NOT ONLY WOULD SUCH DISCLOSURES CAUSE CERTAIN HARM TO THE INVESTIGATION, IT WOULD ALSO VIOLATE THE BASIC NOTIONS OF DUE PROCESS, PRIVACY, FUNDAMENTAL FAIRNESS, AND THE PRESUMPTION OF INNOCENCE.

I REALIZE THAT THE COMMITTEE HAS EXPLICITLY STATED THAT IT IS NOT SEEKING SECRET GRAND JURY MATERIAL. THAT IS AN IMPORTANT AND NECESSARY STARTING POINT, BUT THAT LIMITATION IS NOT ENOUGH. IT IS DIFFICULT TO SEPARATE RULE 6(e) INFORMATION FROM OTHER INVESTIGATIVE MATERIAL, PARTICULARLY IN A MEMORANDUM THAT FREELY COMBINES THE TWO. MOREOVER, WHETHER OR NOT A SPECIFIC PIECE OF INFORMATION IS COVERED BY RULE 6(e), IT IS FUNDAMENTALLY INAPPROPRIATE TO DISCUSS PUBLICLY THE DETAILS OF AN ONGOING CRIMINAL INVESTIGATION.

IT IS ALSO IMPOSSIBLE TO SEPARATE EFFECTIVELY LEGAL ARGUMENTS AND RECOMMENDATIONS FROM THE UNDERLYING INVESTIGATIVE MATERIAL. OBVIOUSLY, SUCH ARGUMENTS AND RECOMMENDATIONS FLOW FROM FACTS AND THEORIES DEVELOPED IN THE COURSE OF THE INVESTIGATION. AS THE CHIEF INVESTIGATOR, I AM MOST RELUCTANT TO PUBLICLY PROVIDE A "ROAD MAP" TO POTENTIAL SUBJECTS AND WITNESSES.

EVEN CONFIRMING MY RECOMMENDATION IN FAVOR OF AN INDEPENDENT COUNSEL CARRIES SUBSTANTIAL RISKS. I KNOW, MR. CHAIRMAN, THAT YOU AND YOUR COLLEAGUES FULLY UNDERSTAND THE NUANCES OF THE

INDEPENDENT COUNSEL STATUTE, BUT MANY PEOPLE DO NOT. I AM CONCERNED THAT MY RECOMMENDATIONS AND COMMENTS MAY BE MISINTERPRETED OR MISCONSTRUED.

ON THAT SCORE, MY RECOMMENDATION LAST YEAR LED TO SPECULATION BY SOME THAT THERE WAS A PROFESSIONAL RIFT BETWEEN THE ATTORNEY GENERAL AND ME. I WOULD LIKE TO RE-EMPHASIZE THAT SUCH SPECULATION WAS WRONG. I HAVE STATED MANY TIMES MY RESPECT FOR ATTORNEY GENERAL RENO AND DO SO AGAIN TODAY. WE HAVE NOW WORKED TOGETHER FOR NEARLY FIVE YEARS, AND I HAVE SEEN HER BRING NOTHING BUT INTEGRITY AND HONESTY TO THE TABLE. WE HAVE NOT ALWAYS AGREED WITH ONE ANOTHER, BUT WE HAVE ALWAYS HAD A STRONG WORKING RELATIONSHIP BUILT ON RESPECT.

IT IS ALSO IMPORTANT TO RESTATE THAT THE DECISION ON WHETHER TO SEEK AN INDEPENDENT COUNSEL RESTS SOLELY WITH THE ATTORNEY GENERAL. SHE IS ENTITLED TO SEEK AND RECEIVE THE BEST JUDGMENT AND UNVARNISHED OPINIONS OF HER SUBORDINATES. BUT THE STATUTE GIVES HER THE SOLE AUTHORITY AND RESPONSIBILITY TO MAKE THE ULTIMATE DECISION.

MR. CHAIRMAN, I HAVE BEEN IN GOVERNMENT FOR ALMOST 25 YEARS, AND I HAVE SERVED EVERY ATTORNEY GENERAL SINCE EDWARD LEVI. I HAVE BEEN AN INVESTIGATOR, A PROSECUTOR, AND A JUDGE. AS FBI DIRECTOR, I HAVE ALWAYS FOLLOWED A SIMPLE RULE: TO FULLY AND FAIRLY INVESTIGATE ALL THE MATTERS WITHIN MY JURISDICTION. I

FOLLOW THE EVIDENCE WHEREVER IT LEADS AND LET THE CHIPS FALL WHERE THEY MAY.

MY JOB IS NOT TO BE A LOYAL SUBORDINATE OR TEAM PLAYER WHEN IT CONFLICTS WITH MY DUTIES AS FBI DIRECTOR. THAT IS WHY YOU, THE CONGRESS, GAVE THE DIRECTOR A 10-YEAR TERM -- TO GIVE ME THE FREEDOM TO CARRY OUT MY RESPONSIBILITIES WITHOUT CONCERN FOR POLITICS OR PARTISANSHIP. OF COURSE, THAT ALSO MEANS THAT MY JOB IS NOT TO MAKE THE CONGRESS HAPPY, PARTICULARLY IF DOING SO MAY IN ANY WAY JEOPARDIZE A PENDING CRIMINAL INVESTIGATION.

I FULLY UNDERSTAND THAT YOU HAVE A JOB TO DO AND I ALSO UNDERSTAND YOUR FRUSTRATIONS. IT IS NEVER EASY TO CONDUCT A CONGRESSIONAL INQUIRY ON A MATTER THAT IS SIMULTANEOUSLY THE SUBJECT OF A CRIMINAL INVESTIGATION. THERE INEVITABLY WILL BE DISAGREEMENTS AND HEADACHES. FOR A VARIETY OF REASONS, THE CAMPAIGN FINANCE MATTER IS PARTICULARLY DIFFICULT. NEVERTHELESS, I MUST DO WHAT I BELIEVE IS RIGHT.

I BELIEVE, MR. CHAIRMAN, THAT WE ARE LEFT IN THE SAME POSITION THAT WE OCCUPIED LAST DECEMBER. WHILE I AM ABLE TO RECONFIRM THAT I HAVE RECOMMENDED TO THE ATTORNEY GENERAL THAT SHE SEEK THE APPOINTMENT OF AN INDEPENDENT COUNSEL, I AM NOT PREPARED TO DISCUSS PUBLICLY ALL OF THE DETAILS OF THAT RECOMMENDATION. BECAUSE THE INVESTIGATION IS ONGOING, THE SAME CONCERNS THAT LED ME TO LIMIT MY TESTIMONY IN DECEMBER APPLY WITH

EQUAL FORCE TODAY.

AS IN DECEMBER, I REMAIN WILLING TO WORK WITH THE COMMITTEE TO PROVIDE SOME ADDITIONAL INFORMATION IN A CONFIDENTIAL SETTING. AS THE ATTORNEY GENERAL PLEDGED IN OUR JOINT LETTER TO YOU OF JULY 28, ONCE SHE HAS COMPLETED HER EVALUATION OF MR. LABELLA'S MEMORANDUM, SHE IS PREPARED TO ARRANGE A CONFIDENTIAL BRIEFING ON THAT MEMORANDUM.

IN THE MEANTIME, YOU CAN BE ASSURED THAT WE WILL CONTINUE TO PURSUE OUR INVESTIGATION VIGOROUSLY. AS I TESTIFIED IN DECEMBER, THE MARCHING ORDERS FOR THE CAMPAIGN FINANCE TASK FORCE WERE AND ARE TO PURSUE EVERY LEAD AND FOLLOW THE EVIDENCE WHEREVER IT TAKES US.

THE FBI HAS DEDICATED NEARLY 100 PEOPLE TO THIS TASK FORCE, AND WE ARE USING OUR PEOPLE ALL OVER THE WORLD TO INVESTIGATE AND GATHER EVIDENCE. WE HAVE CONDUCTED OVER 3100 INTERVIEWS AND SERVED MORE THAN 1900 SUBPOENAS. WORKING WITH MR. LABELLA AND HIS PROSECUTORS, IT HAS BEEN A FOCUSED, TEAM EFFORT THAT HAS LED TO 12 INDICTMENTS AND CRIMINAL INFORMATIONS AGAINST 11 DEFENDANTS. THERE UNDOUBTEDLY WILL BE MORE TO COME.

AGAIN, I VERY MUCH APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THE COMMITTEE, AND I WILL BE HAPPY TO TRY TO ANSWER AS MANY QUESTIONS AS I CAN.

Mr. BURTON. Mr. La Bella, do you have an opening statement?

Mr. LA BELLA. No, Mr. Chairman.

Mr. BURTON. You do not have an opening statement.

Mr. DeSarno, do you have an opening statement?

Mr. DESARNO. I do not.

Mr. BURTON. Would you pull the microphones closer to you, and we will get to the questioning now. We will start with two 30-minute rounds, and then we will go to the straight 5-minute rule for all other Members.

I appreciate, Mr. Freeh, that you acknowledge that our request is not unprecedented. The Justice Department previously had misrepresented that. That's why I submitted the nonpartisan CRS memo for the record. I appreciate your statement regarding that.

Director Freeh, last year, November 1997, a memo recommending an independent counsel became public. In December, you testified that you recommended the appointment of an independent counsel in the campaign finance investigation, and you've stated that is correct?

Mr. FREEH. Yes, sir.

Mr. BURTON. Both the mandatory and—as well as the discretionary. When did you first start recommending an independent counsel to the Attorney General or anyone else at the Justice Department?

Mr. FREEH. We began discussions about the independent counsel because of the nature of this inquiry at the earliest stages. So as early as 1997, even late 1996, this was a matter of discussion within the FBI and also between myself and the Attorney General.

Mr. BURTON. So late 1996 would be a good starting point.

Mr. FREEH. Yes, sir.

Mr. BURTON. Who were the discussions with? The Attorney General and anyone else?

Mr. FREEH. My discussions were with the Attorney General at that time. Of course, within the FBI, we had many ongoing discussions among our counsel, and then there were counterpart conversations between FBI agents and attorneys and the Department of Justice Attorney Generals.

Mr. BURTON. You didn't discuss this with anyone other than the Attorney General at the Justice Department?

Mr. FREEH. No, sir.

Mr. BURTON. OK, thank you.

When you made your November 1997, recommendation, it is correct, as you stated, that both the mandatory and discretionary sections of the Independent Counsel Statute had been triggered. You said that, yes?

Mr. FREEH. Yes.

Mr. BURTON. Now, under the discretionary section, if the Attorney General has a personal, financial or political conflict of interest, then the statute may be triggered. Do you believe the Attorney General has such conflicts?

Mr. FREEH. Yes, sir.

Mr. BURTON. Do you want to explain that?

Mr. FREEH. Well, again, to explain the full nature of that conflict, I would have to, by necessity, detail a lot of the evidence, which I really am reluctant to do here in this format.

I would say, generally, that the subject matter of the investigation, both in 1997 and certainly now in 1998, involves a core group of individuals who, in my view, are indisputably covered persons and that the nature of that inquiry revolves around those covered persons, their associates and what I believe are potential violations of Federal, criminal law.

I think, given the covered status but also some of the other associated individuals in that core group, there is a conflict which, in my judgment, can only be resolved under the statute by a discretionary referral.

Mr. BURTON. Do you believe she has conflicts with the White House?

Mr. FREEH. Well, again, without singling out any of the covered people, I believe that the core group, which is the subject of this investigation, includes both covered people, where the statute would require referral, but also people who, because of their association with covered people, would also on a discretionary basis trigger the referral.

Mr. BURTON. So the answer to that is yes, I presume?

Mr. FREEH. Yes, in a much larger context than the White House.

Mr. BURTON. In a larger context than the White House?

Mr. FREEH. Yes, sir.

Mr. BURTON. I don't know if you are going to answer this, but does that include the President and the Vice President?

Mr. FREEH. Yes, sir.

Mr. BURTON. Now, the mandatory section is triggered when there's specific evidence from a credible source on a covered person. So in your investigation did you find that there was sufficient evidence on a covered person to trigger the mandatory operation of the statute? And I think you've already answered that.

The Attorney General, of course, when you told her these things, she did not take your advice? Did you talk to her directly when you submitted your report?

Mr. FREEH. We've had many conversations, yes, sir, including when we gave her the report.

Mr. BURTON. When you gave her the report, how long was it before she declined to take your advice?

Mr. FREEH. I believe it was several weeks.

Mr. BURTON. You can't be more specific than that?

Mr. FREEH. I would have to go and check my dates.

Mr. BURTON. Was it 2 weeks; 3 weeks; 4 weeks?

Mr. FREEH. It was 2 weeks.

Mr. BURTON. A couple of weeks.

Mr. FREEH. A couple of weeks, yes, sir. But just to be clear, we've had discussions of this now for a very long period of time; and the contents of that memo were clearly and, in many cases, repeatedly discussed between her and I. So she had a long time to consider those arguments.

Mr. BURTON. Director Freeh, didn't part of your memo address the fact that the Attorney General appears to be inconsistent in applying the Independent Counsel Statute in comparison to other cases where she has invoked it, such as Whitewater?

Mr. FREEH. In the memorandum, I cited precedents and compared them with the current stated facts, yes, sir.

Mr. BURTON. Thank you.

Mr. La Bella, you were asked to come on board and head up the Task Force last fall; is that correct?

Mr. LA BELLA. That's correct.

Mr. BURTON. You've been a prosecutor for over 15 years?

Mr. LA BELLA. That's correct.

Mr. BURTON. During that time, you've served as an assistant U.S. attorney, chief of the General Crimes Unit, chief of the Public Corruption Unit, chief of the General Crimes Unit, chief of the Organized Crimes Unit, chief of the Narcotics Unit, senior trial counsel, chief of the Criminal Division and first assistant U.S. attorney.

Mr. LA BELLA. I can't keep a job.

Mr. BURTON. You can't keep a job, OK. Then from October 1997 until just recently, you served as supervising attorney to the Campaign Finance Task Force?

Mr. LA BELLA. That's right.

Mr. BURTON. In June 1998, you were asked to serve as acting U.S. attorney in San Diego where you now serve?

Mr. LA BELLA. That's correct.

Mr. BURTON. That's quite an illustrious background, Mr. La Bella. And I would like to compliment you on your obvious credentials and dedicated public service. It's an impressive record. And I know my colleagues and staff thought very highly of you while you served in what had to be a difficult situation, given the reported division at the Department on these issues.

Mr. La Bella, did you concur with Director Freeh's recommendations last November 1997, for an independent counsel?

Mr. LA BELLA. I made my own recommendation in a report to the Attorney General dated July 16th of this year.

With respect to the events that occurred last year, I believe, when I was asked my opinion by the Attorney General, I gave my candid, unvarnished opinion in December when a decision was being made. I did not review the Director's memo at that time, nor was I asked for an opinion on it.

Mr. BURTON. Did you tell her you thought there should be an independent counsel at that time?

Mr. FREEH. In December of last year?

Mr. BURTON. Yes.

Mr. LA BELLA. Yes.

Mr. BURTON. You did?

Mr. LA BELLA. Yes.

Mr. BURTON. And now, Mr. La Bella, your memo to the Attorney General, which is over 100 pages long and it has 55 exhibits, is it true that in your memo you expressed your strong support for an independent counsel?

Mr. LA BELLA. My recommendation was that it's appropriate to appoint an independent counsel at this time.

Mr. BURTON. When did you submit that memo to the Attorney General? Do you know the exact date?

Mr. LA BELLA. It's dated July 16th. I believe I gave it to her that evening, about 7, 7:30 that evening.

Mr. BURTON. Do you make this recommendation based on both the mandatory and the discretionary sections of the statute?

Mr. LA BELLA. I made the recommendation based on every fact and issue and legal argument that was fairly presented to me in the context of my job as the supervising attorney of the Task Force.

I'm really reluctant to go into the analysis per se. But what I did recommend was—the recommendation I've given was based on the facts and the law as I saw them.

Mr. BURTON. Now, under the discretionary section, if the Attorney General has a personal, financial or a political conflict of interest, the statute may be triggered. Do you believe the Attorney General has such conflicts?

Mr. LA BELLA. I don't believe that I really—my recommendations to the Attorney General—the specific recommendations to the Attorney General that I made in my report, I believe, need to remain confidential. I've recommended to her, I've given her my best analysis, my best judgment on all the facts and the law that have been fairly presented during the course of our investigation. And that's what I've done.

Mr. BURTON. So you don't want to go into the details of it, whether it was mandatory?

Mr. LA BELLA. I would really not like to go into the details of the advice that I gave to the Attorney General, because I think that it would impede—it could impede ongoing investigations. Not only could it impede ongoing investigations, but it could disclose grand jury materials. My advice—I'm sorry.

Mr. BURTON. Excuse me, Mr. La Bella. We certainly don't want to venture into the grand jury or 6(e) testimony or give anybody a hint of where the investigation should go. All I'm asking you is, do you believe that the discretionary part—did you believe that the Attorney General had a personal, financial or a political conflict of interest in the discretionary——

Mr. LA BELLA. The discretion clause of the Independent Counsel Act played a very small part in my memorandum and recommendation to the Attorney General.

Mr. BURTON. OK. Now, the mandatory section is triggered when there's specific information from a credible source about a covered person. So in your investigation did you find that there was sufficient information on the covered person to trigger the mandatory part of the statute? You don't need to be specific about who it would be.

Mr. LA BELLA. Right. My recommendation was that an independent counsel should be appointed at this time, and it was appropriate to do so at this time.

Mr. BURTON. So you're saying the mandatory was triggered as well.

Mr. LA BELLA. That's the clause that I—is the major clause and which is analyzed in my report to the Attorney General.

Mr. BURTON. Director Freeh, you and Mr. La Bella came to these conclusions independently from each other; isn't that correct?

Mr. FREEH. Yes, we did.

Mr. BURTON. Now, Mr. DeSarno, you're the lead investigator in this matter; is that correct?

Mr. DESARNO. Yes, Mr. Chairman.

Mr. BURTON. Do you concur with the recommendations of Director Freeh and Mr. La Bella?

Mr. DESARNO. I do, yes, sir.

Mr. BURTON. Director Freeh, do you believe the Attorney General is applying the law correctly to the facts in this case?

Mr. FREEH. I think she's made a decision under the statute which the Congress has charged her to make, which only she can make, and I certainly respect that decision. I've recommended a different outcome, obviously, but I think she properly exercised her authority and followed the statute, because the statute requires her to make the decision.

Mr. BURTON. I know the statute requires her to make the decision, and I reluctantly pressed this issue. But do you believe she's applying the law correctly in this case?

Mr. FREEH. Well, again, I think my recommendation represents that we view the law differently. And I come out one way and she comes out the other way. But it's her way that counts, because that's the authority you've given her.

Mr. BURTON. You're a real diplomat. Don't run against me, will you not?

Mr. La Bella, do you believe that the Attorney General is applying the law correctly to the facts in the case?

Mr. LA BELLA. I made my recommendation to the Attorney General based on the facts and the law that I knew and as I know them. I gave her my best judgment. It's for her to decide. It's not for me to conclude whether she's right or wrong. It's for me to advise her what I think as a career prosecutor. I've done that. I've given my level best judgment, and it's for her to decide what the final decision is.

Mr. BURTON. Are there any facts—this is for both of you. Are there any facts, to your knowledge, that she might know that you don't?

Mr. FREEH. I don't believe so.

Mr. LA BELLA. I don't think so.

Mr. BURTON. Mr. La Bella, our reports indicated that you concluded the Attorney General has misinterpreted the law, creating an artificially high standard to avoid invoking the Independent Counsel Statute. I don't know if these were your exact words, but did you indicate something to that effect in your memo?

Mr. LA BELLA. I gave the Attorney General my frank, candid, unvarnished view of what the law is and how it should be applied. And I commented on the process that we have had under way in the Department since I've been here, since September. And I made my recommendation to her in that regard.

Mr. BURTON. I understand. But did you say anything to the effect in your recommendations to her that she was setting an artificially high standard to avoid invoking the Independent Counsel Statute?

Mr. LA BELLA. I don't believe I used anything to that effect.

Again, the way my report reads is, I analyzed the law, I analyzed the facts, this is where I come out. This is the threshold that I think we should be applying, and that's my best judgment. I never said in my memo that I think you're wrong. I didn't do that.

Mr. BURTON. Well, I wouldn't do that if it was my boss either, I don't think. I think I would be a little more diplomatic.

Mr. LA BELLA. I have enough people mad at me.

Mr. BURTON. And again, Mr. La Bella, the Washington Post from this past Sunday reports that, and I quote, "The report advises Reno that she must seek an independent counsel if she, herself, is going to obey the law according to officials familiar with the document." Again, not being exact and getting away from these exact words, did you indicate something to that effect in your memo?

Mr. LA BELLA. It's my judgment, my best judgment, based on the facts and the law as I know them, concerning my tenure with the Task Force, that I think it's appropriate at this time to appoint an independent counsel.

Mr. BURTON. Mr. La Bella, the Washington Post on July 24th said that your report included an 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 and that these officials included top Democratic and White House officials; is that correct?

Mr. LA BELLA. I don't want to go into the particulars of my report in that. I believe to do so, as a career prosecutor, I'm telling you I think it would be detrimental to the ongoing investigations.

Mr. BURTON. OK. We won't press you on that.

Isn't it true that your report also indicates—and you don't have to answer this if you don't want to, but we would like you to if you can. Isn't it true that your report also indicates that you believe both Democrat and Republican fund-raising should be part of any independent counsel?

Mr. LA BELLA. Again, I really don't want to go into the particulars of my recommendations to the AG.

Mr. BURTON. Mr. La Bella, yesterday's Wall Street Journal reported that your memo focuses 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 recommendation that Ms. Reno seeks the appointment of an independent counsel. Is that accurate? I think I know the answer to your question.

Mr. LA BELLA. The answer is, predictably, I don't want to go into the particulars of my recommendations to the Attorney General.

Mr. BURTON. OK. Do you consider the Attorney General to have a political conflict in an investigation of Harold Ickes?

Mr. LA BELLA. You're asking for my personal opinion?

Mr. BURTON. Yes.

Mr. LA BELLA. You know that's a decision she has to make. I can't make that decision.

Mr. BURTON. Are you aware of any particular individuals which the Attorney General thought would require her to trigger the discretionary section of the Independent Counsel Statute if they were part of this investigation?

Mr. LA BELLA. I'm sorry. Could you repeat that again?

Mr. BURTON. It's not a very clear question. Are you aware of any particular individuals which the Attorney General thought would require her to trigger the discretionary section of the Independent Counsel Statute if they were part of this investigation?

Mr. LA BELLA. I don't think she's ever made that known to me, which individuals, if any, would trigger the discretionary clause definitively.

Mr. BURTON. Mr. La Bella, did you have an opportunity to speak with the Attorney General about your memo and discuss the recommendations in detail?

Mr. LA BELLA. Not since I gave her the memo on July 16th, I have not.

Mr. BURTON. So you haven't had a chance to talk to her after you gave her the memo?

Mr. LA BELLA. We have not spoken about the memo.

Mr. BURTON. So you just gave her the memo and you haven't gone through it bit by bit with her?

Mr. LA BELLA. No.

Mr. BURTON. Has she called to you to talk to you about it?

Mr. LA BELLA. No. She's reviewing it, and I assume that when she's finished reviewing it, we'll discuss it. But, no, I haven't spoken to her about it yet.

Mr. BURTON. Director Freeh, you reportedly stated in your memo it is difficult to imagine a more compelling situation for appointing an independent counsel. Is that accurate?

Mr. FREEH. I certainly recommended that, under the discretionary clause, my best judgment, based on everything that I know about the case, was—I couldn't think of a stronger argument for an independent counsel.

Mr. BURTON. That was almost 9 months ago. Do you think the case is any less compelling today than it was then?

Mr. FREEH. No, sir.

Mr. BURTON. Is it more compelling now?

Mr. FREEH. I think that's a judgment that—I don't think I could describe that without going into other matters and other areas. It's certainly as compelling now as it was when I made the recommendation.

Mr. BURTON. But you don't want to elaborate on whether it was more—it's more compelling because more evidence has come forth?

Mr. FREEH. Yes, I would rather not.

Mr. BURTON. OK. Have you reviewed Mr. La Bella's memo?

Mr. FREEH. Yes, sir.

Mr. BURTON. You've already finished your review?

Mr. FREEH. Yes, sir.

Mr. BURTON. How long did it take you to come to conclusions on his report?

Mr. FREEH. Well, I read it over several times. I spent quite a bit of time looking at it and the exhibits over the last several weeks.

Mr. BURTON. How long did it take you to come to your conclusions that his memo was accurate or you agreed with it?

Mr. FREEH. Well, I do agree with it. I think it was the process of the last couple of weeks reading it.

Mr. BURTON. It took you a couple of weeks to come to that conclusion?

Mr. FREEH. To read it fully so I could support a conclusion like that, yes, sir.

Mr. BURTON. Two weeks, OK. Would it be fair to say that you agree with his conclusions?

Mr. FREEH. I do.

Mr. BURTON. Would it be fair to say that he makes a very compelling case for an independent counsel, given the facts to date?

Mr. FREEH. I agree with his recommendations.

Mr. BURTON. Has the Attorney General, Mr. Freeh, discussed Mr. La Bella's memo with you?

Mr. FREEH. No, sir.

Mr. BURTON. Do you intend to share your views with the Attorney General regarding the memo?

Mr. FREEH. I do, if I'm asked for them, yes, sir.

Mr. BURTON. Do either one of you know, if she's talked to anybody else at the Justice Department about this memo?

Mr. FREEH. She has told me that she was discussing it with her staff, but I don't know in particular who.

Mr. BURTON. Do either one of you know whom she is talking to over there?

Mr. FREEH. No, sir, I don't know.

Mr. BURTON. Mr. La Bella?

Mr. LA BELLA. I mean, I know that copies of my memorandum—I only made three copies—one for me, one for the Director and one for the Attorney General. I know that copies have been distributed, I think at least nine copies to people in the Department of Justice. I know that.

Mr. BURTON. Are those people political appointees, any of them? Like Lee Radek and who is the other—Bob Litt. Are Lee Radek and Bob Litt two of the people that are looking at that?

Mr. LA BELLA. I have only heard. No one has told me definitively. I've only heard secondhand who the people were. Mr. Radek is not a political appointee, but I think he has a copy of it.

Mr. BURTON. How about Mr. Litt?

Mr. LA BELLA. I believe his name was mentioned, too.

Mr. BURTON. Is there anybody else that you could tell us who has been privy to your memo, sir?

Mr. LA BELLA. Not—I've only heard. I don't know. No one has discussed the memo with me.

Mr. BURTON. I understand. But you, I'm sure, are conversant with whom is looking at your memo; and I would just like to know who they are. You don't have to give us any names.

Mr. LA BELLA. I believe Mark Richard probably has a copy. I believe Mr. Robinson probably has a copy. I believe Eric Holder probably has a copy.

Mr. BURTON. Does Mr. Litt have a copy?

Mr. LA BELLA. I understand that he does.

Mr. BURTON. Does Mr. Radek?

Mr. LA BELLA. Mr. Radek. Ms. Farrington. Those are the names that I was given that I can recall right now.

Mr. BURTON. Does Mr. Holder?

Mr. LA BELLA. And Mr. Holder.

Mr. BURTON. OK. Who, Mr. La Bella, is involved in the Attorney General's decisionmaking? In the New York Times report of July 23rd discussing your memo, they said the Attorney General assembled several of her top advisers to discuss the report on Tuesday. And were you included in that meeting?

Mr. LA BELLA. When was that?

Mr. BURTON. That was on Tuesday, July 21st.

Mr. LA BELLA. I was not in Washington. I was in San Diego. No, I didn't discuss it with her.

Mr. BURTON. Was Mr. Freeh included in that meeting?
Mr. FREEH. No, I was not.
Mr. BURTON. Was Mr. DeSarno included in that meeting?
Mr. DESARNO. I was not.
Mr. BURTON. OK. Now, I want to make sure I got this clear. She assembled her top advisers, and yet the three people closest to the investigation were not involved in the meeting to discuss your decision and your report, Mr. La Bella?
Mr. LA BELLA. I believe I was in San Diego at the time.
Mr. BURTON. You were in San Diego?
Mr. LA BELLA. I was not here.
Mr. BURTON. You were not consulted, Mr. Freeh?
Mr. FREEH. I was not at the meeting.
Mr. BURTON. What was that?
Mr. FREEH. I was not at the meeting.
Mr. BURTON. And you were not?
Mr. DESARNO. I was not, sir.
Mr. BURTON. You weren't invited, either? None of you?
Mr. LA BELLA. No.
Mr. FREEH. No.
Mr. BURTON. OK. Do you know who was in the meeting? Have you been told who was in the meeting?
Mr. LA BELLA. No, I don't know.
Mr. BURTON. None of you were?
Mr. FREEH. No.
Mr. DESARNO. No, sir.
Mr. BURTON. Have there been other meetings about your memo that you know of besides that one?
Mr. LA BELLA. Not that I'm aware of.
Mr. BURTON. Did you know of that meeting?
Mr. FREEH. No, I don't think I knew about that meeting. I knew there was one meeting where the report had been handed out. That's the only meeting that I was ever told about discussing my report.
Mr. BURTON. But you don't know of the meeting on July 21, when they were discussing it in some detail?
Mr. LA BELLA. No.
Mr. BURTON. And you don't know who was at the meeting, other than just hearing about this?
Mr. LA BELLA. No.
Mr. BURTON. Director Freeh, you weren't included in the meeting. Do you have any idea who was at that meeting?
Mr. FREEH. No, sir, I don't.
Mr. BURTON. Do either you or Mr. La Bella—do either of you, Mr. La Bella or Director Freeh, know of David Vinc—how do you pronounce his name? Vincinanzo? Why can't they get Smith up here?
Mr. LA BELLA. It's tough to get Smiths to work for the Department of Justice. But David Vincinanzo, he's the head of the Task Force. He replaced me.
Mr. BURTON. He's the new head of the Task Force replacing you. Do you know if he was included in that meeting?
Mr. LA BELLA. I do not know.
Mr. BURTON. You do not.

Mr. DeSarno, were you included in this or any meetings to discuss Mr. La Bella's memo? I think you've already said no?

Mr. DESARNO. No, I was not, Mr. Chairman.

Mr. BURTON. Are any of you aware of significant meetings involving discussion of the memo to which you were not invited, other than the one we're talking about?

Mr. FREEH. No.

Mr. LA BELLA. I don't.

Mr. BURTON. Mr. La Bella, did you discuss your memo with the current head of the Task Force, the new gentleman?

Mr. LA BELLA. Dave Vincinanzo, we've discussed it generally, yes.

Mr. BURTON. Have you gone into detail with him about it?

Mr. LA BELLA. We've gone into detail on certain aspects of it, because it involves ongoing investigations. And I'm keeping abreast of the ongoing investigations with respect to which I have played some role.

Mr. BURTON. Does he support your position?

Mr. LA BELLA. I haven't asked him, and he hasn't told me. I mean, I don't know.

Mr. BURTON. To your knowledge, has the Attorney General asked his views on the issue?

Mr. LA BELLA. I don't know if she has asked his views on the report. I don't know that.

Mr. BURTON. Has she talked to him about the report, to your knowledge?

Mr. LA BELLA. Not to my knowledge. She could have. I don't know.

Mr. BURTON. Mr. La Bella, are you aware to whom the Attorney General has disseminated your report? I think you've already answered that question. We have that.

Were you aware of opposition to the appointment of an independent counsel by Mr. Radek, head of the Public Integrity Section?

Mr. LA BELLA. I haven't discussed these issues with Mr. Radek.

Mr. BURTON. Were you aware that he was opposed to the appointment of an independent counsel?

Mr. LA BELLA. I know what I read in the papers, but I really haven't discussed it with Mr. Radek.

Mr. BURTON. OK. Director Freeh, were you aware of whether Mr. Radek opposed an independent counsel?

Mr. FREEH. At what point in time?

Mr. BURTON. Well, let's go 6 months ago, 3 months ago and today.

Mr. FREEH. There has been a lot of independent counsel issues over the period.

Mr. BURTON. I'm talking about this independent counsel regarding the campaign finance investigation.

Mr. FREEH. I have heard, but not directly from him, because I have not discussed it with him. But I have heard that he has recommended against it.

Mr. BURTON. Would you both agree that Mr. Radek has an important say on these matters with the Attorney General?

Mr. FREEH. Of course. He's the chief of the section and the section that's responsible for reviewing matters relating to independent counsel referral.

Mr. BURTON. Mr. La Bella?

Mr. LA BELLA. I'm sure it's someone that the Attorney General consults.

Mr. BURTON. Mr. La Bella and Director Freeh, isn't it well-known that a key political adviser to the Attorney General, Bob Litt, is opposed to an independent counsel? Either one of you.

Mr. FREEH. Well, again, I have not had any discussions with Mr. Litt about his recommendations, whether—I know he's consulted with the Attorney General, but I'm not privy to those conversations.

Mr. BURTON. I understand. But you are very close to this investigation. Have you been told or heard in any way that Mr. Litt is opposed to an independent counsel?

Mr. FREEH. I have heard that on different issues and, of course, there are many, many different issues involving independent counsel, that, in some instances, he has expressed, not to me but to others, concerns about applying the statute.

Mr. BURTON. Mr. La Bella?

Mr. LA BELLA. It's not a subject that he and I have discussed.

Mr. BURTON. Have you heard anything about that from any other source, that Mr. Litt was opposed to the appointment of an independent counsel?

Mr. LA BELLA. Any other source? I don't believe so. It's not a subject that we've discussed, and I can't right now recall anybody telling me that he is opposed to the appointment of a particular independent counsel.

Mr. BURTON. And Mr. La Bella and Director Freeh, isn't it well-known that—I think we've covered that. OK.

Director Freeh and Mr. La Bella, the committee and DOJ have received copies of 200 $1,000 travelers checks which were purchased in Djakarta, Indonesia, and distributed in the United States by Charlie Trie and an ex-Lippo-executive, Antonio Pan. Are you familiar with those checks?

Mr. LA BELLA. Yes, I am. We've been familiar for some time about those checks.

Mr. BURTON. A number of Charlie Trie associates received this money and used it for conduit contributions to the DNC. From our investigation, it appears that many of these checks were used for conduit payments to the DNC. We have learned that moneys such as this have not been returned by the DNC.

Isn't the fact that the DNC is potentially financially impacted by this investigation part of the conflicts problem that the Attorney General has in investigating these serious financial allegations of wrongdoing of high officials in her own party, Mr. La Bella?

Mr. LA BELLA. Those matters relate to ongoing investigations, and those are not matters I'm permitted by law to discuss.

Mr. BURTON. I understand. I'm not asking for you to comment other than these people are in the DNC, high officials in the DNC, and isn't there a conflict there by the Attorney General investigating those people?

Mr. LA BELLA. Again, it would be impossible for me to answer that question without jeopardizing ongoing investigative work that the Task Force is currently doing.

Mr. BURTON. Mr. Freeh?

Mr. FREEH. Mr. Chairman, with respect to specific questions of conflict as you have specifying individuals and relating them to the facts of the case, I just feel very uncomfortable about talking about that.

Mr. BURTON. I'm finished. Just generally regarding the DNC, no specific individuals. Wouldn't this be a conflict?

Mr. FREEH. Not just on those facts. I think you need a lot of other facts to make that conclusion. I think just that fact alone would not necessarily be a conflict.

Mr. BURTON. And you're not able to discuss it any further than that?

Mr. FREEH. Not without going into facts which I don't think I should.

Mr. BURTON. Mr. Waxman?

Mr. WAXMAN. Thank you very much, Mr. Chairman.

Mr. Freeh, in your experience over the years, is it unprecedented to find different advisers giving different advice to an Attorney General?

Mr. FREEH. Not at all. I would hope and expect that Attorney Generals, past, present and future, always receive different, good advice. And I think the more divergent it is at times, the better it is for that Attorney General to make what he or she thinks is the best decision.

Mr. WAXMAN. There can be legitimate differences about the law and how it applies without it being wrongdoing to come to a different conclusion——

Mr. FREEH. Yes, sir.

Mr. WAXMAN [continuing]. From one person as opposed to another. The Supreme Court of the United States has handed down a lot of 5 to 4 decisions, which indicates that they have different conclusions about the facts in the law when the matters are presented to them.

In this committee, we have had a chief counsel quit because he didn't think that the chairman was following his recommendations. We all have staff people who give us different recommendations. And we know on this committee as well that different staff people claim to have had different views they presented to the chairman regarding the handling of the Hubbell tapes. So we're not talking about something unprecedented to have views expressed that are different from different advisers; is that accurate?

Mr. FREEH. That's correct.

Mr. WAXMAN. Mr. La Bella, you don't disagree with that, do you?

Mr. LA BELLA. No.

Mr. WAXMAN. Mr. Freeh, I understand the Attorney General has consulted not just with Mr. Burton about the La Bella memo, but also with Senator Hatch, the chairman of the Senate Judiciary Committee, and Mr. Hyde, the chairman of the House Judiciary Committee. I further understand that these chairmen are taking a very different approach to the La Bella memorandum than Chairman Burton.

Can you describe the approach Senator Hatch is taking and compare it to the approach that our chairman is taking?

Mr. FREEH. Mr. Waxman, the only thing I know about that is the clip that I saw when I was waiting in the witness room. I've not spoken to Senator Hatch or Mr. Hyde or the Attorney General about what their position is.

Mr. WAXMAN. Well, Senator Hatch is going along with the Attorney General and giving her 3 weeks before she will come in and have to talk about the memo and her decision, but giving her a chance to review that memorandum. Is that action more consistent with the Department of Justice precedents, to your knowledge, than what we have here in this committee?

Mr. FREEH. Well, I'm not familiar with all the precedents. It certainly consistent with my recommendation, as I expressed before. I think it's reasonable and prudent to give the Attorney General 3 weeks to make a decision before anything is done. I don't think anybody or any body is prejudiced by that. That certainly is my position.

Mr. WAXMAN. Now, that position that you have which you articulated to the chairman in the meeting we had last Friday and which you've expressed today is not just based on the fairness to the Attorney General, which is not insignificant, but it's not just based on that, it's based on doing the least amount of harm to the Department's ongoing criminal investigation?

Mr. FREEH. Yes. It's that, and it's also the institutional concerns I expressed. I think if we can, all of us in this room, avoid a situation where the two branches confront each other over this issue and the fallout that that has on other prosecutors and investigators, I think if we can avoid that, it's prudent to do so.

Mr. WAXMAN. Mr. Freeh, it's well known that you've recommended to the Attorney General that she appoint an independent counsel to investigate Democratic violations. Do you believe that an independent counsel should be appointed to investigate Republican violations?

Mr. FREEH. I think by necessity the jurisdiction would include all campaign financing activity, and it would be a universal inquiry.

Mr. WAXMAN. Let me make sure that I understand this statement, because it's the first time that I've heard it. But it's your view that if there's going to be an independent counsel, the independent counsel ought to be looking at Democratic and Republican campaign finance?

Mr. FREEH. No, I'm not saying that. What I'm saying is the jurisdiction of an independent counsel would have to be defined not only by the court, if a court were to appoint one, but that jurisdiction would also be a function of what recommendation the Attorney General makes. And whether it denominates into parties or subgroupings or whatever, I think that jurisdiction would be a very broad and wide-ranging jurisdiction.

Mr. WAXMAN. Have you articulated this point of view and made this recommendation to the Attorney General?

Mr. FREEH. I discussed that in my memorandum.

Mr. WAXMAN. Mr. La Bella, do you agree with Director Freeh on this point?

Mr. LA BELLA. I do, yes.

Mr. WAXMAN. Is it based on the conflict of interest idea that would lead you to that conclusion that the Attorney General ought to appoint an independent investigator when it comes to Republican potential abuses of campaign finance laws?

Mr. FREEH. Well, again, I haven't denominated it in terms of Democratic or Republican. I would certainly agree with the proposition that a conflict, if one were to be found to exist, could run, despite whether it's a Democratic or a Republican subject. In fact, the 1994 expansion of the Independent Counsel Act, as you know, for the first time allowed the Attorney General the discretion to include Members of Congress in terms of discretionary referral under the Independent Counsel Act. So I think it goes beyond any particular denomination.

Mr. WAXMAN. Director Freeh, one of the areas that the press has reported that the Justice Department is investigating is the issue advertising practices of both Democratic and Republican parties. This is the practice of using soft money to pay for so-called issue ads that are really no more than thinly disguised campaign commercials.

Do you think that an independent counsel should investigate the use of such ads by the Democrats?

Mr. FREEH. Well, again, I think if I answer that question, I have to necessarily either detail or reflect by my answer very detailed and specific parts of my memorandum. I will say that the subject matter of advocacy ads and issue ads was certainly part of my memorandum, but I don't think—to go beyond that I would have to start going into details, which I would prefer not to.

Mr. WAXMAN. If one were to come to the conclusion that there ought to be an independent counsel investigating issue ads paid for by the soft money contributions, do you think that an independent counsel should look at Republican as well as Democratic practices in this area; does it distinguish one or the other?

Mr. FREEH. I think it's too difficult a question to answer, because the referral and the jurisdiction established by the court has to predicate itself on particular facts, and I don't think hypothetically you could make that leap.

Mr. WAXMAN. Well, if one were to find the practice of using soft money for issue ads as a violation, a potential violation, of the law to which there ought to be an investigation, I would presume that if that topic is subject to an investigation, it wouldn't be as it relates only to one party, if both parties were doing the same thing?

Mr. FREEH. Yes, on those facts I think you're correct.

Mr. WAXMAN. Press accounts say that the FBI is investigating evidence that Haley Barbour and the Republican National Committee knowingly solicited foreign money contributions. For example, the Senate hearings revealed that the National Policy Forum, which is a subsidiary of the RNC, received hundreds of thousands of dollars from a Hong Kong businessman, by the name of Ambrous Young. Do you think these allegations should be investigated by an independent counsel?

Mr. FREEH. I think that the matters that you referred to are too current with respect to matters being reviewed, many, many matters, but I think—I really can't comment on that. I think you're

asking me to, first of all, speculate, but also discuss aspects of the grand jury investigation that would not be proper for me to do.

Mr. WAXMAN. Mr. La Bella, do you have any views on this matter?

Mr. LA BELLA. No.

Mr. WAXMAN. Another Republican organization which has received scrutiny from the press and the Senate committee is the Triad Management. Triad is a corporation that secretly funneled campaign contributions to Republican campaigns across the country. Triad also coordinated with the Republican campaigns to run anonymous issue advertisements against Democratic candidates. In fact, many members of this committee have been linked to Triad's activities.

Do you believe that the activities of Triad Management should be investigated by an independent counsel, Mr. La Bella?

Mr. LA BELLA. It really wouldn't be appropriate for me to comment on anything that's ongoing with respect to the Task Force's work. I believe once we get into that aspect, we go down that slippery slope, and there's nowhere to stop. We have to draw the line on talking about specific allegations and specific investigations which are active in front of the Task Force.

Mr. WAXMAN. I respect that. But is it fair to say that in your recommendations to the Attorney General that an independent counsel be appointed to look at campaign finance abuses, that you are not just looking at campaign finance abuses by Democrats, you're looking at campaign finance abuses broadly speaking by both or either party?

Mr. LA BELLA. Let me take a stab at answering the question as best I can. If I were an independent counsel, if I were receiving this matter as an independent counsel, I would want to look at everything, because I think in order to investigate properly one allegation of wrongdoing, I think you have to fundamentally understand the fabric of campaign financing as it is, as it exists, in order to make a determination, which anyone will have to do, whether it's a Department of Justice prosecutor or an independent counsel someday in his or her—the exercise of his or her prosecutorial discretion, even if, assuming you get to the point where there is probable cause to believe a crime has been committed and a particular person committed the crime, whether or not it's appropriate to bring an indictment on that evidence, because of other factors that we as prosecutors consider all the time. I hope that answers your question.

Mr. WAXMAN. So you think if there's going to be an investigation, that an independent counsel would have to look at a broader perspective of campaign finance abuses and not restricted to one party or the other, irrespective of whether that independent counsel later reaches a conclusion that indictments ought to be brought?

Mr. LA BELLA. If it were me, that's the way I would handle it. I would want to look at as much as I possibly could look at, so I can make informed decisions at the end of the day.

Mr. WAXMAN. Director Freeh, do you think that makes sense?

Mr. FREEH. It makes sense. But, again, the authority of the independent counsel is subject to expansion by the court is fairly well

circumscribed, so it would depend on what authority the court decides to establish and then modify it.

Mr. WAXMAN. Well, that would be based on what the Attorney General would recommend. The Attorney General would recommend that an independent counsel be appointed, and she would then delineate what she thought ought to be investigated by an independent counsel?

Mr. FREEH. Yes, sir.

Mr. WAXMAN. And the courts, as I recall, have always gone along with the Attorney General's recommendation.

Mr. FREEH. They generally do, but the courts can modify that and even modify it against her, the recommendation of an Attorney General.

Mr. WAXMAN. That's never happened.

Mr. FREEH. I'm not so sure that it has not happened.

Mr. WAXMAN. I see.

I understand that the Department has an ongoing investigation into allegations—well, you don't want to get into any specific allegations, and I will respect that.

A great deal of symbolic value has been placed on the question of whether an independent counsel should be appointed. People talk about it as if appointing an independent counsel were in and of itself—I mentioned earlier, I don't know if you were in the room, that I myself had called for an independent counsel over a year and a half ago. I did that in an article that was in the New York Times.

But I don't think the most important question is whether or not an independent counsel is appointed. I think the most important question is whether these allegations are being investigated thoroughly and professionally. That's my dispute with our chairman, because his view of running this committee is to do an investigation that's only one-sided, it's partisan, that won't look at abuses by Republicans, and will look for any potential abuses, real or imagined, relating to Democrats. It's not only partisan, it's also been unprofessional, I believe.

Director Freeh and Mr. La Bella, for the last year and a half you have run the campaign finance investigation. I want to ask you a series of questions about your efforts. I want to learn whether your efforts have been thorough, whether they have been professional, whether they have differed in any way from what you would expect an independent counsel to do.

I understand that the Department of Justice Campaign Finance Task Force is the largest open criminal investigation, employing over 100 individuals, including Department of Justice attorneys, FBI agents and support staff. Do you believe that the Task Force is adequately staffed to conduct an investigation of this nature?

Director Freeh?

Mr. FREEH. Yes, sir.

Mr. WAXMAN. And, Mr. La Bella?

Mr. LA BELLA. Yes, I do.

Mr. WAXMAN. Mr. DeSarno?

Mr. DESARNO. Yes, sir, I do.

Mr. WAXMAN. Do you believe that the Department of Justice attorneys and FBI agents currently working on the investigation are competent and professional?

Mr. FREEH. Yes, I do.
Mr. WAXMAN. Mr. La Bella?
Mr. LA BELLA. Yes, sir.
Mr. WAXMAN. Mr. DeSarno?
Mr. DESARNO. Absolutely.
Mr. WAXMAN. Do you think that an independent counsel would be able to put together a more competent staff than you and Mr. La Bella have assembled?
Mr. FREEH. No.
Mr. LA BELLA. I don't think so.
Mr. WAXMAN. Mr. DeSarno?
Mr. DESARNO. No, sir.
Mr. WAXMAN. I understand from your testimony that you've issued nearly 2,000 subpoenas in connection with the campaign finance investigation. At any point did the Attorney General or the White House interfere in any way with the issuance of any subpoena that you thought was important to the investigation?
Director Freeh?
Mr. FREEH. No, sir.
Mr. LA BELLA. No.
Mr. DESARNO. No, sir.
Mr. WAXMAN. Can you think of any subpoena that would be issued by an independent counsel that wasn't issued by the Task Force?
Mr. FREEH. Well, if the independent counsel's jurisdiction was different or——
Mr. WAXMAN. It may be more narrow, but it wouldn't be as broad as yours; isn't that fair?
Mr. FREEH. It would depend what the court established. So, I mean, hypothetically they could be issuing different subpoenas because they could be along jurisdictional lines that are different from us.
Mr. WAXMAN. But you're conducting an investigation on campaign finance abuses, and can you think of any subpoena that you should have been issuing if you were an independent counsel doing the same job that you haven't issued?
Mr. FREEH. Well, again, hypothetically, because of the distinction between covered and noncovered individuals, an independent counsel who would then be focused on people who were determined to be covered might have a different expanse than we would have in determining whether somebody was covered or not, because of the preliminary investigation that doesn't permit subpoena power.
But to answer your question, I'm confident that with respect to all of the matters that I'm charged with supervising, and Mr. La Bella can speak for himself, we have vigorously pursued by subpoena or interview and any other techniques the investigation that we feel is necessary.
Mr. WAXMAN. What about interviewing witnesses? At any point were you prohibited in any way by the Attorney General or the White House from interviewing any witness you thought was important to the investigation?
Mr. FREEH. Certainly not by the White House. There were discussions and at times disagreements about the timing of interviews between the agents and the prosecutors, which, by the way, occurs

in many investigations. But we were never, to my knowledge, prohibited from conducting an interview at any point that we thought was critical.

Mr. WAXMAN. Mr. La Bella, do you agree with that?

Mr. LA BELLA. Yes.

Mr. WAXMAN. Mr. DeSarno?

Mr. DESARNO. I agree, yes, sir.

Mr. WAXMAN. So at this point in the investigation, there are no witness interviews that you believe would be conducted by an independent counsel that you haven't already conducted?

Mr. FREEH. Well, no, with the proviso again that an independent counsel would exercise jurisdiction in a different way than we would possibly.

Mr. WAXMAN. And I assume the same answer about any powers an independent counsel would have that you don't have?

Mr. FREEH. No.

Mr. WAXMAN. Are there any?

Mr. FREEH. No. None that I know of.

Mr. WAXMAN. I assume the answer is the same for all of you.

The Task Force has now indicted or convicted 11 individuals on charges stemming from the campaign finance inquiry. Are there any indictments that an independent counsel would have sought that the Task Force did not pursue?

Mr. FREEH. I don't think I could answer that question.

Mr. LA BELLA. That's a hard question to answer. There are a lot of prosecutors out there. I dare to say that there's some better than me, and they may have come up with a better way to do it, but we've done the best we can.

Mr. WAXMAN. Has the Attorney General, Mr. La Bella, or the White House prevented the Task Force from indicting any individuals or entities that you felt deserved to be indicted?

Mr. LA BELLA. I've never had any contact with the White House concerning ongoing investigations. My contact with the Department has been through the chain of command up and to and including the Attorney General, and never have we been prevented from bringing any charges or seeking any indictments. There have been lively debates about the way indictments should be formed, who should be included, whether additional charges should be brought, and at times we have declined to bring cases after a lively debate, but it's always the normal process that any prosecutor, team of prosecutors and investigators go through.

Mr. WAXMAN. Let me just ask it this way: Have any of you ever been told to pull a punch because of politics?

Mr. FREEH. No.

Mr. LA BELLA. No.

Mr. DESARNO. Absolutely not.

Mr. WAXMAN. So it's fair to say in substance that you've conducted the campaign finance investigation in the same way that you would expect an independent counsel to conduct the investigation; is that accurate?

Mr. FREEH. Yes.

Mr. LA BELLA. I've conducted it the only way I know how. So I don't know how an independent counsel would do it.

Mr. WAXMAN. I want to come back, one last time, to the question to the scope of your recommendations for an independent counsel. You both have recommended an independent counsel. Everyone naturally assumes that your recommendation is focused on Democratic violations. But I understand from my question and your answers that your recommendation to appoint an independent counsel does not break down along party lines; in other words, the activities that you believe the independent counsel should investigate include the activities of both Democrats and Republicans. Is that right, Mr. La Bella? Start with you.

Mr. LA BELLA. We investigate every allegation that we get. We don't analyze what side of the fence the investigation is on. We just follow the leads where they take us, and we pursue every lead. I can't tell you which investigations we have ongoing now, but if an allegation comes to us, and it's sufficient to trigger an investigation, we will trigger an investigation.

Mr. WAXMAN. I'm asking about your referral recommendation that there be an independent counsel. Is it fair that in that recommendation, an independent counsel would not be pursuing matters along party lines exclusively?

Mr. LA BELLA. My recommendation relates specifically to matters that are before the Task Force. So with respect to those matters, I have recommended that an independent counsel be appointed.

Mr. WAXMAN. Director Freeh, can you tell me your views on that?

Mr. FREEH. My recommendations didn't break down along any party lines. I made a very broad-based recommendation, which would be a very inclusive referral, and it didn't denominate or break down or subscribe to or even relate to one party or the other. It was a subject matter referral.

Mr. WAXMAN. Subject matter. Your recommendation for an independent counsel, Director Freeh, is because you believe the law requires it, it's not because you think that a thorough investigation is not being conducted; is that an accurate statement?

Mr. FREEH. That's an accurate statement. I believe a thorough investigation is being conducted within the parameters that we're operating under.

Mr. WAXMAN. And if the law requires an independent counsel take over this investigation, you believe that an independent counsel ought to pursue campaign finance issues within his or her jurisdiction pertaining to both Democrats and Republicans?

Mr. FREEH. I think that the independent counsel ought to pursue the jurisdiction established by the court in order to come back to the court and Attorney General at any predicate point where he or she believes it should change or expand.

Mr. WAXMAN. Well, in the initial recommendation for the appointment of the independent counsel, are you recommending an independent counsel to investigate matters that relate to the subject matter of the violation, whether they have been violated by Democrats or Republicans?

Mr. FREEH. It is an impossible question to answer because the recommendation did not break down along those bright line parameters. It's a recommendation which I think is based on the facts

certainly as we have developed them, but it doesn't subscribe to or delineate a description or characterization by a political party.

Mr. WAXMAN. Well, if I still have time, I want to yield to my colleague Mr. Lantos.

Mr. LANTOS. May I ask how much time do we have, Mr. Chairman?

Mr. BURTON. Six minutes.

Mr. LANTOS. Following your rejection, Mr. Chairman, of the Attorney General's request to appear at this hearing, she sent a letter to you, and copies were distributed to other members of the committee. I ask unanimous consent to insert her letter into the record.

Mr. SHADEGG. Reserving the right to object.

Mr. LANTOS. The gentleman reserves the right to object.

Mr. SHADEGG. I simply want to know——

Mr. LANTOS. I withdraw my request, and I will read the letter.

Mr. SHADEGG. I simply would like to get a copy of the letter. May I be heard on my right to object?

Mr. LANTOS. I withdraw my request.

Mr. BURTON. The gentleman has a reservation. I think we have to wait until he states his reservation.

Mr. SHADEGG. With the copy of the letter in my hand, I withdraw my reservation of my right to object.

Mr. WAXMAN. Point of order. If there is unanimous consent pending, there can be a reservation. But if it is withdrawn——

Mr. BURTON. If the gentlemen will suspend, I will check with the parliamentarian quickly.

Mr. LANTOS. Mr. Chairman, after reviewing your letter of August 3——

Mr. BURTON. The gentleman will suspend for just a moment.

Our parliamentarian said that before you can read the letter, Mr. Shadegg has to state his reservation. Then you can withdraw it if you choose.

Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman.

I simply wanted a copy of the letter. I have now gotten one. I withdraw my reservation.

Mr. BURTON. The gentleman withdraws his reservation. The gentleman——

Mr. LANTOS. This is a letter from the Attorney General to you, Mr. Burton.

Mr. BURTON. Which I have not yet read.

Mr. LANTOS. I will help you read it.

Dear Mr. Chairman: After reviewing your letter of August 3 and the press statement by members of your staff over the weekend, it is clear that the Committee's primary focus is my decisionmaking on the question of the appointment of an independent counsel. That is why I called you this morning and requested an opportunity to be heard at the Committee's hearing.

In light of your rejection of my request to be heard, let me explain the points I would have made had you permitted me to testify this morning.

I greatly respect the system of checks and balances that our founding fathers established. They wisely assigned each branch of government a distinct and limited role. One of Congress's most important roles is to oversee the work of the executive branch in order to better carry out its legislative duties. Among our most important functions are prosecuting criminals, making sure innocent people are not charged, and punishing wrongdoing.

When there is disagreement between the branches, our task as public servants is to find solutions that permit both branches to do their jobs. That is why I offered

to testify this morning and why Director Freeh and I came up to visit with you last week—to try to reach an accommodation with the Committee which allows you to pursue your oversight responsibilities while minimizing any interference with our ongoing criminal investigation.

As you know, the Department of Justice is conducting an investigation into allegations of criminal activity surrounding the financing of the 1996 Presidential election. That investigation has charged 11 persons, and is still very much ongoing. We have more leads to run down, more evidence to obtain and analyze, and more work to do. More than 120 dedicated prosecutors, agents and staff are working on this investigation every day. And many targets, suspects and defense lawyers are watching our every move, hoping for clues that will tip them off and help them escape the law's reach.

Mr. Chairman, you have demanded that I provide two memoranda to the Committee. One was written by Director Freeh last fall, the other by Mr. La Bella, and Mr. DeSarno. We have reviewed your request very seriously. Our concerns are set forth in the letter Director Freeh and I sent to you on July 28.

Last week Director Freeh and I again offered an accommodation that we believe protects both your oversight role and our prosecutorial responsibilities. We explained that this memo is extensive, that I need to review it carefully and thoroughly, and that when I finish my review, I may or may not decide to trigger the Independent Counsel Act. The Justice Department is willing to provide the leadership of the Committee with a confidential briefing on appropriate portions of the La Bella memorandum after I have had an opportunity to evaluate it fully, in approximately 3 weeks.

According to Director Freeh, these memoranda offer a road map to confidential, ongoing criminal investigations. Even excluding grand jury information—which you are not seeking—such documents lay out the thinking, theories, and strategies of our prosecutors and investigators, and the strengths and weaknesses of our cases. They talk about leads that need further investigation, and places where we've reached dead ends. Criminals, targets and defense lawyers alike can all agree on one thing—they would love to have a prosecutor's plans.

Mr. La Bella's memorandum provides an overview of the investigation at this time. I am reviewing it with an open mind. If I do make a decision to appoint an independent counsel after you have taken an internal memo still under review, how will anyone believe that my decision was independent—as the law requires? Indeed, to provide this memorandum to the Committee would be a grave disservice to an independent counsel if one were appointed and could undermine his or her ability to carry out an effective criminal investigation.

There are some public policy reasons as well as law enforcement reasons why we cannot provide this document to the Committee. Suppose, for example, a Congressional committee wants to stop us from prosecuting someone the Committee supports. What's to stop the Committee from threatening Department lawyers with contempt.

Mr. BURTON. The gentleman's time has expired.

Mr. LANTOS. I ask unanimous consent to conclude reading the Attorney General's letter.

Mr. BURTON. I think the gentleman will have 5 minutes to conclude his reading of the letter. All right. Proceed.

Mr. LANTOS. Thank you.

What's to stop the Committee from threatening Department lawyers with contempt, forcing them to produce their internal memos and making them public to everyone including the defendant's legal team? To demand the prosecutor's documents while the case is in progress would irreversibly taint our principles of justice and could harm the reputations of innocent people or even place witnesses in danger of retaliation. Such policies also would subject every prosecution decision to second-guessing and accusations that Congressional pressure affected the Justice Department's decisionmaking.

Even when conducting vigorous oversight, Congress has respected the principle that law enforcement must be free from even the appearance of partisan political tampering. And the Justice Department has adhered to this position for the better part of a century, under presidents from Teddy Roosevelt to Ronald Reagan—and under FBI Directors from J. Edgar Hoover to Louis Freeh.

More than 50 years after they were written, I ask you to consider the words of Attorney General Robert H. Jackson, who later served on the Supreme Court:

> It is the position of the Department . . . that all investigative reports are confidential documents of the executive department of the government, to aid in the duty laid upon the President by the Constitution to 'take care that the laws be faithfully executed,' and that congressional or public access to them would not be in the public interest.

Twelve years ago, the head of the Justice Department's Legal Counsel, during President Reagan's administration, Charles J. Cooper, added other concerns, including:

> Well founded fears that the perception of the integrity, impartiality, and fairness of the law enforcement process as a whole will be damaged if sensitive material is distributed beyond those persons necessarily involved in the investigation and prosecution process.

I know that you have cited several examples that you believe contradict these longstanding opinions. But we have analyzed your examples, and none of them deal with the demand you have made: to turn over law enforcement sensitive documents during a pending criminal investigation.

Mr. Chairman, we have worked very hard to respond to Congressional oversight requests. Since I became Attorney General, I and many other members of this Department have testified dozens of times, turned over thousands of documents, answered thousands of letters and provided countless briefings on matters large and small. As our campaign finance investigation has progressed, we have made every effort and taken extraordinary steps to accommodate your Committee's needs while protecting the integrity of the investigation. We have provided extensive testimony and briefings, including private briefings this winter about the contents of an internal memo by FBI Director Louis Freeh.

If future Attorneys General know that the innermost thinking behind their toughest law enforcement decisions will become fodder for partisan debate, then we risk creating a Justice Department and an FBI that tacks to political winds instead of following the facts and the law wherever they lead. If future law enforcement professionals cannot provide advice that is candid and confidential, we will have a government of "yes" men who advocate what is popular instead of what is right. And if future Congresses can poll the Attorney General's advisors or line attorneys in order to ferret out and promote opinions they approve of, then every controversial law enforcement decision will be tainted in the public's eyes. All of these concerns are most acute when Congress demands information and seeks to pressure me on a sensitive law enforcement matter that I have not yet made.

Given the importance of this matter, I would appreciate you including this letter in the hearing record. Thank you. Sincerely, Janet Reno.

[The letter referred to follows:]

Office of the Attorney General
Washington, D.C. 20530

August 4, 1998

The Honorable Dan Burton
Chairman
Committee on Government Reform and Oversight
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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Given the importance of this matter. I would appreciate your including this letter in the hearing record. Thank you.

Sincerely,

Janet Reno

cc: The Honorable Henry Waxman
Ranking Minority Member

Mr. BURTON. Before I yield to Mr. Hastert, let me just say that we have had the Congressional Research people check out precedents. There are precedents for what we are doing, No. 1.

No. 2, Janet Reno evidently contacted you on the Democrat side before she contacted me about appearing before our committee today, and she called me 15 minutes before the hearing.

And No. 3, this letter which you just read into the record I didn't even have when you started reading it. I think it is unseemly for the Attorney General to be contacting the minority before she contacts the chairman of this committee regarding things that she requests to be inserted in the record or her appearance before the committee. It's obvious to me that she believes that she needs to take partisan advantage with the Democrats. I think that's unfortunate.

Mr. Hastert.

Mr. HASTERT. I thank the chairman.

Just a question, is 5 minutes the time allotted?

Mr. BURTON. The gentleman has——

Mr. HASTERT. The gentleman from California had an additional 8 minutes allotted. That's extraordinary; is that correct?

Mr. BURTON. Yes, the gentleman had an additional 8 minutes.

Mr. HASTERT. Thank you.

Mr. BURTON. I only did that as a matter of comity.

Mr. HASTERT. Director Freeh, the memo that is in contention here that we have been talking about has certainly been circulated in Justice; is that correct? It is going around to be looked at and——

Mr. FREEH. Yes. Mr. La Bella mentioned individuals who he believes has copies of the memo.

Mr. HASTERT. And even some of those people who have copies of the memo are political appointees; is that correct?

Mr. FREEH. Again, I don't know myself who has the memo, and I don't know who the Attorney General is consulting with. It certainly could include both, but I don't know who they are.

Mr. HASTERT. I understand. There are political appointees who have copies of the memo. I would say that would probably be an uncomfortable situation, if you have political people in the Justice Department, that this memo is not open to anybody. It's certainly not open to this committee and may or may not be open to others in Congress later on, but you have political people that are actually looking at the road map where things are going. I just think that probably looks—and I am sure the Attorney General would not make—would not have an impropriety here, but it certainly looks like there may have been an impropriety. Is that probably some of the ideas that you are thinking about when you ask that maybe we need to go outside?

Mr. FREEH. No, actually it's not. You know, the Attorney Generals, past and present, also have political appointees serving in key leadership positions. They are called Schedule C appointments. That's always been the tradition. I have the greatest confidence in the integrity and the honesty of those individuals, including the current ones who may have it, that they are going to treat the memo with the security and confidence that it requires and give

the Attorney General her requested advice. So I am really not concerned about that.

Mr. HASTERT. I probably agree. I am sure that anybody that the Attorney General would trust in confidence that memo circulating would be of the highest, and there wouldn't be any impropriety that would take place on certainly something as important as this, or that there would be anybody that would be unprofessional. But there certainly is room for the appearance for that, and I think that is where the whole legitimacy of this investigation keys on.

And I think—again, I can't get in your mind, and your memos are there for review, but I would speculate that probably when you look at Justice and what needs to be done, probably needs to be balanced, and to make sure that there isn't even an appearance of impropriety, in your past investigations certainly that you have been involved in, you tried to make sure that there is no appearance of impropriety; is that correct?

Mr. FREEH. That's always our objective, as I am sure it is the Attorney General's.

Mr. HASTERT. And it's not unusual for the Attorney General or the Attorney General's Office at the Department of Justice to turn down recommendations from other law—legal agencies, law enforcement agencies; is that correct? I mean, it happens quite often.

Mr. FREEH. It happens often there. It happens, in all 94 U.S. Attorneys' offices every day around the country.

Mr. HASTERT. I mean, the recommendation, for instance, of the IRS in 1996 that $280,000 of campaign funds being money-laundered in a certain campaign, a Senate campaign, in Illinois was turned down twice, but that was certainly for good reason. And I am sure it was balanced with—those types of recommendations are turned down time and time again not for political reasons; is that correct?

Mr. FREEH. Yes. I mean, many, many times investigators come to prosecutors and ask for prosecution. And professional as well as politically appointed U.S. attorneys and their assistants say yes or no depending on their analysis of the case and the facts and the law.

Mr. HASTERT. I finished my question, and I will yield back my time. I am not going to ask for another 8 minutes. I was going to pass on to another person in the committee, but I will not do that and wait to take our appropriate time. I yield back my time.

Mr. BURTON. The gentleman yields back the balance of his time.

The gentleman from California.

Mr. WAXMAN. Director Freeh and Mr. La Bella, you are both being brought here with the recognition that you are career officials uninterested in any political outcome, and therefore a great deal of weight is being given to your thoughts and recommendations. But isn't it accurate to say, Director Freeh, that it is your recommendation that this committee not receive Mr. La Bella's memo?

Mr. FREEH. I'm sorry, that not——

Mr. WAXMAN. That this committee not receive the La Bella memo.

Mr. FREEH. Yes. I think at this time, like I said, my recommendation is that you don't pursue the subpoena, and you don't

try to discover it, even though I agree you have a legitimate need for the information in there. But for the reasons I set forth, I just respectfully ask you to defer it for now.

Mr. WAXMAN. Well, I think——

Mr. FREEH. I'm also not a career appointee. I am a political appointee.

Mr. WAXMAN. You are a political appointee?

Mr. FREEH. Yes, sir.

Mr. WAXMAN. Let me define the term. What we see here is deference being paid to your recommendations when the chairman approves of them, but no deference to your recommendations when he disapproves. And if we go to a contempt citation this Thursday against the Attorney General of the United States, it will be because she refused to turn over the memo written by you, Director Freeh, and that the memo written by Mr. La Bella, which both of you, I assume, think this committee should not receive at this point.

Mr. FREEH. I certainly believe it not prudent to receive it at this point. And I think, again, respectfully, the contempt citation well beyond the Attorney General will send a very chilling message to prosecutors and special agents around the country. So I urge you to just, as I know you will, deliberate very carefully about that, because the implications go well beyond this issue and this Attorney General.

Mr. WAXMAN. Thank you very much.

Mr. La Bella, you concur?

Mr. LA BELLA. The last thing in the world that I want to see as the prosecutor heading this Task Force is that this memo ever get disclosed. I will go beyond 3 weeks. I don't think it should ever see the light of day, because this, in my judgment, would be devastating to the investigations that the men and women of the Task Force are working on right now and that I have put my blood, sweat and tears into, and I don't want to see that jeopardized.

I would even be stronger than the Director. I can't see a set of circumstances under which this report should see the light of day. I understand that perhaps at some time there could be a confidential briefing of some of the aspects in this report, but if I were an independent counsel going to get this case, or I were a prosecutor that is going to prosecute these cases later on, the first thing that I want to do is talk to me. The second thing I want to do is read this report, and third thing I want not to happen is this report see the light of day, because that would just undercut what any prosecutor would do with these investigations, whether they are an independent counselor a Department of Justice prosecutor. That's my belief as a career prosecutor.

Mr. WAXMAN. Mr. DeSarno, do you agree?

Mr. DESARNO. Yes. I think that would be devastating if that report were to be made public.

Mr. WAXMAN. If we are taking your recommendations with a great deal of weight, I think this committee ought to take as well with a great deal of weight your thoughts that we ought not to be pursuing in this subpoena and holding the Attorney General in contempt for refusing to do what all three of you would say would

be irresponsible for her to do, which would be to turn over the memos.

I want to yield whatever remaining time I have to the gentleman from Texas, Mr. Turner.

Mr. TURNER. Thank you, Mr. Waxman.

In the letter that is dated August 3rd, directed to Attorney General Reno by the chairman of this committee, which this committee majority adopted a few moments ago as its position statement on this issue, there is a paragraph that I would like to ask your opinion regarding. It is over on the second page of the letter. And it says in the middle of that paragraph, "However, in this case, it appears that your own actions" referring to Attorney General Reno, "are far more prejudicial to the activities of the Task Force," that is her withholding of the memos. "The hopeless conflicts inherent in your continued investigation of these matters undermines public confidence in its investigation both within and outside the Department. The bureaucratic infighting between those who think this would be handled by an outside counsel free of any political appointees' meddling must certainly have daily impact upon the investigation."

The question I have for you is has the memo, and the opinions expressed in the memo also, that you, Mr. Freeh, and Mr. La Bella have written to the Attorney General, has it, in fact, as suggested by this letter from Chairman Burton, resulted in bureaucratic infighting which has had a daily impact upon the investigation of the campaign finance abuses which you have been pursuing?

Mr. LA BELLA. As far as the Task Force lawyers are concerned, they are not involved in any bureaucratic infighting. They are professionals who are dealing with their investigations on a day-to-day basis, and they continue to do their jobs as excellently as they have in the past. So it's—from my perspective, for the Task Force itself, the people who are on the ground doing the real work in this case, they are not, I don't think, hampered by this—this debate that goes on, and, as far as we are concerned at the Task Force, is a side show to what we are doing. We are about the business of doing the public's work. We are about the business of investigating these allegations as vigorously and thoroughly as we can. And I think the men and women of the Task Force continue to do that.

What happens with the policy wonks at the Department of Justice or the supervisors, I have no idea. They may be engaged in something else, but the Task Force's work continues.

Mr. BURTON. The gentleman's time has expired.

Mr. Cox.

Mr. COX. I thank the chairman.

I just want to button down what I understand to be testimony already given by each of our three witnesses, and that is that since July 16th, the date that you, Mr. La Bella, provided your memorandum to the Attorney General, since that date the Attorney General has not spoken to you about it, has not spoken to Mr. DeSarno about it, and has not spoken to the Director of the FBI about it. Is that correct from each of the three of you?

Mr. DESARNO. Yes, sir.

Mr. LA BELLA. Yes, but in fairness to the Attorney General, she has spoken to me about reviewing the report. She is reviewing it.

And she has said to me she does want an opportunity to speak with me after she reviews the report. I fully expect that we will have contact with her about the report, but to date I have not spoken to her about the substance of the report.

Mr. COX. At least in the intervening 3 weeks, the people that she has been meeting about the decision does not include any of the three of you?

Mr. LA BELLA. That is correct.

Mr. COX. In her letter that was presented to us during the course of this hearing, the Attorney General cited an OLC opinion, the Office of Legal Counsel at the Department of Justice, written 12 years ago by Charles J. Cooper, whom I know to be a very fine and able lawyer. He was then the Assistant Attorney General, the head of the Office of Legal Counsel, and that is the authority that she cited briefly in her memorandum for the proposition that sensitive material should not be distributed beyond those persons involved or necessarily involved in the process. That is a difficult proposition with which to argue.

The entirety of Mr. Cooper's memorandum, however, is even more impressive. It is directly relevant to what we are describing here in this case. And at the time that I worked with Mr. Cooper when he was the Assistant Attorney General in charge of OLC, I was in the White House Counsel's Office on the particular matter that was the subject of this memorandum. And he states definitively in this very report to the Attorney General and the President that Attorney General Reno cites that there are only two defenses that the executive branch can mount in order to defy a subpoena of Congress. One is that Congress lacks jurisdiction, and the other way is to assert executive privilege. And a reading of Mr. Cooper's memo makes it very clear that in a case such as this where our ongoing investigation of a year and a half is the very same subject that you are investigating, there isn't much question that Congress has the jurisdiction to do this and this committee has the jurisdiction to do it, and thus we are left with only one other ground, and that is executive privilege.

Now, in the Cooper memorandum he says, and I quote, "The decision to assert executive privilege in response to a congressional subpoena, however, is the President's to make. . . . the executive privilege cannot be asserted vis-a-vis Congress without specific authorization by the President."

And so I will ask each of the three of you whether you are aware of any effort made to appropriately under this OLC opinion fail to respond to the subpoena issued by this committee. I will move left to right and start with you, Mr. La Bella.

Mr. LA BELLA. You are asking me if I am aware of anybody asserting executive privilege with respect to this memo?

Mr. COX. Whether, according to this OLC memorandum, the process it sets out is being followed in this case.

Mr. LA BELLA. I am not aware of anything in the Department.

Mr. COX. Director Freeh.

Mr. FREEH. Not aware of it, sir.

Mr. DESARNO. Nor am I aware of it, sir.

Mr. COX. Do you have any reason to disagree, since this was the subject of your testimony today, disagree with the 1986 OLC memo that the Attorney General cites?

Mr. FREEH. No.

Mr. LA BELLA. No.

Mr. COX. So may we expect, then, that at least insofar as you are concerned, that the Justice Department will appropriately adhere to that precedent?

Mr. FREEH. I think the—I think the fact that the Attorney General cites that indicates that that is the opinion by which she is being guided in this manner. As to the specific decisions or developments from here on in, I certainly can't predict.

Mr. COX. I think my time is about to expire.

Mr. BURTON. Would the gentleman yield briefly?

Mr. COX. Yes.

Mr. BURTON. I think the point that he is trying to make is when you hear the complete analysis by the gentleman in question, he makes it very clear that the only avenue the Attorney General has to deny our legitimacy as far as that subpoena is concerned is if the President claims executive privilege. It has not been done. Therefore, the subpoena is valid and should stand.

Mr. COX. Mr. Chairman, just reclaiming my time for whatever is not left of it. What this OLC opinion states very clearly, and I happen to agree with it, is that Congress may not invoke its contempt power if the administration properly asserts executive privilege over this memorandum. But according to the OLC memo, the only way that this memorandum can be kept from Congress in the face of a subpoena is either to say that Congress lacks jurisdiction, which is clearly not appropriate here, or to say that executive privilege has been claimed and, as the opinion points out, by the President himself.

I thank the chairman.

Mr. BURTON. The gentleman's time has expired. Who is next?

The gentleman from California.

Mr. LANTOS. At the beginning of your testimony, Director Freeh, you paid great tribute to the Attorney General, to her honesty, to her integrity. I take it your tribute to her integrity and independence is unqualified; is that correct?

Mr. FREEH. Absolutely unqualified.

Mr. LANTOS. Mr. La Bella, how would you rate the Attorney General's integrity and independence?

Mr. LA BELLA. Without question. I have worked with her since September directly, and I don't question anything she has done. I give her my best judgment; she makes her best decision.

Mr. LANTOS. Your statement, therefore, would be that her integrity and independence is beyond question?

Mr. LA BELLA. Beyond reproach.

Mr. LANTOS. Unqualified?

Mr. LA BELLA. Yes.

Mr. LANTOS. Mr. DeSarno, would you agree with that?

Mr. DESARNO. I would agree it is beyond reproach.

Mr. LANTOS. Having established the fact that the Attorney General is a person of extraordinary character and integrity and independence, what we are left with is the quality of the investigation.

And as I recall, a few minutes ago all three of you gentlemen testified that no independent counsel investigation could be more professional, more thorough, more complete than what your office, Director Freeh, is conducting; is that correct?

Mr. FREEH. Yes, sir.

Mr. LANTOS. I find it rather disturbing when the chairman asks you to comment on whether the Attorney General is applying the law correctly or not, because I take it, as was pointed out earlier, when a Supreme Court comes down with a 5 to 4 decision, it's quite clear that all nine justices may be applying the law correctly; isn't that true?

Mr. FREEH. Yes, sir.

Mr. LANTOS. How about a 7 to 2 decision?

Mr. FREEH. The same analysis.

Mr. LANTOS. How about an 8 to 1 decision?

Mr. FREEH. Same result.

Mr. LANTOS. Same answer.

So what we are really dealing with is the judgment of the Attorney General who, under the independent counsel statute, applies her decision, and no one questions that she has the right to do so; is that correct?

Mr. FREEH. I don't question it. I don't think anybody here does.

Mr. LANTOS. So insofar as Members of Congress have a complaint about what the Attorney General is doing, they have a recourse, which is to change the law; is that correct?

Mr. FREEH. They could certainly do that, yes, sir.

Mr. LANTOS. The Attorney General cannot change the law; is that correct?

Mr. FREEH. No.

Mr. LANTOS. Only Congress can change the law. So we have been witnessing the harassment of this extraordinary woman for months and months for having the courage to state her judgment, which she is entitled to do, and under the law is compelled to do. Am I correct in this interpretation, Director Freeh?

Mr. FREEH. Well, I don't want to agree or disagree with your characterization.

Mr. LANTOS. You don't have to.

Mr. FREEH. Certainly a lively and valid dispute between lawyers, between professors, between Members of Congress, and I am sure even without our immediate tension between judges and others about whether the statute should be applied, but that is the nature of the authority that is given to the Attorney General.

Mr. LANTOS. She is clearly not engaged in any wrongdoing; is that correct?

Mr. FREEH. Of course not.

Mr. LANTOS. And only totalitarian societies have the tendency where the powers that be attempt to criminalize conduct or views contrary to their own; would you agree with that generalization?

Mr. FREEH. Yes.

Mr. LANTOS. But in free and open societies, individuals, even Government officials, even the Attorney General, is entitled to express her own judgment?

Mr. FREEH. Well not only entitled, but required by law.

Mr. LANTOS. Required by law to do so.

Mr. FREEH. And required by Congress to do so.

Mr. LANTOS. And harassment of that individual for having the courage to express her own views and, in fact, being obliged by law to do so is extraordinary.

I yield back the balance of my time.

Mr. BURTON. The gentleman yields his time.

Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman.

I want to welcome our Director and his good associates to our committee today. We appreciate your being of assistance to the work of the committee.

Let me ask Director Freeh, when was this Task Force first formed?

Mr. FREEH. The Task Force was formed in early 1997.

Mr. GILMAN. And has been at work continuously since that date?

Mr. FREEH. Yes, sir.

Mr. GILMAN. And Mr. La Bella was the chairman of the Task Force; is that correct?

Mr. LA BELLA. I was the supervising attorney since September of last year.

Mr. GILMAN. And Mr. DeSarno was also part of the Task Force?

Mr. DESARNO. Yes, sir, since September 1997, I was the lead investigator.

Mr. GILMAN. And at what point did you first make your report available, Mr. La Bella, with regard to your recommendation to the Attorney General?

Mr. LA BELLA. The evening of July 16th. The evening of July 16th.

Mr. GILMAN. Of what year?

Mr. LA BELLA. This year.

Mr. GILMAN. This year. And that is after more than a year of work in the Task Force; is that correct?

Mr. LA BELLA. I have been there since September of the prior year, so about 10 months, almost 11 months of working.

Mr. GILMAN. And you base that upon the investigations of the Task Force?

Mr. LA BELLA. Yes.

Mr. GILMAN. Base your report.

Mr. LA BELLA. And my analysis of the law and the facts as I saw them, yes.

Mr. GILMAN. And how did you submit your report to the Attorney General?

Mr. LA BELLA. I gave her a written copy of my report.

Mr. GILMAN. Personally?

Mr. LA BELLA. Yes.

Mr. GILMAN. Have you had an opportunity after you submitted your report to personally discuss the report with the Attorney General?

Mr. LA BELLA. No. It's a 94-page report with a stack of exhibits which probably is a foot thick. I handed it to her, she thanked me, and we didn't discuss it that evening.

Mr. GILMAN. Did anyone at any time, either the Attorney General or one of her assistants, ask you to come in to discuss the report after you submitted it?

Mr. LA BELLA. Not up until today. But the Attorney General phoned me I believe it was on Sunday after I flew in, and she said she intends to discuss it with me when she is finished reviewing it. And Mr. Robinson has asked for us to get together some time to discuss it over the next several days.

Mr. GILMAN. That was this past Sunday?

Mr. LA BELLA. Yes.

Mr. GILMAN. And you first submitted it—what was the date that you submitted it to her?

Mr. LA BELLA. The night of July 16th.

Mr. GILMAN. Did anyone ask you to submit the report or to write it out? How did that come about that you made that report or that request?

Mr. LA BELLA. Actually no one asked me to make a report or do a report. It was my own idea to do a report because I was having trouble keeping all the facts and circumstances in my head from all the various investigations. And also, I was having difficulty connecting all the pieces of circumstantial and direct evidence, which a prosecutor does in the normal course and an investigator does in the normal course of an investigation. This is not one investigation. This is a series of several different investigations from which facts bubble up.

Mr. GILMAN. So you summarized those investigations in your report?

Mr. LA BELLA. I summarized the key facts and the key elements of the investigations, yes.

Mr. GILMAN. And based on that summary, you made a recommendation?

Mr. LA BELLA. I did.

Mr. GILMAN. And that recommendation was for the appointment of an independent counsel?

Mr. LA BELLA. That's correct.

Mr. GILMAN. And did you discuss your report with Director Freeh?

Mr. LA BELLA. No. I mean, we had brief conversations about the investigations previously because we work together, but——

Mr. GILMAN. Did you submit a copy of your report to Director Freeh?

Mr. LA BELLA. Actually Mr. DeSarno gave a copy to the Director. The memo was—is an interim report for the Attorney General and for the Director. It's directed to both, and it was prepared by myself and Mr. DeSarno. And we are both——

Mr. GILMAN. You submitted it to the Director about the same time you submitted it to the Attorney General?

Mr. LA BELLA. I believe it was the same time.

Mr. GILMAN. Director Freeh, had the Attorney General asked you to discuss the report at any time?

Mr. FREEH. Mr. La Bella's report, no, sir.

Mr. GILMAN. And based upon—you reviewed Mr. La Bella's report; is that correct?

Mr. FREEH. Yes, sir.

Mr. GILMAN. And when did you first see the report?

Mr. FREEH. I saw it the day it was delivered, Thursday, July 16th.

Mr. GILMAN. And that is this year?

Mr. FREEH. Yes, sir.

Mr. GILMAN. And after reviewing the report, did you come to some determination as to whether or not there ought to be an independent counsel?

Mr. FREEH. Well, I had already come to that determination in terms of my own recommendation. Having read Mr. La Bella's report and having studied it, I certainly agreed with his conclusions and the information as he developed it in that document.

Mr. GILMAN. And when did you first come to the conclusion before the La Bella report that there should be an independent counsel?

Mr. FREEH. Well, I certainly recommended that to the Attorney General in November, and we had discussed that prior to November 1997, on a number of occasions. And I had, on several of those occasions, recommended that there be an independent counsel.

Mr. GILMAN. And when the Attorney General received the La Bella report, did she ask to discuss that report with you? Did she discuss that La Bella report at any time with you after receiving it?

Mr. FREEH. She has not yet done that. But again, I suspect that will happen as soon as she is prepared to discuss it.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. BURTON. The gentleman's time has expired.

Mr. Horn.

Mr. HORN. Thank you very much, Mr. Chairman.

Mr. BURTON. Mr. Turner, I think, had 5 minutes a while ago. Did you not have 5 minutes?

Mr. TURNER. I concluded using the balance of Mr. Waxman's time.

Mr. BURTON. So you have not been recognized.

Mr. TURNER. I have not been recognized for 5 minutes.

Mr. BURTON. You will be recognized for 5 minutes.

I will get back to you in a minute, Mr. Horn.

Mr. TURNER. Thank you, Mr. Chairman.

Mr. Freeh, it seems to me that we can legitimately debate the authority of this committee to subpoena documents such as these memoranda, it being clear to me that a claim of executive privilege would clearly lie. But short of that we may have disagreements regarding the authority of this committee to subpoena documents such as these memoranda, but I think the more critical issue is the question regarding the wisdom, the appropriateness of issuing a subpoena to secure your memorandum and Mr. La Bella's memorandum.

And I would like to ask first Mr. La Bella, what would your view be regarding the impact of disclosing your memorandum on the pending criminal investigations that you have been conducting?

Mr. LA BELLA. My opinion is as a prosecutor I think it would be devastating. And I just, I mean I just couldn't imagine trying to investigate these cases vigorously and effectively with this information available.

Mr. TURNER. And if this memorandum that you wrote were disclosed, what impact do you think it would have on an independent counsel who may be later appointed to conduct this investigation?

Mr. LA BELLA. If I were that independent counsel, I would be mad as hell.

Mr. TURNER. Mr. Freeh, do you think the threat of a contempt of Congress citation against the Attorney General has the appearance of compromising the independence of the Attorney General that she is required to exercise under the Independent Counsel Act?

Mr. FREEH. I don't know that. I don't know that I can answer with respect to appearances. I mean, it depends, you know, who you are talking about and in what context. My own strong belief, as I have expressed it several times here today, is that the effect of a subpoena executed by contempt authority at this particular time specifically would have a very damaging impact and an adverse impact on prosecutors, investigators, and I have asked, of course, as is known to the committee to please carefully consider that before proceeding.

Mr. TURNER. I suppose, if we were concerned about the appearance of compromising the Attorney General's independence by forcing her hand with a contempt of Congress citation, that the committee majority could have determined simply to have cited you for a contempt of Congress for not delivering the document that you wrote to this committee; could it not?

Mr. FREEH. It certainly could pursue that, yes, sir.

Mr. TURNER. And I suppose as you sit here today, if the Chair were to ask you questions specifically regarding the contents of your memorandum, and refuse to allow you to defer on certain points in your memorandum, you could also be cited for contempt of Congress for not answering your questions regarding the content of that report; could you not?

Mr. FREEH. The committee could certainly pursue that, yes, sir.

Mr. TURNER. And I think we would all understand that that course of action would belie the comments that have been made here earlier by some who would suggest that there are certain things in your memorandum that would not be appropriate to be released; is that correct?

Mr. FREEH. I certainly believe that there are things in there that should not be released.

Mr. TURNER. And those are things beyond grand jury testimony that by law you cannot reveal; am I not correct?

Mr. FREEH. Yes, beyond 6(e) material.

Mr. WAXMAN. Would the gentleman yield?

Mr. TURNER. I will yield.

Mr. WAXMAN. I want to ask one question. The chairman has made the statement, I don't know if he made it publicly or privately, that he thinks that the Attorney General is covering up for the White House and the Democrats, and that is why she is not cooperating. Do any of you believe that? Director Freeh?

Mr. FREEH. No, I do not believe that at all.

Mr. WAXMAN. Mr. La Bella.

Mr. LA BELLA. No. I would not have stayed on the Task Force for as long as I did if I believed that for a second.

Mr. WAXMAN. It would have been a violation of law. She would be committing a criminal act, wouldn't it?

Mr. LA BELLA. That's correct.

Mr. WAXMAN. Mr. DeSarno?

Mr. DESARNO. No, sir, I don't believe that.

Mr. BURTON. The gentleman's time is expired.

Mr. Horn.

Mr. HORN. Thank you very much, Mr. Chairman. I am going to look at the independent counsel statute with the Teamsters Democratic National Committee campaign swap. But to lay the predicate here, looking at the statute, it notes here, quote, the chairman and treasurer of the principal national campaign committee seeking the election or re-election of the President, and any officer of that committee exercising authority at the national level during the incumbency of the President, unquote.

And the Attorney General also, as you know, has discretion in this matter under certain things. You do not have to have a specified office alone to trigger the coverage of the Independent Counsel Act. And then, of course, she has to look at the specific allegations and see if they are creditable enough to commence a 90-day preliminary investigation.

Now as I look at some of the background on this swap of money between—the alleged swap of money between the Teamsters Union and the election of Mr. Carey and the Democratic National Committee, I am rather fascinated here on the case that has been brought by the Southern District of New York, where an indictment has been filed against William W. Hamilton, Jr., the former governmental affairs director of the International Brotherhood of Teamsters. The indictment alleges that Mr. Hamilton committed six felonies involving what the Southern District calls, and I quote, quote, plans to swap, unquote, Teamster funds, quote, in exchange for the Democratic National Committee raising money, end quote, for the re-election campaign of the then Teamsters president Ron Carey.

How the deal would work is that they would get individual donors to give money to Carey, and the Teamsters would give political action committee money to the Democratic National Committee.

In addition to the charges against Mr. Hamilton, the indictment states that certain high-ranking Democratic National Committee and Clinton/Gore officials committed nine, quote, overt acts, unquote, in furtherance of the contribution swap.

Now, two other people have pled guilty to the charges related to this contribution swap scheme. Documents filed by the Southern District in this case show that at least the following people knew about the scheme: Terry McAuliffe, the former national finance chairman, Clinton/Gore; Laura Hartigan, the Clinton/Gore finance director; and Richard Sullivan, the Democratic National Committee finance director. The indictment of Mr. Hamilton also states that an unnamed Democratic National Committee official, presumably Mr. Sullivan, took steps in furtherance of the swap scheme.

Now, furthermore, both McAuliffe and Sullivan's involvement in the contribution swaps were discussed in the November 1997 decision of the election officer appointed to oversee the 1996 election for the Teamsters presidency.

Now, according to the report, Ron Carey told a cooperating witness that he called McAuliffe, quote, to thank him for his help with fund-raising for his campaign, unquote.

What I would like to ask you, gentlemen, is, Mr. La Bella, Mr. Freeh in particular, are you familiar with the allegations set forth in the charging indictments filed by the Southern District of New York or in the election officer's report I referred to of the contribution swaps between the Democratic National Committee and the Clinton/Gore officials and the Teamsters? How familiar are you with that? I think it is relevant to this situation.

Mr. LA BELLA. Right. From the Task Force's perspective, we are very familiar with the investigation. We work closely with the Southern District prosecutors, and we constantly monitor the development of that case.

Mr. HORN. Mr. Freeh.

Mr. FREEH. Yes. I am very familiar with the facts and the allegations and the charges.

Mr. HORN. Mr. DeSarno.

Mr. DESARNO. Yes, sir, Mr. Horn, we are familiar with it at the Task Force.

Mr. HORN. Now I realize that the Office of the U.S. Attorney for the Southern District has a long heritage of being pretty independent and really doesn't take orders from anyone whether they are Republican attorneys, U.S. attorneys or Democratic U.S. attorneys. I guess I am curious. Why is the Southern District, which reports, when you look at the organization chart, technically to the Attorney General—although each Attorney General, I'm sure, can set out who particular U.S. Attorneys report to, and do they deal with the Assistant Attorney General for Criminal or Civil or whatever; I understand that. And the Southern District here, which reports that way, investigating the top money people, the finance chairmen for both the Democratic National Committee and the Clinton/Gore campaign for the 1996 elections, isn't this really a textbook case for the appointment of an independent counsel? Don't all leap at answering.

Mr. LA BELLA. I will leap into it. I think the way to answer the question is that we have analyzed the issues, we have analyzed the people involved, and we have come to the conclusion that the Independent Counsel Act isn't triggered by what has developed to date.

Mr. HORN. Is not triggered? I am sorry, I just want to make sure.

Mr. LA BELLA. Not triggered. Not triggered.

Mr. HORN. OK. Is it not triggered because their title equals the one specified in the act? Because it seems to me when they say "and other national," the language I read here from the act, they named the chairman and the treasurer of the principal national campaign committee seeking the election or re-election of the President, and any officer of that committee exercising authority at the national level. The people I have named are all exercising authority at the national level.

Mr. LA BELLA. It is a twofold process. Whether or not there is specific information from a credible source of wrongdoing, and whether the person is within the mandatory provision.

The analysis has been done. The act has not been triggered with respect to that case. We are constantly monitoring that case. We are briefed periodically, probably every 2 weeks, about that case, the developments in that case. If as and when something develops

in that case that would give us concern under the Independent Counsel Act, I think we will act upon it. I know we will.

Mr. BURTON. The gentleman's time has expired.

Mr. HORN. OK. We might get back to it then.

Mr. BURTON. OK. Mr. Kanjorski.

Mr. KANJORSKI. Thank you very much, Mr. Chairman.

Mr. La Bella, I understand the New York Times reported the existence of the memo, and that disturbs me greatly. How is it that the New York Times has such a clear ability to get inside the Justice Department and get to a critical memorandum such as this that I think could compromise any criminal cases you may have?

Mr. LA BELLA. All I can tell you is what I did. I made three copies of my memorandum, my report. I gave—Jim DeSarno had one to give to the Director, which he got. I gave one to the Attorney General personally, and I kept one myself, which was promptly boxed up and sent to San Diego because I thought I was going home.

At some later time, copies were made, and I believe on Tuesday copies were made. And on Thursday the article appeared in the New York times. Obviously it was a leak. Obviously someone somewhere who was familiar with at least the broad parameters of the report said something to a reporter.

Mr. KANJORSKI. This is not unlike a leak that occurred about 6 months or 9 months ago of the Director of the FBI who prepared a memorandum for the Attorney General, and it was on the street in a matter of days.

Has the Department of Justice undertaken an examination of this problem?

Mr. LA BELLA. The Department of Justice right now has several leak investigations ongoing. I myself have been deposed. I know all the agents and the several of the lawyers working on the Task Force have been deposed, and there are ongoing investigations concerning several of these leaks.

Mr. KANJORSKI. One of these days we are going to have somebody introduce a resolution in the Congress to rename it the Department of Sieve. It seems to me it is hardly something that we should be proud of that investigative forces of the U.S. Government can gather information, some of which is hearsay, some of which is untrue and false, not tried for validity in any way, and that circulates and then gets out to the press. We have seen this carried on with the special independent counsel.

I think maybe this committee should be exercising its jurisdiction to find out what in the hell is happening with these, quote, supposedly insulated high governmental officials charged with extraordinary, extraordinary powers to investigate extraordinary high people in the electorate process of this government.

And I mean I know that the New York Times is a pretty important institution, but I was never aware of the fact that they would so readily be able to get such a valuable internal document.

Mr. Freeh, do you have an explanation for this?

Mr. FREEH. No, I don't think they have a document. And I don't think anybody has my memorandum. I think there's reported information about the contents, some accurate, some perhaps inac-

curate. But the documents, I'm quite confident, are still within the control of a very few number of people.

But to go to your larger issue, as I said here when I testified last year, there's nothing more frustrating for me, and I'm sure everybody else, than the constant leaks that we see not just in this case but in many other cases.

Mr. KANJORSKI. I talked to you last year about this. This very issue. I think you said you were going to go back and making sure you're going to close this situation down. And I was astounded when I picked up the paper and read this memorandum because I'm not at all sure, philosophically or public policywise, why we just aren't having this Task Force proceed with campaign finance crimes. And that's one of the questions. I know my time is already running out.

Mr. La Bella, I understand you're going back to San Diego. Are you done? Is your Task Force over?

Mr. LA BELLA. No, I still have a hand in the Task Force. I still run several of the cases with Dave Vincinanzo, who is coming on board and who I spent a lot of time with, bringing up to speed on the investigations.

Mr. KANJORSKI. I would think you're just about getting up to the point where you should start bringing indictments or prosecutions. Why would the chief counsel, who has all of that faith placed in him to make all this inquiry in the midst of the most important time, decide to go back home?

Mr. LA BELLA. Well, the New York Times says I'm going home because I'm homesick. They also say separately that I'm a patsy prosecutor.

Mr. KANJORSKI. What do you say?

Mr. FREEH. The fact is I'm going home because the U.S. attorney in San Diego left his position. I was the first assistant. That is the person who takes over the office traditionally when the U.S. attorney leaves before his or her term is up. I went back to assume that responsibility because my first job was to the Southern District of California. They sent me on detail to Washington to get——

Mr. KANJORSKI. Wouldn't that argument be somewhat similar that you found out that the captain had a heart attack and died, you were the first mate, and you would be normally taking over so you're leaving the ship, the companionship and——

Mr. LA BELLA. I'm not leaving the ship abandoned. I'm not letting the ship go without a captain aboard so it can run aground.

Mr. KANJORSKI. Let me ask you this. You weigh the Federal District Attorney of San Diego, the leadership of that office, with an equal value with the pursuit of a criminal prosecution and an investigation of a national election of the United States that could affect Members of Congress, the Senate, and the Vice President and the President of the United States?

Mr. LA BELLA. These investigations have not been hampered one jot since my departure. Again, I'm still involved. We have an extremely competent professional field prosecutor.

Mr. BURTON. The gentleman's time has expired.

Mr. KANJORSKI. Can I have 1 more minute?

Mr. BURTON. OK, but we've had several people waiting a long time.

Mr. KANJORSKI. Only three of you have that memorandum. By virtue of your leaving, that necessities additional people?

Mr. BURTON. I think the gentleman is incorrect. The Attorney General disseminated that to a number of others, that was previously testified to, and I think that's part of the problem.

Mr. LA BELLA. Can I just say it wasn't a real career-enhancing move for that to be leaked for me personally. So, take from that what you will.

Mr. BURTON. The leak occurred after the dissemination by the Attorney General to several other people.

Mr. Mica.

Mr. KANJORSKI. There were no leaks?

Mr. BURTON. Mr. Mica.

Mr. MICA. Thank you. Thank you, Mr. Chairman. First of all, as you gentlemen know, I chair the House Civil Service Subcommittee. And I want to take just a moment to publicly express my appreciation to all of you. You're three dedicated public servants, civil servants. You were given a very difficult task and you completed that task. And I believe you did it very fairly, squarely, honestly. And we do appreciate your sticking to your guns on this difficult assignment. The reason we're here is because we've had such a difficult time really getting at the facts.

You just heard Mr. Kanjorski questioning you about the leaks. We do have an important responsibility on this subcommittee of oversight, investigations, including the Department of Justice. We've been working on the campaign finance matter for several years now and tried to work cooperatively. But, again, when you pick up the paper and you read information that we can't get—and this request is to get Mr. La Bella's memo—that again parts of it have appeared or commentary has appeared in the newspaper that we feel we as an investigative body, representative of the people, should have access to.

We've run into the same problem. We've had—I've been down to the floor and Mr. Quinn, papers from the White House, and witnesses, and the only way we've been able to achieve anything is through bringing forth these contempt citations. And this is a very serious one against the Attorney General in seeking that information. And we don't want to interfere with the process.

Again, we're trying to get to the truth. I have a couple of questions. First, the most startling thing I heard today was Mr. Freeh—well, our FBI Director said the conduct under investigation involves a core of persons, quote, "who were indisputably covered. The core group under investigation includes both covered persons and others who would trigger the discretionary provisions." This is again the FBI Director.

"Does the core group include the President and the Vice President?

"Answer: Yes, sir, Mr. Freeh."

This to me is astounding, and it's your commentary before us, Mr. Freeh.

Mr. La Bella, the Wall Street Journal says, and let me read this, let me read the first part of this. It says, "The departing head of the Justice Department campaign fund-raising investigation has told Janet Reno he developed evidence of wrongdoing by senior offi-

cials of the White House and Democratic National Committee. Charles La Bella's findings, presented in a lengthy memorandum to Ms. Reno, focused sharply on the fund-raising efforts of Harold Ickes, the former White House chief of staff, deputy chief of staff. They formed the basis of Mr. La Bella's recommendation that Ms. Reno seek the appointment of an independent counsel."

That's just the prelude. Now, there's a quote, "'It's not exactly that we presented her with a smoking gun,' a senior government official said, 'but we showed her significant threads of evidence that went right into the White House and to the upper levels of the DNC.'"

Is that your quote, Mr. La Bella?

Mr. LA BELLA. No, it's not. I would have never said we've shown her threads of evidence, because the Independent Counsel Act, as I've tried to point out time and time again to anybody who will listen, says specific information from a credible source. I believe that the concept of evidence and information are two separate concepts.

Mr. MICA. And do you believe that and concur with the statement that this goes right to a core group that includes the President and the Vice President, as we heard testimony from Mr. Freeh?

Mr. LA BELLA. I can't comment on the content of my report with respect to specific factual predicates.

Mr. MICA. Finally, the thing that concerns me both—and having spent 2 years on this investigation, it's something you said, Mr. La Bella, that this report puts together all the dots. What concerns me is I've put them together, too. And it appears that in the quest for illegal foreign money, there was a conspiracy. And in the quest for large amounts of illegal or gray money, there was a conspiracy and some of that was directed out of the White House.

I don't know if you can comment on that or not. But you said about connecting the dots. And that's what I think this is all about. And I'm very concerned that this should be in the hands of an independent counsel, not by this committee or anyone else. And I think you found enough evidence to support that suspicion that I have; is that correct?

Mr. LA BELLA. Well, what I've done in the report is connect the dots, but that's my connection, not the Attorney General's connection. With all due respect to the Attorney General, I think she needs time to review this document that's a fairly meaty document, and it took me several months to put together. I am not——

Mr. MICA. On the basis of that work, though, you are unequiovcally recommending the appointment of an independent counsel; is that correct?

Mr. LA BELLA. That's my recommendation.

Mr. MICA. Thank you, sir. I yield back the balance of my time.

Mr. FREEH. Mr. Chairman, if I can just be heard for one moment in response to Mr. Mica's statement. Let me just be clear about what I said. My answer was in the context of a response to the conflict provision and whether or not I believed there was a sufficient conflict to trigger the statute, and my view is that is the case. The subject matter of our investigation involves covered persons, including, as I mentioned, the President and the Vice President. I don't

think there's anything astounding about that. That's the subject matter of the inquiry.

But going back to what I said in my opening statement, it's often misunderstood, which is why I was reluctant in December to even tell you my recommendation that a recommendation to trigger the statute under either the substantive provision, but equally under the discretionary provision, does not mean that I have reached any conclusions about guilt or innocence or even a probable cause finding.

What the statute says is that only further investigation is warranted and that there's a predicate which constitutes a sufficient basis to inquire. So please don't take from my remarks, as I know you won't, any indication that I've come to any conclusions or findings about wrongdoing or criminal activity by the President, the Vice President or anyone else. My recommendation, however, is that in the context of what we are focused on, it should be a situation that triggers the discretionary provisions.

Mr. BURTON. Mr. Souder.

Mr. SOUDER. First I want to thank you all, too, for your distinguished service. And I'm sorry we're even in a quasi-adversarial position. But we're trying to do our job, just like you are. And I appreciate your willingness to speak out, to the degree that you can within the guidelines, on how you understand your duties.

Mr. La Bella, Attorney General Reno said before the Senate Judiciary Committee on April 30, 1997, that "The investigation by the Campaign Task Force is ongoing, I'm personally monitoring it closely and regularly; if at any time I find that the requirements of an Independent Counsel Act have been met, I will not hesitate to invoke it as I have in the past."

Do you feel that she was surprised by any key facts in your report? In other words, was she indeed, as she said to the Senate committee, personally, closely and regularly monitoring it?

Mr. LA BELLA. We briefed the Attorney General weekly—the Task Force briefed the Attorney General weekly on the progress of the Task Force. As I tried to say, however inartfully before, this was my idea to put this report together, because I was having difficulty keeping all the facts and circumstances of all the separate investigations in my head and drawing what I think the appropriate conclusions a prosecutor would draw, putting them all together, again connecting the dots, using that analogy.

I didn't have all of this in my head at any given time. This was a process for me, it was a several-month-long process to put this together. There were no facts in here that surprised me. But I will say that I felt it was much more compelling once I put it on paper and connected the dots between the several different investigations.

I don't know what's going on in the Attorney General's head. All I can tell you, that she may not be surprised by anything in here, but certainly this is the first time I think anybody has done this for her, so she can make that informed decision based on the entire fabric of evidence that's out there.

Mr. SOUDER. It's important, however, to show for the record, if it isn't new key facts or blind-sided, it's mainly an organizational question to see if a systematic form—and if she's having 3 weeks,

it becomes a time question. If there were new facts or if there was a major breakthrough that suddenly appeared to her, it would be a different subject matter.

Mr. LA BELLA. I will say that there are theories in here, which I will not go into, concerning individuals and legal analysis that I don't think have been done before and that I don't think anybody, quite frankly, thought of, myself included, until I started to do this report.

Mr. SOUDER. I really appreciate you saying that.

Mr. LA BELLA. There is a new legal analysis in here, and I think there are some new facts. But, again, I think most of it is generally what we've been dealing with over the last 10, 11 months.

Mr. SOUDER. Well, that leads right into my next question.

Mr. LA BELLA. I'm glad I could help.

Mr. SOUDER. I appreciate that—I'm glad I did this kind of independently, without organizing it—that you've said that you felt releasing this report would be devastating. The Attorney General in her letter said that it would tip off defense attorneys. So you're saying that there are things in this report that are significant and have not been in the media?

Mr. LA BELLA. That have not?

Mr. SOUDER. Been in the media thus far.

Mr. LA BELLA. Oh, absolutely.

Mr. SOUDER. You agree with that, Director Freeh?

Mr. FREEH. Yes, sir. Yes, sir, I do.

Mr. BURTON. Are you saying there are just a few things that haven't been in the media thus far about your report? Are you saying there's many significant things and that's why it would be so devastating to release?

Mr. LA BELLA. I think there are many things in this report that have not been in the media. I think the media has only 1 percent. They have the bottom line that I acknowledged today for the first time, and that's really about it. I don't see much more substance that they have.

Mr. SOUDER. You realize that the problem that you've put us in as elected officials—not you, but whoever has leaked this out, that—and what you just said, because this isn't about some dress, and this isn't some—whether or not the First Lady had some land deal in Arkansas many years ago; this is about whether foreign money influenced decisions of the U.S. Government and whether other decisions were influenced.

Director Freeh just said that the President and the Vice President are not necessarily direct targets, but they're indirect targets because the money flowed into their campaign, and that that at least was a variable in the recommendations. And what we're saying, if this report doesn't get released, and if she doesn't appoint an independent counsel, the American people don't have a right to know specifically about the charges here when we've already seen a pattern in this administration, even in the Attorney General's office, of the Deputy Attorney General going to prison for political questions and abuse of his power.

And it causes a lot of people to become more paranoid than possibly would be justified—but not illegitimately—in other words, when they saw the Deputy Attorney General. Now we have a ques-

tion of even how the memo leaked. And if it undermines the confidence that the American people have in their Government when you put these combinations together and then, in fact, we may never see the light of day, particularly if there's no independent prosecutor, how would we have any way of knowing whether or not evidence was permanently buried?

Mr. LA BELLA. I think what's on the table now is whether or not the Attorney General could be given the time she has requested to review the document, to review the exhibits and make an independent decision that she said she is committed to doing. I don't think 3 weeks—personally I don't think 3 weeks is an unreasonable amount of time to do it, because she has to talk to a lot of people.

She's not just going to accept what Chuck La Bella says about the appointment of an independent counsel. I am one person. I am one lawyer. I'm one prosecutor. I have made mistakes in my career. Maybe she thinks I'm all wet, maybe she thinks I'm all wrong, I don't know. I haven't discussed it with her yet. Maybe she wants to balance this and get the advice of other career prosecutors.

Mr. SOUDER. For the record, it isn't just you, you headed the investigation; it's the Director of the FBI, it's the person who handled the specifics of the investigation, who are saying there's a potential conflict of interest and that the American people are already concerned that this whole thing is a partisan thing on our side and the Democratic side. And it seems to me if there was any way to err, it would be to err toward independence and not toward keeping it in this realm of fuzziness that it has in this committee or in the White House right now.

Mr. LA BELLA. I just think we should give her the chance to do her job—as I think she's been doing from the beginning—and read the report, make a decision. And in 3 weeks, if nothing has been done—I understand there's going to be a briefing on the report, which is probably the appropriate way to go.

Mr. SOUDER. Three additional weeks?

Mr. BURTON. The gentleman's time has expired. The gentleman from Arizona.

Mr. SHADEGG. Let me begin by just talking about the timing question. I would point out that the statute deals with timing. The statute specifically gives her 30 days. By my count, she'd had 19 of those days since your report went in; she has 11 left. The number 3 weeks has been talked around here, because that's her request.

I would simply point out that under the time scenario that the chairman is pursuing and that this committee is pursuing, she would not have 3 weeks. She would have 9 weeks. So I don't think we're rushing it, and that whole discussion I think is off point.

Second, I want to make the point that—FBI Director Freeh made the point that the decision to appoint an independent counsel is hers, and I agree with that. We all know that. But the Congress and this committee don't give up their right, it has not given up their right to exercise oversight.

This statute specifically gives her both a discretionary section and a mandatory section. And I think it's fully appropriate for us to look into her exercise of her function, particularly given that a partial statute is mandatory. And I think that's what this hearing

is about. And I, quite frankly, think that's what the subpoenas are about.

Now I want to turn to another issue which I think has consumed most of this hearing, and that is the question of when is it appropriate and when is it not appropriate for the Congress to seek what you, Director Freeh, characterized as a prosecution memo. I think that my friend, Chris Cox, pointed out, quite frankly, we have legal authority to get this document. In the absence of an executive privilege or assertion, we don't have jurisdiction and no, certainly, we don't have jurisdiction.

The question is, who should? Your words were, Director Freeh, that the subpoena was not unprecedented, but it is extraordinary.

And I want to begin by saying I had a law professor, or a college government professor, who said it all depends on whose ox is being gored. I have sat where you sit. For 7 years, I worked in the Arizona Attorney General's office and I routinely reviewed prosecution memos. I have sat in meetings where we discussed this. And I have a very, very strong belief that what you have said about a prosecution memo, that it is an internal confidential document from a line prosecutor to the person who is on the bottom line, the Attorney General or the county attorney—in my case, it was the Attorney General—is an important document that ought not routinely go public; and that there are dangerous consequences, Mr. La Bella, I agree, if they do routinely go public, because that can destroy the prosecution. It can inhibit prosecutors in doing their jobs.

And I think, Director Freeh, you made a good point when you said that the subpoena is not unprecedented, but it is extraordinary.

And I guess I would like to walk through how extraordinary it is, and then I want to talk about the position that we're in as public officials.

I think any investigation which goes to corruption of a political process at the highest level of the Nation is, in fact, itself extraordinary. I think it's extraordinary when you have a criminal investigation of the President. I think it's extraordinary when you have a possible criminal investigation, or a criminal investigation of possible criminal conduct by the Vice President.

I think the special counsel statute itself is extraordinary, and when it gets invoked it is extraordinary. I think when you have an allegation of possible criminal conduct by people inside the White House, that is extraordinary.

But I think it is particularly extraordinary for two other reasons: No. 1, in this particular case, we have already leaked to the public, so that the American public knows that in this case that the chief investigator, Mr. DeSarno, the chief prosecutor as it were, Mr. La Bella, and the Director of the FBI, all have expressed their opinion that an independent counsel is called for under the statute, and that has become known publicly.

And on top of that, two of them have written reports which are known to the public. Mr. Freeh, you have written a report which we tried to get before and we deferred. You said you thought it was important not to release. We did not obtain it then. Now Mr. La Bella has written another report reaching the same conclusion.

I think all of those are particularly extraordinary, but particularly extraordinary when it's only the Attorney General who says it should not be released. I think it's extraordinary because it's publicly known. The average prosecution memo isn't known about. And I know that you have deep concern about the fact that if we release this memo, the public will know what its secrets are and the defense attorneys will know. And yet I will point out, had it never been leaked—and I trust that none of you leaked—we wouldn't be in the position we're in.

We're in a position where the public knows that the three of you gentlemen believe that a prosecutor, an independent counsel is called for, and yet we cannot know the reasons. And I think that is very extraordinary, and it puts us in a position where we have to try to justify what we do and go forward and justify our investigation and know that we're exercising our discretion properly and our oversight.

I want to add the last point. You say that we should trust the Attorney General in these circumstances. And I must tell you, though I'm not happy to state it, that I do not have confidence in this Attorney General under these circumstances. And I want to explain why. In the investigation of the Vice President's telephone calls, the issue was did he violate the law; and the Attorney General conducted an extensive investigation and produced a report which was some 50 or 60 pages long.

At the end of that report, she released the Vice President and said he did not violate the law. The basis for that in her report was that at the time he made the calls from the White House, which he acknowledged doing, her report concluded that she—that he did not know he was raising political money, campaign money for his own campaign. She based that on interviews conducted with him months after the fact.

But I sat in this room and asked her about that. And I asked her. And she pinned it down and she said, yes, the only reason we let him off and said he didn't violate the statute, because he said he didn't realize at the time he was making the calls that he at the time was raising campaign dollars. And I pointed out to her at his press conference, not months after he engaged in this conduct but days after it became public, he said, point blank, I was raising money for my campaign. And her report never even mentioned that press conference; that blows a huge hole in her report.

He says, his own words before he had a chance to shape his testimony, he acknowledged point blank he was raising campaign money for his own re-election campaign and that of the President. And I asked her why her report contained that glaring error, and she had no explanation. I think we're in an extraordinary position.

I agree with prosecution memos typically shouldn't go public, but typically they aren't leaked. The result of that prosecution memo isn't leaked. And I would add one last point. In most cases, prosecution memos are written to elected county officials, district attorneys and Attorneys General, as was the case in my office.

My Attorney General, the boss, my boss, was elected. And while the pros memos were never leaked and we didn't sit in this situation, I think it was important to know that the people could hold my boss, the Attorney General, accountable at the next election.

The only person to whom Ms. Reno is accountable is the President of the United States, the very person who is under investigation in part in this case. And I think that puts her in a situation where the independent counsel is, in fact, already triggered.

Mr. BURTON. The gentleman's time has expired.

The gentleman from Texas.

Mr. SESSIONS. Thank you, Mr. Chairman.

I would like to, if I could, direct the comments as has previously been stated, that the Attorney General in her letter wrote back where she used the words "criminal activity," and then she says at the last paragraph on page 1, "and many target suspects and defense lawyers are watching our every move, hoping for clues that will tip them off and help them escape the law's reach."

I then hear Mr. La Bella say that we are at a 1 percent. In other words, that we on the outside, not being on the inside, are at 1 percent of the information. Can you please, Mr. Director, or Mr. La Bella, or as appropriate from the panel, discuss with us how long is this going to take? What is it like when you're out there? Who are the adversaries who are they? Are there multiple trial lawyers, defense lawyers that are out there? What is it like? Mr. Director?

Mr. LA BELLA. I mean, there are cases that are already indicted.

Mr. SESSIONS. I agree with that. We're talking about the ongoing investigation.

Mr. LA BELLA. We're talking about both. I mean, we address both. But there are witnesses who have cooperated. There are people who know that they will likely be before a grand jury. There are people who know that they may be the subject of an investigation. I mean, those are the people who have the keen interest in seeing this document see the light of day because it's going to give them a road map.

Mr. SESSIONS. So all of these Asians, they go and hire defense lawyers?

Mr. LA BELLA. No. I think what we're talking about is anybody who is a potential subject; and the people who you've been talking about are not, you know, Asian subjects.

Mr. SESSIONS. Who are they?

Mr. LA BELLA. The people that we've all been talking about.

Mr. SESSIONS. We're talking about the President of the United States and the Vice President. Are you engaging them in the marketplace, their defense lawyers?

Mr. LA BELLA. Are we engaging them in the marketplace?

Mr. SESSIONS. Yes.

Mr. LA BELLA. I've done white collar investigations for a long time. This is a very—these are very difficult cases to investigate for several reasons.

Mr. SESSIONS. Does the President of the United States or the Vice President of the United States, have they engaged defense lawyers who are fighting law enforcement while attempting to gather the facts?

Mr. LA BELLA. I'm not in contact with the President and the Vice President vis-a-vis their retention of counsel. I can tell you that I know that counsel has appeared on behalf of virtually every witness we've subpoenaed into the grand jury for questions.

Mr. SESSIONS. The President's counsel?

Mr. LA BELLA. I know the President has an attorney.

Mr. SESSIONS. So the President——

Mr. LA BELLA. And I met with the President's attorney. I have met with the Vice President's attorney.

Mr. SESSIONS. OK. So now what you're testifying today to is that the President's counsel of his, that they are paying for, is representing these people in the marketplace to where the President and the Vice President of the United States are trying to fight official law enforcement of this country; is that your testimony?

Mr. LA BELLA. No. What I'm saying is that the President's counsel represents the President, and the Vice President's counsel represents the Vice President. I thought that was your question. I misunderstood that.

Mr. SESSIONS. I'm talking about in the marketplace. In other words, when you go in and do your investigation, the Attorney General talks about defense lawyers are watching our every move. Who are those people?

Mr. LA BELLA. OK. I think I can answer that question. The reality in the District of Columbia, as I've come to know it, is that there are joint defense agreements, and these joint defense agreements are as thick as closing binders. They are probably 2 or 3 inches thick. Everyone has a lawyer. Everyone does a shuffle in a white collar case. Everyone forgets their name when you start to question them.

Everyone, when you put a memorandum in front of them, says, "I see my signature. I see the memorandum, but I don't remember writing it. I don't remember what it says, and I can't tell you why I wrote it."

I've been doing white collar cases virtually all of my career. This is the shuffle that you get. It's not the President or the Vice President I'm talking about, but every witness that you come up against in a white collar case. These are very difficult cases to make.

Mr. SESSIONS. Does the President have his counsel, his lawyers, the Vice President, their lawyers as advocates for these people who are under investigation?

Mr. LA BELLA. Not that I'm aware of.

Mr. SESSIONS. Mr. Freeh?

Mr. FREEH. Not that I'm aware.

Mr. SESSIONS. When your investigators go out, do they normally take a lawyer from the Department of Justice?

Mr. FREEH. No.

Mr. SESSIONS. They don't normally do that. Might they have done that in the last week or so when they went to New York to talk about the cashier's checks? Or would it be an FBI agent, or would that have been a lawyer also?

Mr. FREEH. No. It was an FBI agent and a prosecutor.

Mr. SESSIONS. Why would that occur if they normally don't do that?

Mr. FREEH. Well, there are exceptions to any rule. You know, when I was an assistant U.S. attorney, sometimes I would go out in the field with agents to do an interview, sometimes I wouldn't. I don't know exactly what the circumstances were here, but it's not——

Mr. SESSIONS. Not normal.

Mr. FREEH. It's not the normal routine; that's correct.

Mr. LA BELLA. I should tell you when I was a prosecutor in New York, and actually I guess I still—I'm a prosecutor for however long—I would often go on interviews with agents and we often conduct them together. So it's not an abnormal practice for me personally as a prosecutor. I would often do it, especially key interviews. But I would often do that so I could monitor the investigation, if the agents didn't mind.

Mr. SESSIONS. I appreciate all three of you being here today very much. Thank you.

Mr. BURTON. The gentleman's time has expired. The gentleman from Georgia, Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

I was very intrigued by your reference to the public perhaps knowing 1 percent of what's in the memo. I would urge the public to keep that in mind and others as well, as they try to speculate on what Mr. Starr might have in his report. It's been my experience, whether we're talking about a pros memo or an item of material that's presented to a grand jury by an independent counsel or a U.S. attorney or an investigative team, that the public knows very little about what actually is going on.

And I think your words in that regard, as a caution to a lot of folks both in the administration and out of the administration, would be we will advise.

I'm a little bit intrigued, and following up on my colleague from Texas, the Attorney General writes in her letter on page 2, the letter today at the end of the third paragraph, that the "Criminals, targets and defense lawyers alike can all agree on one thing—they would love to have a prosecutor's plans."

We're talking here about, as I think we're talking about when one uses the word a "core" group of individuals, but basically we're talking about covered persons here, as well as those who might be engaged in criminal activity with them, who are not themselves covered persons.

Is the real fear then that the White House would get ahold of this memo and be able to use it in much the same way as they have used information that they have gleaned from other witnesses that have appeared before Kenneth Starr's grand jury?

Mr. LA BELLA. My fear would be that any potential witness or any potential subject or target of the investigation would get his or her hands on this report and use it to the detriment of the investigators or the investigation. I'm not talking about——

Mr. BARR. That would include the President and the Vice President, so it's important for them not to have this.

Mr. LA BELLA. It would include anybody who is dealt with in connection with this report. I'm not going to confirm or deny who is in this report. All I'm going to tell you is that we have—I have recommended an independent counsel be appointed. And it's my opinion, my considered opinion that this could hurt the investigators and the investigation in 100 different ways, because witnesses—you don't make a white collar case by going to the target, tapping him or her on the shoulder and say, "Confess, please," you make them by inches, sometimes centimeters.

You get a document, you go after a witness. You crack that witness. You go up that ladder, you crack that witness. You go up and you crack the next witness. That's how you make these cases. And those witnesses, wherever they are on the ladder, are important; and that could be prejudicial to the investigators and the investigation. That's what I'm trying to say.

Mr. BARR. But you think it's important that no covered person be able to have access to this?

Mr. LA BELLA. I think it's important that no one who is within the range—whether they're covered, noncovered—within the range of our criminal investigation be given access to that document.

Mr. BARR. That includes—I'm not asking whose names—that would include the President and Vice President.

Mr. LA BELLA. Yes, it would include everyone, everybody who is in the parameters of this investigation.

Mr. BARR. Including the President and the Vice President? I mean, they are within the parameters of everything we've been talking about, which is the subject matter of the two reports?

Mr. LA BELLA. I'm not going—I'm not going to comment on who in particular is a subject of a paragraph or a sentence in this report. All I'm saying is——

Mr. BARR. And I'm not asking that.

Mr. LA BELLA. All right.

Mr. BARR. I'm saying it's your opinion as well as mine, I think, that it's important that no covered person—and that includes a whole range of people, including the President and the Vice President—should have access to that report. And maybe that is a good reason why it should not be made public.

Mr. LA BELLA. Yes, I think that's a correct statement.

Mr. BARR. Given the fact that the committee, though, has already indicated both in the terms of the subpoena as well as in all the other discussions, it is not interested in receiving 6(e) material, the only other basis, legal basis for refusing to comply with the subpoena would be executive privilege. Neither you, Mr. La Bella, nor you, Mr. Freeh, is recommending that the Attorney General refuse to comply with the subpoena, are you?

Mr. FREEH. No, I've certainly not recommended that.

Mr. BARR. Mr. La Bella?

Mr. LA BELLA. No, my——

Mr. BARR. You're simply urging us that there are some very sound reasons, other than the legally applicable one of, strictly speaking, executive privilege that should cause us not to press the issue?

Mr. LA BELLA. That's right.

Mr. FREEH. Yes, sir.

Mr. LA BELLA. Yes.

Mr. BARR. OK. I think earlier in your testimony, Mr. Freeh, you said that this was, in essence—and I wasn't sure whether you were referring to your memo or Mr. La Bella's memo and both prosecution memos. Do you use that term to apply to both of them?

Mr. FREEH. Yes. I would apply it to both of them.

Mr. BARR. Are they really, strictly speaking, prosecution memos in the sense that I, as a former U.S. attorney, might be familiar with that layout? A Hobbs Act prosecution with all of the names

of the different witnesses and truly all of the theories of the case, down to who is going to be called, when and where? Or are these somewhat more general documents? I mean, the length of them I think belies the fact that it is a full-fledged pros memo.

Mr. FREEH. Speaking from my memo, it's not a pros memo as you received them from your strike force or from your section chiefs when you were a U.S. attorney. It doesn't lay out in details, witnesses proof, objections to that proof. No, it's not in those details at all. It's in a much more generic term. But it does discuss, by statute and by elements of a particular statute, theories of prosecution and the evidence that supports that.

Mr. BARR. Mr. Chairman, if I could, just one very, very quick question. Is there not then some way we've already—we certainly all agree that there should not be 6(e) material in there. Is there not some way that some of the essence of what we're trying to get at here could be conveyed to us——

Mr. FREEH. Yes, there was.

Mr. BARR [continuing]. Without that?

Mr. FREEH. There's a very good way. And with all due respect, we did this last year in agreement with the chairman and Mr. Waxman and the Attorney General, as I understand her letter. And having discussed it with her, she's offering a very extraordinary presentation, from my point of view, which is a briefing to the committee on the document once she's had the opportunity to make a decision.

Mr. BARR. To the full committee?

Mr. FREEH. And I think that's just a very good opportunity for everybody to compromise on an issue that avoids a constitutional confrontation.

Mr. BARR. You have no problem or, Mr. La Bella, in presenting that in an appropriate setting to the full committee?

Mr. FREEH. Well, we would certainly pursue what we did beforehand, which was to the chairman and the vice chairman; and I would be willing to discuss certainly expanding it beyond that.

Mr. BARR. You wouldn't commit to that today?

Mr. FREEH. I wouldn't commit to it at this point, because I think the Attorney General would have to be consulted.

Mr. BARR. Thank you.

Mr. BURTON. The gentleman's time has expired. I'm the last questioner.

Mr. WAXMAN. We have two votes on the House floor with 5 minutes left. And I want to hear your questioning and Mr. Barrett wanted to pursue his 5-minute round, which he has not yet been able to pursue. May I request that we break and then come back in 10 minutes?

Mr. BURTON. The only reason I was going to go ahead and literally miss this vote myself and conclude was because we kept these gentlemen here all day, and if we go down there, it's going to be a half hour before we get back.

Mr. WAXMAN. There's only two votes.

Mr. BURTON. If Mr. Barrett would like to stay and question, that's fine with me. I'm going to stick with this and try to adjourn.

Mr. WAXMAN. He may well come back, but I did want to hear your questioning.

Mr. BURTON. You're welcome to stay, too.

Mr. WAXMAN. But I do have an obligation to vote on the House floor.

Mr. BURTON. So do I. I think this is more important and these gentlemen's time has been impinged upon enough. I'm going to go ahead with my 5 minutes at this point.

First of all, let me say I appreciate very much your being here. The arguments have been made continually by all of you that we should not insist on seeing these documents. I do not care if they redact 6(e) material, or any other material in there that would bear on the investigation and impede the investigation; maybe we could work that out as well. We want to know the basic reasons why you, Mr. La Bella and Mr. DeSarno believe there should be an independent counsel. There's been no offer whatsoever, other than you'll get together with me and the minority, ranking minority member to discuss this. And that's not going to be sufficient. We have a lot of Members who want to be informed about this, because it's been leaked to the papers.

The other thing is, if it's being leaked to the papers by people who obviously have had copies of this, then I don't think there's any more danger of it being leaked to the papers by this committee than it has been from the Justice Department. Nevertheless, I've been willing to listen to some reasonable requests on how we can make sure everybody on the committee understands the reasons why you and Mr. La Bella want an independent counsel, short of giving us 6(e) material or other material that might endanger the investigation.

Now let me just ask you one more question, all three of you. Are you familiar with the August 14, 1992, memo from Melinda Yee to then Governor Bill Clinton? I want to read the text of the memo. Maybe that will refresh your memory.

This is from Melinda Yee, regarding a car ride with James Riady. It's dated August 14, 1992.

James Riady is the deputy chairman of the Lippo Group 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 to 1987 when he was president of the Worthen Bank in Little Rock. He has flown all the way from Indonesia, where he is now based, to attend the fund-raiser. He will be giving $100,000 to this event and has the potential to give much more. He will talk to you about bank issues and international business. This is primarily a courtesy call.

Soon after the receipt of that memo, the Riadys contributed hundreds of thousands of dollars to the DNC and other Democratic causes, even though it appears Mr. Riady was not living in the country. Are you looking into these contributions in 1992?

Mr. LA BELLA. I believe we're looking at all of those allegations. I can double-check when I get back to the Task Force today, but I believe we're looking into all of those allegations.

Mr. BURTON. I don't believe this is an allegation. We've got a copy of the memo from Melinda Yee, and we've got the money that was given to them from the Riadys.

Mr. LA BELLA. I believe we're following all of those leads, and I believe we've seen that document, but I can't—I don't look at every document in every investigation. I will have to check with the lawyers that handled that.

Mr. BURTON. Does this memo raise some questions or the issues regarding the relationship between the President and James Riady? You're aware that Mr. Riady has refused to cooperate in the investigation?

Mr. LA BELLA. We're certainly aware of all the facts and circumstances surrounding Mr. Riady's relationship, such as it is, with the White House and the President.

Mr. BURTON. And the President?

Mr. LA BELLA. Yes.

Mr. BURTON. OK, let me just ask one more question and then we will let you guys call it a day. OK.

Much of the evidence sought by this committee during the course of its investigation is held overseas, and is, therefore, obtainable only through the assistance of foreign governments. Of particular interest to us are the bank records held by the Bank of China, Hong Kong; the Bank of China, Macao; the Bank of Central Asia, Djakarta, Indonesia.

This is for all of you. It's my understanding that the DOJ Campaign Finance Task Force is seeking to obtain similar information from foreign sources; is that correct?

Mr. DESARNO. Yes.

Mr. LA BELLA. Yes.

Mr. BURTON. You are seeking to find that information?

Mr. LA BELLA. Absolutely.

Mr. BURTON. It's our understanding that you have had little success in obtaining access to foreign bank records to date; is that correct?

Mr. LA BELLA. Those efforts are ongoing. I think we've had some success. And I think we expect to some success in the next week or two with respect to one country. We have expectations that we're going to get records within the next several weeks.

Mr. BURTON. You haven't had substantial success, but you're having some?

Mr. LA BELLA. We're having some.

Mr. BURTON. OK. I would note that this is the same situation we've been faced with in addition to the over 110 people who have fled the country or taken the fifth. Has the response of foreign governments to date been satisfactory as far as you're concerned? Has the response——

Mr. LA BELLA. It really depends on which country we're talking about. Every country has been different.

Mr. BURTON. How about China?

Mr. LA BELLA. To my knowledge, we haven't received anything from China.

Mr. BURTON. How about Indonesia?

Mr. LA BELLA. I think we're—we may be on the verge of getting something from Indonesia.

Mr. BURTON. How about Taiwan?

Mr. LA BELLA. I'm not aware of anything we received from Taiwan. We may have. I'm not aware of it.

Mr. BURTON. How about Macao?

Mr. LA BELLA. I'm not aware of anything from Macao.

Mr. BURTON. How about Egypt?

Mr. LA BELLA. I am not sure about Egypt. We have—you know, I have to double-check on all of these countries with respect to that.

Mr. BURTON. Can you give us an accounting? Can you give us an answer?

Mr. LA BELLA. We can certainly do that, which countries that you've identified we got documents from.

Mr. BURTON. We will give you a list of countries. There's others we've identified in Latin America and so forth.

With regard to the Bank of China records and the Chinese Government specifically, are you aware of any cooperation in providing bank records from Hong Kong or China? I think you said that you haven't had any cooperation from them.

Mr. LA BELLA. No. I'm not aware of any documents we've received from them, no.

Mr. BURTON. In fact, no records from the Bank of China have been turned over to any investigators so far that you know of?

Mr. LA BELLA. Other than the ones the Bank of China in the United States has turned over documents that we have.

Mr. BURTON. We understand that, but as far as offshore.

Now, let me ask you——

Mr. LA BELLA. There may be documents that we received from the Bank of China in the United States that were actually foreign documents, because they had them on their computer. They may have given them to us. So I think, technically, we did get some foreign documents, but we got them from the New York branch.

Mr. BURTON. Onshore.

Now, last of all, when President Jiang of China came to Washington, DC, he claimed he was going to cooperate with the campaign finance investigation. Has the Chinese Government cooperated in any way that you're aware of?

Mr. LA BELLA. Not to my knowledge.

Mr. BURTON. In fact, the Chinese Government hasn't even allowed your investigators to get visas, has it?

Mr. LA BELLA. I don't know that we've requested visas. I don't know that we've done that. But we've——

Mr. FREEH. Mr. DeSarno can answer that.

Mr. BURTON. Did you try to get visas?

Mr. DESARNO. At one point we did. We have not in recent times tried to get any.

Mr. BURTON. Did the Chinese Government deny you getting the visas?

Mr. DESARNO. We got denied at one point, but we have not tried it recently.

Mr. BURTON. But when you asked for visas, you didn't get them?

Mr. DESARNO. Yes.

Mr. BURTON. My investigators didn't get them either when we asked. They were denied out of hand. We asked the President of the United States to take our people along with 1,200 others to China, and we didn't get a response.

According to news reports during President Clinton's trip to China, President Jiang claimed the Chinese Government had conducted an inquiry into the allegations of illegal foreign money from Chinese sources. He said, we conducted a very earnest investiga-

tion into the matter and the result of the investigation shows that there never was such a thing. Do you believe that statement by him?

Mr. FREEH. I'd like to see his report.

Mr. BURTON. Do you believe that statement by him?

Mr. FREEH. Not without reviewing the report.

Mr. BURTON. How about you, Mr. La Bella?

Mr. LA BELLA. I really don't—I mean, I can't comment on the accuracy of his statement. I mean, it really wouldn't be appropriate.

Mr. BURTON. Well, the President of the United States said he believed him. The President said categorically he believed President Jiang when he was over there in a news conference.

Mr. LA BELLA. With all due respect to the President, he doesn't have rule 6(e) materials available to him, and he doesn't have documents in evidence that I do. And for me to comment on that, I would, one way or another, be commenting on things that are before the grand jury and before the Task Force ongoing.

Mr. BURTON. We know that money, $300,000, came from the head of the aerospace industry through Johnny Chung, and other moneys came from China. He says he knew of no organized effort. This lady—what was her name? Liu Chao-Ying, she was part of the hierarchy in the Chinese military. Her father was one of the leaders in the military over there. So it's conceivable that he would be part of their so-called politburo. He and his daughter were giving $300,000 dollars to Johnny Chung, and the head of the Chinese Government didn't know about it. Don't you think that is interesting?

Mr. LA BELLA. There are a lot of things that I find interesting about the Task Force's work, but I can't comment on whether I believe it to be true or not.

Mr. BURTON. I understand. Now, I understand you can't comment about classified intelligence information. But to the extent that certain information has come to light through the Senate investigation in public reports and to the extent that you can comment publicly, is this consistent with what you've been learning or leads the FBI is following? I'm talking about Jiang's statement. I think you commented on that.

On the same trip to China, President Clinton says, in response to Jiang's comment, Jiang said they looked into that, and he was obviously certain and I do believe him and that he has not ordered or authorized or approved such a thing and that he could find no evidence that anybody with governmental authority had done that.

And I guess this is redundant, but do you believe that statement?

Mr. FREEH. I'd like to see the report.

Mr. BURTON. All right. We can't subpoena over there.

Aren't your people continuing to investigate foreign links and not accepting Jiang's denials?

Mr. FREEH. Yes, sir.

Mr. BURTON. Mr. La Bella, is this still an active aspect of your investigation?

Mr. LA BELLA. We're following all the leads that we have, wherever they take us, overseas or in the United States.

Mr. BURTON. OK. Mr. Freeh, we have been briefed periodically about intelligence information relating to the campaign finance in-

vestigation. You participated in some of these briefings. Has the FBI or Justice Department felt obliged to share any of the same information with the White House through the National Security Council?

Mr. FREEH. Some of it has been shared. Some of it has not been. And as I think I mentioned in December when I testified, the Attorney General and I have a process by which we make those determinations, and it's a case-by-case review. It's fact-specific. But there are instances where information has not gone to the NSC, which we've decided, for balancing purposes, is not appropriate to go there.

Mr. BURTON. So you and the Attorney General jointly make these decisions?

Mr. FREEH. Yes, sir, we have been.

Mr. BURTON. Do you know how many times intelligence information relating to the campaign finance's investigation has been shared with the White House?

Mr. FREEH. No, not in terms of times. But there are regular intervals where we present information.

Mr. BURTON. So you present information to the White House regarding the campaign finance investigation?

Mr. FREEH. No, I wouldn't categorize it as that. I would say, from time to time, based on a review, and it's a review which includes Mr. La Bella, not just myself, and the Attorney General, national security information which does not conflict with the integrity of the criminal investigation is presented to the White House and the national security policymakers, as I think it should be. But I think there needs to be a careful evaluative and weighing process.

Mr. BURTON. Who else is involved in that decisionmaking process?

Mr. FREEH. The Attorney General, her assistants and deputies.

Mr. BURTON. Her assistants. Are any of her assistants that are involved in this process political appointees?

Mr. FREEH. Well——

Mr. BURTON. Like Mr. Litt?

Mr. FREEH. I know Mr. Holder gets involved in those from time to time.

Mr. BURTON. Does Mr. Litt?

Mr. FREEH. I don't know for a fact that he is. I don't know who the Attorney General consults. Mr. Holder is a political appointee.

Mr. BURTON. Does Radek?

Mr. FREEH. I don't know for a fact that he gets involved in those.

Mr. BURTON. When was the last time the FBI or Justice Department briefed the White House on these matters?

Mr. FREEH. I don't know. I can find out for you.

Mr. BURTON. Could you find that out for us?

Mr. FREEH. Yes.

Mr. BURTON. Did any of this information briefed to the White House factor into your conclusion that Janet Reno should appoint an independent counsel?

Mr. FREEH. No.

Mr. BURTON. Mr. La Bella, I would like to pose the same question to you. Did any of the intelligence information briefed to the

White House factor into your conclusion that Janet Reno should appoint an independent counsel?

Mr. LA BELLA. No.

Mr. BURTON. Mr. Freeh, wouldn't you agree that the FBI's ongoing obligations to brief the White House on sensitive intelligence matters conflicts seriously with its responsibilities for handling the criminal side of this investigation?

Mr. FREEH. No, I wouldn't agree with that. I think what I would agree with is that the development of national security information in the context of the criminal investigation, which clearly has occurred, requires a very careful and very delicate balancing and review by myself and the Attorney General, and that there are occasions when information that we both agree should pass, there have been instances, not many, where we have agreed it should not pass.

Mr. BURTON. I think in your report you raise some concerns about that, did you not?

Mr. FREEH. Yes, sir.

Mr. BURTON. Wouldn't the appointment of an independent counsel go a long way toward resolving that conflict?

Mr. FREEH. It would change that. In other words, if, hypothetically, there was an independent counsel and the independent counsel developed national security information, which was also directly related to his or her inquiry, I think he or she would have to probably go to the Attorney General with that natural security information and the Attorney General would have to make a decision.

The latter decision would be different, however, because the Attorney General would not be supervising the underlying criminal investigation.

Mr. BURTON. All right. OK.

Finally, I was talking about travelers checks earlier. The travelers checks that we talked about, the $200,000 that came from Djakarta, these same travelers checks also show that the former deputy finance director at the DNC, David Mercer, deposited 5,000 of these travelers checks in the White House Credit Union. We don't yet have an explanation for Mr. Mercer, but we have submitted inquiries to him.

But isn't this the kind of situation with the DNC finance official where there are potential conflicts or appearance of conflicts for the Attorney General from the Democratic party?

Mr. LA BELLA. That's a decision that the Attorney General has to make, whether or not the fact of Mr. Mercer presents a potential conflict for her. That's not something that I've ever opined on.

Mr. BURTON. Well, I think, doesn't the statute talk about officials at the Democratic National Committee?

Mr. LA BELLA. No, it talks about——

Mr. FREEH. It talks about campaign officers, both by name and general category.

Mr. BURTON. Well, Mr. Mercer, like I said, who was a deputy finance director deposited 5,000 of these illegal checks coming in from Djakarta and—well——

Mr. FREEH. He's the DNC official, as I understand it. Not a Clinton/Gore 1996 official.

Mr. BURTON. Don't you think that the American people would have more confidence in an independent investigation of this whole matter?

Mr. FREEH. I can't speak for the American people. I don't know how they review or understand even all of the intricacies of what's going on. I think the fact that there is disagreement about how the facts and law apply here is certainly indicative of an important issue that needs to be resolved.

Mr. BURTON. Well, I want to end by thanking all three of you. It has been a long day. I appreciate your patience, and I appreciate your recommendations to the Attorney General. I only hope that she sees fit to accept them.

Mr. FREEH. Mr. Chairman, could I make one closing remark, just very briefly?

First of all, let me thank you and the committee for your just taking up these issues, which are very important. As you know, I have tremendous respect for you and for the committee and for your fine counsel, minority counsel.

I really just one more time would very, very respectfully ask you to consider the timing of when the subpoena under consideration would need to be enforced. And, again, I do that with great respect and great deference. You have excellent counsel there, and the minority has good counsel. I think you and I have the relationship and our staffs have the relationship that we can work out, as far as I can see, some—if we can avoid a constitutional confrontation, I think it's in everybody's interest, particularly if we're talking about a 3- or a 4-week period of time.

Mr. BURTON. I think that is in the ballpark of the Attorney General. If she wants to make a recommendation to us that will give us the guts of what we want, without endangering the investigation or grand jury and 6(e) material, we will take a look at it. We're not interested in any way in impeding the investigation. I want to state that very clearly, but we want to know, very clearly, why all three of you believe there should be an independent counsel. And, right now, we don't know, and we think the American people have a right to know that. So if it can be worked out, fine, but it's going to have to happen very quick.

With that, thanks for being here. The meeting stands adjourned.

[Whereupon, at 3:01 p.m., the committee was adjourned.]

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