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THE CHARLES LA BELLA MEMORANDUM

HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

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THE CHARLES LA BELLA MEMORANDUM

TUESDAY, MAY 2, 2000

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT
AND THE COURTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:33 a.m., in room SD–106, Dirksen Senate Office Building, Hon. Arlen Specter presiding.

Also present: Senators Thurmond, Sessions, and Leahy.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Good morning, ladies and gentlemen. The hour of 9:30 a.m. having arrived, the subcommittee on Department of Justice oversight will now proceed.

This hearing had originally been scheduled for May the 3rd but was moved back a day when the committee had scheduled hearings on the matter involving young Elian Gonzalez so that notice was given for today's hearing. Our hearing today will focus on the report of Charles La Bella, on his recommendation to the Attorney General for the appointment of independent counsel to inquire into campaign financing for the 1996 Presidential election covering both Republicans and Democrats. It is part of a broader series which also involved a report from FBI Director Louis Freeh dated November 24, 1997, where Director Freeh, like Mr. La Bella, recommended that the Attorney General appoint independent counsel. It is the intention of the subcommittee to hear from Director Freeh on this subject and on his memorandum of November 24, 1997, where he recommended independent counsel.

Another memorandum has been prepared by FBI General Counsel Larry Parkinson dated November 20, 1998, and it may be that we will call Mr. Parkinson as a witness as well.

It is not within the subcommittee's choosing to have a hearing in the midst of the Presidential election. Very strenuous efforts have been made to obtain this La Bella report for a long time. The La Bella report is dated July 16, 1998. One week later, on July 23, 1998, I wrote to the Attorney General requesting a copy of the La Bella report and received no response.

On July 22, 1999, Senator Hatch and I wrote to the Attorney General requesting all documents relating to the 1996 Federal election campaigns which would have comprehended the La Bella re-

port, and the staff of the Department of Justice responded by providing a smattering of information but no La Bella report.

On September 29, 1999, a follow-up letter was written to the Attorney General requesting documents which included the La Bella report, and again no response.

The La Bella report has not been made available to committees looking into campaign finance reform such as the Governmental Affairs Committee, but very heavily redacted copies were made available to chairmen and ranking members of some congressional committees with the prohibition against taking notes and the prohibition against having any copies.

I finally had consent to have my Judiciary Committee counsel David Brog invited to the DOJ offices to review the partially redacted copy of the report on March 15 of this year, and when he got there, he was denied access to the report. And, finally, the Judiciary Committee on a party-line vote, 10–8, issued a subpoena on the La Bella report and the Freeh report and the Parkinson report and the Brian report, and other documents were turned over to the committee under an arrangement where they were deposited in S–407, which is not in strict compliance with the subpoena; but at the risk of not receiving the documents at all, they were received in S–407 under restrictions which first limited access even to members of this subcommittee, which has subsequently been broadened, but prohibiting taking out of those reports from S–407, which I think is not a valid restriction but in the interest of caution have not challenged that determination. So we will be proceeding today without having documents present, but I have read them, others have read them, so we are in a position to proceed. And we will deal with the broader public disclosure of those documents at a later time.

The issues which are involved here relate in very substantial measure to soft money and the so-called issue ads, and it was even before the La Bella report when efforts, unsuccessful efforts, were made to obtain information from the Department of Justice on this issue.

Slightly more than 3 years ago, I questioned the Attorney General in a Judiciary Committee hearing about the so-called issue ads on soft money, and the following day, May 1, 1997, wrote her a lengthy letter, which I will cite only one of the ads, because it sets the foundation for Mr. La Bella's testimony. And this is one of the so-called issue ads: "Protecting families. For millions of working families, President Clinton cut taxes. The Dole-Gingrich budget tried to raise taxes on 8 million people. The Dole-Gingrich budget would have slashed Medicare $270 billion, cut college scholarships. The President defended our values, protected Medicare, now a tax cut of $1,500 a year for the first 2 years of college. Most community college is free. Help adults go back to school. The President's plan protects our values."

Now, inexplicably, at least in my judgment, this has been categorized as an issue ad which can be paid for by soft money, which does not count against so-called campaign contributions. I wrote to the Attorney General on May 1. She wrote back on June 19 declining to comment, saying the matter was for the Federal Election Commission. The subject was pursued by me with the Attorney

General at a later hearing, pointing out that there were criminal provisions to the violations and that the Department of Justice and the Attorney General as chief law enforcement officer had jurisdiction there, but, again, to no avail in receiving a response.

Today's hearing will involve discussion, extended discussion of the independent counsel statute, and on one specific provision where, under a 1987 amendment, the Congress added a provision that the Attorney General shall not base a determination that there are no reasonable grounds to believe that further investigation is warranted upon a determination that such person lacked the state of mind required for the violation of criminal law involved unless there is clear and convincing evidence that the person lacked such state of mind. That provision of law was added because on so many occasions the Department of Justice had declined to proceed with an investigation under the independent counsel statute on the excuse that there was not a showing of criminal intent. And the conference report cited the example of Attorney General Edwin Meese in the Environmental Protection Agency case where the Attorney General declined to appoint independent counsel, request independent counsel, to investigate whether Edward Schmults, the Deputy Attorney General, had obstructed a congressional inquiry, with Attorney General Meese saying there was a lack of evidence of criminal intent, notwithstanding very substantial evidence to the contrary, which led to this rule of law in the statute that there could be no declination to proceed in the absence of clear and convincing evidence that there was not criminal intent since that had been the excuse in the past.

Now, that is, believe it or not, a somewhat abbreviated statement of some of the very complex issues we will be facing in today's hearing, but I thought we ought to lay some of the groundwork, which I have just done.

I yield now to the ranking member of the full committee, Senator Leahy.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Well, thank you, Senator Specter. I appreciate you making the opportunity for me to make an opening statement. As we know, Senator Torricelli, who is the ranking member of this subcommittee, had made it clear some time ago that he could not be available today. And I am aware of the way schedules were changed around.

The chairman has outlined for the committee the scope of the campaign finance investigation he wished to pursue in the earlier statements and would hope this would not be dealing with campaign finance generally but would be targeted at the three convictions obtained by the Justice Department's campaign finance task force pursuant to plea agreements with John Huang and Charlie Trie and Johnny Chung. And, of course, it is within the rights of the Republican majority to review the plea agreements and sentences in these three cases if that is their priority, if that is how they choose to focus the attention of this committee. And I have stated that before. It is their determination and their right to have as many investigations as they want.

Incidentally, it is nice to see you again, Mr. La Bella.

Mr. LA BELLA. Nice to see you, Senator.

Senator LEAHY. And I enjoyed our other talks we have had with Senator Hatch and you earlier.

To the extent that the plea agreements for Johnny Chung and Charlie Trie and John Huang are deserving of this subcommittee's scrutiny, Mr. La Bella actually may be able to resolve the concerns of some of our members. Mr. La Bella, you were the supervisor of the task force September 1997 to June 1998. During that time the plea agreement for Mr. Chung was negotiated by attorneys of the task force. It was approved and signed by Mr. La Bella.

In addition, as I understand it, the Trie case, in which an indictment was returned on January 29, 1998, was well underway, and given the publicly expressed criticisms of the resolution of these matters achieved by Mr. La Bella's task force, I hope that the subcommittee will use the opportunity to voice their concerns to Mr. La Bella, and I think he should have the opportunity to respond.

Frankly, I think that is far afield from the limited focus on those three plea agreements to use this hearing in the subcommittee to reiterate the recommendation of Mr. La Bella that the Attorney General appoint an independent counsel. That topic has been explored with the Attorney General before this committee and with Mr. La Bella before other committees of this Congress. Indeed, as I understand, Mr. La Bella has offered public assurances that, whatever his disagreements with the Attorney General, he believes that her integrity and independence were beyond reproach. He also recently reiterated that whatever his frustration with the Department of Justice, he does not believe that the Attorney General in any way, shape, or form was protecting anybody, or anyone else at the Justice Department was politically protecting anybody. We can go over that ground again, but I thought his answer was pretty clear on that.

Now, on the other hand, a review of the shortcomings in the campaign finance law would be helpful. According to a recent press account, Mr. La Bella identified in his investigation certain flaws in the current campaign finance laws, including the fact that serious campaign finance offenses are only misdemeanors and the applicable statute of limitations only 3 years. I agree with Mr. La Bella that these are serious flaws. That is why I cosponsored S. 1991, a bill that would amend the Federal Election Campaign Act in just these areas and treat as felonies violations involving improper contributions aggregating more than $25,000 in any calendar year. And it would increase the statute of limitations to 5 years, which is the standard statute for Federal offenses.

It would give increased direction to the Sentencing Commission in the area of Federal election violations, and hopefully we might go into questions of that.

We may well be embarking on a much more free-ranging endeavor than previously announced. This inquiry has moved from examining events in Mount Carmel, TX, to the ongoing matter of Wen Ho Lee, to the plea agreement in the case of Peter Lee. It is now turning its attention to fundraising activities in the 1996 Federal elections. These have been explored for a number of years by other congressional committees. They are under active review at the De-

partment of Justice. In fact, they have a task force to conduct a thorough analysis and investigation. And that task force, which for a time was headed by Mr. La Bella, had launched 121 investigations by the end of last year. Perhaps we should review all 121.

But as of March 31 of this year, the task force had initiated 24 prosecutions, obtained the conviction of 15 individuals and one corporation. I hope we will not be going back and second-guessing every one of those.

Questions about the financing of the 1996 Federal elections have already been the subject of multiple, expensive, overlapping, repeated, and continued congressional hearings. For example, in 1997, the Senate Committee on Governmental Affairs held 32 days of hearings, calling 70 witnesses, at a cost to the taxpayers of $3.5 million to investigate campaign finance violations relating to the 1996 Federal elections. And that doesn't count the millions of dollars spent by those people who were called.

Then they had another hearing this fall to review the investigation of Charlie Trie. The House Committee on Government Reform and Oversight has been investigating campaign finance violations since June 1997. Chairman Burton has included over 45 days of hearings. In November 1998, the House committee issued a four-volume interim report and in 1998 reports spending already $4 million. That was a year and a half ago.

The Senate Judiciary Committee has already focused extensively on the campaign finance question in hearings with Attorney General Reno on April 30, 1997, July 15, 1998, March 12, 1999. We have talked to her about her decision not to call for the appointment of an independent counsel. We have talked to her about this to some extent. The chairman actually threatened to sue her over her decision and, of course, that is up to him.

Now, we have not questioned her about the times that she has recommended the appointment of independent counsel over the last 7 years. I do find it disappointing that we are revisiting the matter of campaign fundraising in 1996 as we approach the general elections of November 2000. I wish we were looking at some of the other matters. We have at least showed some wisdom in cancelling the Elian Gonzalez hearing tomorrow, as though there is anything more to know, a hearing which I think would have been a form of congressional child abuse to call that little boy up here, Lord knows why, and fortunately, cooler heads prevailed.

But in the last 2 weeks, we have witnessed the anniversary of the shooting deaths of 15 at Columbine High School in Littleton, CO. We have seen the senseless shooting of children at the National Zoo here in Washington. We had the apparent hate crime shooting spree last week, saw the shooting of a Jewish woman, two Asian Americans, a man from India, an African-American man, but we can't bring up sensible gun safety laws. We have bottled up action on updated hate crimes legislation, the Violence Against Women Act reauthorization, and we won't fill the 79 judicial vacancies. Those are all things this committee could do. We won't move forward on hate crimes. We won't move forward on violence against women. We won't move forward on the juvenile justice bill which is bottled up in a conference because the gun lobby tells us not to, but we will continue on campaign finance violations.

We can investigate but apparently not legislate. We know that a lot of investigations go on. Independent Counsel Kenneth Starr up to September 30 spent $52 million. We still don't know how much more he spent, but his successor has spent another $3 or $4 million. As of May 1999, the Justice Department had detailed 96 employees to help Mr. Starr in his investigations. Ninety-six, 78 of them FBI agents. He still spent $1.5 million on other investigators.

We love to investigate. I wish we would legislate. I wish we would move the hate crimes legislation. I wish we would move the violence against women legislation. I wish we would move the juvenile justice bill, notwithstanding the gun lobby's opposition to it, at least vote on it up or down. But if we are going to have investigations, we can go on for them, I am pleased at least that this committee finally showed enough sense to say that tomorrow we wouldn't be dragging poor Elian Gonzalez and his father or anybody else before us to rehash that matter over and over again.

So thank you, Mr. Chairman, for letting me sit in for Senator Torricelli.

Senator SPECTER. Thank you, Senator Leahy.

One other comment with respect to timing because, as noted earlier, we had made very substantial efforts to get the La Bella report early on. It had been the subcommittee's hope to conclude any inquiries on the campaign finance matters early on. When we were talking about structuring the subcommittee last October, the suggestion was made that we would put campaign finance ahead of Chinese espionage, try to conclude it late March, early April. But that bipartisan agreement could never be worked out. So while there may be talk about the millions spent by the Governmental Affairs Committee and the millions spent by the independent counsel run by Mr. Starr, this subcommittee spent zero, no money, or extra money. Staffing has been done with the Senators so that we have proceeded as best we could, and I think rather expeditiously, with major reports on Wen Ho Lee and hearings on Dr. Peter Lee and other matters.

Now, Mr. La Bella, if you will stand for the administration of the oath? Do you solemnly swear that the testimony you will give before this subcommittee of the Judiciary Committee of the Senate of the United States will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LA BELLA. I do.

Senator SPECTER. Mr. La Bella, we appreciate your being here. For the record, you are under subpoena. For the record, your report and all related memoranda and documents are also under subpoena.

We had sought a relaxation of the rules put on by the Department of Justice on not bringing reports over here, but at least for the moment, we do not have that. The Department of Justice is being represented by Ms. Cheryl Walter, whom I met yesterday for the first time, a little after 6 p.m. She brought over a long ream of material so that they wouldn't be given to us after the hearing, she said, but before the hearing. Staff worked long hours into the night to review that material. I wish I had it so I could at least weigh it or show it. And we would ask again, Ms. Walter, that you reconsider our request to bring those documents over. One way or

another we are going to do it. It would be more convenient to do it now.

The Department of Justice has not lodged any objection to our subpoena as to Mr. La Bella. I don't think the Department of Justice would have any standing or any objection to our subpoenaing Mr. La Bella's report, which we intend to ask him about. Is there any comment, Ms. Walter, that you would care to make on behalf of the Department of Justice?

Ms. WALTER. No, thank you, Mr. Chairman.

Senator SPECTER. Thank you.

We have been joined by our illustrious, distinguished President Pro Tempore of the U.S. Senate, former chairman of this committee and most other committees in the Senate. Senator Thurmond, would you care to make an opening statement?

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. Thank you very much, Mr. Chairman.

Mr. Chairman, I am pleased that Mr. Charles La Bella is with us today to discuss his memorandum regarding the need for an independent counsel to investigate campaign finance irregularities. Mr. La Bella was personally chosen by Attorney General Reno in September 1997 to lead the Department's investigation into campaign fundraising abuses because the matter was being poorly handled by the Department's Public Integrity Section. At the time, he was widely praised by the Department of Justice. He was a distinguished career prosecutor who had a reputation for being aggressive, tough, fair, and effective.

Less than a year later, he strongly urged the Attorney General to appoint an independent counsel in a now famous document that the Department of Justice has made every effort to keep secret. Even though his views were consistent with those of many, including FBI Director Louis Freeh, the Attorney General steadfastly rejected his advice. He was suddenly criticized and was passed over to be a U.S. Attorney in California. His detailed report confirms what we have known for some time: The Attorney General has a duty and obligation under the independent counsel statute to appoint an independent prosecutor to investigate the campaign fundraising irregularities during the Clinton-Gore re-election campaign in 1996. Although the Attorney General did open some extremely narrow inquiries under the independent counsel statute, she would always close them. It is clear that her approach to this case has always been far different from that of any independent counsel probes that she had approved in the past.

It should be noted that since Mr. La Bella's departure, the task force has not been entirely dormant. It has successfully prosecuted some participants, including Maria Hsia, who was integral to the Vice President's 1996 fundraiser at the Buddhist temple. However, the task force has also entered some plea agreements such as for John Huang. In any event, its accomplishments will be greatly limited if the matter is not turned over to a special prosecutor.

This subcommittee will later investigate some of these issues. Although many leads and opportunities have probably been lost forever, it is still my sincere hope that the Attorney General will do

what is right and appoint an independent prosecutor in this matter. It is the only way to restore public trust and confidence in this investigation. I welcome Mr. La Bella and look forward to his testimony. Thank you, Mr. Chairman.

Senator SPECTER. Thank you very much, Senator Thurmond.

Senator Sessions.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman. I know time is short, and we want to hear from the witnesses. I would just say that, with regard to Mr. La Bella, I observed from afar his selection to head this task force. I believe, and it was said then, that he was the kind of professional with integrity that could handle this investigation and, therefore, we would not need an independent counsel, that the Department of Justice could do it itself, and that we had a man of integrity and ability in Mr. La Bella who was going to undertake it. And the result has not been such that it placed great credit in my view on the Department of Justice. I am sad to say that, having spent 15 years of my life working in the Department of Justice. I believe in the ideals of equal justice under law. I believe that you can find truth, and I believe you can determine whether or not people have violated laws, and I believe that no one is above the law. I think that is consistent with American heritage.

So when Mr. La Bella was not allowed, was not able to complete the investigation, I thought that was a stunning and significant event. And then when he was going to be named for the U.S. Attorney's job in California, I thought it was very, very sad that he was denied that position simply for doing his work as a professional, it seems to me.

Now, I am willing, I am open, I want to hear the whole facts, but it strikes me as very unhealthy what happened here, and his opinions are the opinions of a professional and career prosecutor, entitled to great respect, and I am glad we are going to be hearing from him today.

I would also note that he handled the plea bargain of Johnny Chung in California and handled it in a way that is, I believe, fairly consistent with what a professional would do in a plea bargain arrangements. He insisted on cooperation. He got it before he made the recommendations for final recommendation of downward departure and had a plea to legitimate charges. I am very disturbed to learn that after he left the Department, with regard to the John Huang case, who had raised $1.6 million for the Democratic National Committee and the Clinton-Gore campaign, that Mr. Huang was allowed to plead guilty to $7,500 in contributions to the mayor's race of Los Angeles and not one dime of his plea affected his fundraising to the Democratic National Committee, really for the benefit of the Clinton-Gore campaign. And he got a sweetheart plea, and his cooperation was never fully obtained. So I would like to ask him a little bit about that.

Those are some of the things that are on my mind, Mr. Chairman. Thank you for going through this. It is a thankless task, your work, but this is a Government of laws and not of men. I just left a meeting with members of the Russian Duma. They say corrup-

tion is the thing they are most concerned about in their country. I believe it is a stain on us that we must constantly fight against, we must constantly be alert to, and bringing these things to light are important, and thank you for doing so.

Senator SPECTER. Thank you very much, Senator Sessions.

Mr. La Bella, again, you are here under subpoena. Your report is under subpoena. And we would ask you at this time to proceed with your testimony as to what your investigation found and what your report said.

Mr. LA BELLA. You want me just to go to a narrative?

Senator SPECTER. Well, I would be glad to ask you questions.

STATEMENT OF CHARLES LA BELLA, SUPERVISING ATTORNEY, CAMPAIGN FINANCING TASK FORCE

Mr. LA BELLA. Let me just begin by saying that, you know, I have been subpoenaed. My documents, the documents I prepared when I was a Department employee, were subpoenaed. My testimony has been subpoenaed. And with respect to the Department, the Department has not given me any, you know, instructions or directions. And in fairness to the Department, I think that is because it doesn't want to be perceived as, you know, trying to shape or mold my testimony or my actions.

With respect to the report, I'm aware of the communications back and forth between the Senate and the Department of Justice concerning my report and the production of my report and the conditions placed upon the production of my report. Basically, with respect to my producing my version of my report, which I still have, and my exhibits, the addendum, the problem is I'm flying by my own lights with respect to the report and my testimony. And I'm just going to tell you what my best judgment tells me to do because no one has told me what to do. And the temperature between the Department of Justice and myself changed quite dramatically after our September 2, 1998, meeting, briefing on the Hill. After that time, I really had very little to do—I had nothing to do with the campaign financing issues. I was not included in any discussions, and perhaps rightfully so, because I had moved on to another post at that point.

Before that time, after I handed my report in, in July, towards the end of July, within a week the result of the report had been reported in the New York Times. On August 4 or 5—I forget the date—I testified in the House Oversight Committee, and at that time I was asked whether I had discussed the report with the Attorney General. My response was no. We hadn't had a chance to discuss it between the time I handed my report in in that meeting.

Senator SPECTER. Have you ever discussed the nuts and bolts of this report with the Attorney General?

Mr. LA BELLA. Well, following that hearing, the Department put together a meeting, I think it was on August 13 or 14, 1998, ostensibly to discuss my report. We met with the Attorney General. We discussed some very generic issues. I think the major issue we discussed was whether or not there was anything in the report that would require us to trigger an Independent Counsel Act inquiry at that time. But it was a very generic, macro discussion. We didn't get into the nuts and bolts or a substantive discussion at that time.

Senator SPECTER. At any time?

Mr. LA BELLA. Not after that, no. After that, I was really gone——

Senator SPECTER. Never had, as you put it, a nuts and bolts discussion with the Attorney General of your report?

Mr. LA BELLA. No. No, I mean, we never really discussed line by line or chapter by chapter or heading by heading. We had that one generic discussion on August 14, but that was about it.

But, in fact, I had been replaced, though. In fairness to the Department, I had been replaced as chief of the campaign financing task force. Someone else was in that position from June on, and, you know, I had moved on——

Senator SPECTER. When were you replaced as head of the task force?

Mr. LA BELLA. Well, I guess—I was appointed U.S. Attorney, Acting U.S. Attorney in June 1998, and I kept loose affiliation with the task force and the Department vis-a-vis campaign financing issues through the September 2 meeting, and then after that we really kind of severed ties with respect to campaign financing.

Senator SPECTER. And what was the cause of your being replaced as head of the campaign finance task force?

Mr. LA BELLA. Because I went out to San Diego to replace the U.S. Attorney, interim U.S. Attorney—to act as interim U.S. Attorney to replace the U.S. Attorney who had just left. And that was the reason I left.

So with that time line in mind and the fact that I'm really flying by my own lights and my own moral compass, I'm glad to talk about certain issues in the report. I really feel compelled—and I'll just tell you this. I don't know how else to deal with people except up front. OK? I'm somebody to just lay it out on the table. I may have differences with the Department. The Department may have differences with me. But I was a Department lawyer for nearly 17 years. I have a certain amount of loyalty and respect for the office of Attorney General and for the Department of Justice. I don't want to do anything to disparage the office of Attorney General or to disparage the men and women who work for the Department of Justice.

I feel as a former prosecutor and a former public servant that it's really incumbent upon me to respect the Department's views with respect to the deliberative process as much as, you know, any ego in me would love my report to come out, because I think it's a sound report. I think it was well written. I think it was well reasoned. I think it was a sound legal document.

I think the deliberative process is important, and I really would ask that we do not go into the nuts and bolts of the evidence underlying my conclusions. I'm happy to discuss my conclusions. I'm happy to generically discuss my conclusions. If we have to go into closed session, I'd be happy to do that. I have nothing to hide. I stand by my report. I stand by my career. But I don't want to jeopardize the important work that the Department continues to do, and I don't want to—also, frankly, I don't want to have—give someone grist for criticizing me publicly, because in one sense I have not been given any instructions. I'm left to fly by my own moral compass, and I'm doing that. But I know if I step—if I say something

inappropriate, there are people waiting, just waiting to jump on it, and so I'm cautious of that, too.

So, cognizant of all that, I'm happy to answer questions. I want to answer questions. I think Senator Leahy brought up a good point that one of the issues we really should be talking about is campaign financing reform. I know Senator Thompson—and it's cosponsored—has some pending legislation that's very important that—and I say that because all my suggestions in my report are included, I think, in that piece of legislation. I think it's a wonderful piece of legislation. It would be an important step in the right direction, and I think that's a useful road to go down.

With respect to the problems with the law, the problems with the Independent Counsel Act, the problems with maybe generically how we handled things in the Department, that's all fair game for questions. I just am a little reluctant to answer questions as to, for example, why Mr. X—why I thought Mr. X, his conduct required the appointment of an independent counsel. If I get into the nuts and bolts of Mr. X's conduct and the evidence, I really just think that I'm giving away the deliberative process that's so important to the Department's ability to do what it needs to do, whether I agree with the Department or not. And I did not agree with the Attorney General on this issue, but I think that has to be preserved.

So, you know, I'll do the best I can to answer all your questions, and you want to know something that really goes to the heart of why I reached a certain decision, I think we really do have to go in closed session or at least discuss amongst ourselves how we best—how I can best answer the question, give you what you need to do your job, and preserve the integrity—my own integrity plus the integrity of the deliberative process that the Department really needs.

Senator SPECTER. Mr. La Bella, we understand your position and have structured this in a way which is designed to the maximum extent to make it obvious that you are responding to a subpoena, a compulsory process. And you and I compared your report. You had your report within your possession, and I went over the report in S–407 that the Department of Justice had provided on the redacted items and said to you that we would not ask you any questions about the redacted items, so that will be respected.

The inquiries made by the subcommittee of the Department of Justice relate only to the deliberative process, and the Judiciary Committee, as I said earlier, by a 10–8 party-line vote decided that the public interest and public policy in oversight of the Department of Justice, as it touches quite a number of matters—number one, just pure oversight as to how the Department is functioning. The second aspect of our inquiry is what we ought to do by way of legislative change, and I have sponsored and cosponsored campaign finance reform legislation. And there is a bipartisan group sponsoring legislation to put back the independent counsel statute, so that the experience here and your testimony is important on that subject.

We will not go into matters which require closed session because we are not going to go into any 6(c) or any redacted information. And we are interested in your conclusions, but necessarily, in the view of the subcommittee, which is why we subpoenaed the report,

we may get into some of the specifics as to what you had your conclusions for. And I know what your conclusions are, and I know what the specifics are because I have read the report. But we will just move along and handle it in a way which is consistent with all of our professional responsibilities, and emphasizing again that the Department is represented here and has raised no objection. I repeat, which I don't like to do, I don't know that there is any objection they can raise, but they haven't in any event.

Mr. La Bella, if you prefer, we will just start with questions.

Mr. LA BELLA. That would be better if I could answer questions.

Senator SPECTER. We can proceed in that manner.

Perhaps a good way to start would be, as you had commented to me last night, on the index. What subject matters were comprehended within your report with respect to generalized topics of investigation or individuals subject to investigation?

Mr. LA BELLA. I started with the statutory framework and our investigative approach, to just set the stage for the Attorney General and the Director of the FBI. This was to the Attorney General and the Director of the FBI. And then section 2, I went into information that myself and Jim DeSarno, who was the head of the FBI, believed was sufficient to trigger a preliminary investigation and to support a determination that further investigation was warranted under the ICA.

Senator SPECTER. And essentially what was the evidentiary base for triggering a preliminary investigation and a follow-up investigation?

Mr. LA BELLA. My understanding of the law was that if there was sufficient information from a credible source to warrant an investigation, then an investigation had to be conducted. We believed, Jim and I, after, you know, assembling all the evidence, we believed that there was sufficient information from credible sources to warrant the appointment of an independent counsel.

Senator SPECTER. With respect to the individuals, I believe you label them as starting with Mr. Harold Ickes, the President, then the Vice President, et cetera. Essentially what were your findings, starting with the first on your agenda, Mr. Ickes?

Mr. LA BELLA. Well, with respect to Mr. Ickes, without going into the nuts and bolts of the analysis, I obviously concluded that, you know, for purposes—you know, with respect to the evidence that I detailed and outlined in the, I guess, 20-some-odd pages that followed, that his conduct warranted the Attorney General appointing an independent counsel. It wasn't his conduct alone, but his conduct in connection with cross-cutting several of the investigations that we had conducted at the task force.

Senator SPECTER. And which investigations were those?

Mr. LA BELLA. Well, he touched upon a lot of investigations. He was someone who had cameo appearances in several investigations.

Senator SPECTER. What was your essential finding as to ultimate control of the campaign by Mr. Ickes operating as Deputy Chief of Staff?

Mr. LA BELLA. Well, I can refer to public documents, and there's certainly memos that—reflecting that, in fact, he functioned as really the coordinator of the DNC during the critical years. He had people report to him, and he made decisions, you know, budgetary

decisions and those sorts of things. So that was part of the analysis.

Senator SPECTER. And who was next on your itinerary?

Mr. LA BELLA. Well, I had—the captions are—you know, we talked about the President, and under several topics, and then we had the Vice President, the——

Senator SPECTER. What were the several topics with respect to the President?

Mr. LA BELLA. Well, it's going to be difficult for me to go into those without really going into the underlying—the underlying facts of the investigation. That's——

Senator SPECTER. Well, Mr. La Bella, we want the underlying facts. This does not really touch on the deliberative process where you confer with the Attorney General, which, in fact, you didn't, except for the one generic meeting that you have described. To understand the basis for your conclusion, we do need the facts. Regrettably, it has all been in the newspapers, anyway.

Mr. LA BELLA. Well, it hasn't. I mean, that's the dilemma I have. There's some—there's been some reports of leaks of this report with respect to positions taken, but not to the underlying evidence.

Now, if—for example, there's no way—it's very difficult for me to discuss my analysis without getting into the nuts and bolts of the evidence. I mean, I understand the Department's view on this, and I've got to respect it, that, you know, the deliberative process is critical. They believe, the Department believes—and I've actually testified earlier in front of the Government Oversight—House Oversight Committee that it's just—it's just difficult for a former prosecutor to—you know, to publicly go into the analysis that he or she engages in in order to reach a certain conclusion.

I reached a conclusion as a 17-year prosecutor that there was sufficient information from credible sources to warrant the appointment of an independent counsel.

Senator SPECTER. Mr. La Bella, when we talk about deliberative process, we are talking about a report which an investigator in your position submits to his superiors and the conversations which you have and the way a judgment is formed and the way there are discussions which are not chilled by somebody looking over your shoulder at some time.

Now, there are circumstances where the case law has upheld congressional oversight going into pending investigations, and we have already had hearings on Peter Lee with line attorneys, strenuously objected to by the Department of Justice, where the committee has decided to overrule the Department's objections. We are not asking you for your conversations with the Attorney General, and we don't intend to because there is nothing to ask you about, which is the reason we are not asking you about them. And perhaps we wouldn't if there was something to ask you about. But with respect to the factual matters that led to your conclusion, that is not part of the deliberative process, as I see it.

Mr. LA BELLA. But this is a report to the Attorney General. This is a conversation, the only conversation I had, but maybe a one-sided conversation, but this is my conversation with the Attorney General and the Director of the FBI as to why Jim DeSarno and I thought an independent counsel needed to be appointed. So, I

mean, it really is a—it is a conversation in that I was—you know, I put my heart and soul into this, and this is my best judgment as to what went on. But I analyze evidence. I get very particular about what went on and why I thought it was appropriate to appoint an independent counsel.

I am not shying away from that decision. I mean, don't get me wrong. I think I was right then, and I think I'm right now. But my dilemma is I don't want to go into the nuts and bolts of why I think under—you know, under the caption, let's take the President, why I think—you know, the five areas that I thought triggered or demonstrated in a matter of evidence and information, why I concluded based on that information and evidence that there was reason to further investigate particular allegations.

The allegations are not a surprise to anybody. They're very similar allegations that were—you know, have been public record. What is not public record is my analysis and my piecing together the different pieces of evidence.

Now, I know that there are probably some people who don't want this report to come out because circumstantially it's fairly powerful. But I think the greater concern is that it would compromise the way the Department conducts its business in U.S. attorneys' offices around the country. And if a prosecutor can't write an analysis like this without fear that his or her analysis is going to become public, it could chill that. I mean, it will chill that. And I think that's the critical issue that's at stake here, and I'm glad to talk about—you know, I stood on my own two feet and said that I think that an independent counsel should have been appointed. The Attorney General disagreed. I took the shots and I have moved on.

But I don't know how to go into the nuts and bolts of why I think an independent counsel should have been appointed vis-a-vis the President, the Vice President, or Harold Ickes without going into the nuts and bolts. It's just not going to make sense to anybody. I can talk about the conclusion, but to talk about the nuts and bolts, it requires me to really draw upon the evidence. And I know that's frustrating, and I know it probably serves some people's interest. But I'm concerned with the greater issue here, which is my loyalty to the Department of Justice, not a person, not a bunch of bricks, but to the Department of Justice and what it stands for. And I can't just sort of brush that aside because I maybe don't have a friendly relationship with the Attorney General of the United States anymore.

Senator SPECTER. Well, Mr. La Bella——

Mr. LA BELLA. That's where I am.

Senator SPECTER. I don't propose to have an elongated discussion as to the deliberative process, simply to say that it is my conclusion that you are not talking about a deliberative process. The deliberative process involves deliberation within the Department where you would make a report and where you would have a discussion, and that did not occur here. What you were talking about is the work of an individual lawyer, investigator, prosecutor who writes a report. That is not the deliberative process.

Now, whatever it is, the committee has already decided that we want the facts, and that is what we intend to ask you about point-blank.

Mr. LA BELLA. OK.

Senator SPECTER. And we have already been through this with others, with line attorneys; the Attorney General herself has appeared and has answered specific questions about a warrant under the Foreign Intelligence Surveillance Act. It was in closed session, but she answered that. She has also answered in public sessions specific questions. So that is what we intend to deal with.

Senator SESSIONS. Mr. Chairman, I would just like to join you in that, and I know Mr. La Bella has had witnesses before him that didn't want to testify also, and they thought for some reason or another they didn't have to testify, but he has required them to testify. Isn't that right, Mr. La Bella?

Mr. LA BELLA. Yeah, I——

Senator SESSIONS. A lot of times.

Mr. LA BELLA. Absolutely.

Senator SESSIONS. As a professional.

Mr. LA BELLA. Right.

Senator SESSIONS. Well, you are under subpoena here.

Mr. LA BELLA. Right.

Senator SESSIONS. And to my knowledge, there is no objection to your testimony, and I don't see why you ought not to give it. You would recognize at some point that the Department of Justice is subjected to some oversight, would you not?

Mr. LA BELLA. Absolutely.

Senator SESSIONS. And that if a professional who is investigating a case is turned down by the Attorney General who serves at the pleasure of the President, when the professional said that the President should be subjected to an independent counsel, then I think the people of this country have a right to have some understanding of what this is about.

Mr. LA BELLA. Right.

Senator SESSIONS. Because we don't have an independent counsel anymore.

Mr. LA BELLA. Well, I think if you——

Senator SESSIONS. This is all we got here is the U.S. Congress to attempt to make sure the people understand what happens, and if there is a good explanation, so be it. If it is not, we need to know it.

Mr. LA BELLA. Well, I think if you want to ask me, you know, what broke down in the process, that is a legitimate question. And I'm not shy to tell you that, you know, the process within the Department I think was dysfunctional. And I've said that and I will repeat it.

Senator SESSIONS. Well, I think the chairman's asked you some questions to which, to my knowledge, there is no real objection to, and I would hope that you would answer them.

Mr. LA BELLA. Well, give me another question. I'll try better.

Senator SPECTER. OK. Mr. La Bella, there has been a lot of concern about the Attorney General's refusal to proceed with the investigation as to the Vice President on her finding that there was lack of intent on the part of the Vice President to violate the Federal election laws. And I have already cited a statute which says that the Attorney General may not stop an inquiry. "The Attorney General shall not base the determination that there are no reason-

able grounds to believe that further investigation is warranted upon a determination that such person lacked the state of mind required for the violation of criminal law involved unless there is clear and convincing evidence that the person lacked such state of mind." And the Congress, in putting that provision in, cited Attorney General Meese letting the Deputy Attorney General go on his unilateral finding that there was not criminal intent.

And the issue has arisen as to the Vice President's state of mind, and, again, I repeat, this would have been a good subject for inquiry in 1998 or 1999 as opposed to May 2 of the year 2000. But we just got this report and have had a chance to go into specifics as to what was before the Department of Justice.

Now, your report and Director Freeh's report relate to the Vice President having made so-called hard money calls because it was the Clinton-Gore credit card which raised hard money as opposed to soft money, which is raised by the Democratic National Committee. And there were 13 memoranda which had been sent from Mr. Ickes to the Vice President from August 1995 until July 1996. And these 13 memos contained divisions as to hard money/soft money, and also using Federal contributions, which are equivalent to hard money contributions.

And the Vice President is quoted as saying, quote, the subject matter of the memos—memorandums would already have been discussed in his presence and in the President's presence. And there was an issue raised as to whether the hard money/soft money was discussed in the Vice President's presence, and Mr. Strauss, his Deputy Chief of Staff, had a memorandum which related—specified a 65 percent split in hard money and a 35 percent—65 percent soft money and 35 percent in hard money.

And there was an issue raised by the Vice President as to whether he was present all the time, whether he had drunk so much iced tea that he had a "restroom break" at that particular time, and the Vice President's further statement that he was experienced for many years of campaigning.

There was also the question raised as to his credibility on the false statement issue, and your memorandum noted that it was inconceivable that the topic of hard money/soft money was not addressed at these regular Wednesday night meetings in the light of the Ickes memo, and you commented based on this memo and others penned by Ickes to the Vice President, everyone was on notice about the need for the hard dollars.

Now, coming right down to the core conclusion where you recommended to the Attorney General that there be a further investigation, it was your conclusion that the matter could not be ruled out as clear and convincing evidence that there was no criminal intent with so many of these facts in dispute, and the defense of advice of counsel where somebody says, well, I told my lawyer everything and I relied upon his advice and, therefore, I do not have the criminal intent, is in the nature of an affirmative defense, which is a jury question, not one which you can rule out as a matter of law.

And the flavor of the report is that it is not a matter of prosecutorial discretion. A prosecutor can decide what to charge and what not to charge, but a lot of the independent counsel statute that

says you can't rule out criminal intent in the absence of clear and convincing evidence.

My question to you is: What was your basis for recommending independent counsel?

Mr. LA BELLA. Virtually all that is public information, so I can talk about that. Let me just put it in its perspective, proper perspective, proper context.

When I arrived in September 1997, there was already underway the initial investigation concerning the 607 violation, the phone calls from the public office.

Senator SPECTER. 607 is exactly what, Mr. La Bella?

Mr. LA BELLA. 607 is the Pendleton Act. That was the alleged violation.

Senator SPECTER. I just want to ask you for the record what 607 provides so it is clear.

Mr. LA BELLA. Well, I don't have it in front of me, but it is basically the Pendleton Act.

Senator SPECTER. Paraphrase.

Mr. LA BELLA. In any event, the 607 violation was underway already when I got there. In December, early December, when it was decided—like December 7 or 8 was the cut-off date. I at that point had recommended to the Attorney General that I thought it was appropriate to warrant further investigation. She decided that it wasn't.

The report was written in July—I mean, it was concluded in July and handed in in July. At that same time there was the emergence of or the surfacing of the Strauss memo and the Leon Panetta interviews and those sorts of things that suggested additional facts. In my memo——

Senator SPECTER. Let me interrupt you just on the point of the Panetta memo, which has been in the public domain, and that is that Leon Panetta, the Chief of Staff, has said that the Vice President was attentive during the course of discussions about the hard money. Correct?

Mr. LA BELLA. Right.

Senator SPECTER. OK. Go ahead.

Mr. LA BELLA. In my July report, you're right, the conclusion was that it was inconceivable that at the Wednesday meetings that hard money/soft money split wasn't discussed. That was the best evidence we had at that point. We had the Ickes memos, and we had all that material that you've just alluded to.

Right after that, or at that same time, as I was writing this, the Strauss memo emerged. The Leon Panetta interview occurred I think in August 1998. I'm not exactly sure.

Senator SPECTER. And what was the Strauss memo?

Mr. LA BELLA. The Strauss memo was the notations of Strauss that indicated the split of the hard and soft money.

Senator SPECTER. Sixty-five percent hard, 35 percent——

Mr. LA BELLA. Exactly——

Senator SPECTER. Sixty-five percent soft, 35 percent hard.

Mr. LA BELLA. Yeah, something to that effect. I don't have it in front of me, but there was a memo with the handwritten notes.

Senator SPECTER. At this point, Mr. La Bella, make it clear for the record what the import was of the hard money, that that count-

ed as a contribution under the Federal election law, whereas the soft money did not under the Department of Justice's interpretation.

Mr. LA BELLA. Right. The initial analysis was—and I think it was correct—that if you're just soliciting soft money, that it's not soliciting contributions and it doesn't come under 607. So there was no—if it was just soft money, there could be no potential violation of 607. If it was hard money——

Senator SPECTER. But if you're soliciting hard money, there could be a violation of 607?

Mr. LA BELLA. A potential violation.

Senator SPECTER. And 607 prohibited raising money on Government property.

Mr. LA BELLA. Right. It is a very old statute. It is a very technical statute. But, arguably, it did prohibit that sort of conduct.

Now, the issue, the only issue before us at that time was whether or not there was sufficient evidence, sufficient information from credible sources to warrant a further investigation. Based on that and my 17 years as a prosecutor, I thought that was a ground ball, that yes, indeed, there was enough information that you would want to conduct an investigation. That's not to say that at the conclusion of the investigation you would do anything with it, that you would prosecute it. In fact, in my judgment, you know, based on the facts and the evidence, you probably wouldn't.

Senator SPECTER. Well, why was there enough information, as you just put it, to conduct additional investigation?

Mr. LA BELLA. Because you had the memos, you had the Leon Panetta interview, you had the Strauss memo, you had, I think, information from credible sources that there's reason to believe that the Vice President, you know, knew that he was raising, in part, soft money and hard money. But, you know, it could be that he didn't. I'm not saying he did. I'm just saying——

Senator SPECTER. When you say the memos, you are——

Mr. LA BELLA. Possibility.

Senator SPECTER [continuing]. Talking about the 13 memos from Ickes to the Vice President?

Mr. LA BELLA. Right, the 13 memos from Ickes to—I'm taking your number as accurate. The number of Ickes memos to the Vice President, the Strauss handwritten notes, the Leon Panetta interview, if you put all those together, it seems that a further investigation is warranted.

Again, not saying that a further investigation is going to result in charges. Probably would not, based on my experience. But, you know, in my judgment—and it was just my judgment and Jim DeSarno's judgment that at the early stage we thought there was sufficient information, and then after the Strauss memo emerged and the Leon Panetta interview occurred, there was additional information. But I guess it was still deemed insufficient.

Senator SPECTER. I am going to yield now to Senator Leahy. We have not run the clock this morning because this discussion doesn't lend itself to 5-minute segments, and I conferred with Senator Leahy about the procedure, and he said go ahead a few minutes ago until you find a convenient spot. He has other commitments,

and there will be more questions, but this is a convenient spot, so I yield now to the ranking member.

Mr. LA BELLA. Are you going to give me an easy one?

Senator LEAHY. Yes, let's talk about our Italian ancestry. What part of Italy does your family come from originally?

Mr. LA BELLA. My father's from Sicily, my mother's from northern Italy, so it made for interesting Sunday dinners.

Senator LEAHY. Whereabouts in northern Italy?

Mr. LA BELLA. The Genoa area.

Senator LEAHY. Mine is from the Friuli area over on the other side. So that is the easy part.

Senator SPECTER. I think the Department of Justice objects to this part of the dialogue. [Laughter.]

Senator LEAHY. And the chairman is absolutely right when he said normally we put on a time, and I thought he had, in asking his questions, an absolutely legitimate right, and I wasn't about to object to it. I was finding the questions interesting myself.

I know, Mr. La Bella, you are in somewhat of a rock and a hard place here, and I know Senator Hatch and the Department of Justice have started negotiating on what would be the use of this material that was sent up here, and I guess those negotiations are still going on, and in the meantime you are here.

I was pleased with what you said about the Thompson bill on amending the Federal Election Campaign Act. That is S. 1991 that was introduced by Senator Thompson, Senator Lieberman, Senator Collins, and myself as a bipartisan piece of legislation. I think a number of the issues that you have raised in your statements earlier, some of the private discussions you have had with members, and also some of the public ones, some of the problems with the Federal election campaign law could be taken care of there.

You have also alluded to the question of what is raising funds on public or on governmental property, including the statute that was put together before there were telephones and those things. The idea that somebody might have written a note and mailed it out on their way home but wrote the note in a public place probably would not have had any question now if they are doing basically the same thing but a telephone call isn't.

I also am struck by one thing you said, and I want to re-emphasize it. In the special counsel law or special prosecutor law, or whatever, one of the criticisms of it and one of the reasons why it has not been renewed and one of the reasons why significant Republicans and Democrats whom I have a great deal of respect for say they would not renew it in its present form—I think everybody agrees it would not—if it were to be renewed, it would not be renewed in its present form because of the low threshold it has to trigger an investigation.

You are an experienced prosecutor. Is it safe to say that you have had a lot of cases where somebody brought something to you and you said, it could be something, let's just take a look at it, and thus start an investigation, and then pretty soon said, there is nothing there, let's go on to something else?

Mr. LA BELLA. Absolutely.

Senator LEAHY. And wouldn't that be pretty much the experience of most prosecutors?

Mr. LA BELLA. Yes. I mean, you exercise a great deal of prosecutorial discretion, and the cases you decline on are never really public. I mean, it is only the rare one that becomes public, but I think prosecutors, Federal prosecutors everyday decline on cases because every technical violation of a Federal statute does not require the full weight and majesty of the Federal law coming down on someone. So I mean there is a lot of prosecutorial discretion that is exercised everyday in U.S. attorneys' offices, and appropriately so.

Senator LEAHY. It is on a far different level, but it is against the law to go 1 mile an hour over the speed limit. Most of us would wonder what was wrong with a prosecutor if suddenly a whole pile of people were brought in for going 41 miles an hour in a 40-mile-an-hour zone.

But with the low threshold on the special prosecutor, did you find that oftentimes there was, just in general, a discussion that this may or may not trigger the special prosecutor law, but even if it does, at the end of the day there is not going to be any special prosecution.

Mr. LA BELLA. Right. I mean, that view was always expressed. I mean, everybody had that feeling about many of these prosecutions. I mean, if I prosecuted every person who came into the grand jury and lied to me, that is all I would have done. It is, you know, a hazard of the job. You get a lot of people who come into the grand jury and don't tell you the truth. Some of them you have to prosecute as perjury.

You know, if it is significant, if it is a centerpiece of a criminal activity, you go after it. But by and large, you know, the minor ones you sort of let go. You have to let certain things go. But we had that discussion. I mean, people discussed that openly. I can't say we ever had the discussion in front of the Attorney General about that, but we certainly amongst ourselves—you know, between the lawyers in Public Integrity and the other supervisors around the table, you would scratch your head at some of these things and say, you know, 10 out of 10 prosecutors are ultimately going to decline this case, but we need to sort of go through the numbers.

And that is where I sort of parted company with some of the people, because I said, it is the law, we need to go through the numbers, we need to go by the numbers. That is not to say all of them would, and you never know what you are going to find if you do the investigation. But, you know, that was certainly part of our discussions.

Senator LEAHY. Well, let me take one example. There were two special prosecutor investigations, costing millions of dollars, on the Vincent Foster suicide, and at the end they both found exactly the same thing. Millions of dollars were spent, but both found at the end we had a suicide.

On a lesser thing, as a State prosecutor, you always have the experience of somebody who comes in after a bitter divorce case. And with diametrically opposed testimony, it is obvious somebody lied, and they say—usually the person who came out on the short end of the stick—we want a prosecution, but there isn't one.

You have got a contractor who does something. One person sues. The contractor promised to do such and so for this money. The con-

tractor says, I never promised to do such and so for that money. Somebody is lying, but you don't prosecute.

These things, however, are difficult because in the public domain we may have set the threshold to trigger the special counsel law too law. That is my feeling. I don't know if you have a feeling on that.

Mr. LA BELLA. I think there is two things. I think you have the double whammy. It is a very low standard, but in addition, you are hamstrung by a lack of investigative tools. You can't use subpoena, you can't immunize witnesses, and these are the tools of the prosecutor. Without subpoena power, without the right to immunize witnesses, it is very difficult to get to the bottom of a situation.

Senator LEAHY. Well, isn't it safe to say if you have a case involving a whole lot of people, at some point you are going to take somebody out and say, all right, we are going to put you on the bubble, we are going to immunize you, but——

Mr. LA BELLA. Right. I mean, in a white-collar case that is generally the way you have to go. You have to immunize somebody to get an insider to testify as to what went on inside the white-collar conspiracy. That is just the way it is.

Senator LEAHY. Unless you got really lucky on a piece of evidence or had a wiretap or something like that, there is probably not much you can do.

Mr. LA BELLA. Right, if you get lucky on a search warrant or something like this. But in cases like this, these are generally very public investigations and people know you are coming, you know, miles before you are there.

Senator LEAHY. Now, Mr. La Bella, I know you have a great deal of respect for people in the Justice Department, and I do too, and I have said this. The professional and career people—I have probably given more speeches about my respect for them in both Republican and Democratic administrations. As a lawyer and as a prosecutor, I have dealt with some of them and I think that the country has been darn lucky to have the men and women that you are referring to.

You described in your report that the circumstantial evidence was powerful, but there was also some significant dissent among other career prosecutors within the Department about your conclusions. Is that correct?

Mr. LA BELLA. There is some dissent among career people in the Justice Department. My difference with you is that my definition of a career prosecutor is different than just someone who has worked for the Department of Justice for 20 years.

Senator LEAHY. What is your definition, then?

Mr. LA BELLA. Someone who has tried cases and stared down juries and has gone into the grand jury substantial amounts of times who has done significant prosecutions, who knows his or her way around the courtroom, his or her way around the grand jury room.

Senator LEAHY. That is my definition, too.

Mr. LA BELLA. Yes, and I think that there are people in the Department of Justice who are career bureaucrats, and that is not to demean the fact that they are career bureaucrats. There is a place for that. I mean, we need people in the Department to be concerned about, you know, policy and issues that are more national in scope,

but I wouldn't necessarily call them a career prosecutor. But, you know, I think that you could probably get—you could find career prosecutors who may disagree with me. I haven't met any.

Senator LEAHY. But you have had this same thing in some cases before where you have had this back-and-forth on whether there should be a prosecution.

Mr. LA BELLA. Absolutely.

Senator LEAHY. And sometimes your side wins out and sometimes the other.

Mr. LA BELLA. Right.

Senator LEAHY. Would you say, if you were the one making the ultimate decision on a case that might be a close call, would you encourage this debate in presenting a recommendation to you?

Mr. LA BELLA. I started out as a line assistant and I ended up as U.S. attorney, so I held every position along the way. And I was very often in the position of having to argue for a position and very often in the position of having to make a decision as Chief of the Criminal Division or as U.S. attorney.

So you really do need to encourage vigorous debate, but you need to encourage real debate and you also need to encourage the fact that once the debate is over, there is a professional respect and closure to the debate. I mean, in a U.S. attorney's office, when we had knock-down, drag-outs about whether we should proceed with a case, we walked out of the room respecting each other and not casting aspersions on each other. So, yes, I think that is something you need to encourage.

Senator LEAHY. In fact, when you testified before the House Committee on Government Reform and Oversight, you said, and I am going to quote this, "The last thing I want to see as the prosecutor heading this task force is that this memo ever gets disclosed. I don't think it should ever see the light of day because this, in my judgment, would be devastating to the investigations. I can't see a set of circumstances under which this report should see the light of day."

Is that a basically accurate recompilation of what you said, and if so, do you feel that way today?

Mr. LA BELLA. It sounds like something I would say. Oh, yes, I think, you know, then there were greater concerns because things were actively under investigation. I think a lot of that has been mooted, but I think just to make public the document, because you can't make this document public in a vacuum—you would have to make the responses public and the whole debate would have to become public that was internal. The Lee Radek response to my memo would have to be made public.

I understand from the Department that Jim Robinson wrote a memo analyzing my memo. And, you know, once you go down that slippery slope, there is no stopping, and that is the problem.

Senator LEAHY. Is that why you wanted a subpoena to appear here today?

Mr. LA BELLA. Yes. I don't want to—let me just tell you, I am not a reluctant public servant, but I just—you know, I don't want to seem to be a volunteer on this. I feel strongly about this. I felt strongly when I wrote it, I feel strongly today. But I just think

that, you know, there are issues we need to deal with and we should probably move on to those issues.

Senator LEAHY. You have spoken about the Attorney General's integrity and independence. And when you testified before the House Government Reform Committee on August 4, 1998, you said you thought that the task force was adequately staffed and the attorneys and FBI agents working on the investigation were competent and professional.

You said that neither the Attorney General nor the White House prohibited the task force from interviewing any witnesses, or prohibited them from bringing any charges or seeking any indictments. Do you still feel that way today?

Mr. LA BELLA. Yes. I had finished my work then, so nothing has changed. I didn't do any more work with the task force, but we had adequate staff. You know, there were legitimate debates inside the Department as to one road or another, but I think we did—as long as I was there, we did the job as best we could.

Senator LEAHY. And whether you agree or disagree with any decisions of the Attorney General, do you still feel that her integrity and good faith and independence are clearly obvious?

Mr. LA BELLA. She made no decisions, you know—and I have said this before—my perception is she made no decisions to protect anyone. You know, she listened to the advice of certain people and she followed that advice.

Senator LEAHY. I worry, as your testimony has indicated you do, about anything that may come into question of second-guessing what prosecutors do because of all the decisions they have to make every single day. I am not suggesting that this committee does not have the authority and the right to look into aspects of the Department of Justice. Of course, it does.

But we seem to have those who are going to be the prosecutors, the line prosecutors and all—we have gone a long way from decades ago where you put the county chairman's weak-brained nephew in for a place, for a job. We now have extraordinarily good people. At least that has been my experience in the U.S. attorneys' offices I go to.

So because of that, do you think if we are going to ask questions, they ought to be at least at the supervisor level and not at the line prosecutor level?

Mr. LA BELLA. Yes, I think it is helpful to keep line people out of it. Supervisors are responsible for the decisions that are made ultimately. And, you know, if heads need to roll, theirs should be the heads that roll. The line assistants generally—and, again, I have filled all these positions. They are just doing their job, and they do them to the best of their abilities. And we are supposed to as supervisors—when I was a supervisor, we are supposed to be providing them guidance, and if we fail, then we should be held responsible for it.

Senator LEAHY. In fact, would it be safe to say when you were a line attorney, there were times you would probably come in and do a devil's advocate debate on whether a case should be brought or not?

Mr. LA BELLA. Oh, sure, yes.

Senator LEAHY. But you didn't want to see that next week before a congressional committee?

Mr. LA BELLA. Right. I mean, you would have to take positions and argue the other side of a position very often to flesh out all the pros and cons, and that was a technique we used in the U.S. attorneys' offices all the time.

Senator LEAHY. Now, we have had criticism of the plea bargains struck and the results obtained in the Johnny Chung, Charlie Trie, and John Huang cases prosecuted by the Campaign Finance Task Force. Did you have involvement with any of these plea agreements at any stage?

Mr. LA BELLA. No, no. I did the Chung agreement, but that is the only one I did. I think everything else happened after I left.

Senator LEAHY. On Chung, did you approve the final version of that agreement?

Mr. LA BELLA. Yes, yes, I did.

Senator LEAHY. And, to your knowledge, did these include provisions requiring cooperation?

Mr. LA BELLA. I put it in my agreement. I know that one.

Senator LEAHY. And was that important to you?

Mr. LA BELLA. It was important to me, yes.

Senator LEAHY. And why was that, sir?

Mr. LA BELLA. Just to advance the investigations, and it is standard in a situation like this where you believe someone has information to provide that you want to make sure that you have an agreement and an understanding with that person that they have an obligation to provide that to you. So they are not just doing it out of the goodness of their heart. You want to make sure that that is part of the deal, part of the final agreement with that person.

Senator LEAHY. In fact, it is probably unusual that somebody might be making a plea just because they want to be a good citizen.

Mr. LA BELLA. Generally, people don't plead guilty to crimes because they want to be good citizens. They generally plead guilty because they are guilty and if they can cooperate, they want to get themselves out of a jam and advance the investigations.

Senator LEAHY. In fact, is it safe to say, given the appropriate circumstances, that has always been a very effective tool for the prosecutor?

Mr. LA BELLA. Cooperation agreements?

Senator LEAHY. Yes.

Mr. LA BELLA. Very effective.

Senator LEAHY. Mr. La Bella, as I say, it is good to see you again. Maybe sometime at a later moment, we can talk about some of our shared ancestry. But I appreciate you being here and I appreciate the difficult situation you are in, but I also appreciate very much your feeling that—or your very candid assessment both about the integrity of the Attorney General, but also about the fact that these are issues where indeed there are debates that go on and differences of opinion. Thank you.

Thank you, Mr. Chairman.

Senator SPECTER. Thank you, Senator Leahy.

Senator Sessions.

Senator SESSIONS. Mr. La Bella, the question and what your memo was directed to was simply whether or not an independent counsel should be appointed. Is that correct?

Mr. LA BELLA. That is correct.

Senator SESSIONS. In other words, the Federal law says if there is a sufficient amount of evidence involving a covered person that an independent counsel shall be called.

Mr. LA BELLA. That was the law then, yes.

Senator SESSIONS. And that is gone now.

Mr. LA BELLA. That is gone.

Senator SESSIONS. But it was the law then, and you weren't making an opinion as to whether or not the prosecution should ultimately go forward. In other words, even if there were a violation of a law, a prosecutor might decline to prosecute it, for various reasons.

Mr. LA BELLA. Right, and there is also the discretionary clause, too. It is not only the mandatory clause, but there was a discretionary clause if the Attorney General believed there was a conflict of interest or some reason why the Department should not do it. It was not mandatory. There was also that discretion to do it.

Senator SESSIONS. Well, the whole deal of the independent counsel and the covered person is that the Congress did not desire that the person serving at the pleasure of the President, the Attorney General, should be called upon to make decisions in areas of tough criminal law involving the President or his highest associates. Isn't that right?

Mr. LA BELLA. I mean, I have been through the legislative history and that is my understanding of it.

Senator SESSIONS. And so that was why you felt like somebody else ought to make this decision other than the Attorney General?

Mr. LA BELLA. Yes, and I felt a lot of these calls were very close calls and what we call jump balls and they could go either way. And in order for the people to have faith in the integrity of the decision, it was always my position that it was better made by someone who was independent.

Senator SESSIONS. And you did note in your remarks earlier that based on what you knew then, it might be that a prosecutor would not go forward with the case, but it is always possible something else would come up.

Mr. LA BELLA. Absolutely.

Senator SESSIONS. And isn't it a fact, Mr. La Bella, just based on your core experience as a prosecutor—and I was in it 15 years—isn't it a fact that the real deal sometimes comes down to how determined a prosecutor is when conducting plea bargains and negotiations with defendants, how determined they are to insist that that person tell the full truth?

Mr. LA BELLA. Well, sure. I mean, the prosecutor is probably one of the most important elements in that formula because he or she really controls whether or not the plea is accepted, you know, whether or not it gets to court because he or she has to determine, yes, I am going to accept this plea.

Senator SESSIONS. Well, let's say you have a defendant that wants to plead guilty, and you have a case against him, but he

wants a sweetheart deal and wants to tell you about one-tenth of the truth. That is not unusual, is it?

Mr. LA BELLA. No. I mean, you——

Senator SESSIONS. And so it is down to that prosecutor's personal judgment and integrity on whether or not they insist that the full truth is—you probably, like I have, have rejected pleas by the fact that, well, that is about half the truth, Mr. Defendant, and if you are not telling the whole truth, I have got enough to convict you and you can go to jail. Is that right?

Mr. LA BELLA. There are stories about me in the Southern District of New York where I would pound the table and leave a proffer session and call people and tell people that they weren't——

Senator SESSIONS. But that is your obligation, isn't it?

Mr. LA BELLA. It is your obligation.

Senator SESSIONS. I mean, that is your duty.

Mr. LA BELLA. It is.

Senator SESSIONS. If you are going to put that person on the witness stand or say he deserves a recommendation of leniency, he or she should tell the full truth.

Mr. LA BELLA. Right.

Senator SESSIONS. Now, I guess what I am saying to you is, isn't that another reason you need an independent counsel? Aren't there some areas in which the person prosecuting the case has some reluctance to do so? There are a lot of stages in the case in which they could perhaps be a bit soft and not pursue as aggressively as they could.

Mr. LA BELLA. Cooperation is a process.

Senator SESSIONS. And I believe the Radek memorandum—Mr. Radek is not a trial lawyer?

Mr. LA BELLA. He may have tried some cases.

Senator SESSIONS. Not in your recent knowledge, is that right?

Mr. LA BELLA. Not in my recent knowledge, no.

Senator SESSIONS. There is a difference when somebody is trying to evaluate a case who knows what the evidence is going to be and has some experience about how a jury will react to it, and I think you are correct.

With regard to the Attorney General, the Attorney General had never served in the Department of Justice, had she, before becoming Attorney General?

Mr. LA BELLA. Not that I am aware of.

Senator SESSIONS. Had never prosecuted RICO cases or Hobbs Act cases or traditional tough Federal corruption cases, had she?

Mr. LA BELLA. I don't believe so. I don't know her background as far as——

Senator SESSIONS. Well, she was just basically a State prosecutor that supervised a substantial staff of people involved in murders and robberies and rapes and things that are very important. But it is a different category of crime, some of these white-collar corruption cases, aren't they?

Mr. LA BELLA. They are peculiar.

Senator SESSIONS. Well, I would just say that under those circumstances I think you were correct that there was a basis for a case to be brought here.

Let me ask you this: has there been a declination by the Department of Justice on the matters you recommended an independent counsel on as of this date?

Mr. LA BELLA. I am assuming so. I assume that they just decided there was nothing that warranted triggering the Independent Counsel Act. But I don't know. I was gone then, so I don't know.

Senator SESSIONS. Well, there is something good to be said for that independent counsel who issues a report and declines to prosecute and sets forth some reasons why. Isn't that healthy when you are involving the highest level of the Government of the United States?

Mr. LA BELLA. That would have been a nice closure to this.

Senator SESSIONS. I don't think we have had that. I think it has soured and been a bitter pill in the body politic. And the Attorney General—the chairman of this committee and the chairman of this subcommittee, Senators Hatch and Specter, and others, have urged her to not do this, to allow it to go forward, as you recommended, and we would have been a lot better off. There is no doubt in my mind about this.

Let me ask this one more thing, and I know the chairman has a lot to ask. When you interviewed the Vice President, and during the other interviews of the Vice President that we are aware of, was he ever asked specifically and in detail about the Buddhist temple fundraising activity?

Mr. LA BELLA. I only participated in one interview, and that was the one in November 1997, and he was not asked any questions in that interview.

Senator SESSIONS. And you supervised that?

Mr. LA BELLA. I was at that interview.

Senator SESSIONS. Did you supervise that interview?

Mr. LA BELLA. Yes. I mean, myself, Lee Radek, the line assistants who were conducting the investigation, and the FBI agents who were conducting the investigation were there.

Senator SESSIONS. And why didn't you ask about that?

Mr. LA BELLA. Because the understanding was that we had a very particular area that we wanted to talk to him about. That was really about the Pendleton Act and the phone calls from the Government office and the use of the telephones. That was the investigation that was underway at that point. We had time pressures. We had to get that interview conducted with respect to that particular investigation.

It was our understanding that if at any time we needed to go back to talk to the Vice President, he was going to be made available. I don't know that the Buddhist Temple case was ripe at that point to ask him questions about it. But as that case developed and the Maria Hsia case developed, you know, maybe they went back to him. I don't know.

Senator SESSIONS. Do you know or not know whether they——

Mr. LA BELLA. I don't know. I don't know if they did or not.

Senator SESSIONS. Mr. Chairman, I am through.

Senator SPECTER. OK, thank you very much, Senator Sessions.

Mr. La Bella, when you accurately say that the judgment is only as to continuing to investigate, it is not possible for an investigator

or prosecutor to know until the investigation is finished whether there will be a basis for prosecution or not.

Mr. LA BELLA. That is absolutely true, and the decision has to be made by that person at the end of the process.

Senator SPECTER. Could be, might not be, might or might not be, depending on the evidence. But the independent counsel statute is designed to remove the Attorney General from making that decision as to covered people where you have the close association or the appointing power, as with the President or where there is a conclusive conflict of interest a la the enumerated people who are so-called covered people, correct?

Mr. LA BELLA. Right. If there is sufficient information from credible sources, the Act is triggered.

Senator SPECTER. And that is what you call the mandatory provision.

Mr. LA BELLA. Right.

Senator SPECTER. The law says we shall proceed with the investigation, and if sufficient evidence occurs, is uncovered, to proceed to appoint independent counsel.

Mr. LA BELLA. Right.

Senator SPECTER. And then the second part which you talked about, the discretionary part, says may proceed where there are reasons to conclude that there is a conflict of interest with somebody else, although not the lofty so-called covered persons.

When Senator Leahy had started to ask you about dissent among the career personnel, career prosecutors, you got off on the discussion as to who is a career prosecutor and who is not. I don't think you came back to the question of whether there was dissent. And you mentioned Mr. Radek, and Mr. Radek wrote a memorandum against appointing independent counsel because, as he put it, there was not evidence of a willful violation. Is that the essence as to the Radek memorandum?

Mr. LA BELLA. It was a lengthy memo. I know that that was probably in there somewhere, and I don't know what specific point that was addressed to. I don't know exactly what he was talking about there. I know he used those words. I think he used those words, but——

Senator SPECTER. You wrote a reply to Mr. Radek's memorandum, correct?

Mr. LA BELLA. Well, I wrote an addendum to my interim report, yes, I did.

Senator SPECTER. OK, in the nature of a reply. You did it once Mr. Radek had written and you wanted to respond to some of his points.

Mr. LA BELLA. Right.

Senator SPECTER. Mr. Radek's standard was disagreed to by others in the Department, was it not? Assistant Attorney General James Robinson disagreed with the standard which Mr. Radek had stated?

Mr. LA BELLA. I don't have a copy of the Robinson memo. That was——

Senator SPECTER. There is no way you could. The Department of Justice won't let us bring it into this room. It is not sanitized.

Mr. LA BELLA. Yes. I don't know what he said. That was after my tenure.

Senator SPECTER. Well, we looked at it last night together, Mr. La Bella.

Mr. LA BELLA. Yes.

Senator SPECTER. We will get into this at a later time with the committee, so in the absence——

Mr. LA BELLA. But there was something about the standard that he disagreed with. I don't know what it—I don't remember as I sit here now what exactly it was, but it was something about the standard.

Senator SPECTER. Well, the specific language which Assistant Attorney General Robinson, head of the Criminal Division, picked up in disagreeing with Mr. Radek was that there was a rejection by Mr. Radek of willful intent. Mr. Radek's conclusion was you couldn't prove willfulness, and Mr. Robinson responded that that wasn't determinative for stopping the investigation because the statute specifically left open that issue unless there was clear and convincing evidence. So Mr. Robinson concluded Mr. Radek had applied the wrong standard in disagreeing with your recommendation about independent counsel.

Does that refresh your recollection?

Mr. LA BELLA. Yes, that seems right, and I had said in my memo that I thought he applied the wrong standard because he used sufficient evidence from a credible source. I said it is information. He said that is a silly distinction. I thought it was a real distinction.

Senator SPECTER. Pretty big difference for a prosecutor as to whether it is evidence or information.

Mr. LA BELLA. Well, if I go to a Federal judge and say, Your Honor, I offer this information, he is going to look at me and take my head off, or she is going to take my head off. If I offer evidence, then I have a colorable claim to get into evidence.

Senator SPECTER. But then you are a career prosecutor.

Mr. LA BELLA. Right. I think there is a difference between evidence and information.

Senator SPECTER. Well, of course there is.

Mr. LA BELLA. And I think that the Congress, when they wrote it, they intended it.

Senator SPECTER. Well, for the record, state what the difference is between evidence and information.

Mr. LA BELLA. I mean, evidence is more directed, evidence is more substantive; it has the earmarks of reliability. Information can be much more generic, can be much more general. Information can be hearsay. Evidence, if it is hearsay, has to have an exception to get into evidence. I mean, lawyers just know it. I mean, you know the difference between evidence and information.

Senator SPECTER. Evidence is the standard for what you can say in a courtroom, compared to information which is the standard for what you can say on the floor of the Senate.

Mr. LA BELLA. Right. I mean, evidence is what is admissible in a court of law. Information is anything that can be heard on the Internet or with your own ears.

Senator SPECTER. So when you proceed to have an investigation based on information, it is obviously an articulation of a much lower standard.

Mr. LA BELLA. A much lower standard.

Senator SPECTER. And when Mr. Radek is requiring evidence, he is not following the standards set for by the Congress in the independent counsel statute.

Mr. LA BELLA. In my effort to be fair to him, he just argues that they use the words interchangeably, but for him they mean the same thing. And Public Integrity has always applied the right standard; they just interchange the words and it is form over substance. And that was his point in his addendum, as I recall. I mean, I disagree with that. I don't——

Senator SPECTER. These words have a lot of specific meanings for lawyers in courtrooms, or for application of standards of statutes, don't they, Mr. La Bella?

Mr. LA BELLA. Well, I mean, as a former prosecutor, you deal with the laws that Congress passes. You don't deal with the laws as you think they should have been passed.

Senator SPECTER. When the comment is made that there was dissent among career prosecutors, is that true? To your knowledge, was there dissent within the Department of Justice among career prosecutors, if you move out Mr. Radek, whom we have already said applied the wrong standard and interchanged evidence and information?

Mr. LA BELLA. It is hard for me to know who was in the debate because I wasn't in the debate after I left. But I mean, you know, Jim Robinson was a former U.S. attorney, so I mean I don't know how—I mean, you have to ask these people how many cases they tried, you know, how many investigations they have conducted. I mean, people call themselves career prosecutors, and I just don't know. I don't know the resumes of all those people.

Senator SPECTER. How many cases would you have to try to qualify? I want to know if I qualify, in your opinion.

Mr. LA BELLA. I think it depends. I think a Federal prosecutor, after about eight or nine trials, can be a trial lawyer because, you know, they can be month-long trials.

Senator SPECTER. If you are only a district attorney, more than that?

Mr. LA BELLA. Well, district attorney—they usually put like 150 under their belt each year, so I think after about 2 or 3 years they are pretty much seasoned trial lawyers.

Senator SPECTER. Mr. La Bella, coming back to the information as to the others, there is a section of your report which deals with Loral on the technology transfer from Loral to the People's Republic of China. And there was a recommendation as to proceeding as to an investigation for the chief executive officer of Loral, Mr. Bernard Schwartz, who had contributed some $1,500,000 to the Democratic National Committee. And there was the judgment that you had articulated that if the matter was to be opened as to Mr. Schwartz, it ought to be open to President Clinton as well.

Mr. LA BELLA. Let's assume that the allegation that appeared in the paper was that, you know, someone had given contributions and, as a result of the contributions, had received some benefit.

Senator SPECTER. A presidential waiver for technology transfer. Let's put that in the assumption.

Mr. LA BELLA. OK.

Senator SPECTER. You are postulating a hypothetical question.

Mr. LA BELLA. Hypothetical. And if, hypothetically, you are going to investigate the person who gave the contribution because you think something was wrong with that because they were seeking a quid pro quo, then it seems to me that part of the area of investigation would be the person who received the contribution. I mean, that just is my analysis, you know, so——

Senator SPECTER. So, hypothetically, if you proceed as to A, Mr. Schwartz, you would proceed as to B, Mr. Clinton, hypothetically?

Mr. LA BELLA. Well, hypothetically, I would think you would have to because it is part of the same subject area, but that would be just my reaction as a—that would be my reaction as an investigator.

Senator SPECTER. Mr. La Bella, in the second part of the report which you submitted, dated August 14, 1998, you raised the issue of further investigation, "The Vice President may have given false statements." What was your approach on that particular item?

Mr. LA BELLA. Well, by that time, what had surfaced—in addition to what was in my initial report of July, the Strauss memo had surfaced. In my initial report, I think I was basing it on the Ickes memorandum and the fact that it was generally discussed in the memos that went into the Vice President from Ickes. I concluded that, you know, it was inconceivable to me to rule out that it was an issue that he knew nothing about.

After the report, the Strauss memo surfaced, and then following that the Leon Panetta interview had occurred, I think, before my addendum, or at just about the same time, and those were additional facts that came forward.

Senator SPECTER. And your report made a comparison of the Vice President's not recalling the Ickes memoranda, the 13 memoranda; as you put it, "reminiscence of the lack of recollection of the Buddhist Temple matter."

Mr. LA BELLA. That sounds like a phrase I used, yes.

Senator SPECTER. It sounds like a phrase you used?

Mr. LA BELLA. It sounds like a phrase I used.

Senator SPECTER. With respect to your recommendations, Mr. La Bella, with which I agree totally, but I think it would be good for the record to amplify why you think that these campaign finance violations ought to be categorized as felonies as opposed to misdemeanors.

Mr. LA BELLA. I think for two reasons. Number one, it sends a message publicly that we are going to take these things seriously, because for years I think we have not taken them seriously because they have been denominated as misdemeanors. And when you denominate something in the Federal law as a misdemeanor, that sends a message to prosecutors. That means no one really cares about it, and it is something that you use when you really want to give somebody a good deal. You would look for a misdemeanor to get them out of their predicament, and that is a fact of life that prosecutors view misdemeanors as an escape hatch, as a way out.

Felonies are what prosecutors are about; that is what they do. If conduct is important enough to be brought into a Federal criminal courtroom, it is important enough to be a felony. And I think it sends a public message that these are serious—this is serious conduct, and if you violate this conduct, it goes to the integrity of our electoral process and therefore we are going to take this seriously.

It also gives the prosecutor much more room to move when he or she is investigating a crime. You know, if you have a misdemeanor, you have got a floor and there is nowhere you can go except a get out of jail free card and let them walk out the door.

If you have got a felony, at least you have got some gradations, and if a case requires a misdemeanor disposition, then you can go down to a misdemeanor. But if it requires and screams out for a felony prosecution, you can do your job and use a felony prosecution.

I think the other issue is the statute of limitations has to be changed, and there are other issues about the present state of the law. But I think that goes a long way—making it a felony goes a long way into showing how serious we consider this conduct.

Senator SPECTER. Before moving to the statute of limitations issue, because I want to take that up specifically with you because it is a very important provision, the felony categorization also carries a substantially stiffer penalty.

Mr. LA BELLA. Right, and I am sorry. That is really the second prong of it because you can use that obviously to extract cooperation. Now, some people are repulsed by the idea that a prosecutor can use a heavy jail sentence as a mechanism to extract cooperation from someone. But if you have served as a prosecutor, you know people don't willingly cooperate, especially against their friends in a white-collar case. It just doesn't happen unless you have got something to hold over their heads.

And fortunately for prosecutors—and I know the public sometimes doesn't like to hear this—but, fortunately, you can use that severe sanction as a way that someone can, you know, give full cooperation and you can make sure that you are getting truthful testimony before they get any break whatsoever. So it is a tool that prosecutors use, so it is an important tool and if you have that tool, you can advance investigations.

Senator SPECTER. And the statute of limitations, for explanation, is the period of time in which a prosecution must be brought after the acts are completed.

Mr. LA BELLA. Correct.

Senator SPECTER. And you have made a recommendation that the statute of limitations be extended from 3 to 5 years?

Mr. LA BELLA. Yes.

Senator SPECTER. And would you amplify why you think that is an important legislative change?

Mr. LA BELLA. Well, virtually all Federal statutes are 5 years. So if any of us commit a Federal offense, other than an election violation, the prosecutor's office has 5 years—the FBI or Customs or Immigration, whatever agency is going to investigate, and the prosecutor have 5 years to investigate and bring that case to closure, bring that case to an indictment.

Three years is an incredibly short amount of time when you are dealing with a white-collar case; it can be. It sounds like a long period of time, but when you are talking about hundreds of thousands of documents that have to be reviewed and many witnesses that have to be interviewed and grand-juried, it goes very rapidly, especially if the prosecutor doesn't learn about the conduct until 2 years after it is committed, or 2½ years. Then you have 6 months to close your case, which is virtually impossible.

So you have got to understand that prosecutors don't learn about the conduct always right when it happens. It could be a year, it could be 2 years in a white-collar situation before someone comes forward and drops a dime on someone, as we say, and says, hey, you should look at this, because, you know, sometimes it is a disgruntled employee. So you never know where you are going to get the lead from in a white-collar case, but 5 years is appropriate.

Senator SPECTER. Mr. La Bella, when you conducted your inquiry, were you aware of the issue of the e-mails that were not collected by the White House that may have been relevant to your investigation?

Mr. LA BELLA. The task force was aware, and I was in contact with White House counsel about the e-mails during our investigation. We did broach that subject. They had a lot of difficulty pulling the e-mails up and it was a constant source of discussion between myself and White House counsel.

Senator SPECTER. Did you feel at that time or do you feel now that you got an adequate response from the White House on the e-mail issue?

Mr. LA BELLA. White House counsel was always very straightforward with me and I never had a problem with them. I don't know if they were being given the information, accurate information, but I always trusted what they told me. I never had reason to question what either Lanny Brewer or Chuck Ruff told me in that regard. But I don't know—because they were depending on other people to give them the information, I don't know if they were getting the straight information.

Senator SPECTER. Mr. La Bella, there is a distinction as to in an electioneering message which contrasts with the two categories of advocacy ads and issue ads. The ad that I read at the outset of the proceeding is categorized as an issue ad because it doesn't say "vote for x, vote against y."

There is an in-between message which is called an electioneering message, which is a distinction made by the Federal Election Commission and was adopted by the Tenth Circuit, although not mentioned in the Supreme Court decision on the Colorado case.

The FEC has concluded that electioneering messages should not be paid for with soft money, and the FEC confirmed that. Yet, the Attorney General found clear and convincing evidence that the President and the Vice President lacked intent. Wouldn't that come under the category, as you put it, of jump ball or ultimately an issue for a jury?

Mr. LA BELLA. That you do so in the context of the electioneering message?

Senator SPECTER. Yes.

Mr. LA BELLA. You know, not having read the whole thing, I think there were a series of close calls. You know, that may be one of them. I would really have to investigate that further, but I think that certainly may be one of them.

I think you bring up a good point, though, about the FEC, and part of the report that I think is worth talking about is the fact that the FEC is absolutely impotent by design. And I have said that before and I said it in the report, and I think if there is going to be some way to—there has to be some way to address that. It can be a significant organization just like the SEC is and it can actually root out campaign financing violations, but it needs to be restructured. It can't operate by committee and it just is absolutely ineffective.

Senator SPECTER. Your report included evidence that high-ranking officials from the Democratic National Committee were aware of illegal contributions from both foreign donors and executive branch officials. Was there a sufficient basis for appointment of independent counsel on the basis of the failure of the White House to take action there?

For example, on the issue of campaign contributions to the President, when it was determined that Charlie Trie had gathered for the legal defense fund contributions which were inappropriate, then, as your report specified, Mr. Trie continued to raise money for the Democratic National Committee without the President's campaign fund alerting the recipients of additional funds raised by Mr. Trie that they came from inappropriate or illegal sources.

Would you comment on that?

Mr. LA BELLA. It gets very close to the nuts and bolts, but I will try to do it in a sort of generic way.

Senator SPECTER. Well, do it hypothetically, since you don't like nuts and bolts.

Mr. LA BELLA. Well, I will try to use a corporate analogy. If an individual is on the board of directors of a charitable corporation and is the heart and soul of that charitable corporation, and in the context of that charitable corporation inappropriate conduct occurs—someone gives money to the company that is questionable, not per se illegal but questionable, comes from questionable sources, and the charity decides not to take that money. They make a determination that we don't like this, it doesn't fit.

Now, if the corporation were to take that same money, it would be illegal, as opposed to the charity. The charity—it wasn't illegal for it to take it; it was just inappropriate. But for the company, it would be illegal to take that money.

Now, if on the board of directors of that charity is also a member of the board of directors of corporation x, and if he or she sits at corporation x and watches the same person come in with similar money, query: do you have an obligation to advise your fellow directors for the company that, you know what, in my other life, with my other hat on, this conduct happened with this person, therefore I think you may want to look at closely his activities in connection with this corporation. I think we have an obligation to do that.

Now, I believe that is a sound principle of law. I know Mr. Radek ridiculed that and thought it was silly, so maybe the truth is some-

where in the middle. But as a prosecutor, that is the way I analyzed it.

Senator SPECTER. Senator Sessions, do you have anything further to inquire on?

Senator SESSIONS. Well, let me just say that Mr. Radek's position was Chief of Public Integrity?

Mr. LA BELLA. Yes, sir.

Senator SESSIONS. And that is a political appointment of the Attorney General?

Mr. LA BELLA. I don't know.

Senator SESSIONS. Or a discretionary appointment of the Attorney General. It is not a career-type position. He is a career attorney. He can drop back to a career position, but he was temporarily holding a position at the pleasure of the Attorney General. Isn't that right?

Mr. LA BELLA. I believe the position is appointed by the Attorney General.

Senator SESSIONS. All of the chief of divisions, I think, are that way. So you are not aware of any career prosecutor that ever disagreed with your opinion on this matter?

Mr. LA BELLA. It really depends on who you—I mean, I don't know the resumes of all the people in the Department when I was there and when I left, and there may have been people who read and said, no, he is——

Senator SESSIONS. But you are not aware of it?

Mr. LA BELLA. I am not aware of it.

Senator SESSIONS. All right. I think that even though this might have been a case, the phone calls of the White House-type case using Government phones, that ultimately did not need to result in a full prosecution, I believe you are correct that there was ample evidence, and certainly information, to indicate that a law had been violated, and therefore an independent counsel should have been called. And they could have concluded the case one way or the other, and they could have declined officially and stated their reasons, and this matter would have been a lot better off and this Nation would have been better off.

So, that has concerned me about this, and it does appear that the Attorney General reached out and made a decision here that leaves people to be able to say that she did not use objective decision-making processes. I am not happy with that. I think that was an error in the Department of Justice.

With regard to the e-mails, were you aware of all the e-mail material that has been in the paper, and that certain people were told not to disclose this information? How much did you know about what was available from the computer search?

Mr. LA BELLA. We were told that the system was limited and it was an archaic system and it would take a long time to retrieve e-mails. And it was a very slow process, and I knew they had called in a company to try to retrieve e-mails, but it was a very slow process. And I think it was 8 months or even longer before we could hope to get certain e-mails. That is what I was told when I was there and——

Senator SESSIONS. And who was telling you this, the White House counsel?

Mr. LA BELLA. The White House counsel, right. That is my best recollection. It was a long time ago, but I think it was something like that. It was a long time to retrieve them because it was an archaic system.

Senator SESSIONS. Well, apparently, that is not accurate from what we read in the papers.

Mr. LA BELLA. Yes. I don't know. I mean, I have read the same articles.

Senator SESSIONS. So you said White House counsel was straight up with you. Apparently, perhaps not?

Mr. LA BELLA. Well, I don't know if they were getting—I don't think they were actually doing the investigative work. I think they were relying upon other people to tell them on the staff what could you do and what could you not do as far as retrieval.

Senator SESSIONS. Well, a lawyer has an obligation to make accurate representations under those circumstances. You just don't do it off the seat of your britches when you tell the chief counsel that you can't get documents. You should have a basis for that, should you not?

Mr. LA BELLA. Yes, and they weren't telling us they couldn't get them. They said that it was going to take a long time, and I don't know what happened with respect to the e-mails, whether they got them or not, the task force. I just don't know.

Senator SESSIONS. I would just add, Mr. Chairman, I agree very much that the 3-year statute of limitations is too short. In fact, in some ways it needs to be longer than the normal 5 because these things take time. Election issues and those kinds of things take time.

I suspect—and I have seen it in my State, a short statute of limitations on election cases—that if you lose the election, it takes the new guy a long time to figure out what is happening. By the time he does, the statute has run. It really is a problem, and has complicated some of my efforts as attorney general in State court.

So many of the cases involving corruption and fraud and extortion, would you not agree, Mr. La Bella, get prosecuted in the fourth and fifth year of the statute of limitations?

Mr. LA BELLA. Very often, we are right up against it before you bring the indictment.

Senator SESSIONS. It just takes a long time, and 3 years is exceedingly short. In these kinds of cases, if anything, it should be longer than 5, and I thank you for raising that point.

Senator SPECTER. Thank you, Senator Sessions.

Before we wrap up, just one more factual point. The Vice President admitted making these calls in March 1997, but there was no investigation started by the Public Integrity Section or anybody else in the Department of Justice until July 1997, some 4 months later. Do you know why there was that delay?

Mr. LA BELLA. I wasn't privy to that, but I remember the fact that before that time they thought they were all soft money calls. And it wasn't until around July that someone realized, based on documents, I think, or testimony, that—well, I think it was documents because there was no testimony at that point—that there was a hard money/soft money component to the calls. I don't think it was until July that someone realized that.

The Attorney General initially—and I know this all from, you know, documents I have seen—said, well, this is all soft money, there can be no violation. And then later it was determined that there was hard money component to it, and therefore I think the investigation was started then.

Senator SPECTER. But the question wasn't even raised, no inquiry, for some 4 months.

Mr. LA BELLA. Right.

Senator SPECTER. Well, Mr. La Bella, we thank you very much for coming. I believe that your testimony is extraordinarily important. I believe your report is extraordinarily important.

In September 1997, the Governmental Affairs Committee was conducting an investigation into campaign finances, and we had a closed-door session with the Attorney General, the FBI Director and the CIA Director where we found out that the CIA had information about what was in the FBI's files which the FBI hadn't disclosed to the Governmental Affairs Committee.

And that was a very rugged session; we broke some furniture. It was a closed session in the Intelligence Committee room. And it was shortly thereafter that you were brought in. The Attorney General did not want to appoint independent counsel, but she wanted to come close to it, and she brought you in as an experienced prosecutor, 17 years' experience, or 15 at that time, whatever it was, and known for integrity.

And as soon as you wrote your report on July 16 and it became public knowledge, in 1998, I wrote to the Attorney General asking her for it, and 1 week later, as I put in the record earlier, renewed those requests and had the chairman of the full committee join me in those requests. And we had started earlier than that, even back in 1997, April 30, asking these questions in a very pointed way about the soft money, and had asked the Attorney General for a judgment as to violation of law.

Those letters will be put in as a part of this record. They have been put in the Congressional Record.

[The letters referred to follow:]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, July 22, 1999.

Hon. JANET RENO,
Attorney General of the United States, U.S. Department of Justice, Washington, DC.

DEAR MADAM ATTORNEY GENERAL: We are writing to request that you provide to the Judiciary Committee all documents in the Department's possession relating to (1) the Department's investigation of illegal activities in connection with the 1996 federal election campaigns, and (2) the Department's investigation of the transfer to China of information relating to the U.S. nuclear program. Your submission should include a copy of Charles La Bella's report recommending appointment of a campaign finance independent counsel. In addition, your submission should include, but not be limited to, any and all memoranda, reports, agreements, notes, correspondence, filings and other documents pertaining to:

1. The allegations against, cooperation from and plea bargains with Peter H. Lee.
2. The allegations against, cooperation from and plea bargains with Johnny Chung.
3. The allegations against, cooperation from and plea bargains with Charlie Trie.
4. The allegations against, cooperation from and plea bargains with John Huang.
5. The Department's reported decision not to prosecute Mr. Wen Ho Lee.
6. Any other individuals who were or still are under investigation by the Department for campaign finance violations.

7. Any other individuals who were or still are under investigation by the Department for passing nuclear technology to China.

These matters—for which we now seek documents—are at the heart of this Committee's oversight responsibilities. Indeed, it would be difficult to imagine more compelling cases for this Committee's oversight than those involving the Department's investigation and prosecutorial decisions concerning the possible theft of the nation's nuclear secrets and the possible violation of our campaign finance laws. The fulfillment of these oversight responsibilities is imperative to ensure that our national security and campaign finance interests are adequately protected, and to identify any shortcomings in current law or procedure so that any necessary corrective action can be taken in a timely fashion. Moreover, the information we seek herein is imperative if this Committee is to meaningfully address various matters left outstanding following your appearances before this Committee on March 12, May 5 and June 8, 1999.

We would appreciate a response within ten days as to whether you intend to comply with this request, including a timetable for document production.

Thank you for your cooperation.

Sincerely.

ORRIN G. HATCH.
ARLEN SPECTER.

Additional signatures for the July 22, 1999 letter to Attorney General Reno signed by Senators Hatch and Specter.

BOB SMITH.
JON KYL.
JEFF SESSIONS.
STROM THURMOND.
CHUCK GRASSLEY.
MIKE DEWINE.

U.S. SENATE,
Washington, DC, September 29, 1999.

Hon. JANET RENO,
Attorney General, Main Justice Building, Washington, DC.

DEAR ATTORNEY GENERAL RENO: On behalf of the Senate Judiciary Committee Task Force on Department of Justice Oversight, I am writing to request information referred to in the U.S. Department of Justice, Office of the Inspector General Special Report on the Handling of FBI Intelligence Information Related to the Justice Department's Campaign Fiance Investigation (July, 1999). To conduct its oversight of the Department's activities, the Judiciary Committee Task Force needs to be able to assess the reliability of the ten pieces of intelligence information described in the report, and to do so in the context of any prosecutions, plea agreements or other actions by the Justice Department to which these ten pieces of information pertain. Therefore, the Task Force requests the ten pieces of intelligence information mentioned in the report, as well as any analysis available to the Department of Justice related to the validity of the information and its suitability for use in a prosecution or relevance to a plea agreement.

Any classified information responsive to this request should be delivered to the Office of Senate Security, Room S407, The Capitol, to the Attention of Mr. Dobie McArthur.

Your prompt attention to this request is appreciated.

Sincerely,

ARLEN SPECTER.

Senator SPECTER. But we have persevered, and these are big, big questions as they will affect the future of independent law enforcement. The independent counsel statute, I predict, will come back. It is an oddity that none was appointed here and we had the Starr investigation, and then Judge Starr recommends against independent counsel. But we need to think these matters through, and your work is very important.

Your report is still under subpoena, Mr. La Bella. We haven't physically taken it from you, and don't intend to, but the subpoena remains. And we are discussing in the committee that some of the

members believe this ought to be in the public domain, as I do, and we want to be as careful as we can not to politicize this matter. We have been very delicate in going through the matters today, and you have hypothesized here and there and you have referred to some matters in the public domain.

But I think a few nuts and bolts have been spread upon this record; as we lawyers say, spread upon the record, I think, in the public interest. And we are going to pursue it. We are not going to be worn out by these matters, however late the Department of Justice records come to us and however voluminous they are. Dobie McArthur spent a good part of the early morning hours going through those thick reports, as did David Brog and the others who have functioned really in Senator Sessions' and Senator Grassley's and Senator Thurmond's and Senator Torricelli's and Senator Feingold's and Senator Schumer's staffs. This is the least expensive investigation in the history of Congress, and it is a record which will never be broken. You can't get any less than zero in expenditures on an investigation.

But your contribution has been very important, and you have been the model of circumspection in what you have had to say about it.

May the record show that Mr. La Bella finally smiled.

And when Mr. Vega was appointed in your place, in September of 1998, I raised hell about it and said there ought to be a Judiciary Committee hearing, not that I have any concerns as to Mr. Vega, but I have concerns as to what happened to Mr. La Bella. And Mr. Vega still hasn't been confirmed. He is the U.S. Attorney for the San Diego area as a matter of court appointment, and I do hope yet that we will have a hearing on Mr. Vega. That is an appropriate forum to go into questions which I am not going to except to reference.

But you are one of the heroes around here, Mr. La Bella, in my opinion, and this is a town without many heroes.

Do you want the last word, Jeff?

Senator SESSIONS. I do, because I have been pretty aggressive about making this record public. And I have served in the Department and I understand Mr. La Bella's concern that internal deliberations be made public. But with regard to the special counsel law, the Attorney General was required to act. This was not an area in which prosecutorial discretion was at stake, in my view.

There is a real question about whether or not she performed her duty under the law, a requirement under the law. If there was sufficient evidence, she shall call for an independent counsel. And to say that this body can never inquire into that is to say that the Attorney General doesn't have to abide by that law, and there would be no way to find out if she did or did not. So, reluctantly, I believe we have had to go into this. I know you and Senator Hatch called for the independent counsel earlier, and we wouldn't be here today if they had answered your call.

Senator SPECTER. Well, the law is plain that we have oversight authority to get reports like this, to question line attorneys, to deal even on pending prosecutions as we are pushing ahead on the Loral Hughes technology transfer. And we are not going to be de-

terred and we are not going to be worn out. And we have tried, and I think succeeded, in depersonalizing this inquiry today.

We are looking to the future. We want to know how we are going to handle the Department of Justice investigations in the future and how the statute ought to be changed, and if we go back to an independent counsel statute, the finance matters, statute of limitations, and felonies—and if we go back to an independent counsel statute, how we will learn and how we improve the processes for the future.

This is not a matter as to the Attorney General personally. We had a closed-door session on Wen Ho Lee and the Foreign Intelligence Surveillance Act, and one of the members of the Judiciary Committee raised some very hard questions. And I sided with the Attorney General not raising issues as to integrity or competency.

But there are laws to be followed and we are going to do our very best to see to it that when these issues arise in the future—and they will come up just as surely as the sun will rise tomorrow in Washington, D.C., going back to Teapot Dome and before—that we use the experience that you have brought to bear, Mr. La Bella to improve the system.

Mr. LA BELLA. Well, I promise you I am not going to leave the country with my report. I will stay in the country.

Senator SPECTER. Thank you.

That concludes our hearing.

[Whereupon, at 11:46 a.m. the subcommittee was adjourned.]

[Submissions for the Record follow:]

NOTE: Redacted to delete information the disclosure of which could adversely affect a pending criminal investigation or prosecution or would violate Rule 6(e) of the Federal Rules of Criminal Procedure. Redactions completed on March 24, 2000.

Janet Reno

Copy 5 of 7

INTERIM REPORT

FOR

JANET RENO
ATTORNEY GENERAL

AND

LOUIS J. FREEH
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

PREPARED BY:

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Supervising Attorney
Campaign Financing Task Force

and

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Assistant Director
Federal Bureau of Investigation
CAMPCON Task Force

July 16, 1998

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DOJ-FLB-00033

INTERIM REPORT

I. Introduction

This report is an effort to piece together the disparate investigations involving allegations of campaign finance abuse being handled by the Task Force, to offer a framework in which to consider the evidence gleaned from these investigations, and to suggest a role to be played by the Department so that the abuses detailed below do not repeat themselves in the next election cycle. Several of the investigations have culminated in criminal prosecutions; others are still active with charges anticipated, and some will be closed. However, there runs through each investigation certain common themes: the desperate need to raise enormous sums of money to finance a media campaign designed to bring the Democratic party back from the brink after the devastating Congressional losses during the 1994 election cycle, and the calculated use of access to the White House and high level officials -- including the President and First Lady -- by the White House, DNC and Clinton/Gore '96, as leverage to extract contributions from individuals who were themselves using access as a means to enhance their business opportunities.

The temptations served up by White House operatives to political fundraisers and contributors cannot be underestimated. The pressure to produce contributions created an environment ripe for abuse. Dick Morris, hired by Clinton/Gore '96 in June 1995 to salvage the President's political future, determined almost immediately that the situation demanded a media blitz which could cost as much as $1 million per week. Harold Ickes, Deputy Chief of Staff to the President, assumed the role of Chief Whip -- relentlessly exhorting party functionaries and fundraisers to bring in the money. Ickes also functioned as the de facto head of the DNC and Clinton/Gore '96, making all key decisions from his post at the White House.

One of the innovations devised to generate the sums needed was a system of escalating perks for donors and fundraisers. Most notably, fundraisers who solicited $100,000 or donors who contributed $50,000, were denominated Managing Trustees of the Democratic party. This entitled them – and their designated guests – to a plethora of benefits, the most munificent of which involved opportunities to mingle with the President, Vice-President and First Lady at various party functions. Other important perks included special seating at DNC functions, invitations to White House coffees, opportunities to travel on Air Force One and Two, overnight stays at the White House, complimentary tickets to DNC events, participation in official U.S. sponsored trade missions, membership in DNC committees and related entities (including the Trustee Program, the Democratic Business Leadership Forum and the DNC Finance Board of Directors), as well as invitations to meetings and other events where senior White House personnel were in attendance.

The fundraising was also geared, in a more sophisticated manner than it had been in the past, toward the special interests of various ethnic groups. Asians, a group which believed itself under represented in terms of political influence, were courted much more actively than ever before. Our investigations suggest that key operatives at the White House understood and exploited the fact that, among Asian groups, a "photo op" with the President, Vice President or First Lady was a commodity which could be used to leverage business opportunities overseas. In a market system run amok, where the demand for such photos was insatiable, the cost of a photo opportunity sometimes ran as high as $20,000 or $30,000.

In addition, the opportunity to be part of a small group to have coffee with the President became a major fund raising technique. The price for coffee with the President ranged from

$25,000 to $50,000 per person. The chart, annexed at Tab 1, demonstrates how the frequency of these coffees increased during the time when funds were desperately needed to fund the media campaign. Between 1992 and 1994 there were no similar coffees held at the White House. However, between January 1995 and November 1996, the number of coffees mushroomed to as many as 14 per month. According to the statistics compiled by the Task Force, over 42% of the individuals who attended the coffees contributed $5.05 million hard and $9.81 million in soft money during the 1996 election cycle. This figure does not include donations made by corporations associated with the individual attendees. (Tab 2)

The rush to exchange donations for access provided the perfect environment in which opportunists like Charlie Trie, John Huang, Maria Hsia and others were able to flourish. Given the conditions fixed by the White House, exploitation of the campaign funding process was inevitable.

At the outset, there were discrete responsibilities assigned to the DNC, Clinton/Gore '96 and the White House. As the pressures to finance the media campaign grew, however, and especially as it became clear that the mid-term elections would be disastrous for the Democrats, the lines began to blur and, ultimately, to disappear altogether. All pretense of maintaining discrete areas of responsibility and control were shattered as the need for campaign funds -- driven by the media campaign -- increased. Such blurring of lines is troubling because it triggered an intermingling of funds, resources and personnel that resulted in the circumvention and violation of campaign contribution regulations.

The White House, as the player with the greatest clout, took on the dominant role -- in the person of Harold Ickes -- in decisions concerning strategy, fundraising and the expenditure of

all funds. Ickes assumed the role of Svengali, assuming power – with the imprimatur of the President – to authorize DNC and Clinton/Gore expenditures, award media contracts and direct every aspect of the DNC and Clinton/Gore activities related to the reelection effort. For example, the media bills were directed to Ickes who decided when they were to be paid and whether payment for a particular expense came from the coffers of the DNC, Clinton/Gore '96 or the state committees. As is evident from a series of memos to and from Ickes, a small portion of which are detailed below and at Tab 3, Ickes acted as the CEO of the effort to reelect the President. Ickes met with both DNC and Clinton/Gore chiefs almost daily to cement his control of the purse strings of the DNC and Clinton/Gore '96, as well as his direction of policy and strategy for these entities. DNC and Clinton/Gore employees reported to Ickes regularly concerning fundraising efforts, budgets, events and strategy. Although Fowler and Knight were the titular heads of these organizations, it was Ickes who pulled all the key strings. Fowler and Knight fulfilled more ceremonial than substantive roles – providing the facade behind which Ickes was free to operate.

Dick Morris too straddled the DNC and Clinton/Gore organizations. Morris was paid by both and believed he worked for both.[1] This was not surprising given that the White House itself made no distinction between the DNC and Clinton/Gore. As detailed below, the blurring of the lines extended to the highest levels of the White House. The Vice President used a Clinton/Gore (hard money) credit card when he was ostensibly soliciting "soft money" on behalf of the DNC.

---

[1] During the fall of 1994, Morris and the President held weekly strategy meetings. Between August 1994 and May 1995, Morris was paid as a "subcontractor" for the polling firm of Penn and Schoen, which was in turn paid, at least in part, by the DNC. From June 1, 1995 through August 31, 1996, Morris was paid by Clinton/Gore '96. During that same period, he was also paid by the DNC as a member of the November 5 Group, a corporation formed by Squier, Knapp, Penn, Schoen, and Morris.

Thus, Clinton/Gore '96 funded these calls which, according to the Vice President, had nothing to do with the reelection effort but rather were to fund so-called generic "issue ads." In addition, the Vice President received of a series of Ickes memoranda and attended weekly meetings concerning, among other things, the interplay between these so-called "soft money" solicitations and the DNC's hard money accounts. (Curiously, though renowned as a policy wonk, the Vice President claims he did not read the memos and cannot recall the meetings.)

Another simple, but by no means isolated example, of this type of conduct is the involvement of Clinton/Gore '96 employees in raising funds nationwide to fund the so-called generic "issue ads." For example, Laura Hartigan, while employed as Finance Director at Clinton/Gore '96, took charge of a "DNC project" to raise funds for the media campaign. In a memo to Harold Ickes, entitled Clinton/Gore '96 Commitments - Media Fund, Hartigan provided a state by state analysis of the dollars raised and promised by key contributors and solicitors to the DNC. (Tab 4) Like the use of the Clinton/Gore credit card to solicit soft money contributions, the use of a paid Clinton/Gore '96 employee to execute a DNC effort in connection with generic "issue ads" is telling. While some chalk these efforts up to "super coordination," others view them as circumstantial evidence of the true nature of fundraising efforts associated with the media fund.

The intentional conduct and the "willful ignorance" uncovered by our investigations, when combined with the line blurring, resulted in a situation where abuse was rampant, and indeed the norm. At some point the campaign was so corrupted by bloated fundraising and questionable "contributions" that the system became a caricature of itself. It is hoped that this report will place in context the abuses uncovered in our investigation: a system designed to raise money by

whatever means, and from whomever would give it, without meaningful attention to the lawfulness of the contributions or the manner in which the money was spent.

II. Statutory Framework

The Independent Counsel Act, 28 U.S.C. § 591 et seq., (hereinafter "ICA" or "the Act") is at the edge of each of our investigations. The Act can be triggered in one of two ways. First, the mandatory clause provides that the Attorney General shall conduct a preliminary investigation where there is information sufficient to investigate whether any "covered person" may have violated any federal criminal law. 28 U.S.C. § 591(a). Second, the Attorney General may conduct a preliminary investigation under the following "discretionary" provision:

> When the Attorney General determines that an investigation or prosecution of a [non-covered] person by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person . . . if the Attorney General receives information sufficient to constitute grounds to investigate whether that person may have violated Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

28 U.S.C. § 591 (c)(1) (emphasis added).

A. Investigative Approach

1. Critical Mass vs. Stovepipe

Since the inception of the Task Force, we have been faced with numerous investigations (30 - 40 at any given time) which present separate vignettes of potential criminal conduct. While there are several key players and themes that run through the Chung, Hsia, Trie, Jimenez, Glicken, and Huang matters, to name a few, each is an investigation unto itself with a principal target. A separate investigative team (prosecutors and agents) is charged with responsibility for each investigation. It is true that each team is acutely aware of the ICA.

However, while a particular investigative team may be aware of some of the activities of the overlapping individuals developed by other investigations, by and large the Task Force has, from its inception, had a stovepipe approach to investigative matters.

On the one hand, it has been said on more than one occasion that the sheer volume of allegations relating to potential campaign finance violations requires a triggering of the Act and the appointment of an Independent Counsel. That is, given the amount of smoke surrounding these allegations, senior White House officials and key DNC and Clinton/Gore officials, there must be a fire somewhere and the Act should be triggered. Granted that this provides an expedient way to unload these matters onto the shoulders of an Independent Counsel, it is not sufficient to discharge the Department's duties and responsibilities.

On the other hand, it cannot be that we are doomed to stovepipe each and every allegation of wrongdoing and view it in isolation. As prosecutors and investigators we are trained to look within the four corners of an investigation in order to make judgments concerning the commencement or conduct of a criminal matter. However, the campaign finance allegations do not present the typical criminal matter. Rather, they present the earmarks of a loose enterprise employing different actors at different levels who share a common goal: bring in the money.

Everyone who has worked on these investigations has noted that the overlaps and crossovers deserve investigation. And yet, the Task Force has never conducted an inquiry or investigation of the entire campaign finance landscape in order to determine if there exists specific information from a credible source that a covered person (or someone within the discretionary clause) may have violated a federal criminal law. Every time this was suggested (e.g., Core Group investigation, Common Cause allegations) it has been rejected on the theory that such an

inquiry can only be conducted pursuant to a preliminary investigation under section 591 of the Act. However, we have been told that we can only commence a preliminary investigation if there exists specific and credible evidence that a potential criminal violation has occurred. That is, you cannot investigate in order to determine if there is information concerning a "covered person," or one who falls within the discretionary provision, sufficient to constitute grounds to investigate. Rather, it seems that this information must just appear.

As a result of this Catch-22 approach, there has been a critical component missing from our investigative strategy. This report will attempt to bring together the bits and pieces of information and evidence that have developed despite the absence of the type of landscape investigative approach outlined above. When viewed in context, various innocent-appearing actions and events develop into a pattern running through the separate investigations. The conduct of certain figures common to several individual investigations, while not sufficiently sinister in any single investigation, takes on a different gloss when combined with the same actors' conduct in several investigations. This is especially true with respect to the conduct of senior White House officials and key DNC and Clinton/Gore officials. These individuals make brief, albeit key, appearances in the individual investigations. While their participation in a single investigation generally falls short of a knowing participation in potential criminal conduct, the sum of their appearances results in a pattern of conduct worthy of investigation.

2. In Search of a Uniform Threshold Under the ICA

Another difficulty has been that the Task Force has been existing in an environment in which there are two different rules of engagement depending on the nature of the investigation. On the one hand, we are bound and determined to investigate thoroughly every lead and

allegation concerning campaign financing. We have often been told to follow all leads and leave no stone unturned. This is as it should be. The Task Force has opened criminal investigations, issued subpoenas, and presented evidence to a Grand Jury, based upon a determination that there is an allegation which, if true, <u>may present</u> a violation of federal law. The low quantum of information necessary to trigger a Task Force investigation has remained constant from the outset. The Task Force's threshold has never been articulated in terms of specific and credible information -- much less evidence -- that a crime has been committed in order to commence an investigation. As a result, more than one criminal investigation has been opened by the Task Force based upon a newspaper article that strings together "allegations" and "facts" suggesting a possible federal violation.[2]

On the other hand, a higher threshold than that employed by the Task Force has been imposed when approaching allegations that may implicate the ICA and White House personnel. The ICA provides that a preliminary inquiry shall be conducted whenever the Attorney General receives information (not evidence) "sufficient to constitute grounds to investigate whether any person . . . <u>may have violated</u> any Federal criminal law . . ." 28 U.S.C. § 591(a) (emphasis added). The only factors to be considered under the ICA in determining whether grounds to

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[2] It has also been the policy of the Task Force to continue to investigate allegations and to decline prosecution and/or further investigation only after each and every allegation has been fully investigated. This is true despite the fact that some allegations approached what a reasonable investigator might characterize as frivolous. For example, the Task Force continued to investigate the overnight stays at the Lincoln bedroom and attendance at White House coffees long after any expectation of a potential violation of law had disappeared. The rationale was that no stone would be left unturned. Thus, even if not unlawful in and of itself, an overnight stay or attendance at a coffee by a contributor might provide context to some of the other activities under investigation or constitute an overt act in an overall criminal conspiracy. The Department has also confirmed that no campaign finance investigation will be closed without conferring with the Director of the FBI.

investigate exist are the specificity of the information received and the credibility of the source of the information. This provision seems simple enough and indeed consistent with the quantum of information necessary to commence a typical Task Force investigation. And yet, in applying § 591(d)(1) of the Act, a good deal has been read into the legislated threshold. The threshold has been raised from consideration of the specificity of the information and credibility of the source, to a determination that there is specific and credible evidence of a federal violation. Evidence suggests something which furnishes proof; information need not be as directed. While the distinction may appear to be subtle, it is significant. [3]

The mechanics of how we address campaign finance matters is also flawed and has contributed to the confusion. If an allegation suggesting a potential federal violation was made, an investigation was commenced and the Task Force pursued it. And yet, whenever the ICA was arguably implicated, the Public Integrity Section was called in to consider if a preliminary investigation should be commenced, to conduct and direct the investigation, and, thereafter, to recommend if a further investigation was warranted. While these actions were generally taken in loose coordination with the Task Force, a peculiar investigative phenomenon resulted. The

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[3] We received a briefing for the Attorney General prepared by the Public Integrity Section in connection with the Attorney's General's July 15th testimony. Under the heading "Why AG Has Not Recommended Appointment of IC" is the following statement:

> I. The Independent Counsel Act
> - The Statutory standard under the Independent Counsel Act requires:
> (1) Specific evidence from a credible source that a crime may have been committed, and either ...

In the pages that follow concerning specific topics like "Allegations Relating to Chinese Government Influence," we see the constant refrain: "There is no evidence ..." However, the statute refers to information and not to evidence. The reference to "specific and credible evidence" is just wrong. (Tab 5) (emphasis added)

Department would not investigate covered White House personnel nor open a preliminary inquiry unless there was a critical mass of specific and credible evidence of a federal violation. (It is not accidental that everyone generally refers to the standard as requiring specific and credible evidence rather than information. Indeed, the phrase "specific and credible evidence" has become so much a part of our lexicon that it has even found its way into high-level briefings on the Act to explain why the Department has done what it has done— see fn 3.) And yet, the Task Force has commenced criminal investigations of non-covered persons based only on a wisp of information. The failure to distinguish between information and evidence as we attempt to apply the Act, as well as the employment of two distinct thresholds in connection with the commencement of criminal investigations, impacts on the conclusions reached in these matters.[4]

The Task Force's threshold concerning the commencement and conduct of criminal investigations has been publicly endorsed by the Department in the numerous correspondence sent to Congress as well as in the testimony of the Attorney General before the Senate. As such, this threshold constitutes a written or other established policy of the Department within the meaning of the ICA. See 28 U.S.C. § 592(c)(1). The implications that flow from such an established policy in the area of campaign financing are significant.

The standard for triggering a preliminary investigation under the ICA should be identical to the threshold employed when deciding to open a Task Force investigation. If the Task Force

[4] Even among the ICA investigations conducted to date, there appears to be a very different approach taken when the allegation involves the President, Vice President or Senior White House Officials. The Babbitt and Herman matters illustrate the very low quantum of information deemed necessary to trigger the ICA and the need to conduct further investigation. And yet, although matters involving covered persons and White House personnel outlined in this report present specific information from credible sources well beyond that present in these other investigations, the Act has not been called into play.

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issues subpoenas, elicits (and at times compels) sworn testimony, and employs the other investigative techniques available during a criminal investigation, this should satisfy the investigative threshold in the ICA as well. This assures that covered persons under the ICA are treated neither more harshly nor more leniently than others in less powerful positions. This was certainly the standard envisioned by Congress when it determined that "whenever the Attorney General received information sufficient to constitute grounds to investigate" a covered person or one who falls within the discretionary provision, a preliminary investigation should be conducted. See Legislative History of the ICA, infra. The reference to "the specificity of the information and the credibility of the source for the information" was intended to limit the Attorney General in determining whether sufficient grounds to investigate exist by eliminating other factors the Attorney General could rely upon to avoid commencing a preliminary investigation. (Tab 6) However, these factors are now being advanced as somehow creating a higher threshold than that which the Attorney General employs in deciding to commence a criminal investigation which does not implicate the ICA.

Likewise, the standard for the conduct of a campaign financing investigation -- including a determination that further investigation is warranted -- should be consistent, regardless of whether the ICA is implicated. Thus, following a preliminary investigation under the Act, the decision as to whether further investigation is warranted, should parallel the standard employed by the Task Force in conducting, and closing, investigations. Under the Act itself, a decision concerning the need for further investigation is governed by the Department's written or established policy. In the area of campaign financing investigations, that policy embraces the "leave no stone unturned" approach employed by the Task Force. See Footnote 2, supra

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The question thus becomes whether the Task Force standard or the ICA standard – as currently applied to campaign financing investigations involving White House personnel – should be the benchmark. While some have argued that the Task Force's "pursue every lead and leave no stone unturned" approach presents a somewhat relaxed predication requirement,[5] the Department has articulated several compelling reasons why this approach is the appropriate policy in connection with campaign finance investigations: the shortened statute of limitations for election violations; the rash of potential illegal activities presented during the 1996 election cycle and the resulting political crisis; the apparent injection of foreign money into our political system; the widespread circumvention of existing election law restrictions; the exposure of gaps in the law which permitted wholesale circumvention of federal election laws; and the possible participation – or willful blindness – of public officials, and high level party officials in connection with these activities. Perhaps most importantly, the public cynicism and apathy engendered by reporting (much accurate, some not) of the campaign abuses, compels an exceptionally thorough investigation, so that there is not even the appearance, let alone the reality, that leads have not been pursued.

We were not participants in the application of the Act by the Department prior to September 1997. However, as a prosecutor and investigator who have observed its application

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[5] The standard for the commencement of a criminal investigation, as set forth in the U.S. Attorney's Manual, is consistent with the Task Force's approach and the Department's stated policy. The Manual provides:

> The grand jury may be utilized by the U.S. Attorney to investigate alleged or suspected violations of federal law.

United States Attorney's Manual § 9-2.010

over the past ten months, it seems evident that, for whatever reason, there has been unnecessary complication in applying the standards set forth in the ICA concerning the commencement and conduct of investigations. This is especially so where the President and White House personnel are involved. Indeed, the continuing and often heated debate involving the so-called Common Cause allegations is an apt example. If these allegations involved anyone other than the President, Vice President, senior White House, or DNC and Clinton/Gore '96 officials, an appropriate investigation would have commenced months ago without hesitation. However, simply because the subjects of the investigation are covered persons, a heated debated has raged within the Department as to whether to investigate at all. The allegations remain unaddressed.

When you juxtapose the Common Cause allegations against the Loral allegations, for example, there is no acceptable explanation as to why one is the subject of a full criminal inquiry and the other is, and remains, in an investigative limbo. The fact is that Loral has been, and remains, a front page story whereas the Common Cause allegations never grabbed the public attention. The tone, tenor, and tempo of the debates on Common Cause and Loral seemed to flow from this. The debates appear to have been result orientated from the outset. In each case the desired result was to keep the matter out of the reach of the ICA. In Common Cause (outlined below at pages 36-41), this was accomplished by never reaching the issue. The contortions that the Department has gone through to avoid investigating these allegations are apparent. For example, it was suggested that these allegations be sent to the understaffed and investigatively impotent Federal Election Commission ("FEC") for an initial review to determine if the FEC believes that potential criminal charges exist. In Loral (outlined below at pages 75-79) avoidance of an ICA was accomplished by constructing an investigation which ignored the

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President of the United States -- the only real target of these allegations. It is time to approach these issues head on, rather than beginning with a desired result and reasoning backwards.

While the Common Cause and Loral matters are discussed more fully below, it is important to note that these anomalies exist and the time has come to address them based upon the information received and developed by the Task Force. In the context of campaign financing allegations, the Department's established policies are, and should be, those that the Task Force has employed from its inception: whether the allegations, if true, present a potential violation of federal law. This is also the appropriate standard to be applied under the ICA in the context of potential campaign finance violations.

B. Legislative History of the ICA

The above statutory framework anal sis is based upon a plain and fair reading of the ICA. However, a review of the legislative histo of the 1978, 1983, 1987 and 1994 amendments to the ICA, and its predecessor, support this analysis and yield two factors which are particularly germane to our discussion.

First, in connection with the commencement and conduct of criminal investigations, Congress intended to achieve an equilibrium between those covered by the Act and those who are not. If there is sufficient information for a criminal investigation to be commenced in connection with John Q. Public, this same quantum of information is sufficient to trigger an investigation under the ICA. The amendments of 1987 and 1994 make it clear that those covered by the Act are intended to be in the same position as non-covered citizens when it comes to whether an investigation is commenced and, if commenced, whether a further investigation is warranted. For this reason the Department's "established policies" were legislatively grafted onto the Act.

Second, the legislative history accompanying these amendments is riddled with comments suggesting that in the past, the Department's literal, hyper-technical, parochial, or professorial reading and application of the ICA has proved to be the catalyst for several amendments. It seems that the more the Department has resisted a common sense reading and application of the ICA, the more it has invited Congressional action. And, on more than one occasion, Congressional action has further restricted the Department's discretion in the application of the Act. For example, in discussing the 1987 amendments, the Senate report notes that in several cases the Department had declined to conduct a preliminary inquiry despite the fact that it had received:

> . . . specific information from a credible source of possible wrongdoing, because it determined that the evidence available did not establish a 'crime.' In at least 5 of these 10 cases, this decision appears to be based, in whole or in part, upon a finding that there was insufficient evidence of a subject's criminal intent and therefore, no 'crime' to investigate.
>
> Thus, contrary to the statutory standard, . . . [the Department] relied on factors other than credibility and specificity to evaluate the case. Moreover, in at least half of these cases, the Department of Justice refused to conduct a preliminary investigation into the alleged misconduct, because it had determined there was, at this early stage in the process, insufficient evidence of criminal intent.

S.Rep. No. 100-123, at 7 (1987), reprinted in 1987 U.S.C.C.A.N. 2150, 2156 (hereinafter collectively referred to by year followed by "U.S.C.C.A.N.") (emphasis added).

In the same report, it was noted that "[s]ome of the most serious implementation problems identified by the Committee concern the Justice Department's procedures for handling cases under the statute." 1987 U.S.C.C.A.N. at 2158. The most serious problem chronicled by the Committee was the Department's practice of conducting "threshold inquiries" of incredible length

involving "elaborate factual and legal analysis" in order to determine if certain information was sufficient to trigger a preliminary investigation.[6] The Judiciary Committee noted:

> It is not clear why the Department of Justice has adopted this practice. Some have suggested that the Department is conducting preliminary investigations in all but name to avoid statutory reporting requirements that attach only after a 'preliminary investigation' has taken place. Since these reporting requirements are the primary means of ensuring the Attorney General's accountability for decisions not to proceed under the statute, Congress intended them to attach in all but frivolous cases.

1987 U.S.C.C.A.N. at 2158 (emphasis added). The clear mandate is that a preliminary investigation should be triggered in all but frivolous cases. As detailed below, the Task Force has uncovered a variety of non-frivolous allegations involving covered and discretionary persons under the ICA.

Finally, the Department was criticized for its interpretation and application of the Act in determining whether further investigation was warranted following a preliminary investigation. The Committee noted that the Department had substituted its own "reasonable prospect of conviction" threshold for the statute's "reasonable grounds to believe that further investigation or prosecution is warranted" threshold.[7] See 1987 U.S.C.C.A.N. at 2160. In doing so the

[6] One could argue that this is precisely what the Department is doing now by employing two thresholds for criminal investigations: one for the commencement of campaign finance investigations not implicating the ICA, and another for the commencement of a preliminary investigation under the Act.

[7] This is much like the substitution we have adopted in connection with the Common Cause allegations. These allegations -- and the potential criminal violations -- are outlined below. Suffice it to say that the Department appears to moving towards its own threshold in determining that the Common Cause allegations do not, as a matter of law, present a potential violation of federal law without conducting any inquiry or investigation whatsoever. Instead, it is suggested that the allegations be referred to the FEC which in turn can then advise the Department if a potential criminal charge is presented.

Department ignored Congress' intent in establishing the preliminary investigation and substituted its own judgment:

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

1978 U.S.C.C.A.N. at 4270 (emphasis added).

As a result, Congress amended the ICA: (a) to prevent the Department's "disturbing practice" of conducting "threshold inquires" to determine if a preliminary investigation is warranted; (b) to limit the Attorney General to consideration only of the specificity of the information and credibility of the source in determining whether a preliminary investigation should be triggered; (c) to impose a reporting requirement upon the Department following a preliminary investigation; and (d) to remove reference to "prosecution" in determining if a further inquiry is warranted. 1987 U.S.C.C.A.N. at 2163-64.

The ICA is far from a model piece of legislation. Because of this, some within the Department tend to resist its application, while others adopt a creative reading to provide a more sensible enforcement mechanism. People have been reading things in and out of the Act in order to avoid what is perceived as an impermissibly low threshold for triggering the Act and warranting further investigation. However well intentioned these efforts may be, it is clear that Congress intended the ICA to embrace this low threshold. The perception that the Department is skirting the Act certainly will evoke heightened Congressional scrutiny and possibly additional legislative fixes calculated to restrict further the Department's ability to navigate in these difficult waters. If

we have concerns about the ICA in its current incarnation, and we do, the Department should propose appropriate amendments. If we believe that the Act should be triggered only if there is specific and credible evidence of wrongdoing, or that the Department should be given more leeway in connection with preliminary investigations, we should advocate such amendments. The campaign finance investigations certainly provide an appropriate platform upon which to launch proposed changes to the Act. However, if we are seen as part of the problem, as we were in connection with the 1987 amendments, our views and concerns may well be lost when it comes time to draft appropriate fixes to the ICA. A legislative fix without significant input from the Department would likely result in an even more cumbersome legislative framework within which to work. For this reason also, it is incumbent upon us to engage in a fair and common sense reading and application of the ICA regardless of our feelings concerning the wisdom of the Act as currently drafted.

In the end, you may conclude that our statutory analysis is incorrect and determine that the Department has consistently applied the appropriate standard concerning the commencement and conduct of a criminal investigation under the Act. However, even under what we believe to be a higher threshold, this does not alter our conclusions in the following section of this report. That is, the information developed in the areas outlined below is sufficient to trigger a preliminary investigation. In addition, given the amount of information developed, this information is sufficient to support a determination that further investigation is warranted in each of these areas.

III. Information That We Believe Is Sufficient To Trigger A Preliminary Investigation And Support A Determination That Further Investigation Is Warranted Under the ICA

There are several individual areas which we believe present information sufficient to trigger a preliminary investigation and support a determination that further investigation is warranted under the ICA. They fall both within the mandatory and discretionary provisions of the Act. These areas are outlined below.

A. Harold Ickes

We understand that Public Integrity, in another investigation, determined that Harold Ickes is not a "covered person" and therefore does not fall within the mandatory clause of the ICA. (Tab 7) The facts we have developed in the context of this case, however, suggest that a different conclusion is now appropriate.

The Chair of Clinton/Gore '96 is a covered person under the Act as is any officer of that committee "exercising authority at the national level." 28 U.S.C. § 591(b)(6). The evidence developed by the Task Force establishes that Harold Ickes operated as the de facto Chairman of Clinton/Gore '96. In addition, Ickes functioned on a daily basis as a de facto officer of that committee exercising absolute authority at the national level. As such, it is our belief that Ickes falls within the mandatory provision of the Act.[1]

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[1]Annexed at Tabs 8 and 9 respectively, are the lists of covered personnel in the Bush and Clinton Administrations. Although the President is authorized by statute to appoint and pay twenty-five persons at Level II, thus including them as covered personnel, President Clinton currently pays only six persons at that level. As is evident, the Clinton Administration, by reducing the salary structure of certain senior White House officials, has removed these individuals from the covered list. While these senior White House officials -- like Ickes -- perform largely the same function as their Bush Administration predecessors, they fall outside of the ICA by forgoing certain modest compensation. Whether this was the intent of the salary cap, or only an incidental benefit, is irrelevant. It is clear that the position occupied by Harold Ickes,

In a separate matter, Public Integrity analyzed whether Terence McAuliffe – who served as the Finance Chair of Clinton/Gore and later as "Honorary Campaign Co-Chair" of Clinton/Gore – was a covered person under Section 591(b)(6) of the Act. This is the same section of the ICA within which we believe Ickes falls. Public Integrity produced two memos on the subject, dated March 13, 1996 and September 30, 1997, which are annexed at Tabs 10 and 11 respectively. In analyzing McAuliffe's status under § 591(b)(6) of the Act, Public Integrity concluded that the Act "establishes a two-part test, relying on title and function, for determining whether an officer other than the chairman and treasurer is a covered person." (Tab 10 at p. 2) Since neither McAuliffe's title (Finance Chair and Honorary Campaign Co-Chair) nor function (glorified fundraiser) satisfied the elements of § 591(b)(6) of the Act, Public Integrity concluded that McAuliffe was not a covered person. This type of analysis, looking at the reality of the position rather than its trappings, leads to a very different conclusion when applied to Ickes' role during the 1996 campaign.[9]

Unlike McAuliffe, Ickes had no official title at Clinton/Gore '96. However, it is clear that Ickes functioned as the de facto Chairman of Clinton/Gore '96 as well as Chief Executive Officer of that committee exercising authority at the national level. We believe that Ickes' de facto title, which follows from his de facto function, establishes his place as a covered person under the ICA.

Deputy Chief of Staff to the President, has traditionally been a covered position for purposes of the ICA. See Tab 8 at Page 111 (Sununu, Duberstein and Baker).

[9]The support for this analysis is predicated upon a November 19, 1986 memorandum from William Weld, Assistant Attorney General, Criminal Division, to Arnold I. Burns, Acting Attorney, which is referenced at Tab 10, Page 2, Note 1.

Ickes' prominence in this regard dates back to September 1994 when he began to send memos to the President regarding the need to raise millions in connection with the media campaign the White House anticipated waging over the next few years:

> The purpose of the breakfast would be for you to express your appreciation for all they (Vernon Jordon, Bernard Schwartz and Jay Rockefeller) have done to support the Administration, to impress them with the need to raise $3,000,000 within the next two weeks for generic media for the DNC and to ask them if they, in turn, would undertake to raise that amount of money.

See Tab 12 (emphasis in original).

Ickes' efforts in this regard were relentless. In January 1995, he wrote to President Clinton that "[w]e should meet at your earliest convenience, perhaps including Chairman Dodd and Chairman Fowler and Terry McAuliffe, to discuss when and how to begin the fundraising effort for the Committee to Re-elect as well as the DNC." (Tab 13) Less than one month later, at the same time the White House coffees began as a fundraising tool (inspired by an Ickes memo to POTUS),[10] the regular Wednesday night meetings at the White House began. There were separate money and issue meetings held on Wednesday nights all geared to the fundraising and strategic efforts to be employed by the DNC and reelection committees. While the attendees were generally different at each meeting, Ickes regularly attended both the money and issue meetings.

Ickes also memorialized his position with regard to the DNC in an April 17, 1996, memo to Fowler in which he, in effect, confirmed himself to be the Chief Executive Officer of the DNC:

> [A]ll matters dealing with allocation and expenditure of monies involving the Democratic National Committee ("DNC") including, without limitation, the DNC's operating budget, media budget, coordinated campaign budget and any other budget or expenditure, and including expenditures and arrangements in

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[10] With regard to the coffees, it was Ickes who determined in January 1995 that the DNC would pay for the coffees. (Tab 14)

> connection with state splits, directed donations and other arrangements whereby monies from fundraising or other events are to be transferred to or otherwise allocated to state parties or other political entities and including any proposed transfer of budgetary items from DNC related budgets to the Democratic National Convention budget, are subject to the <u>prior</u> approval of the White House.

(Tab 15) (emphasis in original).

Morris has stated that this memo simply memorialized what had been the accepted practice from the outset. In August 1995, Morris hired media consultants to do polling and TV ads. At Ickes' direction, the bills were sent to Ickes at the White House and it was Ickes who determined how much of a particular bill was to be paid by the DNC, by Clinton/Gore '96, or the State Committees. This practice continued right up to the 1996 election. (Tab 16)

Morris also confirmed that Ickes was the sole person charged with making financial decisions for the White House, DNC and the reelection effort. Morris stated that Ickes controlled every aspect of DNC and Clinton/Gore fundraising and that Ickes was brought in by the President to run the reelection effort. Ickes himself reaffirmed his position all through the 1996 election cycle in numerous memos, at meetings and by virtue of his conduct toward Clinton/Gore '96. In fact, Ickes went so far as to pen some of his memos to the President, Vice President and others on Clinton/Gore '96 letterhead. These memos addressed substantive issues like the Penn and Schoen polling budget for 10/95 through 8/96 and reporting on paid media spots. (Tab 17)

Ickes also regularly sent memos to Bobby Watson, Chief of Staff at DNC, directing Watson to pay outstanding balances owed to media consultants "immediately" with copies to Clinton/Gore officials. And Ickes wrote directly to Peter Knight and others at Clinton/Gore in this same vein. (Tab 18) In fact, in an April 10, 1996 memo, Ickes (at the request of the President) directed that all those who attend DNC and political coffees at the White House be

added to the Clinton/Gore '96 database. (Tab 19) Both Clinton/Gore and the DNC complied and the database was expanded.[11]

It is not simply that Ickes perceived himself to be in charge. Those at the DNC and Clinton/Gore clearly recognized this to be the case. For example, in an August 8, 1995 memo to Ickes, Scott Pastrick, National Treasurer for the DNC, wrote: "It has been brought to my attention that you are considering a decision to disallow the DNC Finance Division from formally packaging corporate and individual donor benefits and activities at the 1996 convention..." (Tab 20) Similarly, Clinton/Gore officials sent Ickes "proposed weekly budget reports" seeking his input, (Tab 21) as well as reports on the money raised for the media campaign. (Tab 22)

Quite apart from this paper trail, Leon Panetta acknowledged in an FBI interview that he did not have the experience to run a national presidential campaign and therefore relied heavily on Ickes to handle all issues relating to the President's reelection. Panetta confirmed that he relied on and trusted Ickes to handle the multiple tasks and issues regarding the organization and operation of the President's reelection efforts.[12] According to Panetta, Ickes ran the re-election effort from the outset and took the lead concerning DNC matters as well.

In the course of the Task Force's investigations, the presence of Harold Ickes is the common denominator. It would be impossible to address each of the memos from or to Harold

[11] Ickes also was the chief negotiator on behalf of Clinton/Gore in services of the November 5 Group. This group, which included Dick Morris and the Penn/Schoen firm, was used to coordinate the entire media campaign.

[12] In fact, in his interview Panetta stated that he was aware of only two telephones in the White House that were paid for by funds from Clinton/Gore '96. One of these phones was in Ickes' office, thus underscoring Ickes' involvement with the reelection effort and Clinton/Gore '96.

Ickes that demonstrates his position as a senior White House official, Clinton/Gore Campaign Operative and CEO of the DNC. Instead, we have annexed a detailed time line of important Ickes memos and meetings which chronicle these positions and his absolute control over White House, DNC and Clinton/Gore operations. See Tab 23. When viewed in context, this time line makes clear that Harold Ickes is the very type of senior White House official and Clinton/Gore functionary contemplated in section 591(b)(6) of the Act.

Ickes also falls squarely within the discretionary provision of the Act. This provision, calculated to function as a "catchall" provision, was intended to include "members of the President's family and lower level campaign and government officials who are perceived to be close to the President. 1987 U.S.C.C.A.N. at 2165 (emphasis added).[13] Given Ickes' role in the reelection effort, his intimacy with the President, his status at the White House, and his control over the DNC and Clinton/Gore, Ickes presents the type of political conflict contemplated under the Act. Indeed, Ickes' relationship with the White House continues even today. According to a statement made by Ickes on the Today show on June 22, 1998, he is now working with the White House to help "get the message out" to the press on matters relating to Kenneth Starr. Ickes' involvement with the White House and the President on this sensitive issue raises the specter of a political conflict of interest should Ickes be the subject of a criminal investigation.

Whether you consider Harold Ickes as a covered person, or someone who is within the discretionary provision of the Act, there is sufficient information concerning his activities to

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[13] In establishing this provision, Congress recognized that "there may be situations in which conflicts of interest become apparent at a later stage of an investigation. For example, during an investigation conducted by the Department of Justice, additional facts may surface concerning a person close to the President. . . which could give rise to a conflict of interest." 1982 U.S.C.C.A.N. 3537, 3545-3546. Such is the case here.

commence and conduct an investigation based upon the Department's established policies relating to Task Force matters.

1. Aiding And Abetting Conduit Contributions, <u>False Statements And A Scheme To Defraud</u>

First, there is an allegation that Ickes knowingly permitted the DNC and Clinton/Gore '96 to accept conduit contributions collected by Charlie Trie and to file false and misleading reports with the FEC. The specific information from credible sources is as follows:

On March 21, 1996, Trie approached Michael Cardozo, the Executive Director and Trustee of The Presidential Legal Expense Trust ("PLET"). PLET was a trust established by the President and Mrs. Clinton to meet their mounting personal legal expenses. The June 28, 1994 Press Release concerning the establishment of the trust, its purpose and rules and regulations relating to contributions and contributors, provided in pertinent part:

> Under the terms of the trust, contributions will be accepted only from individual citizens other than federal government employees, not from corporations, labor unions, partnerships, political action committees or other entities. Individual contributions will be limited to a maximum of $1,000 per year. The trustees will periodically publish the names of all contributors. The trust will also publish periodic reports on its receipts and expenditures. (Tab 24)

When Trie approached Cardozo, he offered Cardozo a bag which contained $460,000 in checks and money orders of individual "donors."[14] In a recent interview, Mark Middleton acknowledged that Trie showed him the checks shortly before they were presented to Cardozo. According to Middleton – a former White House employee – he advised Trie <u>not</u> to submit the

[14] At the time Trie proffered these contributions, he was adamant that he not be associated with the donations since he expected to be appointed to an undisclosed Commission by the President in the near future. In fact, on April 22, 1996, just weeks after the PLET "donations" were tendered by Trie, President Clinton appointed Trie – the former Little Rock restaurant owner – to the Commission on U.S. Trade and Investment Policy.

checks to PLET because they looked "foreign." Despite Middleton's warning, Trie brought the bag of checks to PLET.[15]

Trie assured Cardozo that all the "contributions" were from U.S. citizens. Cardozo returned $70,000 later that same day to Trie because, according to Cardozo, the checks were "defective on their face." The remaining $390,000 was deposited into the PLET account, although Cardozo was still uneasy about the Trie money. Based upon his concern, Cardozo decided to scrutinize the Trie "contributions" and to advise the White House of the situation.

A PLET administrator conducted a brief review of the Trie checks that were retained by PLET. As a result, PLET determined that many of the checks were comprised of bundled money orders which were sequentially numbered, though often signed by people in different cities. There were also many third party checks and the word "Presidential" was uniformly misspelled (as "presidenseal") on several of the checks.[16] The preliminary review also suggested that some of

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[15] The Task Force conducted a search of Trie's Watergate apartment in October of last year and found a copy of the June 28, 1994, PLET Press Release, including contribution and contributor restrictions. A fax cover sheet was also seized indicating that the release was faxed by Mark Middleton to Antonio Pan (Trie's codefendant in the pending indictment) at Trie's Watergate apartment on March 7, 1996. (Tab 25) This was just two weeks before Trie tendered the bag full of checks to Cardozo. Pan's role in the PLET contributions is unclear at this point. (Pan's role in the conduit schemes charged in the Trie indictment was that Pan, on behalf of Trie, helped structure the repayment of conduits from foreign sources. It is interesting to note that at some point in the conduit scheme charged in the Indictment, Pan had contact with John Huang concerning the structured checks. Huang's involvement with an effort by   to structure checks "contributed" in connection with a White House coffee is also outlined below).

[16] Clinton/Gore '96 apparently did not apply the same level of diligence to scrutiny of contributions as did the PLET and Middleton. Clinton/Gore apparently never discovered that ten conduit checks gathered by Maria Hsia for a September 1996 fundraiser all had the payee written with a uniform misspelling in one cursive handwriting as "Clienton Gore 96." Ten other conduit checks for the same fundraising event had the payee in block letters as "CLIEN TON-GORE 96."

the "donors" might have been coerced into giving the checks by a Taiwanese-based Buddhist cult of which they – and Trie – were members.

On April 4, 1996, Cardozo went to the White House to alert Harold Ickes and the First Lady about the Trie contributions and his concerns. (Ickes had no formal role or position with PLET. Therefore, we must assume that he was present as the President's representative.) Based upon Cardozo's expressed concerns, the First Lady told Cardozo to be very diligent in determining the eligibility of the contributions. Ickes' notes from the meeting reflect a "public relations" concern about reporting the return of contributions on the Trust's disclosure statement. Ickes' note reads: "Don't report names if $ are returned."[17] (Tab 26) Given Ickes' role in the reelection effort, it is not surprising that he would be concerned about the political fallout of a wholesale return of "foreign looking" contributions gathered by the President's good friend Charlie Trie.

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[17] When Cardozo was asked in his Senate testimony about Harold Ickes' participation in the meeting, he said "I have no recollection of Mr. Ickes saying anything at the meeting. He was buried in his notes." In reviewing the unredacted Ickes calendars we received recently from the White House, we discovered a meeting scheduled between Ickes and Terry Lenzner, the Chairman and CEO of The Investigative Group, Inc. ("IGI"), the day before the April 4th Cardozo briefing of Mrs. Clinton and Ickes. Lenzner and IGI were hired by PLET to investigate the Trie "contributions." While the formal engagement of IGI appears to have occurred after the briefing of April 4th, the Lenzner/Ickes meeting of April 3rd suggests that IGI may have been involved in the matter – albeit informally – before the April 4th briefing. In a recent interview, however, Lenzner denied this and claimed he was at the White House on an entirely separate matter. Indeed, he recalled that although he was waved into the White House and waited for almost two hours, he did not meet with Ickes at all on April 3rd because the White House had just learned that the plane transporting Ron Brown had crashed. Neither Lenzner nor Ickes disclosed the April 3rd meeting during the course of their testimony to the Senate about the Trie contributions. It is interesting to note that the Ickes/Lenzner meeting had previously been redacted by the White House in connection with production of Ickes calendars as "non-responsive." The Task Force is still negotiating to obtain unfettered access to the calendars of Panetta.

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Based upon its initial review, and after consultation with its attorneys and trustees, PLET formally hired Terry Lenzner and IGI – a Washington-based investigative firm – to investigate the Trie "donations." Apparently the sole restriction placed on Lenzner and IGI in conducting the investigation was that they were not to talk to Trie. Two days after IGI was formally retained, Trie brought another $179,000 in checks to PLET. These checks were immediately rejected by PLET and Trie was told not to bring any more "donations" to the Trust.[18]

In early May, Cardozo returned to the White House for a second briefing. On this occasion, Cardozo briefed Harold Ickes about the IGI findings. In addition to Ickes, the briefing was attended by Jack Quinn (White House Counsel), Maggie Williams (Chief of Staff to the First Lady), Bruce Lindsey (Deputy White House Counsel), Evelyn Lieberman (Deputy White House Chief of Staff) and Cheryl Mills (Deputy White House Counsel). The IGI investigation confirmed the findings of the PLET's internal investigation and added that the checks were bundled in a likely attempt to buy influence. No one from either the DNC or Clinton/Gore '96 - except Ickes - was present at this briefing. And yet, during this meeting Bruce Lindsey, after hearing Trie's name, commented that he knew Trie from Little Rock and that Trie was involved with the Democratic Party. (In fact, Trie was a Managing Director of the DNC at that time.)

Just three days after this May briefing, Trie donated – and the DNC accepted – $10,000. The following day Trie attended an event and sat at the President's table after having donated another $5,000 to the DNC. Two days later PLET received IGI's draft report reiterating the causes for concern outlined in the briefing. Receipt of the report prompted Cardozo to advise

[18] Cheryl Mills, Deputy White House Counsel, admitted in her Senate testimony that she was aware of the delivery and rejection of this second batch of Trie checks.

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White House Counsel that PLET would return all the "donations" gathered by Trie. Cardozo was later told that the President and Mrs. Clinton concurred in the decision of the trustees.[19]

In June 1996, shortly after the return of the Trie "donations," PLET altered its own reporting requirements so that the return of the Trie money would not have to be disclosed. It appears that this decision was reached by PLET in consultation with White House officials -- including Ickes, Mills and Quinn. In previous PLET reports, any returned contributions were clearly reflected. The failure to do so is consistent with Ickes' April 4th notes reflecting his concerns surrounding the disclosure of the return of the Trie "contributions." See Tab 26. This change in policy appears to be inconsistent with the PLET regulations concerning the publication of the names of all contributors as well as publication of all receipts and expenditures. Since the contributions were accepted by PLET, and thereafter returned from its account, the Trie "contributions" were either a receipt or an expenditure of funds. In any event, in their Senate testimony, both Quinn and Mills denied any participation in the decision to alter the PLET accounting methods. Cardozo stated that the reporting change was one recommended by the

[19] In his prepared statement to the Senate, Cardozo enumerated the reasons why the Trie "contributions" were returned:

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

Trust's accountants (the same accounting firm retained by the DNC) and the timing of the change was fortuitous vis-a-vis the Trie "donations."

On August 12, 1996, Cardozo sent a letter to Cheryl Mills with an enclosure asking her to circulate it by hand to Mrs. Clinton, Jack Quinn, Harold Ickes, Bruce Lindsey, Evelyn Lieberman and Maggie Williams. (Tab 27) The enclosure was a July 5, 1996 letter from David Lawrence (a member of the Taiwanese sect that was the source of the Trie "contributions") to the PLET trustees. In his letter, Lawrence thanked PLET for the return of his $1,000 "donation" (which was included in those checks bundled by Trie) and advised the Trust that the funds were raised by requesting donations from members of The Ching Hai sect and that none of the rules or regulations of PLET had been explained to them. In addition, the promise of reimbursement by the organization was known to the so-called contributors. In fact, Lawrence had opted to have the organization reimburse him for $500 of his $1,000 "donation."

The Lawrence letter made clear that which had been discovered by PLET's internal review and confirmed by the IGI investigation: the "donations" were from members of the Ching Hai International Association; when they were solicited, the members were not advised of the rules and regulations of donation (including that the Trust would file periodic reports identifying donors); and the organization made it clear that those who "contributed" could be reimbursed by the organization if they chose.

Mills testified that no action was taken by the White House in response to the Lawrence letter. Neither the DNC nor Clinton/Gore was advised by Ickes, the President, the First Lady, White House Counsel, or anyone else at the White House about the problems surrounding Trie's PLET "donations." This is true despite: (a) Ickes' role as the de facto head of the DNC and

Clinton/Gore '96; (b) Ickes' weekly meetings with Peter Knight, head of Clinton/Gore '96; (c) regular budget and fundraising meetings at the White House which included, among others, Ickes, Gore, Panetta, Lieberman, Sosnik, Ron Klain (VPOTUS Chief of Staff), Peter Knight, Terry McAuliffe (Clinton/Gore Finance Chair), Laura Hartigan (DNC and Clinton/Gore '96 employee), Don Fowler (DNC), Chris Dodd (DNC), Marvin Rosen (DNC), Richard Sullivan (DNC), Scott Pastrick (DNC) and B.J. Thornberry (DNC); (d) the President's active role in the affairs of the DNC and the reelection effort; and (e) Ickes' White House briefings detailing the concerns surrounding Trie's PLET "donations."

In short, no one who was briefed on the problems with the Trie "donations" lifted a finger to advise the DNC or Clinton/Gore '96 about the situation despite numerous opportunities to do so.[20] Fowler and Knight first learned about the tainted Trie contributions when the story broke in the press. Because of their ignorance, Trie continued to attend dinners with the President, enter the White House, and function as a major solicitor and fundraiser through election day.

In August of 1996 -- not two months after PLET returned the Trie donations -- the DNC accepted $110,000 solicited by Trie in connection with the Presidential Birthday Gala.[21] We have

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[20] In October 1996, after the fundraising controversy had broken in the press, Ickes was asked by Thornberry at DNC about John Huang. Ickes responded that if the DNC was going to look at John Huang, Thornberry should look at Trie as well. No particulars were provided at that time by Ickes as to why Trie should also be looked at in connection with campaign contributions. The comment, however cryptic, speaks volumes about Ickes' knowledge concerning Trie.

[21] Interestingly, John Huang is listed on the DNC check tracing forms as the DNC contact. (Tab 28) This group of solicited funds is featured as an overt act in the Trie indictment. Since it was foreign soft money, we chose not to charge this as criminal conduct. Since the filing of the Trie indictment, however, the Department has taken the position that such contributions are violative of FECA.

confirmed that $100,000 of these solicited funds were conduit contributions.[22] (Trie also gave additional, albeit smaller, amounts to the DNC following the PLET incident).

Trie was invited back to the White House in December for the DNC Trustee Christmas party. To that point no one at the White House, PLET or IGI made any effort to question Trie about these so-called "contributions" – which were all returned – or whether any of the other Trie "contributions" or solicitations suffered from the same defects. In fact, Trie's December White House appearance came after IGI issued its final report in which it detailed "donor" after "donor" who said they were reimbursed for their "contributions," and after the other questionable conduct about Trie's fund raising efforts were a matter of public record. [23] All indications are that this conduct was calculated to consciously avoid learning the truth.

It is true that we have uncovered no document that establishes directly that Ickes knew that Trie was a regular DNC/Clinton Gore solicitor/contributor. The reports sent to Ickes generally addressed financial needs and gross receipts. However, to conclude that Ickes was not aware that Trie was a significant solicitor/contributor and close friend of the President, is absurd.

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[22] In light of statements made by Chung in his debriefing concerning Trie acting as a conduit for PRC money into the Presidential election, this transfer in August of 1996 – like the other Trie "donations" and solicitations – takes on greater significance as does the true source of the Trie PLET "contributions."

[23] If that weren't enough, it was at this same DNC Christmas event that Trie secured a bogus driver's license for an Asian man who he brought into the White House to meet President Clinton. The man who entered with Trie was photographed with Trie and the President. The photo depicts Trie apparently introducing him to the President. To date, the White House has been unable to identify this individual other than under the bogus name that appears on the WAVES records. The photo was also supplied to counsel to the President but apparently the President cannot assist with an identification. This unknown Asian man may or may not have some connection with the Trie "contributions" to PLET or to the conduit donations solicited for the Presidential gala. It is just one more avenue that warrants further investigation.

Ickes himself advised DNC's Thornberry (after the scandal began to break) that if the DNC had questions about Huang, it should also look into Trie as well.

In addition, it was common knowledge among those at the DNC, Clinton/Gore and the White House, that Trie was a big contributor/solicitor and a close friend of the President from Little Rock. Lindsey acknowledged as much during Cardozo's second White House briefing on the Trie "donations," at which Ickes was present. Similarly, when Middleton faxed a letter to the White House from Trie to the President on the very day Trie brought the first bag full of checks to Cardozo, Trie was identified in the fax cover sheet as a "personal friend of the President from LR ... [and] a major supporter." (Tab 29) In fact, Trie's personal friendship with the President was one of the very reasons offered by Cardozo in his Senate testimony to explain why no one ever bothered to ask Trie for an explanation concerning the source of these "donations." Indeed, no one wanted to "offend" a friend of the President by confronting him with pointed questions concerning hundreds of thousands of dollars of "contributions" collected by him for the personal benefit of the President and First Lady. Instead, IGI was hired by PLET, and paid nearly $15,000 in fees, to find out what Trie could have confirmed in a simple and candid interview following the delivery of the checks.

Based upon the foregoing, it is evident that Ickes, while occupying a de facto position as a principal in DNC and Clinton/Gore, concealed the Trie problem from these entities. This concealment is especially troubling in light of Ickes' concern -- evident in his notes of the April 4th briefing by Cardozo -- about the effect of reporting the return of the Trie money. See Tab 26.

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Ickes was also aware that the DNC and Clinton/Gore needed funds right through the election in order to keep the media campaign going. Trie was a regular source of funds for the DNC and Clinton/Gore as a contributor and fundraiser. White House calendars indicate that during the Spring and Summer of 1996, Ickes, Fowler and Knight were meeting regularly at the White House. (Tab 23) And yet, despite his proclivity for memo writing generally and taking charge of DNC and Clinton/Gore matters, Ickes was strangely silent on the Trie "donations" problem. He failed to pen one word on the subject or to mention one word of concern to either Fowler or Knight.

Did the failure to disclose to the public or to advise the DNC or Clinton/Gore '96, aid and abet Trie in the conduit scheme charged in the indictment filed against him? PLET itself advised Trie (after rejection of the second bag of checks) not to bring any more "contributions" to the Trust. However, by keeping the DNC and Clinton/Gore in the dark about Trie's PLET donations, Ickes enabled Trie to continue to solicit and to contribute. Ickes also enabled DNC and Clinton/Gore to continue to accept funds "solicited" by Trie. Perhaps Ickes did not inform DNC or Clinton/Gore so as not to burden these entities with the knowledge and the duty to check Trie's earlier contributions and to vet carefully all future solicited or donated funds. At best, Ickes engineered an effort to consciously avoid learning the truth about Trie. At worst, Ickes' failure to act was intended to conceal the truth from those who could have protected the DNC and Clinton/Gore from Trie's illegal solicitations/contributions. In any event, DNC and Clinton/Gore blissfully continued to accept tainted contributions from Trie.

The PLET allegations are not new. They were initially reviewed before we joined the Task Force. At that time it was concluded that since the FEC and FECA did not govern the

PLET or its filings, there was no potential criminal violation. (We are not aware of a formal declination of this matter.) In reviewing the information gathered by the Task Force from its inception and applying to it additional recent information developed concerning Ickes, Trie and Senior White House Officials, it is clear to us that this matter should now be reopened and pursued as a conspiracy, mail fraud, wire fraud and false statements investigation. Moreover, in light of Ickes' status under the ICA, a preliminary investigation should be triggered and a decision be made promptly that further investigation is warranted.

2. Common Cause Allegations And Conspiracy To Violate Soft Money Regulations

Ickes' participation in the so-called Common Cause allegations, is similarly troubling. Much has been made of the fact that the Department is unsure whether the applicable statutes (outlined in the Litt, [redacted] memoranda previously circulated), present a potential violation of federal law. To be sure, Litt, advocating that the Department not even commence an investigation, concluded in May 1997:

ATTNY NAME

> For all of these reasons, it is appropriate under established Department of Justice policy to refer to the FEC the issue of whether party advertising campaigns during the 1996 presidential election were properly paid for. It is important to note that this analysis does not imply that the advertisements, and their funding, did not violate FECA. It only says that, based on the present record, that determination should be made as an initial matter by the FEC rather than by the Department and a grand jury. In any event, the activities of the party committees may be relevant to other matters under investigation, and will be examined to that extent. Moreover, if at any time we uncover evidence demonstrating that there were knowing and willful violations of FECA, this conclusion could change.

See, Litt Memo dated May 28, 1997 (emphasis in original).

Nearly one year later, Bob reached a similar conclusion:

> We need not actually refer the matter to the FEC. We are aware that the FEC is already investigating it. They are, of course, desperately short of resources: almost a year ago they asked us for help and we have yet to respond. While the FBI is not prepared to provide resources to assist the FEC, JMD indicates that we can find other sources. We should do so immediately, and in our letter telling them we are providing these resources note that we are deferring to them on these issues. . . . It is unfortunate that the FEC is so weak, but we should not use that as an excuse to disregard well-established concepts of predication and well-established procedures, to conjure up novel legal theories of which political candidates had no notice, and to take on the responsibility of primary regulator of the political process. That is not an appropriate function of the Department of Justice.

See, Litt Memo dated February 6, 1998.

To date, the Department has not determined whether the Common Cause allegations implicate a potential federal violation. Even Litt, in arguing that an investigation should not be commenced, concluded that the question remains open. It may be that some day a court will determine that the standards set out in the applicable statutes are too vague or infringe unconstitutionally upon the First Amendment and cannot be enforced. It may be that a prosecutor, based upon a fully developed factual record, will exercise his/her discretion and decline to bring charges even if a technical violation presents itself. However, to substitute our judgment -- as a matter of law -- at this early stage of the process is a mistake. The potential violations exist, and therefore it is a matter that warrants investigation under the Department policies -- outlined above -- which have been established for alleged campaign finance violations.

The alternative approach -- a parochial and professorial application of the ICA -- is the very approach that has gotten the Department into trouble in the past. It is the same type of maneuvering and practice that triggered the 1987 Amendments to the ICA and the sharp criticism

of the Department that accompanied these amendments. Indeed, one could argue that the Department's treatment of the Common Cause allegations has been marked by gamesmanship rather than an even-handed analysis of the issues. That is to say, since a decision to investigate would inevitably lead to a triggering of the ICA, those who are hostile to the triggering of the Act had to find a theory upon which we could avoid conducting an investigation. However, in light of the Task Force's actions in non-ICA related matters, this position is untenable. Any objective review of the Common Cause debate and the Task Force's threshold in other investigations makes this clear.

Finally, the alternative approach, while avoiding application of the ICA, virtually ignores the possibility that there exists a section 371 conspiracy to defraud the United States by violating the civil regulatory framework set out in FECA. When asked to research this point, an attorney in Criminal Appeals concluded that such a prosecution was indeed viable. The memo, attached to this report at Tab 30, presents a well reasoned theory upon which a potential criminal violation may be predicated. It is not – as suggested by Bob Litt – a Merlin-like legal theory conjured up to ensnare unwitting participants in the political process. Rather, it is an established legal theory applied to the novel conduct conjured up by sophisticated political operatives to circumvent and to violate the law. [24]

As is evident from the annexed memorandum, the Supreme Court has held that a conspiracy to defraud the United States reaches "any conspiracy for the purpose of impairing,

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[24] The legal analysis is analogous to the Section 371 theory that was found to be viable in connection with John Huang's scheme to conceal his fundraising activities while he was at the Department of Commerce. See pages 63-70 and Tab 46. There, the regulatory system involved is the Hatch Act and its prohibitions against political fundraising by Government employees.

obstructing or defeating the lawful function of any department of Government." Dennis v. United States, 384 U.S. 855, 861 (1966). In fact, while a conspiracy to defraud the United States may allege a violation of a specific statute (civil or criminal), "the impairment or obstruction of a governmental function contemplated by Section 371's ban on conspiracies to defraud need not involve the violation of [any] statute at all." United States v. Rosengarten, 857 F.2d 76, 78 (2d Cir. 1988), cert. denied, 488 U.S. 1011 (1989) (emphasis added). Quite apart from the Common Cause debate and questions involving "issue advocacy" and the First Amendment, section 371 provides an independent predicate upon which to base a potential violation of Federal law. To date, we have been so caught up in determining whether violations of the Presidential Primary Matching Payment Account Act (PPMPAA) and the Presidential Election Campaign Fund Act (PECFA) are criminal acts, and paralyzed by the suggestion that any investigation in this area is tantamount to a totalitarian attack upon the First Amendment, that we have not focused on the possibility that mere civil violations may form the predicate for a § 371 conspiracy. We dare say that it has been buried in the debate because it presents a significant speed bump on the highway around the Common Cause allegations that some have cleverly constructed. Thus, the Common Cause allegations are not allegations in search of a criminal violation, but rather present allegations upon which a full investigation should be based.

It has been almost two years since the Common Cause allegations were first sent to the Department for consideration. In our responses, we have consistently assured Common Cause that we are reviewing the matter. The fact is the allegations have been and remain in limbo. However, the factual landscape surrounding the Common Cause allegations has changed dramatically over the last several months and there is reason to reevaluate the Department's

position. As a result of the Task Force's investigative efforts, it is clear that every aspect of the reelection effort was orchestrated from the White House. The DNC and Clinton/Gore were used as vessels, to be filled and emptied at the direction of – among others – Harold Ickes. Ickes injected himself into the DNC and Clinton/Gore as a manager, director and agent and took control of these organizations insofar as the reelection efforts were concerned. Simply stated, Ickes was empowered by the President to run the reelection effort and he did precisely that. To the extent that there was any effort to circumvent the regulations outlined above, Ickes was at the heart of the effort.

In addition, several facts have been developed – outside of the content of the so-called issue ads – which support the conclusion that the media fund contributions were collected in an effort to influence the 1996 presidential election and, therefore, arguably subject to FECA. The use of the Clinton/Gore credit card by the Vice President in soliciting contributions for the media fund has been referred to already. However, the Task Force recently learned that Laura Hartigan, when a Clinton/Gore employee, was tasked by Ickes to work with the DNC in an effort to coordinate state by state pledges to the media fund. Similarly, the recent interviews of the state committees which were used to purchase the generic "issue ads" suggest that they were mere conduits through which the funds passed in an effort to accomplish indirectly what the DNC and Clinton/Gore '96 could not accomplish directly. In short, the media fund was driven by the reelection effort as was the media campaign. The facts suggest a concerted effort – orchestrated by the reelection team – to circumvent the regulatory framework established to prevent this kind of activity.

Based upon the Department's established policies concerning the commencement and conduct of Task Force criminal investigations, there is now ample information upon which to commence and conduct an investigation relating to the Common Cause allegations. There is no reason to distinguish this matter from the numerous other allegations that have given rise to full-blown criminal investigations by the Task Force. It is intellectually dishonest to commence an investigation of Loral, Mark Middleton, COSCO, or Jude Kearney, to name a few, on a quantum of information at or below that which exists for the Common Cause allegations and not to commence an investigation of that matter simply because it implicates the ICA. There is no reason why the Department's policies and thresholds concerning campaign financing allegations should be altered simply because the ICA is implicated.

3. Diamond Walnut/Teamsters

Another area concerning Ickes involves his actions in connection with the Diamond Walnut matter. If nothing else, this incident underscores Ickes' position as a senior White House official who is close to the President and who used that position to leverage the fund raising efforts of the DNC in connection with the upcoming Presidential election.

The core allegation is that in an effort to encourage large Teamster contributions and public support of the Democratic Party, Ickes used his position at the White House to direct then U.S. Trade Representative Mickey Kantor to make contact with Diamond Walnut Senior Management to attempt to settle the on-going labor dispute between management and the Teamsters. The Task Force is just now putting flesh on these allegations. However, Ickes' Senate testimony as to what, if any, involvement he and the Administration had with this matter has also emerged as an area to be investigated. Indeed, while Ickes testified that he was unaware

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of any action taken by the Administration concerning the Diamond Walnut labor dispute, there is evidence -- testimonial and circumstantial -- to the contrary.

The Task Force has recently obtained several memos which suggest a direct contact between Ickes and Teamster officials in connection with the Diamond Walnut strike. In fact, what emerges from these memos is a plan initiated by Ickes to entice the Teamsters to increase their support of the re-election effort. The first document, annexed at Tab 31, is an undated memo entitled "Teamster Notes". Based upon other facts uncovered in the investigation, it appears that this memo was written in early 1995. In an interview, Ickes acknowledged that the handwriting and underlining on this memo was his, but claimed he did not know who prepared the document or why it was prepared. The relevant portions (with Ickes' underlining) are set out below:

> <u>Carey is up for re-election in 1996.</u>
>
> ***
>
> <u>The Teamsters played an enormous role in the '92 campaign.</u>
>
> ***
>
> When they are plugged in and energized they can be a huge asset. Over the past two years their enthusiasm has died down. They have been almost invisible at the DNC and other party committees for the past two years. With our proclamations on striker replacement, the Team Act ..., Davis-Bacon and the Service Contract Act and our NLRB appointments (very important to Carey) <u>we are in a good position to rekindle the Teamster leadership's enthusiasm for the Administration,</u> but they have some parochial issues that we need to work on.
>
> ***
>
> <u>It is in our best interest to develop a better relationship with Carey.</u> We won't always agree on issues and he's a tough, street fighter. But he is well intentioned, hell-bent on reforming the union and trying to root-out the "bad guys." If he doesn't succeed in his effort, the union is likely to fall back into the hands of the "old Teamsters." This would be a huge setback for the entire labor movement. Carey is not a schmoozer -- he wants results on issues he cares about. The <u>Diamond Walnut strike</u> and the organizing effort at <u>Pony Express</u> are two of Carey's biggest problems. We should assist in any way possible. Previous

> Teamster presidents have met with the POTUS. A meeting would be a good idea and could help Carey. (Tab 31)

The second document is an undated memo from Bill Hamilton (Teamsters Director of Governmental Affairs) to Ron Carey. Again, our investigation suggests that this memo was written in the first half of 1995. It refers to a June meeting between Hamilton, Carey, and Agriculture Secretary Dan Glickman to attempt to persuade Glickman "to cut off USDA support for Diamond Walnut" in connection with school lunch programs and promotion programs oversees. The memo notes that the meeting was set up for the Teamster officials "by the White House after [Carey and Hamilton] met with Ickes and others over there a month or so ago." (Tab 32)

Finally, there is a March 27, 1995, memo from Bill Hamilton to several Teamster officials regarding a "Meeting with the White House." (Tab 33) In this memo, Hamilton recounts that Teamster President Carey and he met with key White House and Clinton Administration people -- including Harold Ickes -- to discuss a range of Teamster topics. This meeting was apparently a follow up to an earlier February meeting between Ickes and Hamilton. The important part of the memo is listed under "Outcomes" and provides:

> 1. **Diamond Walnut** - Ickes said he met face-to-face with USTR Mickey Kantor last week and that Kantor agreed to use his discretionary authority to try to convince the CEO of that company that they should settle the dispute.

The White House recently produced documents relating to Kantor, Ickes and Diamond Walnut. The documents reflect a good deal of contact between Ickes' and Kantor's office concerning Ickes' request that Kantor contact Diamond Walnut Executives concerning the strike. Telephone records also confirm several calls to Kantor from Ickes in early 1995 which correspond

to several e-mails produced by the White House which reflect Ickes' desire for Kantor to contact Diamond Walnut executives in early 1995 concerning the strike.

These memos, telephone records and e-mails, as well as Ickes' conduct in connection with the Diamond Walnut strike, must be viewed in context. At the Democratic National Convention in August of 1992, Ickes arranged a meeting between Teamster President Carey and then candidate Bill Clinton. After this meeting Carey announced that the Teamsters would be supporting the Democratic Party after having supported the GOP in the last three elections. See Tab 23 at p. 1. Later, Ickes actively sought to solidify Teamster support by finding ways in which the Administration could support Teamster efforts in different areas. (See Tab 31) One of these areas was in connection with the lengthy Diamond Walnut strike. The fact is that Kantor, at Ickes' request, did contact the CEO of Diamond Walnut. When interviewed by FBI agents, CEO Cuff said that he has never before or since received a call from such a high level Administration official. (The strike, which began in the fall of 1991 is still unresolved.) According to Cuff, Kantor claimed that foreign leaders and negotiators were raising the Diamond Walnut situation whenever the United States referred to human rights abuses overseas and this was the impetus for the call. The essence of Kantor's message to Cuff was that the strike was hindering Kantor's international trade negotiations and it would be good if it was resolved. (Kantor has given similar innocuous explanations to pointed press inquiries on the subject.) The Teamsters' political backing was never mentioned. Cuff reported Kantor's call to the Board at the next Directors meeting. We have secured a copy of the relevant portion of the minutes and they confirm Cuff's statement.

These memos, meetings, telephone records and e-mails suggest much more of a substantive role by Ickes (and apparently Kantor at Ickes' request) than Ickes later admitted in his sworn testimony. Moreover, it is evident that Ickes' contact with Teamster officials was the result of a concerted effort by the DNC to court Teamster contributions, public support, and get out the vote efforts in connection with the upcoming Presidential election. The implications of Ickes conduct -- given his status with the DNC and Clinton/Gore -- are apparent. If Ickes used his official position to take official action or to cause official action to be taken in return for campaign contributions to the DNC, or if contributions were a reward for official action taken by Ickes or another official at his direction, a potential criminal violation exists. See, e.g., 18 U.S.C. §§ 600, 601, 1341 and 371.

Apart from the underlying transaction, it seems clear that Ickes' sworn testimony is at odds with the substance of the internal Teamster memos. This suggests a potential perjury charge in connection with Ickes' Senate testimony which warrants investigation.

The Diamond Walnut investigation is in its infancy. The matter was recently referred to the Department by the Senate in its final report. The issue, however, is not whether this information presents an indictable or prosecutable offense at this juncture. Rather, is there sufficient specific information from a credible source to commence a criminal investigation under the standard Task Force rules of engagement. We believe the answer is yes and have opened a criminal investigation. While the evidence and information is not overwhelming at this early stage, in light of the other matters detailed above, including Ickes' position with the reelection effort, it militates in favor of commencing a preliminary investigation under the ICA and reaching a prompt determination that further investigation is warranted.

B. The President

1. Trie's PLET Donations

There are several facts concerning the President's association with Trie at the time of the PLET donations which, in our view, warrant investigation. They are outlined below.

The Trust was established by and for the benefit of the President and First Lady. They were the Trust's sole beneficiaries. Monies that were contributed went to reduce their personal legal bills. When the Trust was established, there were several rules established concerning acceptance of contributions, the management of the Trust, and the public filing of periodic reports listing those who contributed. These rules and regulations were publicly released in connection with a general invitation to all qualified contributors to make qualified contributions. See Tab 24.

As detailed above, on the morning of March 21, 1996, Trie went to the Executive Director of PLET with $460,000 in checks and money orders. Trie assured the Executive Director that all the "donations" were from citizen donors and that he wanted to keep his association with the donation quiet because, among other things, he was soon to be appointed to an unnamed Commission by the President.

On January 31, 1996, the President had signed an Executive Order enlarging the Commission on U.S. Trade and Investment Policy by five members. The White House WAVES records confirm that Trie visited the President at the White House on January 29, 1996, two days before the President expanded the Commission. It would seem that it was on this visit that the

President informed Trie of the new seats to the Commission and the fact that Trie would be given one of those seats.[25]

Cardozo provisionally accepted the $460,000 checks and asked Trie to come back after lunch to continue their discussion about the proffered contributions. Trie left and apparently met Mark Middleton for lunch. Shortly after this lunch, Middleton faxed a letter prepared by Trie to the White House concerning Trie's impressions and concerns about the situation in the Taiwan Straits. The fax was directed by Middleton to Maureen -- (we believe Maureen Tucker who was an intern in the President's office). On the fax cover sheet transmitting Trie's letter, Middleton wrote:

> Dear Maureen,
> As you likely know, Charlie is a personal friend of the President from LR. He is also a major supporter. The President sat beside Charlie at the big Asian fundraiser several weeks ago." (See Tab 29)

On April 26, 1996, the President (based upon the recommendation of Tony Lake and other NSC staffers) responded to Trie's letter. Curiously, the President's letter was not sent to Trie's Watergate apartment. Rather, it was sent to Charlie Trie c/o Middleton's D.C. business address. (Tab 34)

Trie returned to meet with Cardozo later on the 21st. Cardozo returned $70,000 of the proffered checks to Trie because they were defective on their face. (This was after Middleton told Trie, after inspecting the PLET checks, that the checks looked "foreign" and should not be given to Cardozo.) The remaining $390,000 was deposited in an interest-bearing PLET account.

[25] Between January 2, 1996 and March 21, 1996, Trie visited the White House on four occasions. Two of those visits listed the President as the person visited.

On April 4, 1996, Ickes and the First Lady were briefed by Cardozo on the Trie contributions to PLET and Cardozo's concerns with respect thereto. (As noted earlier, IGI's Chairman and CEO, Terry Lenzner entered the White House the day before this meeting and was scheduled to see Ickes). On April 22, 1996, Trie - the former Little Rock Restaurant Owner - was appointed to one of the newly created seats at the Commission on U.S. Trade and Investment Policy. As the Senate Report points out, Trie's qualifications were well below those of the other members of the Commission. On the same day that Trie was appointed, the PLET Trustees formally decided to hire IGI to investigate the checks gathered by Trie, but were instructed not to speak with Trie concerning the "contributions."

Two days after his appointment to the Commission, Trie returned to PLET with an additional $179,000 in checks. These checks were summarily rejected and Trie was told not to bring any more "donations" to the Trust.

On May 9th Ickes and a host of others were briefed at the White House on the IGI preliminary findings. One week later Cardozo, after receiving IGI's draft report, advised Cheryl Mills that PLET would be returning the balance of the Trie "donations."

The timing of Trie's PLET donations is indeed curious: one month before Trie was appointed to the Commission but after the creation of additional seats on the Commission, and after Trie was told that he would be appointed. Were Trie's PLET "donations" related to the appointment? We know that the bulk of the funds were collected by Trie in New York on March 16, 1996 – one week after Middleton sent the PLET rules and regulations to Trie's Watergate apartment. (Tab 25) (In fact, the "donations" were collected from followers of the Ching Hai sect at gatherings held in Houston, Los Angeles and New York.) Were the donations intended to

influence an official act or were they made because of an official act – Trie's Commission appointment? Were the actions of the President sufficient to deprive the citizens of his honest and lawful services?[26]

Alternatively, were the contributions related to the subject matter contained in Trie's Taiwan Straits letter sent to the White House by Middleton on the day the contributions were tendered by Trie? Were they intended to facilitate the letter finding its way to the President? Were they offered as an incentive to encourage a positive action on the letter?

Was the decision to alter the Trust's reporting methods – admittedly done to conceal the Trie "contributions" and the return thereof – part of a scheme to defraud the Trust or the public in connection with the Trust's commitment to file a periodic disclosure statement? In light of Ickes' notes from the April 4th briefing – a meeting he attended as the President's representative along with the First Lady – was the decision not to report the returned funds one in which the White House participated?

These are questions that can only be answered following an investigation. It may be that there are innocent explanations as to why the President, the First Lady, Harold Ickes, and White House counsel never advised the DNC or Clinton/Gore '96 about the Trie "donations" and consciously concealed the return of these "tainted" funds from the public until __after__ the November elections. There may be an innocent explanation as to why PLET paid nearly $15,000 in fees to

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[26] While contributors often are given positions in Administrations, __e.g.,__ ambassadorships, this is substantively different. Here there are questions and real concerns about the source of the money "donated," and the timing of the "donations." In addition, these matters raise at least the suspicion of a quid pro quo. The timing of the Trie "donations" to PLET is at least as curious as the timing of contributions of Bernard Schwartz and the waivers sought by Loral in connection with its satellite project with China. The Loral matter is currently the subject of a full criminal investigation.

IGI to investigate the Trie "donations" and yet advised IGI not to interview Trie concerning these funds.[27] However, this conduct is certainly as redolent of a scheme to defraud as it is of a series of innocent actions. There is a need for further investigation.

In addition to the involvement of the President and Harold Ickes, it is clear that the First Lady and White House Counsel (Quinn and Mills at a minimum) also were intimately involved in the PLET fiasco. Did White House Counsel have a duty to advise Clinton/Gore or the DNC of the problems with the Trie "contributions?" The fact is that White House Counsel was often copied on Ickes' memos to the DNC and Clinton/Gore regarding various fundraising issues.

Based upon the established policy of the Department vis-a-vis Task Force investigations, we would commence an investigation and, based upon these facts, conclude that further investigation is warranted. The result should be no different because the ICA is implicated.

2. Common Cause Allegations and Conspiracy to Violate Soft Money Regulations

The President is likewise implicated in a potential violation outlined in the Common Cause allegations as well as a conspiracy to violate soft money regulations. It was the President who anointed Ickes as the head of the DNC and Clinton/Gore fundraising efforts and to whom Ickes reported directly. In fact, Ickes' calendars reflect a significant number of briefings of the President on various topics including the media fund and re-election efforts. (Tab 23) Therefore, to the extent Ickes had knowledge relating to the Common Cause allegations and soft money violations, it is likely, indeed probable, that the President shared that knowledge. At a minimum, this needs to be investigated fully.

[27] Since PLET ultimately returned all of the Trie "donations," the IGI fee represented a $15,000 net loss to the Trust as a result of Trie's "fund raising" efforts.

3. Senior White House Official's Knowledge of Foreign Contributions: Soft and Hard Money

It has been evident from the outset that a good number of the cases under investigation at the Task Force involve foreign funds finding their way into the '96 Presidential election. There are several incidents that suggest that the President and senior White House officials knew or had reason to know that foreign funds were being funneled into the DNC and the re-election effort. (The same is true, of course, for several high-level RNC officials as we have seen from the Barbour investigation.)

The President, and Vice President, were sent regular memos from Ickes outlining the true financial situation of the DNC and the need to raise a great deal of money quickly to keep the media campaign going. The regular White House money and issue meetings also focused on the need to raise more and more money. This was a constant theme played by Ickes from late 1994 through election day 1996. The following events demonstrate a pattern of activity within the White House involving senior White House officials. This pattern suggests a level of knowledge within the White House -- including the President's and First Lady's offices -- concerning the injection of foreign funds into the reelection effort.

(a) Johnny Chung:

In December of 1994, Chung wrote to his DNC contact Richard Sullivan with his White House "wish list." Chung was attempting to arrange a series of White House events for a prominent group of Chinese businessmen he was bringing through Washington. The group included the Chairman of Haomen Beer who was described by Chung in his letter to Sullivan as someone who "will play an important role in our future party functions." (Tab 35) Chung's

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wish list included lunch in the White House Mess and a photo session with the President in the Oval Office following the President's weekly radio address. As it turned out, Sullivan did not deliver and Chung arranged a photo op with the President through Maggie Williams in the First Lady's office.

In March of 1995, Chung again went to Sullivan with a White House access "wish list" involving prominent Chinese businessman, at least one of whom – Chung told Sullivan – could encourage American Chinese companies to donate to the DNC. Sullivan told Chung that a meeting with the President would be difficult to arrange. Chung responded that he would make a $50,000 contribution if Sullivan could make the arrangements. Once again, Sullivan did not deliver. And, once again, Chung went to the First Lady's office for assistance. This time Chung approached Evan Ryan, Special Assistant to Maggie Williams, and made the same $50,000 offer in return for granting his White House "wish list." Ryan went in to speak with Maggie Williams and when she returned, she told Chung that Williams and the First Lady's Office would assist Chung. Ryan also told Chung that the First Lady's Office owed the DNC $80,000 for the White House Christmas party, and if Chung could help with that debt, it would be appreciated. Chung said he would donate $50,000 to help retire the debt. The following day, Chung wrote a $50,000 check and gave it to Ryan (at the White House) for delivery to Williams. Williams then arranged a White House lunch and visit with the First Lady for the following day.

Chung returned to Williams and asked for a meeting with the President for himself and his Chinese businessmen. Thereafter, Chung and his delegation were admitted to the President's Saturday radio address. After the address, photos were taken of these Chinese businessmen with the President. However, somewhere between the photo session and the photos being sent out

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from the White House, the NSC stepped in and questioned whether photos of the President with these so-called Chinese businessmen should be released. Chung was beside himself when the release of the photos was delayed. He had promised that these photos would be delivered on his next trip to China, but could not get them out of the White House.

In April, Chung wrote to Maggie Williams in an effort to get copies of the photos so he could take them to his delegation in China. (Tab 36) By that time, Chung had been advised by Sullivan that the NSC had concerns about releasing the photos. The e-mails on this subject between NSC staffers establish the knowledge of some at the White House concerning the link between the Chinese delegation and DNC contributions:

> A couple of weeks ago, late Friday night, the head of the DNC asked the President's office to include several people in the President's Saturday Radio Address. They did so, not knowing anything about them <u>except that they were DNC contributors</u>.
>
> It turns out they are various Chinese gurus and the POTUS wasn't sure we'd want photos of him with these people circulating around. Johnny Chung, one of the people on the list, is coming in to see Nancy Hernreich [Director of Oval Office Operations] tomorrow and Nancy needs to know urgently whether or not she can give him the pictures. Could you please review the list asap and give me your advice on whether we want these photos floating around? (<u>FYI - these people are major DNC contributors and if we can give them the photos, the President's office would like to do so</u>).
>
> <u>See</u> Tab 37 (emphasis added).

In his response, Robert Suttinger, Director of Asian Affairs at the NSC, warned about Chung and what White House access meant to him:

> I don't see any lasting damage to U.S. foreign policy from giving Johnny Chung the pictures. And to the degree it motivates him to continue contributing to the DNC, who am I to complain"?

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> But a caution - a warning of future deja vu. Having recently counseled a young intern from the First Lady's office [we believe this is a reference to Gina Ratliff] who had been offered a "dream job" by Johnny Chung, I think he should be treated with a pinch of suspicion. My impression is that he's a hustler, and appears to be involved in setting up some kind of consulting operation that will thrive by bringing Chinese entrepreneurs into town for exposure to high-level U.S. officials. My concern is that he will continue to make efforts to bring his "friends" into contact with the POTUS and FLOTUS - to show one and all he is a big shot, thereby enhancing his business. I'd venture a guess that not all his business ventures - or those of his clients - would be ones the President would support. . . ."

See Tab 38. The photos were released shortly thereafter.

In a separate incident in January 1995, Chung wrote to Doris Matsui, Deputy Assistant to the President, ". . . [i]n the next two years, I will be coordinating a lot of visits from Asian business leaders to support DNC." (Tab 39)

In light of these events, the connection between Chung's foreign business associates and DNC contributions is evident.[28] It is inconceivable that senior officials at the White House were oblivious to these connections.

(b) Charlie Trie:

The facts surrounding the incident with the PLET "donations" suggest a knowledge or a conscious decision by the White House not to learn the truth about Trie's DNC and Clinton/Gore '96 contributions and solicitations. From the first briefing, Ickes' notes reflect a concern with how the return of ineligible contributions would be reported to the public by the Trust. At that juncture, all Ickes knew about the Trie "donations" was what Cardozo had told

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[28] The importance of access to Chung's on-going businesses interests was best demonstrated by a mild extortion of Chung by the First Lady's staff. The facts are set out at pages 59-60.

summarily rejected by Cardozo because they were facially defective; and the First Lady and Cardozo had concerns about the balance of the proffered "donations." And yet, Ickes' first concern was to keep any return of these "donations" from becoming public. Obviously, Ickes knew that any questionable transactions involving Trie-- a personal friend of the President from Little Rock -- would reflect adversely on the President and perhaps impact negatively on the reelection effort.

In addition, although IGI was paid nearly $15,000 to investigate the Trie donations, the investigators were not permitted to interview Trie, who was commonly known to be a close friend and big supporter of the President from Little Rock. And, after the Trie "donations" were returned because they were defective, no effort was made by anyone to alert the DNC or Clinton/Gore of this fact. As a result, tainted foreign and conduit donations continued to be solicited by Trie and accepted by the DNC and Clinton/Gore. These actions (and inactions) involving the President, First Lady, Ickes, White House Counsel and Bruce Lindsey, suggest a conscious decision not to learn the truth about Trie's fundraising activities. By not alerting the DNC and Clinton/Gore and by directing IGI not to confront Trie about the PLET "donations," the White House chose not to impede a potent fundraiser at a time when funds were needed.

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C. Vice President Gore

Common Cause Allegations and Conspiracy to Violate Soft Money Regulations

During the investigation concerning Vice President Gore's fund raising calls from the White House, the Department concluded (among other things), that he did not solicit hard money and therefore there could be no § 607 violation. The fact is that Gore, using a Clinton/Gore (hard money) credit card, placed several calls from the White House to pitch soft money contributions. The Vice President denied that he was aware that the soft money contributions were routinely being split upon receipt by the DNC between soft and hard accounts. He stated in his interview that he did not recall the Ickes memos directed to him on the issue or the discussions at the regular Wednesday night meetings about this point.[29] (The Vice President's failure to recall reading the memos sent to him is reminiscent of his claim not to have read the April 1996 memos advising him that an event he was to attend at the Hsi Lai Temple in Hacienda Heights, CA, was in fact a fundraiser arranged in part by Maria Hsia.)

Quite apart from the § 607 analysis, it is evident that to the extent either the Common Cause allegations or a § 371 conspiracy to defraud the United States presents a viable potential

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[29] In September 1994, Ickes wrote to Panetta about the need for quick approval for generic media ads. In order to accomplish the media blitz, Ickes wrote that the DNC would have to raise approximately $3 million over the next 3 weeks, "of which $2 million should be 'hard' dollars. (An individual is permitted to contribute a maximum of $25,000 'hard' dollars to political activities during a calendar year.)" The memo, although not sent to the Vice President, goes on to outline how the President, Vice President and First Lady will have to be enlisted to accomplish this by, at a minimum, calling major donors who in turn would call other major donors. (Tab 40) It is inconceivable that this topic was not addressed at one of the regular Wednesday night meetings.

Based upon this memo, and the others penned by Ickes which were sent to the Vice President, it seems that everyone was on notice about the need for "hard" dollars and at least the possibility that the first $25,000 contributed in a given year would be applied to a hard money account. Certainly Ickes was aware of the possible split that did in fact occur.

violation of federal law, the Vice President would certainly be among those whose conduct would be reviewed. Like President Clinton and Harold Ickes, he participated in the fund raising and strategic efforts of the White House as they impacted the DNC and Clinton/Gore '96.

D. The First Lady

1. Trie's PLET "Contributions"

Many of the questions outstanding about Ickes and the President also apply to the First Lady. She knew who Trie was; she had been briefed about his donations to the PLET; and something in that briefing caused her to alert Cardozo of the need to be very diligent in vetting the Trie "contributions." In early May, the First Lady's Chief of Staff was among a small group briefed on the IGI findings. It is inconceivable that Maggie Williams did not pass this information on to the First Lady. And in August 1996, the First Lady was on a short list of people to receive, by hand delivery, a letter from David Lawrence outlining the untoward circumstances by which contributions to the PLET were obtained from members of the Ching Hai sect. (Tab 27)

Knowing of these problems with the Trie "contributions," being intimately involved in fundraising (she was employed by the campaign to solicit from major donors), and participating -- at times alone, and at times with the President -- in a variety of DNC and Clinton/Gore events, the First Lady certainly knew that Trie was donating to and soliciting heavily on behalf of the DNC. (Even Middleton, a former mid-level White House figure, knew this much, as evidenced by his cover note on the fax transmitting Trie's Taiwan Straits letter, on which he identified Trie as "a major supporter of the President.") And yet, the First Lady failed to give either the DNC or Clinton/Gore the same warning she gave to PLET and Cardozo (to scrutinize carefully Trie's "donation") after the problems with Trie's PLET donations were known to her. While she may

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not have had the same fiduciary relationship to the DNC and Clinton/Gore which Ickes and the President did, based upon her knowledge that Trie's "contributions" to PLET were riddled with defects, in light of her direction to Cardozo to review carefully the Trie "donations," and the fact that she was a beneficiary of the Trust, her failure to advise the DNC, Clinton/Gore, or the public of these facts (and instead to welcome Trie to various events at the White House which were his only because of his questionable monetary donations and solicitations) is worthy of investigation.

2. Gina Ratliff Incident

The incident involving Gina Ratliff and her brief employment with Johnny Chung, is also troubling. At about the same time Chung was setting up the radio address event, Chung was also attempting to hire Gina Ratliff, a FLOTUS intern, to help him with his public relations business. Eventually, Chung persuaded Ratliff to come to his business. Shortly after she went to work for Chung, Ratliff was either fired or left his employment. It was not a happy parting of the ways. Apparently, Ratliff believed that Chung owed her $15,000 for moving expenses incurred in connection with her new -- albeit short lived -- career. Chung disagreed and the dispute got ugly. In May 1995, Evan Ryan, Special Assistant to Maggie Williams, told Chung that unless he settled the dispute with Ratliff, the White House would be closed to him. In fact, Ryan made it clear that this message came directly from Maggie Williams, Chief of Staff for the First Lady. Ryan confirmed this in a recent interview. Chung subsequently paid Ratliff $8,000 through Ryan (at the White House) to settle the dispute. Chung stated that he felt pressured to make the payment because if he refused, his access to the White House would be adversely impacted. Since Chung's financial well being depended on continued access to the White House, Chung's business interests dictated that he resolve the matter -- a fact he said was well known by Williams and others at the

White House. As Chung explained in a recent interview, on numerous occasions he informed DNC and White House personnel that the more access he could get, the better his business would be and the more contributions he could make.

Based upon these facts, it could be argued that Ryan and Williams were seeking to extort money from Chung to settle Ratliff's claims in return for continued access to the White House, the President and the First Lady. Alternatively, Ryan and Williams were soliciting a thing of value -- payment of Ratliff's claim -- in return for access to the White House, the President and the First Lady. Certainly those around the President and the First Lady knew that to deny Chung access to the White House would adversely affect his business interests. And while Chung may not have been entitled to this access, the denial was used as a threat to extract a settlement of a dispute with a former intern of the First Lady.

The entire matter was handled by two senior officials in the First Lady's office. Chung and Ryan both confirm that Chung's continued access to the First Lady, and the White House, was at stake in connection with settling Ratliff's claim. While it is unclear at this juncture if anyone other than Ryan and Maggie Williams were aware of the squeeze being placed on Chung and the pressure being applied to the "White House access" lever, (there is no evidence that either the President or the First Lady were aware of these events), the matter does warrant further inquiry.

While the First Lady is not a covered person under the mandatory provisions of the Act, she should be considered under the discretionary clause. Given our threshold for opening investigations, determination of what the First Lady knew and what she did (or chose not to do) in connection with the information detailed above, is something which deserves further inquiry.

E. John Huang, Marvin Rosen, David Mercer and the DNC

There are several incidents involving John Huang, Marvin Rosen, David Mercer and the DNC which are troubling. These incidents suggest that at some level, certain DNC fundraisers were actively engaged in conduct which had the effect of concealing questionable fundraising conduct from the FEC and the public. The particulars are detailed below:

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2. Huang's Commerce Department Solicitations/Mercer's Cover-up

In a separate investigation, the Task Force has recently learned that David Mercer, another mid-level member of the DNC who regularly appeared at Ickes' White House strategy and money meetings, was also involved in what appears to be, at a minimum, a scheme – again with John Huang – to cause false entries to be made on the books and records of the DNC.

The Task Force has uncovered a document, dated October 30, 1995, from Mercer's files at the DNC. (Tab 43) The document lists a group of potential Asian-American contributors with anticipated donations and instructions relating to those who apparently are to place the various solicitation phone calls. Two entries relate to people apparently solicited by John Huang while he

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[32] Notes from Janice Kearney, who reported Presidential doings, describe the June 18 coffee in the following way: "The gathering was an eclectic group of top supporters of the President." In fact, of the twelve people at the coffee, fewer than half were acknowledged contributors. As noted earlier, these people were "invited" shortly before the coffee apparently to dilute the decidedly foreign presence of the CP Group and The other attendees were either foreign nationals, DNC officials, or Thai business people.

was employed at Commerce. (Huang left Commerce in either mid-December 1995 or in early 1996, in order to accept a paid fundraising position at DNC which was arranged directly by President Clinton.)

One of the donors attributed to Huang on the solicitation sheet is Mi Ahn, a California resident. Next to Ahn's name and the figure $10,000 is the notation "John Huang call." We have telephone records that show Ahn called Huang at Commerce on June 5, 1995. On June 9, 1995, there is a telephone message from Mercer to Huang at Commerce: "Have talked to Mi. Thank you very much." On June 12, 1995, Mi Ahn gave $10,000 to the DNC -- the same amount listed next to her name on the October '95 solicitation sheet. Mercer listed Jane Huang -- John's wife as the solicitor of these funds on the relevant DNC documents. We believe this was done because Huang was employed at Commerce at the time and was prohibited (under the Hatch Act) from soliciting funds. In an article in the Los Angeles Times, Ahn was quoted as saying Huang encouraged her to financially support the DNC during their phone conversation from his Commerce office. Ahn said a California DNC staffer followed up on the Huang call and she gave $10,000. Mercer's initials appear to be written over the name of the donor on the call sheet. (See Tab 43) During his Senate testimony and FBI interviews, Mercer simply had no recollection of why he thanked Huang in connection with Ahn and could offer no explanation as to why Jane Huang's name appears as the solicitor.

When Ahn was later interviewed by FBI agents, she denied that Huang had ever solicited her, and further denied the statements attributed to her in the Los Angeles Times article. However, the records appear to support Ahn's original version which appeared in the Los Angeles Times.

During the course of our investigation, no one has suggested that Jane Huang has ever been a DNC solicitor. Curiously, however, Jane Huang was also listed (by Mercer) as the solicitor for several other donations made while her husband John was at the Department of Commerce. On October 12, 1994, K. Wynn donated $12,000 to the DNC. At that time, Huang was working at the Department of Commerce. The DNC form first had John Huang as solicitor; his name is crossed out and replaced by that of his wife Jane. (Tab 44) And, on November 8, 1995, Arief and Soroya Wiriadinata each wrote a $15,000 check to the DNC. Although Jane Huang is listed as the solicitor of this $30,000 contribution, the Wiriadinatas admitted when interviewed that John Huang had "suggested" the donation be made. The Wiriadinatas denied even knowing Jane Huang.

Chung Lo was the second name associated with Huang on the October 30, 1995 call sheet. See pages 63-64 and Tab 43. There is evidence that Huang called Chung Lo in late October in an effort to persuade Lo to attend a November 2nd event featuring Vice President Gore. Lo declined to give a donation at that time. Lo has stated, however, that she was called by Huang when Huang was at Commerce for fundraising purposes. In fact, Lo said that the only calls she got from Huang while Huang was at Commerce were to solicit funds. While Lo did not contribute to the November 2nd event, she did send a check in 1996.

In an FBI interview, Lo admitted that when she was in Washington, she visited Huang at his Commerce office and would discuss fundraising but would do so in the Shanghainese dialect. She also confirmed that Huang called her in California from his Commerce office. She knows this because Huang would call and leave a message to return his call at his Commerce office. When Lo returned these calls, they would talk about fundraising. Huang's telephone records from

Commerce confirm several calls to Lo's telephone in San Francisco.[33] The notation on the October 1995 call sheet next to Chung Lo's name provides "I've been told she's holding out for another fundraiser or SOMETHING. John Huang and Charlie Trie to work on this." (Tab 43)

In connection with the November 2, 1995 Washington fundraiser, there was a concern that the event was going to be a flop. A few days before the event, Huang and Mercer met at the Willard Hotel. According to Mercer's Senate testimony on May 14, 1997, this was just a chance meeting and only pleasantries were exchanged. However, according to the Senate Report, Mercer's expense voucher for his parking at the Willard that day was explained as a meeting with John Huang. (Tab 45) Again, this meeting -- three days after the dated call sheet referred to above -- came at a time when Huang was at Commerce and therefore prohibited (under the Hatch Act) from engaging in fundraising. As improbable as Mercer's explanation is, he stuck to it in his sworn testimony to the Thompson Committee.[34]

The credible information points to the fact that Mercer knew John Huang was engaged in fundraising while he was at Commerce and that Mercer and Huang actively tried to conceal this

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[33] Phone records obtained by the Task Force show that several calls were placed from Commerce to Chung Lo's business telephone in San Francisco in June 1995 (1 call), September 1995 (3 calls), October 1995 (4 calls, including one on October 30th and another on October 31st), November 1995 (2 calls). Four of these calls were from Huang's extension at Commerce, the others were from other Commerce extensions during Huang's tenure at Commerce.

[34] Huang also met with fundraiser Sam Newman and DNC staffer Mona Pasquil, who were the organizers of the November 2nd event. Pasquil told the Senate that when she expressed concern that the event might not be a success, Huang said that he might be able to help her once he left the Department of Commerce and began working at the DNC. His apparent concern at this meeting about the strictures of the Hatch Act do not vitiate the other information we have suggesting that he may have violated that Act's terms. It may mean no more than he was not as familiar and comfortable with Pasquil and Newman as with Mercer. In any event, we do not need to resolve the motivation questions at this point. That there are questions about Huang's behavior only underscores the need to investigate further.

fact by inserting Jane Huang as the solicitor to cover John's tracks. In fact, the Task Force records indicate that the above donations are the only donations attributed to Jane Huang. And those contributors with whom we have been able to speak have confirmed that they had no dealings whatsoever with Jane Huang. Indeed they did not even know who Jane Huang was.

By concealing John's fundraising activities, any suggestion of a possible Hatch Act violation could be avoided. While the Hatch Act has no criminal penalties for its violation, the disclosure of such a violation could have effected dramatically the continued employability of Huang at Commerce and future employment at DNC respectively. If Huang's fundraising activities were discovered before he left Commerce, his Commerce employment would have been jeopardized and the resulting inquiry would have made his move to the DNC a public relations nightmare.

Even though Huang and Mercer (and possibly others) were able to keep his fundraising activities a secret while he was at Commerce, thus avoiding the public relations' nightmare, this conduct does suggest a potential criminal violation. The Task Force asked Criminal Appeals to research a potential Section 371 conspiracy to defraud the United States based upon a Hatch Act violation. We recently received the benefit of the research in which it was concluded that a scheme to defraud in connection with false statements and active concealment relating to campaign funds solicited in violation of the Hatch Act, does present a viable prosecutable theory. In fact, the memo, (Tab 46), presents several theories upon which a Section 371 prosecution could be predicated. In light of this research, the conduct of Huang and Mercer presents a potential criminal violation and a full investigation is warranted.

The Task Force's investigation has uncovered facts which suggest that it was not only Mercer who was aware of John Huang's active fundraising at Commerce. An October 20, 1995, fax from Laura Hartigan -- who was working at Clinton/Gore at the time -- to Harold Ickes at the White House, included a document entitled "Clinton/Gore '96 Commitments - Media Fund." (Tab 4) This memo listed, among others, John Huang as having made a $75,000 commitment to the media fund. According to this memo, Huang's $75,000 commitment was received by the DNC as of October 20, 1995. Based upon our review of subpoenaed records, the $75,000 refers to funds solicited (not donated) by John Huang. This $75,000 commitment appears to be comprised of, among other donations, the Ahn ($10,000), Wynn ($12,000) and Wiriadinata ($30,000) donations, which were all credited by Mercer to "Jane Huang." Thus, at the same time David Mercer was altering the books and records of the DNC to conceal John Huang's active solicitations while Huang was at Commerce, Hartigan was boldly attesting to Huang's fundraising activities in an internal memo to Harold Ickes.[35] At a minimum, it appears that Hartigan, Ickes and Mercer were aware of the chicanery with respect to Huang's fundraising efforts while he was employed at Commerce. (As detailed below, Ickes was well aware in the fall of 1995 that Huang was employed at Commerce and was attempting to move to a paid position at DNC.) It would also appear that there is a potential perjury case to be investigated in connection with David Mercer's Senate testimony as it relates to John Huang.

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[35] In a recent interview, Hartigan -- true to DNC and Clinton/Gore form -- could recall nothing about the memo and what funds made up Huang's $75,000. She did confirm, however, that, according to the memo, the funds attributed to Huang were received by the DNC prior to the date of the memo.

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It is also interesting to note that at the time Hartigan prepared this memo to Ickes on the media fund commitments, she was a Clinton/Gore employee. The funds reflected in this memo were comprised of soft money and included several corporate donations. This was exclusively a DNC project in that it related directly to the so-called "generic issue ads" and not to the reelection effort. The fact that a key Clinton/Gore employee was at the helm of this DNC effort – reporting directly to Harold Ickes on the project – speaks volumes about the true purpose of these "generic issue ads," Ickes' role in the reelection effort, and the willingness to eliminate even the pretense of independence among Senior White House officials, the DNC and Clinton/Gore '96.

John Huang's path from Commerce to the DNC provides an interesting backdrop to his questionable fundraising efforts at Commerce. The effort to have the DNC hire Huang as a fundraiser began in the summer of 1995. Huang was billed as someone who would be able to orchestrate the DNC's effort to tap into the Asian-American Community. In mid-September, Huang and the met with President Clinton and Bruce Lindsey at the White House. It was during this meeting that Huang's desire to leave Commerce and to begin work for the DNC was expressed. In fact, it was who underscored for the President that Huang's talents were being wasted at Commerce and should be utilized in some other way. In a follow-up meeting with Lindsey the next day, Huang confirmed that he wanted to leave Commerce for the DNC. Lindsey mentioned Huang's desire to Harold Ickes who had received the same message directly from the President. On October 2, 1995 – a few weeks before Ickes received Hartigan's memo reflecting Huang's $75,000 commitment to the Media Fund – Ickes met Huang to discuss his move from Commerce. Huang told Ickes that he would go to either the DNC or Clinton/Gore – whichever Ickes thought was best. Ickes chose the DNC and contacted Marvin Rosen (and

possibly Fowler) about hiring Huang. Ickes then reported back to the President that Huang's move to the DNC was being worked out. Certainly when Ickes received the Hartigan memo and notice of Huang's $75,000 commitment which had been received by the DNC, he was aware of Huang's current employment at Commerce.

The President himself asked Marvin Rosen in early November about Huang's status with the DNC and commented that Huang came highly recommended. As a result, the next day Huang was called to set up an interview at the DNC. This was done despite Fowler's earlier reluctance to hire him. A few days later, Huang met Rosen and Sullivan and was hired by Fowler that same day. Within a few weeks, Huang was a paid DNC fundraiser. Apparently Rosen, Fowler and Sullivan were so concerned about Huang's understanding (or lack of understanding) of the law relating to fundraising, that they insisted that Huang receive special training in this area. At the same time, however, Huang was also given an incentive component to his base salary at DNC based upon his fundraising efforts. The incentive was calculated to make up for the salary cut he suffered in the move from Commerce to DNC.

Huang's fundraising efforts in his final months at Commerce, and the need to conceal these efforts by listing Jane Huang as the solicitor of record on the DNC books, take on quite a different hue when viewed in the context of the efforts to move Huang from Commerce to the DNC. The role of Ickes, the President, Fowler, Rosen, Mercer, and Hartigan certainly militate in favor of a full investigation into these efforts and the apparent altering of the books and records of the DNC to conceal Huang's activities during this "transition" period.

3. Miscellaneous Events

There are several miscellaneous events (some mentioned above) which raise questions about whether the DNC -- at some level -- was aware of (or intentionally oblivious to) potential campaign irregularities:

(a) According to the Senate Report, the DNC vetting procedures went from stringent to, at best, curiously lax. In 1992, a system was in place which involved the vetting of all contributions of $10,000 or more. A group varying from 6 to 10 persons were responsible for vetting the checks. By 1994, only one member of the DNC General Counsel's office and one DNC part-timer handled vetting, and they did so only for checks of $25,000 and over. In May of 1994, the part-timer left the DNC. After that, according to Chairman Fowler, the responsibility went to the Finance Division. However, he could provide "no specifics" on how it was performed, and Sullivan described the new process as "a poor compliance system."

(b) On December 14, 1994, Chung wrote to Sullivan at the DNC about a group of foreign nationals who were scheduled to visit the White House. He provided Sullivan with detailed information about the group, including Chairman Chen of Haomen Beer who, according to Chung, would play "an important role in our future party functions". (Tab 35)

(c) On March 8, 1995, Chung contacted Sullivan and asked if Sullivan could arrange for a meeting for Chung with the President. Sullivan did not do so. As he explained in his Senate deposition:

> We had gotten money from Johnny previously. I think he had contributed about 100,000 to that point over the past year, and the fact that -- him showing up with these five people from China, I had a concern that he might -- that they -- he might be taking -- I had a sense that he might be taking money from them and then giving it to us, you know. That was my concern.

(Sullivan Senate Deposition, June 4, 1997, at 228).

(d) On January 4, 1995, Chung wrote to Doris Matsui, Deputy Assistant to the President:

> In the next two years I will be coordinating a lot of visits from Asian business leaders to support DNC. I look forward to working closely with you . . .

(Tab 39) (emphasis added).

None of these miscellaneous matters – standing alone or together – presents compelling information upon which a prosecution would be commenced. However, in the context of what we have learned, it is information worthy of further investigation.

As is evident, there are a variety of matters which raise concerns about the DNC and some of its officials. None of the DNC officials fall within the mandatory provision of the Act. On the contrary, aside from Ickes, none of these officials were *de facto* officers of Clinton/Gore exercising authority at the national level. However, an investigation into the fundraising activities of the organization and several of its high level officials – including Rosen and Mercer – at least suggests a potential political conflict of interest for the Department of Justice which should be considered. As long ago as 1978, when the office of Special Prosecutor was first created, Congress was concerned about this very scenario:

> The Attorney General and his principal assistants are appointees of the President and members of an elected administration. It is a conflict of interest for them to investigate their own campaign or, thereafter, any allegations of criminal wrongdoing by high-level officials of the executive branch.

1978 U.S.C.C.A.N. at 4222.

The reason such a potential political conflict is suggested is based in part on the fact that Ickes, and others, including the President, were very active in running the affairs of the DNC and

Clinton/Gore. The fact that both the President and Ickes were part of what could be considered the DNC and Clinton/Gore control group, casts a different light on the investigation. While this does not present the type of distilled potential conflict contemplated in the Act, it is a matter to be considered under the discretionary provision.

F. <u>Loral Matter</u>

There are several issues arising from the Loral matter which are troubling.

1. <u>The Decision to Investigate</u>

Recently, allegations surfaced that Loral was given a waiver on the export of satellite technology in return for campaign contributions by CEO Bernard Schwartz. The mere fact that these allegations were made has presented a dilemma for the Department. This was evident in the first meeting held to address the allegations. We were attempting to reach a consensus on the Department's response to these allegations when an interesting suggestion was made. Someone urged that in light of the Hill's announcement to have Congressman Cox's Committee look into the matter, perhaps the Department should stand down in connection with any criminal investigation/inquiry so as to avoid the inevitable tension between the Department and Cox's Committee reminiscent of the tension between the Task Force and Senator Thompson's Committee last year. The argument was that if we attempted to conduct a criminal investigation, the first time we requested that the Committee not grant immunity, not call a particular witness, or not make certain information public, we would be accused of obstruction and engaging in a cover up.

The other half of the dilemma was that although no one could articulate a solid basis upon which to predicate a criminal investigation, given the political climate, it was generally felt that the

Department had to commence an investigation. As a result, the Task Force was asked to formulate an investigative plan based upon allegations -- not because there was any real indication of a quid pro quo or criminal conduct -- but rather because allegations were made which, if true, suggested a potential violation of federal law. The Task Force did put together a proposed investigative plan which included potential criminal allegations. (Once again, the Task Force's low threshold with respect to matters not involving senior White House Officials was triggered and a full criminal investigation was begun.) When the Loral allegations are placed side by side with those contained in the Common Cause letters received by the Department almost two years ago, it is difficult to justify the Department's failure even to commence an investigation of the Common Cause allegations.

2. Actual And Potential Conflicts Of Interest

The Department has opted to commence an investigation of the Loral matter.

One of the areas to be reviewed is whether the contributions of Bernard Schwartz somehow corruptly influenced the President's decision to issue the 1998 waiver to Loral over the Justice Department's "concerns" that the waiver may adversely impact an ongoing criminal investigation. That is, was the waiver corruptly influenced by the President's desire to help his friend and generous DNC contributor Schwartz and to impede the ongoing investigation?

In connection with this investigation, at least two high-level DOJ employees will be witnesses. Their testimony will be material on the issue of what was said to the White House in

connection with the Department's concerns about the on-going criminal investigation. Several potential and actual conflicts arise as a result of these facts.

A. DOJ's Expressed Concerns

By expressing our concerns, the Department took a position adverse to that ultimately adopted by the President. The Department believed that a decision to grant the waiver had the potential to effect adversely the ongoing criminal investigation. We are now called on to investigate the motives underlying a decision by the President which was contrary to the position advanced by the Department. In addition, the President's decision – even now – continues to have the potential to effect adversely an ongoing criminal investigation being conducted by the Department. To us, the conflict is evident.

As a subtext to this conflict, it will become material what the precise conversation (or conversations) was (were) between Bob Litt and Chuck Ruff concerning the Department's position. This is especially true in light of indications by Ruff, according to press reports, that the Department's concerns were not deemed by the Department as significant given the manner in which they were communicated to the White House. It may be that the tone and tenor of the conversation (conversations) will be the subject of differing interpretations. There seems to be a "he said, he said" shaping up. At a minimum, the conversation (conservations) will likely be spun by the White House.

B. The White House Desire To "Get The Story Out"

Quite apart from these issues, the White House recently contacted the Department about document production to the Hill on the Loral matter. Apparently, the Department was contacted by DOD about the production of a particular DOD report to the Hill and what effect its

production would have on the ongoing criminal investigation. This is the same criminal investigation which may be adversely effected by the President's decision to sign the waiver. The Department's response – after consultation with the prosecutors handling the Loral matter – was that production would effect adversely the investigation and the report should not be produced. Following this determination, Chuck Ruff called the Deputy's Office to have Justice reconsider its decision because the White House believed that a prompt release of all the documents was in its interest and would serve its purposes. A meeting was called by Bob Litt (one of the DOJ witnesses in our investigation) to revisit the issue and to see if a time could be agreed upon for the release of this report. At the meeting we expressed a concern about negotiating or even consulting with the White House on the timing of the release of documents simply because a quick release was in the interest of the White House. The contact should certainly not involve Bob Litt, one of the witnesses whose statement (testimony) will be material in the investigation of the manner in which the Department's concerns were communicated to the White House. (Bob Litt and Mark Richard recently requested to be recused from the Loral matter) This type of negotiation, consultation and posturing in the context of this investigation is unseemly and serves to underscore the conflict that underlies this entire matter.

While the issue concerning the release of the documents has been mooted, and the Department witnesses are no longer involved with the matter, the entire Loral matter presents a string of conflicts which will not go away and which cannot be ignored.

3. The Task Force's Dilemma

As a backdrop to the entire Loral matter, the initial concern is that our conducting this investigation is a recipe for disaster. If there is a single piece of paper that we miss, a single

employee anywhere that we neglect to interview, or a single question we do not ask, we will be branded incompetent at best and, at worst, part of a corrupt effort to cover up for the Administration. While this is not the type of environment in which to conduct a criminal investigation, it is not a sufficient reason to ship this matter to a preliminary inquiry under the ICA either. However, the following concerns may establish a principled reason to send this matter to a preliminary inquiry under the ICA.

There are two documents which could form a basis upon which to predicate a federal criminal investigation. The first is a February 13, 1998, letter from Thomas Ross, Vice President of Government Relations for Loral, to Samuel Berger, Assistant to the President for National Security Affairs. It could be argued from this letter that Schwartz intended to advocate for a quick decision on the waiver issue by the President. In the letter, annexed as Tab 47, Ross wrote: "Bernard Schwartz had intended to raise this issue (the waiver) with you (Berger) at the Blair dinner, but missed you in the crowd. In any event, we would greatly appreciate your help in getting a prompt decision for us."

In the letter Ross also outlined for Berger how a delay in granting the waiver may result in a loss of the contract and, if the decision is not forthcoming in the next day or so, Loral stood to "lose substantial amounts of money with each passing day." The President signed the waiver on February 18, 1998. On January 21, 1998, Schwartz had donated $30,000 to the DNC; on March 2, 1998, he donated an additional $25,000.

The second document is a memo from Ickes to the President dated September 20, 1994, in which Ickes wrote:

> In order to raise an additional $3,000,000 to permit the Democratic National Committee ("DNC") to produce and air generic tv/radio spots as soon as Congress adjourns (which may be as early as 7 October), I request that you telephone Vernon Jordan, Senator Rockefeller and Bernard Schwartz either today or tomorrow. You should ask them if they will call ten to twelve CEO/business people who are very supportive of the Administration and who have had very good relationships with the Administration to have breakfast with you, as well as with Messrs. Jordan, Rockefeller and Schwartz, very late this week or very early next week.
>
> The purpose of the breakfast would be for you to express your appreciation for all they have done to support the Administration, to impress them with the need to raise $3,000,000 within the next two weeks for generic media for the DNC and to ask them if they, in turn, would undertake to raise that amount of money.
>
> * * *
>
> There has been no preliminary discussion with Messrs. Jordan, Rockefeller or Schwartz as to whether they would agree to do this, although, I am sure Vernon would do it, and I have it on very good authority that Mr. Schwartz is prepared to do anything he can for the Administration.

See Tab 12 (emphasis in original).

From this memo one could argue that Ickes and the President viewed Schwartz as someone who would do anything for the Administration -- including raising millions of dollars in a short period of time to help the media campaign. We now know not only that the media campaign was managed by Ickes from the White House, but also that it played a critical role in the reelection effort. Consequently, it is not a leap to conclude that having been the beneficiary of Schwartz' generosity in connection with the media campaign, the Administration would do anything it could to help Bernie Schwartz (and Loral) if the need arose.

If in fact there is anything to investigate involving the Loral "allegations," it is -- as set out in the Task Force's draft investigative plan -- an investigation of the President. The President is the one who signed the waiver; the President is the one who has the relationship with Schwartz; and it was the President's media campaign that was the beneficiary of Schwartz' largess by virtue of his own substantial contributions and those which he was able to solicit. We do not yet know the extent of Schwartz solicitation efforts in connection with the media fund. However, if the matter is sufficiently serious to commence a criminal investigation, it is sufficiently serious to commence a preliminary inquiry under the ICA since it is the President who is at the center of the investigation.

For all these reasons, the Loral matter is something which, if it is to be investigated, should be handled pursuant to the provisions of the ICA.

IV. The Enforcement Dilemma

Apart from consideration of the information and evidence developed by the Task Force and what, if any, impact that evidence has upon the ICA, there is another significant issue which must be addressed. That is, given the information and evidence we have developed to date, what obligation does the Department have to ensure effective enforcement efforts in the future in the area of campaign finance violations. The short answer is that given the current state of the law, there is not much we can do. However, with a few key changes and modifications, an effective enforcement mechanism is within our reach. In light of the abuses we have uncovered over the last 21 months, we believe that it is incumbent upon the Department to articulate the problems and to propose changes (modest and ambitious) in a positive manner.

A. The Problems

1. FECA and the FEC: Impotence By Design

At the heart of the enforcement dilemma is the Federal Election Campaign Act ("FECA"). FECA, as drafted and amended, is designed so that any meaningful prosecution is difficult at best. By reducing felonies to misdemeanors and combining a shortened statute of limitation with a heightened intent requirement, the role of the prosecutor in all but the most egregious cases has been non-existent. And, when you add to this the FEC -- the only administrative/civil game in town-- with its special rules of engagement and paltry investigative resources, there is, by design, no effective civil or criminal enforcement mechanism in the area of campaign financing. It is no wonder that campaign finance abuse is such a fertile area for the clever white collar criminal. Not only is criminal prosecution made more difficult than in the typical fraud case, the risk of civil or administrative sanctions are likewise remote. There is virtually no deterrent that exists -- civil or criminal -- in this area and the '96 election cycle has demonstrated the depth of abuse that is possible. If one tenth of the energy and resources that were spent on the Senate and House oversight investigations were directed toward mending the impotent enforcement mechanisms Congress has created, we would be well on the road to recovery.

The fact is that the so-called enforcement system is nothing more than a bad joke. Thousands of Americans each year believe that if they check a box on their tax returns, they are striking a blow for campaign financing reform and against big contributors coopting our elected officials through a system whereby big contributors buy access to the exclusion of the average person. Simply stated, the matching funds provisions do not serve their stated purpose. Given

the loopholes, the law, the opportunists, and the elected officials in desperate need of funds to fuel media campaigns, the enforcement system is illusory at best.

2. Compliance By the Major Parties

Under the current enforcement system, the two major parties are virtually insulated from any serious enforcement actions. In the criminal arena, given the statutes we are dealing with and the way the parties have set up their fundraising mechanisms, it would be extremely difficult to charge the major parties with a criminal violation. Both parties have built in layers of deniability and negligence between senior party officials and the rank and file solicitors/fundraisers. As a result, the "lack of knowledge" and "negligent employee/volunteer" defenses are as much a part of the system (by design) as the need to raise money to fuel campaigns.

During the 1996 election cycle, the DNC had about as sloppy an operation as you could imagine. However, the DNC designed its operation to insulate top officials from the sins of the fundraisers and solicitors. On the one hand, there were the senior White House officials who, working with senior DNC and Clinton/Gore personnel, were the architects of a "contributions for access and perks" system calculated to fuel the media engine that was driving the reelection effort. From the White House these officials -- without benefit of formal title or position -- issued directives as to the access and perks available and the money needed to keep the media fund running. Always just days away from exhausting available funds, the drive for contributions was constant. See, e.g., Tabs 48 and 49.

On the other hand, enticing solicitors, fundraisers and donors with perks and access was the oil that kept this machine running. Those with business acumen quickly recognized how access and perks could be transformed into personal profit in the context of private business

opportunities. Trie, Chung, Kronenberg, Hsia, Jimenez, to name a few, are living proof of the environment created in the '96 election cycle. Without a credible compliance effort, those who chose to exploit the opportunities served up by the White House, the DNC and Clinton/Gore, went unsupervised and unhampered. This was true even after the warnings were heard loud and clear along the way by senior White House officials. See, e.g., PLET discussion supra at pages 46-50 (Ickes, First Lady, White House Counsel aware of donations collected by Trie which were comprised of foreign funds in violation of PLET rules and regulations); Tabs 35 and 39 (Chung letters to the DNC and White House linking DNC assistance and contributions to Chinese businessmen he intends to bring to the White House); Tabs 37 and 38 (NSC e-mails suggesting a connection between Chung's Chinese businessman and DNC contributions); and Senate deposition of Richard Sullivan reprinted in part at page 71 (suggesting that there was a suspicion concerning the true source of Chung's donations). The result was the solicitation and acceptance of conduit and foreign contributions.

The compliance disconnect involved not only solicitors, fundraisers and contributors, but applied to the DNC's internal functions as well. The DNC had a practice of automatically allocating a contribution first to a hard money account (up to an individual's yearly maximum) and sending the balance off to a soft money account. However, the required notifications to the contributors – sent to alert them that they had reached their maximum hard money limit for that year – were rarely sent out simply because compliance was not a priority and DNC resources were "better spent" on raising money rather than insuring compliance with exiting laws. Similarly, the vetting of checks also fell in favor of more aggressive fundraising efforts. However, the DNC's senior officials were always insulated from the sins of those in the accounting and

collection departments. The procedures were on the books and the failures were, according to the DNC officials, an oversight by, and the responsibility of, low level employees or volunteers.

In each of the areas outlined above, the DNC designed a system which gave the appearance of concern for compliance, but in fact provided no substance to ensure compliance with existing laws. Likewise, Clinton/Gore '96, working hand in hand with the DNC and the White House in the fundraising frenzy, presented a mere facade of a compliance framework. The result was the wholesale violations which the Task Force has been addressing over the last 21 months.

For its part the RNC, while apparently not on a par with the DNC, had its fair share of abuses. The Barbour matter is a good example of the type of disingenuous fundraising and loan transactions that were the hallmark of the 1996 election cycle. In fact, Barbour's position as head of the RNC and NPF – and the liberties he took in those positions – makes the $2 million transaction even more offensive than some concocted by the DNC. Indeed, with one $2 million transaction, the RNC accomplished what it took the DNC over 100 White House coffees to accomplish.

It is evident that the missing piece from campaign finance enforcement is a credible incentive for the major parties to comply with the law. Any real campaign finance reform has to begin with the major parties and motivating them to comply with the law. This can be accomplished in at least two ways.

The most ambitious approach would be to undertake an overhaul of the substantive provisions of FECA and to create an enforcement-ready FEC. This would, of course, entail addressing the jurisdictional reach of FECA (and the FEC) concerning soft money (foreign and

domestic), the intent requirements, the statute of limitations, and the funding and complexion of the FEC (including a credible enforcement arm of the FEC). These are complex issues requiring careful treatment. Our work on the Task Force provides excellent experiences upon which to participate in such an undertaking. We could write extensively on these points; however, that is best left for another report on another day.

Short of the type of complete overhaul contemplated above, there are several relatively minor adjustments which could increase enforcement dramatically. For example, the effective use of civil and administrative proceedings against the major parties (and in an appropriate case the candidate also) for the very type of abuses seen in the 1996 election cycle could accomplish a great deal. With a lower quantum of proof needed to prove a violation and a lesser intent requirement, a civil or administrative proceeding could hurt the parties in the areas in which they are vulnerable. First, with a sensible damage provision, a civil or administrative proceeding could be just the tool to compel the major parties to promulgate and enforce internal rules and regulations calculated to insure that everyone working within the party -- employees and volunteers alike -- is not only properly trained, but is properly supervised during the course of the election cycle. The parties have to be "inspired" to construct and maintain effective and credible internal compliance divisions which are as important to the operation of the parties as their fundraising components. Compliance divisions have to have the ability to enforce compliance within the party including making appropriate referrals for enforcement action. Monetary penalties would go a long way to encourage the creation of compliance divisions and credible internal scrutiny of party activities.

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In addition, a civil or administrative proceeding provides the opportunity for the creative use of injunctive relief to compel (and to insure) future compliance. This can be accomplished by requiring the out of compliance party, committee, or candidate to maintain a compliance division which will in turn maintain certain minimum compliance standards. In addition, the party, committee, or candidate can be required to employ an outside monitor to oversee conduct in future election cycles following a violation. The outside monitor could observe the operation in connection with the next election cycle and report to the appropriate enforcement agency concerning the efforts in place to avoid future violations. These conditions can be imposed as part of a resolution of a particular violation by the party, committee, or candidate.

The reports which must be filed by the candidates and their committees should also be amended to ensure that important information is reported and reviewed by those who have enforcement responsibility at the time the reports are filed. Currently, most violations are detected initially by the press during periodic reviews of filings with the FEC or by an opposing candidate who is sufficiently outraged by a particular practice that he/she reports it to the FEC. This does not constitute an acceptable enforcement network. The regulators must take the reporting requirements as well as the information reported seriously. In order to accomplish this, the review of the material cannot be the result of a haphazard review occurring months and sometimes years after the reporting is made. Rather, the review process, as well as an appropriate enforcement response, must be methodical, timely, and diligent. These efforts will assist in motivating compliance.

You will recall the notes from the Panetta staff meeting as the fundraising scandal began to break in the press. The Task Force obtained these notes from the White House pursuant to

subpoena. The notes reflected comments by a White House Staffer who, amid reports of foreign money finding its way into the re-election effort, opined that any FECA violations would not be addressed by the FEC until after the election. What was not said -- but what was clearly understood -- was that any election abuse addressed after the election will likely be forgotten long before the next election and chalked up to the cost of doing business. In any event, it would have no impact on the current election.

In the Barbour investigation, it was discovered that the RNC took a similar tact by not drawing down on the Young loan to NPF until a date which insured that the $2 million transaction would not have to be reported to the FEC (and therefore publicly) until after the election. This was not accidental, but rather a strategic move calculated by top RNC officials to avoid a potentially embarrassing -- and possibly an illegal transaction -- from being discovered prior to election day. The RNC officials -- like the Panetta staff member -- knew full well that a post-election day discovery of a violation is an acceptable cost of doing business.

Given the lethargic response to campaign finance abuses in the past, it is no wonder there is no incentive to play by the rules. A critical problem is that the FEC has exclusive jurisdiction over administrative proceedings involving funding violations. And yet the FEC was designed to be impotent. Not only is the FEC under staffed, it cannot act absent a consensus of the politically balanced Commission. The system is not designed to function but rather to protect an environment in which abuses can flourish. Say what you will, but the FEC is not an effective enforcement mechanism.

In order to break this enforcement dilemma, the Civil Division of the Department of Justice should be given at least concurrent jurisdiction to bring administrative actions based on

FECA violations.[36] By doing so, and by establishing a significant section within the Civil Division to address such cases, the Department could accomplish in the area of campaign finance compliance what has been accomplished in the area of compliance by securities and commodities firms (and their employees) with respect to securities and commodities laws, rules and regulations. Virtually every broker-dealer today has elaborate and credible compliance departments which use best efforts to ensure that the company and all employees are observing all laws passed by Congress as well as the rules and regulations promulgated by the Securities and Exchange Commission ("SEC") and the Commodities Futures Trading Commission ("CFTC") for the marketplace. However, this compliance was not the result of an expression of goodwill or sudden enlightenment by the broker dealers. On the contrary, civil lawsuits and credible enforcement actions have established the principle that compliance is the norm in the marketplace. The brokerage houses are responsible for their employees and agents when they act in the marketplace. If an employee or agent is not properly trained or supervised and bad things result, the brokerage house responds in damages. In addition, the Government has from time to time snapped a broker into compliance with an enforcement action resulting in monetary damages and injunctive relief. These actions have been complimented by a mandatory monitoring system conducted by an investigative firm (which is paid by the offending brokerage house), which have become part of any settlement of the action. Compliance follows stiff civil and criminal enforcement and monitoring operations. It is that simple.

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[36] To the extent that there needs to be a legislative fix to grant the Department concurrent jurisdiction with the FEC for civil violations, the current political climate appears propitious. Members of the House recently broke ranks with the leadership and demanded some campaign finance reform. This may be the type of modest reform that will be acceptable to a majority on both sides of the aisle.

In the area of campaign financing, however, there is no real civil enforcement mechanism in place. The FEC is unable to engage in any meaningful enforcement efforts and the Department of Justice is precluded from doing so in the civil arena. As a result, there is no real effort by the major parties to comply with the law because the occasional FEC enforcement action or criminal misdemeanor prosecution is chalked up to the cost of doing business and nothing ever changes. Both the RNC and DNC pay lip service to compliance – but nothing more. A few well-placed and expertly investigated civil actions will quickly ensure the creation of credible compliance departments within the major parties and genuine concern for how the fundraisers and solicitors bring in the money.[37]

It is curious that with the millions of dollars spent on media advertisements during the last election cycle, virtually nothing was spent by the parties on effective compliance departments. That speaks volumes about where the major parties place compliance with existing laws on their list of priorities -- somewhere below securing the obligatory red, white, and blue balloons for release on election night. We are now paying the price for this neglect.

3. The Conduit Problem And The Criminal Response

One of the major problems resulting from an ineffective enforcement mechanism is the proliferation of conduits in the election process. Through conduits two evils are realized. First, those who by law are not permitted to participate in our electoral process are able to do so. This can be foreign governments, foreign officials, ineligible residents or ineligible entities. Second, the

[37] Here, unlike the investment situation, there are no disgruntled customers who have lost money and will scream "foul" as a result of a brokers conduct. Rather, in the election context the victim is the regulatory framework, the integrity of the electoral process and the public at large. Absent diligent investigative reporting or an opponent who is prepared to blow the whistle with respect to a particular practice, violations typically go undetected.

regulations concerning the types of money being donated (hard money vs. soft money) can be circumvented easily. The result is that the electoral process can shift by virtue of unauthorized contributions in favor of one candidate at the expense of another. While in the past we have treated these abuses as "minor offenses," the magnitude of these abuses can alter the outcome of a particular election. If we have learned anything about the election process it is that the amount of money raised as well as the type of money raised (hard vs. soft) can impact directly on the results of a particular election. And yet, we tolerate a system that promotes -- and even rewards -- the use of conduits. This has to change.

Conduit payments are difficult to detect. A simple reimbursement scheme -- especially if accomplished with cash -- does not leave a bright investigative trail. More often than not investigators back into a conduit scheme while investigating some other alleged violation. It is clear, based upon the Task Force's experience, that the criminal law alone is not an effective method to guard against conduit donations finding their way into the process. Rather, any effective deterrent has to begin with major parties and the fundraisers themselves. The key is enforced diligence in connection with solicited funds. An effective compliance department or legislated procedures could accomplish this. The standard procedures should include a requirement that contributors be required to attest on a donor card that: (i) the source of the money is not foreign; (ii) they are an authorized donor; and (iii) they are not being reimbursed, directly or indirectly, for the contribution. In addition, the donor should attest that they are aware that foreign funds or conduit reimbursement would be illegal and that this donor information will be filed by the Committee, candidate or party with the FEC (a federal government agency) and that the representations made on the card are true and accurate. Then, if conduit money was later

detected, a federal criminal violation could be brought and the intent requirement satisfied by virtue of the donor card. The standard "I didn't know it was not permitted" or "I never heard of the FEC" defenses would be eliminated. Similarly, fundraisers/solicitors should be required to advise prospective donors about the prohibitions of conduit and foreign source payments and make some effort in the field to determine that the donations are genuine and not reimbursed.

If credible compliance departments are maintained by the parties, enforcement efforts should be strict and when violations are found, the consequence should include prosecution of the conduit (as opposed to our general policy not to prosecute), the solicitors and, in appropriate cases, the party or Committee itself, under the felony provisions of Title 18 United States Code.

In order to accomplish this, the Department of Justice should revise its long standing policy relating to conduits. In the Federal Prosecution of Election Offenses, we have announced to the world that our approach to the conduit is one of non-prosecution. See Prosecution of Election Offenses (1995 Edition) at 117. We should now modify our policy and pledge an effective enforcement operation against conduits for violation of the law.

In addition, the Department's misdemeanor approach to campaign financing violations in general should be changed as well. The presumption should be that these violations are deemed serious by the Department and will be treated as such. With the minor adjustments suggested above, the Department could make a significant course change in the area of campaign finance abuse.

Short of legislative fixes, the Department has the tools right now to effect a change in the prosecutorial response to election offenses. This would, of course, mean altering our published guidelines. However, the experience of the task Force has given us more than ample reason to

alter our long standing policies. We noted earlier that the Department has articulated several compelling reasons why the Task Force's "pursue every lead and leave no stone unturned" approach justifies a somewhat relaxed predication requirement. See page 13 above. These relaxed predication requirements were adopted in response to a flood of election law violations. For these same reasons, it may be time to change the Department's public statements concerning the prosecution of election offenses. The tone and tenor of any new statements should reflect the seriousness of the criminal conduct we have been investigating, its effect on the political process, and the need for deterrence in this area. In short, any new statements should reflect an all felony approach for those orchestrating conduit or foreign contribution schemes and a misdemeanor (rather than no prosecution) approach for the simple conduit who was not part of the planning process.

The mere conduit -- who we currently decline to prosecute -- is not unlike the mule or courier in a typical airport or border-bust case. The real culprit is the drug dealer who has effectively insulated himself/herself from arrest by hiring a low level mule or courier to carry the drugs from point A to point B. However, our response has never been to give the mules a free pass or a one-time "get out of jail free" card because they are not players in the larger drug operation. To the contrary, we have no problem sending them to jail for 10-15 years to demonstrate how serious we deem the underlying offense, as a deterrent to others, and as an incentive for the mule to tell us all they know about the larger operation.

We should adopt the same approach with respect to the so-called simple conduit. It is rare that the conduit is truly ignorant of what is going on. They are asked to make a political contribution to a candidate or party designated by someone else who, in turn, reimburses them for

their contribution. Like the mule who claims he/she did not know the drugs were in the trunk or suitcase, but was only asked by a friend to drive the car into the United States or to carry the suitcase, the conduit always claims ignorance of the law and denies any knowledge that this conduct was somehow illegal. Those of us who deal with these conduits understand the kabuki dance that we are engaged in. We rush to grant immunity (or issue one of our now famous non-prosecution conduit letters) so that we can focus on the organizer of the conduit scheme.

Without the conduit, the system does not work. And yet, we have publicly stated that absent aggravating circumstances, the conduit will not be prosecuted. Moreover, there is no incentive for them to tell us the whole truth when they and their lawyers know that if they stick to their scripted lines, they will not be prosecuted. (More times than not their attorney is paid for by the target of the conduit investigation and the conduit's version is generally consistent with whatever "defense" the target is constructing.). An effective and intelligent prosecution plan -- coupled with the changes outlined above concerning the donor cards -- will effect this.

The particulars of an effective enforcement mechanism may of course take different forms than those outlined above. We could write volumes on the subject based upon our experiences with the Task Force. However, it is sufficient at this point to alert you to the enforcement dilemma and to suggest some possible resolutions. The Department should put an energized working group together (a healthy portion of which should include experienced AUSAs) to address these issues in the near future. This is not a matter we can leave for someone else to resolve. It is clear that if the Department fails to address this dilemma, we will find ourselves faced with the same conduct at the end of every election cycle.

V. Conclusion

We have been reviewing the facts and the evidence for the last ten months. During that time we have gained a familiarity with the cases, the documents and the characters sufficient to draw some solid conclusions. It seems that everyone has been waiting for that single document, witness, or event that will establish, with clarity, action by a covered person (or someone within the discretionary provision) that is violative of a federal law. Everyone can understand the implications of a smoking gun. However, these cases have not presented a single event, document or witness. Rather, there are bits of information (and evidence) which must be pieced together in order to put seemingly innocent actions in perspective. While this may take more work to accomplish, in our view it is no less compelling than the proverbial smoking gun in the end. As is evident from the items detailed above, when that is done, there is much information (and evidence) that is specific and from credible sources. Indeed, were this quantum of information amassed during a preliminary inquiry under the ICA, we would have to conclude that there are reasonable grounds to believe that further investigation is warranted. As suggested throughout this memo, there are many as yet unanswered questions. However, the information suggesting these questions is more than sufficient to commence a criminal investigation.

It may be that in the end the allegations outlined above will all wash out and not a single additional prosecution will be brought. In fact, as an experienced prosecutor and investigator we are confident that we cam predict the course that some of these matters will take. However, we must operate within the four corners of the ICA as drafted, not as we would have it drafted. It seems clear to us that in the end, the prosecutorial discretion necessary to make a determination concerning the matters outlined above, given the status of the people whose conduct is under

review and the provisions of the ICA, is the type of decision designed to be made by a responsible Independent Counsel.

Attachments

U. S. Department of Justice

Criminal Division

Gore

Washington, D.C. 20530

November 30, 1997

MEMORANDUM

TO: THE ATTORNEY GENERAL

THROUGH: Mark Richard
Acting Assistant Attorney General
Criminal Division

FROM: Charles G. La Bella CGL
Supervising Attorney
Campaign Financing Task Force

Re: Independent Counsel Matter
Vice President Albert Gore, Jr.

On November 21, I received the first draft of Public Integrity's memorandum on the VPOTUS calls. This is the first write up I have seen regarding facts developed from Integrity's inquiry. As structured, I have had no role in the preliminary investigation of the Vice President's calls from the White House except for my attendance at his interview on November 11, 1997. Nor have I been provided copies of the key documents referenced in Public Integrity's memorandum. As a result, I must rely upon the description of these key documents -- like the call sheets and the Ickes/Mitchell memoranda -- as they appear in the memorandum. I should also note that while I have been told that the FBI has submitted a separate memorandum on the subject of the Vice President's phone calls from the White House, I have never seen a copy of that memorandum and am unaware of its contents. Thus, my analysis -- such as it is -- and reaction to the Public Integrity memorandum is very limited. I must give deference to the instincts and judgments of the prosecutors and investigators who conducted and participated in the preliminary inquiry.

It is worth noting at the outset that this matter presents several troubling and difficult issues. First, reasonable minds can and do differ as to whether Section 607 applies to solicitation phone calls placed by the Vice President to non-federal employees at non-federal locations. Second, even assuming that Section 607 is applicable, do the facts presented by the calls and the subsequent

contributions and treatment of these contributions by the DNC, involve a potential violation of that statute by the Vice President?

Underlying these difficult issues is the fact that even assuming a technical violation of Section 607, the likelihood of a prosecution based upon such a violation would be -- at best -- remote in the judgment of any relatively experienced prosecutor. The temptation, of course, is to allow the relatively insignificant nature of a potential violation to color the analysis that is to be applied under the Independent Counsel Act. This is a temptation that everyone has acknowledged but stated that they would resist in an attempt to resolve the matter. With this in mind, I have attempted to review the matter and arrive at a recommendation.

In its memorandum, Public Integrity, assuming the application of Section 607, concludes that

> further investigation of the allegations is not warranted because an Independent Counsel would not be able to demonstrate that the Vice President knowingly solicited any hard money contributions from his White House office.

Memo, p.3. In addition, Public Integrity finds that even if there were a solicitation of hard money, there is "clear and convincing evidence that the Vice President subjectively intended to ask only for soft money." Memo, p.2. Accordingly, Public Integrity recommends against the appointment of an Independent Counsel.

After reviewing Public Integrity's memo, I remain convinced that the Attorney General should seek the appointment of an Independent Counsel in connection with this allegation. It is clear that the likelihood of a prosecution is remote based upon the facts as we now know them. Nonetheless, there exists, in my view, a potential (albeit technical) violation that can be articulated based upon the fair inferences to be drawn from the facts thus far developed. Moreover, the possibility that this may be part of a broader criminal activity cannot be discounted.[1]

My overall concern is that at every point where two inferences could be drawn from a set of facts, the inference consistent with a lack of criminal intent/conduct was always chosen. Although I might personally agree with the inference accepted by Public Integrity as the more compelling or likely inference to be drawn, the fact is that reasonable minds may well draw a contrary

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[1] In a separate memo, I have urged that although it is my belief that Section 607 does not apply to the facts presented by the Vice President's phone calls, the question is not without doubt and, in keeping with the spirit and intent of the Independent Counsel's Act, an Independent Counsel should make this decision.

inference. To give just a few examples:

1. The memorandum notes that Liff's reference on the call sheet to the "legal limit" of what he believed he could give seems to indicate that he thought the Vice President was requesting hard money. This would be especially plausible in light of the absence of a reference to the DNC during the call (Memo p.38). Nonetheless, the memorandum concludes that the "legal limit" comment was simply "a nonsequitor born of Liff's misunderstanding of what the Vice President was asking for" (Ibid.). While this may be true, it is by no means the only inference to be drawn. Indeed, an inference contrary to that urged by Public Integrity would go some distance in undercutting the "Vice President's subjective intent" upon which Integrity's memorandum bases, in part, its conclusion not to seek the appointment of an Independent Counsel.

2. The notation of "soft money" on a few DNC-generated call sheets suggests that the concept of "soft money" was discussed by the Vice-President during those conversations. This is seen as evidence that soft money was discussed in all solicitations (Memo p.36, n.46). However, it is equally plausible -- indeed, it could be argued to be even more plausible -- that the few notations mark the exception rather than the rule. One could argue that it is more common to note an aberration than a pattern. Moreover, the possibility that there were hard money calls gets some corroboration -- and perhaps not insubstantial corroboration -- from the fact that many of these calls were paid for with a Clinton/Gore (hard money) credit card, rather than a DNC (soft money) card. (Memo, p.21, n.25, p.26, n.29).[2] Indeed, the use of a Clinton/Gore credit card could arguably give weight to the Common Cause allegations discussed below. In any event, it would be interesting to know just how many of the Vice President's calls were funded with a Clinton/Gore credit card and the rationale for using it.

3. The call to Penny Pritzker (incidently paid for with a Clinton/Gore credit card) (Memo, p. 26, n.29) could be part of a plan to link the media campaign directly with the reelection effort. Support for such a view comes from the Vice President's appeal to give to the media fund because of its demonstrated effort in promoting the presidential reelection effort (Memo, p.26). If there was such a linkage, it could be argued that the entire episode of phone calls was part of an effort to influence the '96

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[2] The memorandum characterizes the persons to whom "soft money" comments were made as the "most sophisticated" donors (Memo, p.40). There is nothing that I am aware of in the memo to support this characterization. It therefore appears, probably unfairly, as an effort to "explain away" the Vice President's comments. It would seem that if there are facts known to us that would support this conclusion, they should be recited to bolster the proposition.

election (rather than to solicit funds for a media campaign allegedly not associated with the election). Indeed, this is precisely the charge that Common Cause has lodged with respect to the media campaign and solicitation of funds in connection therewith. To segregate the telephone calls from the Common Cause allegation -- never viewing these as a whole or in context -- is in my judgment a dangerous approach which will be viewed by many as an effort to avoid seeing the big picture. (See discussion re Ickes/Marhsall memos, infra.) We cannot simply ignore the Common Cause allegations in our analysis of the Vice President's calls because they were included in a separate submission to the Department. To the contrary, these are significant allegations available to us concerning the media campaign and the Vice President's calls from the White House. It is arguably unfair on the one hand to reach a conclusion as to the Vice President's "subjective intent" in making the solicitation calls from the White House, and on the other hand to ignore the Common Cause allegations which -- some would and have argued -- place these calls and the Vice President's intent in proper perspective.

4. Although the memorandum states that "the four prosecutors who participated in the interview of the Vice President each found him to be credible and forthcoming", this somewhat overstates my own impressions of the interview. While the Vice President did present his case well and plausibly, there were certain answers which seemed somewhat less convincing than others. In particular, the Vice President was quick to explain that he did not likely review the Ickes/Marshall memos (which reference the DNC's splitting of contributions into hard and soft accounts in connection with the media campaign) because these matters were the subject of meetings that he attended. Yet he could not recall the items being discussed at the meetings.

Similarly, the Vice President claimed that his concern -- borne from his Senate experience -- was simply who was paying for the calls, not where they were placed. Yet if this is so, reasonable minds could argue that he would have charged his Senate fundraising calls (as he did his Vice Presidential ones) rather than go to a different location to place them. Again, the memorandum accepts the favorable inference without addressing the alternative.

This is not to say that I found the Vice President to be untruthful. On the contrary, on the whole I too found him to be credible and forthcoming. However, his answers to one or two questions gave me sufficient pause so that I would not rely on his interview as a bulwark for a determination not to appoint an independent counsel. Although Public Integrity tries not to give "undue weight" to the Vice President's statement (Memo, p.5), it appears to be that it does factor in to a not insignificant degree. Finally, I would be interested in the view of the agents who conducted the interview. I have not discussed the topic with them and I did not see their impressions in the memorandum.

Perhaps there are facts known to the prosecutors and investigators that would eliminate my few concerns about the answers that trouble me. If so, they are absent from the memo and I would suggest inserting them in order to support the conclusions reached. Indeed, if it is true that everyone who attended these meetings with the President and Vice President has been interviewed and supports the finding that the DNC allocation of funds and the hard/soft component to the media funds were not discussed, this should be included in the memorandum. If this is not the case, my concerns remain.

5. The call sheet for Jim Hormel was shown to the Vice President at the interview. The call sheet contains a handwritten note "no federal $ '95." During his interview, the Vice President said that he did not recognize the handwriting and did not believe it was on the call sheet when he placed the call. Have we identified the handwriting and, if so, have we interviewed the author? If we have not, is there any evidence to support the conclusion that the handwriting was not on the call sheet when it was given to the Vice President? The Vice President, in response to this document, reaffirmed that he believed he was only asking for soft money in these phone calls and was unaware of any hard money component to the media fund. However, one could draw a contrary inference from this notation.

One of the principal concerns I have with the position of Public Integrity and its recommendation is the treatment of the Ickes/Marshall memos. There are several facts with respect to these memos that are not disputed:

(a) They make it clear that there was a hard and soft money component to the media fund.[3] The memos also could be read to suggest that the DNC was systematically splitting the large contributions solicited by the President and Vice President in their phone calls into hard and soft accounts in connection with the media fund.

(b) The memos were sent to the Vice President and the topics referred to in the memos were discussed at some of the regular meetings attended by the President and Vice President.[4]

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[3] Indeed, Ickes stated his belief that had the Vice President read and understood the memos, he would have known that the DNC needed to raise federal funds in order to keep the media fund afloat (Memo, p.15).

[4] That the media hard money/soft money topic was discussed is, I have been told, evident from notes of the meetings. Since I have not reviewed the documents I must rely on the characterizations in Public Integrity's memo and my recollection of the discussion of these memos during the Vice President's interview.

The Vice-President does not deny seeing the memos; he stated only that he did not recall seeing them. The same inability to recall permeated his response to questions about meetings at which the memos were discussed. The Vice President stated that the reason he did not review the Ickes memos was that he knew he would be in attendance at meetings during which the topic would be fully aired. Moreover, he would wait for these meetings to find out what he needed to know. And yet the Vice-President cannot recall any discussion at these meetings concerning the splitting of funds -- although funding of the media campaign was a major concern at the time.[5] The Vice President did assume, however, that the subject matter of the memoranda would have been discussed in his and the President's presence. See FBI 302 at p.9. In such circumstances, some would argue that the Vice-President's failure of recollection is, at least, curious.[6]

With respect to the memos, Public Integrity concludes that:

> Based on the results of our investigation, it appears very unlikely that the Vice President had any awareness of the DNC's practice. As set out above, he states that he was unaware of it, and that, in fact, he believed that hard money donations to the DNC were severely limited to relatively small sums. Only the Ickes/Marshall memoranda, described in detail below, provide any support even for an inference that he may have known of the allocation practice. Moreover, even if it could be demonstrated that the Vice President read the memoranda, which he denies, this fact, by itself, does not support an inference that the Vice President asked any donor to make a hard money contribution.

(Memo, pp. 10-11). While it is true that the memos by themselves do not lead to a conclusion that the Vice President solicited hard money, they certainly suggest that the Vice President may have been part of an effort to solicit soft money with the understanding that the DNC would split this money for use in the media campaign.[7]

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[5] In fact, this was the heart of the "bad blood" between Ickes and Morris about which the Vice-President was extremely chatty.

[6] The Vice-President denied that he had any understanding that there was a hard money component to the funds used for the media campaign. The President however -- who attended the same meetings -- did understand, as he admitted during his interview. The President said he was unaware that the DNC routinely and systematically split each large contribution. In fact Ickes, himself denies he knew that this was the practice.

[7] The suggestion on p.11, fn.10 that the Task Force is continuing to look at the DNC's allocation practice is somewhat inaccurate. The Task Force investigation was halted at the request

This is certainly the type of inference that a reasonable prosecutor might draw from these facts.

As noted above, I assume that all those at the DNC, the White House, and Clinton/Gore '96 who could shed light on the issues have been interviewed. For example, I must assume that Knight, Utrecht, Strauss, Morris, the Vice President's Chief of Staff (who the Vice President said would alert him to anything he needed to see in the memos) and others have been interviewed and their statements support the notion that the Vice President had no reason to know that (i) there was a hard money component to the media campaign; or (ii) that the DNC routinely split large donations between hard and soft money accounts. I think this should be made clear in the memorandum since it goes a long way to support the Vice President's statements and the other objective facts relied upon by Public Integrity to support its recommendation.

The type of analysis involved in determining whether the Vice President was part of a scheme to solicit soft money knowing that it would be turned to hard money for the media campaign is subjective and open to debate. By routinely embracing the most innocent inference at every turn, even if the inferences are factually defensible, the memorandum creates an appearance that the Department is straining to avoid the appointment of an Independent Counsel and foreclose what many would characterize as an impartial review of the allegations. When you look at the facts,[8] the memos, the meetings, and the DNC practice, it is hard to say, as the memorandum does, that there is only one conclusion to be reached. This is especially so when you factor in the Common Cause

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of Public Integrity because they feared that it might chill those who were talking voluntarily to the POTUS and VPOTUS investigators. The investigation was halted at the time the Task Force was attempting to interview high level DNC employees -- the very people who might have some light to shed on contact with the White House and the essence of the Common Cause allegations. This investigation remains on hold at the request of Public Integrity.

[8] Although every effort was made to gather all facts within the limited time frame, several donors or potential donors were unable to be interviewed (due to illness, travel, etc.) One of those, Mark Jimenez, I learned about only this week when we were told that he is the same person being targeted by the Task Force for conduit contributions. He is also being investigated by three United States Attorney's offices. It is curious to me that Mark Jimenez was able to avoid an interview and yet his attorney [redacted] has submitted a 40-page memorandum to Public Integrity outlining why Mark Jimenez's use of conduit contributions in 1996 was not an "intentional" violation of the Election laws. The memo was subsequently sent to the Task Force since it is the Task Force that is conducting the Jimenez investigation.

allegations which have been debated within the Department for the better part of a year and the use of a Clinton/Gore credit card to support at least some of the Vice President's calls. For the reasons I have already set out in the Section 607 memorandum, and the concerns expressed herein, I believe that the wise course is to seek the appointment of an Independent Counsel.[9]

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[9] If the Attorney General chooses not to seek an Independent Counsel, it would, in my view, be better to do so on the ground that Section 607 is inapplicable. Although I recommended in an earlier memorandum that this question too be determined by an IC (because there are plausible arguments on both sides), my own opinion, as stated in that memorandum, is that the better argument is that the statute does not apply.

I have been told repeatedly, however, that it is the Attorney General's obligation to determine if the statute applies. Assuming that to be the case, a determination that the statute is inapplicable is, in my opinion, not only legally correct, but has the incidental benefit of obviating the need to scrutinize and second-guess every act and word of the Vice President. A decision based on the facts in this case is, in my opinion, much more subjective than one on the law. As such, it is better made by an Independent Counsel than the Attorney General.