MINORITY VIEWS
REPORT ON
"JANET RENO'S STEWARDSHIP OF THE JUSTICE DEPARTMENT:
A FAILURE TO SERVE THE ENDS OF JUSTICE"

Over the past four years, Rep. Dan Burton has waged a vendetta against the Attorney General of the United States. Mr. Burton has accused Attorney General Janet Reno of "deceit"[1] and "corruption."[2] He has called her the President's "chief blocker."[3] He has charged that the Attorney General "eroded the people's respect for the Department of Justice"[4] and established a "legacy" of "incompetence and partisan zeal."[5] He has said that the Attorney General has brought the Justice Department to "to shame and disrepute"[6] and has made a "mockery of justice."[7] He also has stated, "When you ask me, do I trust her, I certainly do not."[8]

In August 1998, Mr. Burton and the other members of the majority even voted to hold the Attorney General in contempt of Congress.

There is a fundamental problem with Mr. Burton's accusations against the Attorney General: they have no basis in fact. Over the course of the Committee's investigation, the Committee has heard testimony from a dozen Justice Department lawyers and FBI officials who have worked with Attorney General Reno. Several of these individuals, including FBI Director Louis J. Freeh and former campaign finance task force head Charles G. La Bella, have strongly disagreed with some of the Attorney General's judgments. But not one witness has said that the Attorney General is deceitful, corrupt, or partisan.

Rather, witness after witness has testified -- under oath -- to the Attorney General's integrity. As Director Freeh testified, "I have stated many times my respect for Attorney General

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[1]Fox, *Fox Special Report with Brit Hume* (March 14, 2000).

[2]Testimony of Rep. Dan Burton, House Committee on Rules, Subcommittee on Rules and Organization of the House (July 15, 1999) (available at www.house.gov/reform/oversight/99_07_15db-rules.htm).

[3]Fox, *The Edge with Paula Zahn* (March 14, 2000).

[4]Testimony of Rep. Dan Burton, House Committee on Rules, Subcommittee on Rules and Organization of the House (July 15, 1999) (available at www.house.gov/reform/oversight/99_07_15db-rules.htm).

[5]*Id.*

[6]*Id.*

[7]NBC, *Meet the Press* (June 11, 2000).

[8]NBC, *Meet the Press* (Aug. 29, 1999).

Reno. In the 4 1/4 years we have worked together, I have seen her bring nothing but integrity and honesty to the table."[9]

The majority's main complaint about the Attorney General boils down to a dispute over conflicting interpretations of the independent counsel statute. The majority believes that the Attorney General was required to appoint an independent counsel to examine campaign finance matters. The Attorney General reached a different conclusion. This type of disagreement over interpreting the law is not unusual. Unfortunately, Mr. Burton seems to take the position that disagreeing with his opinion is evidence of "bad faith" and "corruption."

It is the height of irony that the majority pronounces judgments on the handling of the campaign finance investigation by the Department of Justice given the widespread criticism this Committee has received for misconduct in its own campaign finance investigation. The Committee's campaign finance investigation has been referred to as a "case study in how not to do a congressional investigation and as a prime example of investigation as farce,"[10] a "parody of a reputable investigation,"[11] and "its own cartoon, a joke, and a deserved embarrassment."[12]

Three years ago, the Chief Counsel of the Committee quit and told Mr. Burton that he had "been unable to implement the standards of professional conduct I have been accustomed to at the U.S. Attorney's office."[13] Two years ago, when Mr. Burton released doctored transcripts of former Associate Attorney General Webster Hubbell's phone conversations, one Republican investigator was quoted saying, "I'm ashamed to be part of something that's so unprofessional."[14] Over the course of the investigation, the majority has gone through four chief counsels and at least three different chief investigators. One former senior Republican investigator said, "Ninety percent of the staff doesn't have a clue as to how to conduct an investigation."[15]

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[9]Testimony of FBI Director Louis Freeh, House Committee on Government Reform, *Hearings on the Current Implementation of the Independent Counsel Act*, 105th Cong., 1st Sess., 1128 (Dec. 9-10, 1997) (H. Rept. 105-89).

[10]*House Probe of Campaign Fund-Raising Uncovers Little, Piles Up Partisan Ill Will*, Los Angeles Times (May 2, 1998) (quoting Norman Ornstein, a congressional expert at the American Enterprise Institute). This article and other news stories are attached as exhibit 1.

[11]*A House Investigation Travesty*, New York Times (Apr. 12, 1997). This editorial is attached with other editorials and commentaries as exhibit 2.

[12]*Mr. Burton Should Step Aside*, Washington Post (March 20, 1997)..

[13]Letter from John P. Rowley III to Rep. Dan Burton (July 1, 1997).

[14]*Burton Tape Fiasco Pitted Panel's Pros Vs. Pols*, The Hill (May 13, 1998).

[15]*Id.*

This Committee is in no position to criticize the Attorney General -- and the majority's report reflects this fact. As will be discussed below, the report is based on unfounded allegations and improperly injects the Committee into prosecutorial decisions. The report is also highly partisan.

I. UNFOUNDED ALLEGATIONS REGARDING ATTORNEY GENERAL RENO AND THE JUSTICE DEPARTMENT

Over the last six years, the majority has made a series of false allegations of wrongdoing by the Clinton Administration. These allegations have included accusations that Deputy White House Counsel Vince Foster was murdered as part of a coverup of the Whitewater land deal; that the White House intentionally maintained an "enemies list" of sensitive FBI files; that the IRS targeted the President's enemies for tax audits; that the White House may have been involved in "selling or giving information to the Chinese in exchange for political contributions"; that the White House "altered" videotapes of White House coffees to conceal wrongdoing; that the Clinton Administration sold burial plots in Arlington National Cemetery; and that problems with the White House e-mail archiving system are "the most significant obstruction of Congressional investigations in U.S. history" and "reach much further" than Watergate.

As documented in a staff report recently released by Rep. Henry A. Waxman, these allegations have proven to be unsubstantiated.[16] According to Al Hunt of the Wall Street Journal, "the accusations have a common denominator: They are blatantly false."[17]

Attorney General Janet Reno and the Department of Justice have been frequent targets of these false allegations. Further, in its efforts to suggest wrongdoing on the part of the Justice Department, the majority has unfairly smeared numerous individuals along the way. The major allegations that have been leveled against the Department and others over the last few years and in the majority's report -- and the actual facts as established in the record before the Committee -- are described below.

C *Allegation: Attorney General Reno has been "blatantly protecting the President, the Vice President and their party from the outset of this scandal"[18] and "the record clearly shows that this Justice Department has bent over backwards to avoid investigating the*

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[16]Minority Staff Report, *Unsubstantiated Allegations of Wrongdoing Involving the Clinton Administration* (Oct. 2000) (attached as exhibit 3).

[17]*Congress Forfeits Its Role*, Wall Street Journal (Sept. 21, 2000).

[18]Press Release, House Committee on Government Reform (May 19, 2000).

President, the Vice President and other senior White House officials."[19] *It is "evident to anyone who's been closely involved in this that she's blocking for the president."*[20] *It is "hard to escape the conclusion that the Attorney General has acted politically to benefit the President, the Vice President, and her own political party."*[21]

The Facts: Mr. Burton's allegations have been repeatedly refuted by sworn statements before this Committee and other committees from, among others, FBI Director Louis Freeh and Charles La Bella, the former head of the Campaign Finance Task Force. Although Mr. Freeh and Mr. La Bella disagreed with Attorney General Reno's decision regarding appointing an independent counsel for campaign finance issues, they repeatedly affirmed their belief in the Attorney General's integrity and denied that she acted to protect the President or others or to impede their investigation.

For example, Mr. La Bella stated, "My perception is [the Attorney General] made no decisions to protect anyone."[22] He also said:

> The Attorney General and the Deputy Attorney General have fully supported the Task Force, and I have every confidence in the way they are handling the matter. They are committed to a vigorous investigation and prosecution of all campaign finance matters and have told me to pursue the evidence wherever it leads. That is what I have done and what I expect the Task Force to continue to do.[23]

According to Mr. La Bella, "when you jump to the conclusion that this is corruption, I think you're making an incredible leap."[24]

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[19]Statement of Rep. Dan Burton, House Committee on Government Reform, *Has the Department of Justice Given Preferential Treatment to the President and Vice President?*, 106th Cong., 6 (July 20, 2000) (stenographic record) (hereinafter "July 20 hearing").

[20]Rep. Dan Burton appearing on Fox, *Hannity & Colmes* (Aug. 3, 1999).

[21]House Committee on Government Reform, Majority Report entitled *Janet Reno's Stewardship of the Justice Department: A Failure to Serve the Ends of Justice*, at i (hereinafter "Majority Report").

[22]Testimony of Charles La Bella, Senate Committee on the Judiciary Subcommittee on Administrative Oversight and the Courts, *Hearing on 1996 Campaign Finance Irregularities* (May 2, 2000).

[23]Statement of Charles La Bella (May 3, 1998).

[24]Fox, *Hannity & Colmes* (March 13, 2000).

Similarly, Mr. Freeh stated:

> I have tremendous respect for our Attorney General. . . . I do not believe for one moment that any of her decisions, but particularly her decisions in this matter, have been motivated by anything other than the facts and the law which she is obligated to follow. If I thought anything differently, I would not be sitting here today as the FBI Director. I think in all of the matters that I have dealt with her, and this is over five years, you get to know a person pretty well. She has always brought honesty and integrity to the table.[25]

Mr. Freeh's and Mr. La Bella's views about the Attorney General have been echoed by other senior FBI and Justice Department officials appearing before our Committee. William J. Esposito, former Deputy FBI Director, testified, "My dealing[] with the Attorney General was quite extensive, especially in my last year in the FBI. I found her to be a person of high integrity, a person who would do the right thing."[26] He further stated that "in all matters that I've dealt with her on, she acted very even-handedly."[27] Neil Gallagher, Assistant FBI Director for Terrorism, stated, "I have the highest respect for the Attorney General. I have dealt with her on many issues, and I have no reason to question her at all."[28] And Robert Conrad, a career prosecutor who has been chief of the campaign finance task force since January 2000, told our Committee that "my experience has been that I have had a fair hearing from her on issues that I have brought before her and my expectation would be that I would have a fair hearing on any recommendations in the future."[29]

In total, the Committee heard testimony from 12 senior Justice Department lawyers and FBI officials who worked with the Attorney General on the campaign finance investigation and other matters.[30] Although several of these witnesses disagreed with the Attorney General's

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[25]Testimony of Louis J. Freeh, House Committee on Government Reform, *Hearing on The Need for an Independent Counsel in the Campaign Finance Investigation*, 105th Cong., 71 (Aug. 4, 1998) (hereinafter "Aug. 4 hearing").

[26]Testimony of William J. Esposito, House Committee on Government Reform, *The Justice Department's Implementation of the Independent Counsel Act*, 106th Cong., 73-74 (June 6, 2000) (stenographic record) (hereinafter "June 6 hearing").

[27]Testimony of William J. Esposito, June 6 hearing at 80.

[28]Testimony of Neil Gallagher, June 6 hearing at 129.

[29]Testimony of Robert J. Conrad, July 20 hearing at 55.

[30]The witnesses were FBI Director Louis Freeh; Charles La Bella, former head of the Justice Department's campaign finance task force; James DeSarno, former lead FBI agent for the campaign finance task force; Lee Radek, chief of the Justice Department's public integrity

judgment, not one witness questioned her motives or integrity.

- *Allegation: The Attorney General misapplied the independent counsel statute to protect the White House. "Janet Reno has defied the spirit and the letter of the independent counsel statute . . . Her investigation has become a sham,"*[31] *and "the Attorney General placed politics over impartial enforcement of the laws."*[32] *"Reno engaged in a creative analysis of the law in what appeared to be an effort to avoid the implementation of the Independent Counsel Act."*[33] *"The Attorney General was able to avoid the appointment of an independent counsel through a disregard of the law and a narrow view of the evidence."*[34]

The Facts: Attorney General Reno has appointed more independent counsels than any of her predecessors. Since enactment of the independent counsel statute in 1978, 20 independent counsels have been appointed. Seven of those appointments were made at the request of Attorney General Reno.[35]

Rep. Burton relies on memos written by Mr. Freeh and Mr. La Bella as evidence that the Attorney General misapplied the Independent Counsel Act. These memos recommended the appointment of an independent counsel. However, Mr. Burton dismisses and overlooks other memos provided to the Committee which recommended against the appointment of an independent counsel or which took issue with recommendations in the Freeh and La Bella

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section; William Esposito, former FBI Deputy Director; Neil Gallagher, Assistant Director for Terrorism, FBI; James K. Robinson, Assistant Attorney General; Robert Raben, Assistant Attorney General; Robert Conrad, head of the Justice Department's campaign finance task force; Alan Gershel, Deputy Assistant Attorney General; John R. Schmidt, former Associate Attorney General; and John Hogan, former Chief of Staff to Attorney General Reno.

[31]Rep. Dan Burton quoted in *Reno Rejection of Ickes Probe Dims GOP Support for Counsel Law*, Associated Press (Jan. 30, 1999).

[32]Majority Report at 62.

[33]Majority Report at 1.

[34]Majority report at 1.

[35]Those seven independent counsels were: Kenneth Starr (Whitewater, White House Travel Office, FBI files, and Monica Lewinsky); Donald Smaltz (Agriculture Secretary Mike Espy); David Barrett (HUD Secretary Henry Cisneros); Daniel Pearson (Commerce Secretary Ron Brown); Curtis von Kann (Americorps head Eli Segal); Carol Elder Bruce (Interior Secretary Bruce Babbitt); and Ralph Lancaster, Jr. (Labor Secretary Alexis Herman).

memos.[36] The record shows that the Attorney General solicited and received conflicting advice from a number of advisors.

The record also shows that the conflicting advice was rendered in good faith. Mr. Freeh and a number of senior Justice Department officials testified that there was nothing unusual in the Attorney General receiving conflicting advice in the course of the campaign finance investigation. Mr. Freeh testified, "I would hope and expect that Attorney Generals, past, present and future, always receive different, good advice. And I think the more divergent it is at times, the better it is for that Attorney General to make what he or she thinks is the best decision."[37] James Robinson, head of the Justice Department's criminal division, stated that the internal documents released to Congress demonstrated "honest good faith differences of opinion between prosecutors and investigators who are not shy about expressing their views."[38]

In these circumstances, it was the Attorney General's prerogative -- and her responsibility -- to choose which advice to follow. Not a single witness before the Committee suggested that her decision was influenced by favoritism or politics. Rather, as Mr. Robinson testified, the

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[36]*See, e.g.*, Memorandum from Public Integrity Section Chief Lee Radek to Assistant Attorney General James K. Robinson (Aug. 5, 1998) (DOJ-FLB-00130 to 00150) (attached as exhibit 4); Memorandum from Robert S. Litt to the Attorney General, the Deputy Attorney General, and James K. Robinson, Assistant Attorney General (July 20, 1998) (DOJ-3149 to 3153) (attached as exhibit 5).

[37]Testimony of Louis J. Freeh, Aug. 4 hearing at 93.

[38]Testimony of James Robinson, July 20 hearing at 65. *See also* Testimony of Deputy Assistant Attorney General Alan Gershel, July 20 hearing at 66-67 (noting that "it's certainly very common for prosecutors to engage in good faith discussions, disagreements, debates on the application of the law, the application of the facts, the appropriate way to charge or not charge a case. So it does not strike me as unusual at all"); Testimony of Lee Radek, Public Integrity Section Chief of the Department of Justice, Senate Committee on the Judiciary Subcommittee on Administrative Oversight and the Courts, *Hearing on Attorney General's Decisions Regarding Campaign Finance Investigations*, 106th Cong (May 24, 2000) (page numbers not available) (hereinafter "May 24 hearing") (stating that "[i]nternal disagreements among Department of Justice officials about various aspects of the Independent Counsel Act date back to its passage over twenty years ago. What is new is the determination of some to delve into those confidential discussions and disagreements that were intended as an honest and frank exchange of views between the attorney general and her various advisors"); Testimony of Lee Radek, June 6 hearing at 31-32 (noting that the style of the Attorney General "has been to seek out the views of a variety of advisors, listen carefully to each of us, consider our arguments, ask her own questions, and then reach her own decisions" and that "[a]ny group of lawyers grappling with complex legal and factual issues are bound to have disagreements, and the issues we faced were both complex and difficult").

record indicates that the Attorney General made a "good faith effort to reach absolutely the correct view from her vantage point as the decision maker under the Independent Counsel Act."[39]

- *Allegation: Attorney General Janet Reno "changed her interpretation of the Independent Counsel Act" to "set the bar for appointing an independent counsel even higher for the campaign finance investigation than previous investigations."[40] The Attorney General has stated that the discretionary clause of the independent counsel statute requires that she must conclude there is potential for an actual conflict of interest, rather than merely an appearance of a conflict of interest, when she invokes this clause. Yet in "at least four" earlier investigations, she referred matters to an independent counsel under the discretionary clause and applied a standard of "apparent conflict."[41]*

The Facts: The majority is engaging in pure speculation regarding whether the Attorney General based earlier independent counsel referrals on an "apparent conflict" standard in the discretionary clause of the Independent Counsel Act. The referral documents in which the Attorney General described her rationale for these earlier decisions do not support the majority's interpretation.

For example, one of the four examples cited by the majority as an earlier "discretionary clause" referral is the matter involving former Assistant to the President for Management and Administration David Watkins. According to the majority report, this referral was made under the Act's "discretionary provision," as "David Watkins did not satisfy any of the requirements for the mandatory provision of the Act."[42] In fact, the specific reason the Attorney General cited for recommending an independent counsel on this matter was that Mr. Watkins did fall under the Act's mandatory provision.[43] The Act's discretionary clause was not invoked in the Watkins

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[39]Testimony of James Robinson, July 20 hearing at 65.

[40]Majority Report at 13-16.

[41]Majority Report at 14-16.

[42]Majority Report at 15-16.

[43]Notification to the Court Pursuant to 28 U.S.C. §592(a)(1) of the Initiation of a Preliminary Investigation and Application to the Court Pursuant to 28 U.S.C. §593(c)(1) for Expansion of the Jurisdiction of an Independent Counsel, *In Re William David Watkins* (D.C. Cir., March 20, 1996). The Independent Counsel Act (which expired in 1999) specified a list of "covered persons" who automatically fall under the Act's mandatory provision. 28 U.S.C. §591(a) & (b). In her filing with the court regarding the Watkins investigation, the Attorney General stated, "I have concluded that Watkins is a covered person under the Independent Counsel Act." *In Re William David Watkins*, at 2 (emphasis added). In the filing, the Attorney General reasoned that the Act:

referral.

Another of the four examples cited by the majority was a referral involving former White House detailee Anthony Marceca.[44] Mr. Marceca's referral concerned allegations that the White House had improperly obtained files from the FBI. According to the majority, the "conflict" at issue in the Marceca referral was based on Mr. Marceca's "relationship with President Clinton or the White House generally."[45] This characterization, however, is inconsistent with the rationale set forth in the Marceca referral. The referral states that an investigation by the Department of Justice would constitute a political conflict of interest "because it necessarily will involve an inquiry into dealings between the White House and the FBI."[46]

Further, with respect to the three referrals cited by the majority which did invoke the discretionary clause, there is simply no discussion of an "apparent conflict" standard anywhere in the referral documents. In these documents, the Attorney General cites "political conflict of interest" as the basis for the decision to refer, and does not discuss whether she perceived an "apparent" as opposed to an "actual" conflict.[47]

> includes as a covered person, for the entire duration of the incumbency of the President: "the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of that committee exercising authority at the national level." Watkins was the Vice President and Secretary of the Clinton/Gore 1992 Campaign Committee, and functioned as the Deputy Campaign Manager for Operations. On the basis of an investigation into Watkins' role on the campaign, I am satisfied that Watkins meets the criteria set out by the statute.

Id.

[44]Majority Report at 16.

[45]*Id.*

[46]Notification to the Court Pursuant to 28 U.S.C. §592(a)(1) of the Initiation of a Preliminary Investigation and Application to the Court Pursuant to 28 U.S.C. §593(c)(1) for the Expansion of the Jurisdiction of an Independent Counsel, *In Re Anthony Marceca*, 3 (D.C. Cir. June 21, 1996).

[47]Notification to the Court Pursuant to 28 U.S.C. §592(a)(1) of the Initiation of a Preliminary Investigation and Application to the Court Pursuant to 28 U.S.C. §593(c)(1) for the Expansion of the Jurisdiction of an Independent Counsel, *In Re Bernard Nussbaum*, 3 (D.C. Cir. Oct. 24, 1996); *Application to the Court Pursuant to 28 U.S.C. §592(c)(1) for the Appointment of an Independent Counsel In Re Madison Guaranty Savings & Loan Association*, 3-4 (D.C. Cir. July 1, 1994); *In Re Anthony Marceca, supra* note 45, at 3.

- *Allegation: In explaining her view that the Independent Counsel Act's discretionary clause requires a finding of potential for an <u>actual</u> conflict of interest instead of merely an <u>appearance</u> of a conflict, the Attorney General "neglected to mention the report language supporting the idea of an apparent conflict of interest."*[48] *"[T]he Senate Report accompanying the 1982 Amendments to the Act stated '[t]he Committee recognizes that there may be instances when investigations by the Attorney General of persons not covered by the Act may create an actual or <u>apparent</u> conflict of interest.'"*[49] *The Attorney General "ha[s] a problem with her interpretation of the Act's legislative history."*[50]

The Facts: The majority's reference to the Senate report is misleading. The report language cited by the majority concerned the discretionary clause provision in the Senate-passed version of the 1982 Amendments to the Independent Counsel Act. The discretionary clause language in the Senate-passed bill authorized appointment of an independent counsel based on an "appearance" of a conflict of interest. That language, however, was deleted before Congress enacted the 1982 Amendments into law. In fact, the floor manager of this bill, Rep. Sam Hall, specifically noted:

> The Senate-passed bill provides that the Attorney General may apply for the appointment of a special prosecutor to investigate persons other than the class of individuals specifically covered whenever the Attorney General determines a personal, financial, or political conflict of interest or the appearance thereof may result if an officer of the Department of Justice conducts the investigation. <u>The bill as amended deletes the reference to appearances, and thereby requires the Attorney General to determine that an actual conflict may exist in order to utilize the special prosecutor procedures</u>.[51]

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[48]Majority Report at 14-15.

[49]*Id.* at 15.

[50]*Id.*

[51]Congressional Record, H9507 (Dec. 13, 1982) (emphasis added). The majority also faults the Attorney General for citing "negative legislative history" by drawing inferences regarding congressional intent from the fact that Congress rejected language. The majority is apparently concerned that in 1997 testimony, the Attorney General noted that Congress in 1994 decided to reject a proposal for a more flexible standard for invoking the discretionary clause. Majority Report at 14-15. This criticism ignores the fact that the Attorney General does not rely purely on "negative legislative history" in discussing her interpretation of the Act's discretionary clause. For example, as the majority report acknowledges in a footnote, the Attorney General also relies on the floor statement of Rep. Hall that explicitly described why Congress deleted the "appearance" language from the discretionary clause. *E.g.*, Letter from Attorney General Janet Reno to Senator Orrin G. Hatch, 3 (Apr. 14, 1997) (DOJ-02046 to 02055) (attached as exhibit 6).

- *Allegation: The Attorney General intentionally misled the Committee about Waco by withholding evidence on the use of "military rounds" of tear gas during the siege of the Branch Davidian compound in Waco, Texas. The basis of this allegation was that the Justice Department purportedly didn't produce the 49th page of a memo that was, according to Mr. Burton, "the very definitive piece of paper that could have given us some information."*[52] *Referring to allegations that the Justice Department had withheld Waco-related information from Congress, Rep. Burton also stated that the Attorney General "should be summarily removed, either because she's incompetent, number one, or, number two, she's blocking for the President and covering things up, which is what I believe."*[53]

The Facts: At the time Mr. Burton made these statements, evidence produced by the Justice Department regarding the use of "military rounds" of tear gas was <u>in his own files</u> -- and had been since 1995. The Office of Special Counsel John Danforth investigated this issue, and concluded:

> [W]hile one copy of the report did not contain the 49th page, the Committees [the House Government Reform and Oversight Committee and the House Judiciary Committee] were provided with at least two copies of the lab report in 1995 which did contain the 49th page. The Office of Special Counsel easily located these complete copies of the lab report at the Committees' offices when it reviewed the Committees' copy of the 1995 Department of Justice production. The Department of Justice document production to the Committees also included several other documents that referred to the use of the military tear gas rounds, including the criminal team's witness summary chart and interview notes.[54]

- *Allegation: The Attorney General has "a double standard for Republicans and Democrats," and "Republicans who break the law get the book thrown at them, Democrats who break the law get off with a slap on the wrist."*[55] *"[A]s far as the equal application of justice, it doesn't appear to me that there has been an equal application of*

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[52]Fox News, *Fox News Sunday* (Sept. 12, 1999).

[53]*Morning Edition*, National Public Radio (Aug. 31, 1999).

[54]John C. Danforth, Special Counsel, *Interim Report to the Deputy Attorney General Concerning the 1993 Confrontation at the Mt. Carmel Complex, Waco, Texas*, 54 (July 21, 2000).

[55]Press Release, House Committee on Government Reform (Nov. 1, 1999).

justice by this Justice Department."[56] *"When Democrats do get convicted, they get very light sentences. When Republicans get convicted of the same conduct, they're given massive fines."*[57] *The Attorney General's conduct reflects "uneven enforcement of the law."*[58]

The Facts: The majority's statements ignore the fact that Democrats have received harsh fines for campaign finance offenses. For example, in December 1998, Future Tech International Inc. and its chief financial officer, Juan Ortiz, were fined $1 million for reimbursing employees for their campaign contributions to Democratic campaigns. In February, the Federal Election Commission also imposed a $209,000 civil penalty -- the fourth largest in FEC history -- on Future Tech and several company officials.

In addition to receiving fines, Democrats have also served actual jail time for their offenses, unlike their Republican counterparts:

- In December 1999, Yogesh Gandhi was sentenced to one year in prison and ordered to pay more than $237,000 in back taxes to the IRS for tax evasion, mail fraud, and helping to make an illegal $325,000 campaign contribution to the Democratic National Committee.

- In September 1997, Democratic party fund-raisers Gene and Nora Lum were sentenced to 10 months in custody, half in a community confinement center, the other half in home detention. Each also received $30,000 in fines and two years of probation for arranging about $50,000 in illegal contributions in 1994 and 1995.

- In 1996, Jack Webb and Jeffress Wells, two former officials of the U.S. Department of Agriculture, were sentenced to 30 days in jail, two years of supervised probation, and 120 hours of community service and given a $2,500 fine for conspiring to raise contributions for a PAC from coworkers and subordinates. Mr. Wells and Mr. Webb were both active Democrats, the persons solicited were Democrats, and the PAC supported the Clinton campaign.

Rep. Burton's allegation of favoritism also conveniently overlooks the fact that Attorney

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[56]Statement of Rep. Dan Burton, House Committee on Government Reform, *Hearing on the Role of John Huang and the Riady Family in Political Fundraising*, 106th Cong. (Dec. 15, 1999).

[57]Statement of Rep. Dan Burton, House Committee on Government Reform, *Hearing on the Role Of Yah Lin 'Charlie' Trie in Illegal Political Fundraising*, 106th Cong. (March 1, 2000).

[58]Majority Report at 109.

General Reno has not initiated prosecutions against prominent Republicans involved in alleged campaign finance violations. For example, no action has been taken against former Republican National Committee Chairman Haley Barbour, who formed the National Policy Forum (NPF) and was alleged to have solicited and secured a $2.1 million loan from a foreign national for the NPF which he funneled into the RNC. According to Charles La Bella, the former head of the campaign finance task force:

> 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 one $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.[59]

Similarly, no action has been taken against Republican Majority Whip Tom DeLay, despite specific and credible evidence that Mr. DeLay and a Republican congressional candidate, Brian Babin, knowingly participated in a scheme to funnel illegal contributions to Mr. Babin's campaign.[60] The evidence relating to Mr. DeLay includes a sworn affidavit from Texan businessman and Republican donor Peter Cloeren stating that Mr. DeLay instructed him to funnel money illegally to Mr. Babin's campaign.[61]

The validity of Mr. Burton's allegation can be tested by comparing the treatment received by two former members of Congress who committed campaign finance violations, former Republican Rep. Jay Kim and former Democratic Rep. Mary Rose Oakar. Rep. Kim knowingly accepted $230,000 in illegal contributions -- over 14 times the amount of money that Rep. Oakar conspired to contribute illegally ($16,000). But Rep. Kim received a comparable sentence to Rep. Oakar.[62]

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[59]Interim Report from Charles La Bella and James DeSarno for Attorney General Janet Reno and FBI Director Louis J. Freeh, 83 (July 16, 1998) (DOJ-FLB-00030 to 00127).

[60]House Committee on Government Reform and Oversight, *Investigation of Political Fundraising Improprieties and Possible Violations of Law*, 105th Cong., 2d Sess., v. 4, at 4020-24 (Nov. 5, 1998) (H. Rept. 105-829).

[61]Affidavit of Peter F. Cloeren, House Committee on Government Reform and Oversight (Aug. 6, 1998).

[62]In March 1998, Rep. Kim was sentenced to two months home confinement under electronic monitoring, one year of probation, and 200 hours of community service, and received a $5,000 fine. According to prosecutors, his case represented "the largest amount of criminal campaign finance violations ever committed by a member of Congress." *Former Rep. Kim*,

- *Allegation: The Attorney General delayed releasing the Freeh and La Bella memos in order to protect herself from public embarrassment. "By withholding the memos from this Committee, you tried to keep the Committee from learning how you had mishandled the investigation."*[63] *Furthermore, "when the Justice Department finally turned the documents over to the Committee, it was clear that the Justice Department's objections had been utterly false and baseless."*[64]

The Facts: The Attorney General's reluctance to produce the Freeh and La Bella memos was consistent with the longstanding departmental policy against releasing internal memoranda concerning ongoing investigations to Congress.[65] Both Mr. Freeh and Mr. La Bella stated on numerous occasions that public release of their memoranda would jeopardize the task force's investigations and have a "chilling effect" on pending prosecutions.

For example, Attorney General Reno and Director Freeh warned in a December 8, 1997, letter to Rep. Burton that release of the Freeh memo would provide a "road map" of their investigation.[66] In his testimony before the Committee on August 4, 1998, Director Freeh was asked whether he thought Congress should receive his memorandum. Director Freeh replied that "I certainly believe it not prudent to receive it at this point."[67] Mr. La Bella stated at the same hearing:

> The last thing in the world that I want to see as the prosecutor heading this Task Force is that this memo ever get disclosed. . . . I don't think it should ever see the light of day, because this, in my judgment, would be devastating to the investigations that the men and women of the Task Force are working on right now and that I have put my blood, sweat and tears into, and I don't want to see that jeopardized."[68]

Convicted in 1997, May Run Again, Los Angeles Times (Dec. 4, 1999). Rep. Oakar received a sentence of two years' probation and 200 hours of community service, and a $32,000 fine.

[63]Letter from Rep. Dan Burton to Attorney General Janet Reno (March 10, 2000).

[64]Majority Report at 128.

[65]*E.g.*, Charles J. Cooper, *Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, 10 Op. O.L.C. (Apr. 28, 1986); *see also* House Committee on Government Reform and Oversight, *Contempt of Congress*, 105th Cong., 2d. Sess., Minority Views at 123-25 (Sept. 17, 1998) (H. Rept. 105-728).

[66]Letter from Attorney General Janet Reno and FBI Director Louis J. Freeh to Rep. Dan Burton (Dec. 8, 1997).

[67]Testimony of Louis J. Freeh, Aug. 4 hearing at 110.

[68]Testimony of Charles La Bella, Aug. 4 hearing at 110.

Despite these well-founded reservations, the Attorney General made significant efforts to accommodate the Committee. In early 1998, the Justice Department provided a briefing to the Chairman, Ranking Member, and certain staff of the Committee on redacted portions of the Freeh memorandum.[69] In late 1998, the Justice Department provided a briefing to the Chairman, Ranking Member, and certain staff of the Committee on redacted versions of the Freeh and La Bella memoranda, and permitted review of these documents. And in May 2000, after the Department's successful prosecution of individuals mentioned in the memoranda, the Justice Department provided the documents in minimally redacted form to the Committee.[70]

- *Allegation: "[W]e have a piece of evidence from the Director of the FBI that makes it abundantly clear that we have been right all along. Janet Reno and Lee Radek have been blatantly protecting the President, the Vice President and their party from the outset of this scandal."*[71] *"Justice Department officials believed that a key supervisor of the campaign finance investigation thought that the Attorney General's political future hinged on her decisions regarding her political superiors."*[72]

The Facts: The majority's evidence is a December 9, 1996, memo from FBI Director Freeh to former Deputy FBI Director Esposito, which stated:

> I also advised the Attorney General of Lee Radek's comment to you that there was a lot of "pressure" on him and [the Public Integrity Section] regarding this case because the "Attorney General's job might hang in the balance" (or words to that effect). I stated that those comments would be enough for me to take him and the Criminal Division off the case completely.[73]

The meaning of Mr. Radek's alleged comment is unclear. The testimony before this Committee and a Senate Judiciary subcommittee suggests that the two people who heard Mr.

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[69]*See* Letter from Rep. Henry Waxman to Attorney General Janet Reno and FBI Director Louis J. Freeh (Dec. 19, 1997).

[70]Mr. La Bella apparently concurred in the Attorney General's decision in May 2000 to release the minimally redacted memoranda to Congress. In December 1999, he stated, "I would think now that the investigations are all concluded, there's a lot -- a good portion of the memo that could be made public I think without risk to anybody or anything." Fox, *Hannity and Colmes* (Dec. 29, 1999).

[71]Press Release, House Committee on Government Reform (May 19, 2000).

[72]Majority Report at v.

[73]Memorandum from FBI Director Louis J. Freeh to Deputy FBI Director William J. Esposito (Dec. 9, 1996).

Radek's alleged comment interpreted the comment differently. Mr. Esposito testified that he considered the remark to be "totally inappropriate,"[74] and he evidently communicated his belief to Mr. Freeh. But Neil Gallagher, Assistant FBI Director for Terrorism, testified that he "did not put any great significance" on the statement,[75] and that "the implication that I took was that Lee Radek was making a statement of how sensitive and tough this investigation was going to be that we were about ready to enter."[76]

Mr. Radek is a 29-year career prosecutor who began working for the Justice Department in the Nixon administration and who has never been involved in Democratic party politics.[77] He testified that while he has no recollection of the alleged conversation with Mr. Esposito, he "would undoubtedly, in conversations with Mr. Esposito, talk about pressure on the Public Integrity Section at frequent occasions, whenever he and I would talk" but that "[i]t was pressure to do the job and do it right."[78] Asked what pressure he got from the Attorney General, Mr. Radek responded that "I got pressure to do a good job and to do it well."[79] As for the Attorney General herself, Mr. Radek said that he was "aware of no pressure being put on her."[80]

C *Allegation: The Vice President "apparently suggested that the DNC issue ads be shown to James Riady."[81] The Justice Department failed to review an incriminating tape of a December 1995 White House coffee which is "evidence that the Vice President knew that those [DNC issue] ads were being paid for by foreign money. That is evidence that the President knew that there was a connection between those ads and Mr. Riady."[82] "I don't think the Justice Department has even looked into this. In five interviews with the Vice President, they didn't ask him a single question about it. I don't think they have even asked to see the original tape."[83]*

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[74]Testimony of William J. Esposito, June 6 hearing at 119.

[75]Testimony of Neil Gallagher, June 6 hearing at 126.

[76]Testimony of Neil Gallagher, June 6 hearing at 125.

[77]Testimony of Lee Radek, May 24 hearing.

[78]Testimony of Lee Radek, May 24 hearing.

[79]Testimony of Lee Radek, May 24 hearing.

[80]Testimony of Lee Radek, May 24 hearing.

[81]Majority Report at 65.

[82]Statement of Rep. Bob Barr, July 20 hearing at 100.

[83]Statement of Rep. Dan Burton, July 20 hearing at 10.

The Facts: The videotape in question is of a December 15, 1995, White House coffee attended by Arief Wiriadinata, the son-in-law of Hashim Ning, a business associate of Lippo founder Mochtar Riady. James Riady, Mochtar's son, is suspected of making conduit campaign contributions in the 1992 and 1994 election cycles. According to Rep. Burton's description of the videotape:

> Mr. Wiriadinata moves away from the camera and you hear a voice in the background. It sounds very much like the Vice President. It sounds like he is saying, "We oughta, we oughta, we oughta show Mr. Riady the tapes, some of the ad tapes."[84]

According to neutral observers, however, the tape is virtually unintelligible. A *Reuters* reporter describing the playing of the videotape at the Committee's hearing wrote, "Gore's muffled words were not clear."[85] When the tape was played on a Fox TV show, the person in charge of transcribing the show was also unable to make it out. The transcript for the show reads: "We ought to, we ought to show that to [unintelligible] here, let [unintelligible] tapes, some of the ad tapes [unintelligible]."[86]

Furthermore, as the majority is aware, the tape in question was provided to the Justice Department in October 1997.[87] Thus, it is entirely possible that the Department reviewed the tape three years ago and came to the same conclusion as other unbiased observers -- namely, that the tape is unintelligible.[88]

- *Allegation: The Justice Department is "more interested in defending the White House in*

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[84]Statement of Rep. Dan Burton, July 20 hearing at 9.

[85]*Justice Department Won't Discuss Gore Video*, Reuters (July 21, 2000).

[86]Fox, *Hannity and Colmes* (July 19, 2000).

[87]Letter from Counsel to the President Beth Nolan to Chief Counsel James C. Wilson (Sept. 23, 2000) (noting that "in a recent conversation with Lisa Klem of my office you indicated that you knew the Department of Justice had the videotape in October 1997").

[88]The majority also asserts, "The Vice President himself admitted that it was his voice, but deflected questions by saying it was a political attack using news that had been available for years." Majority Report at 71 (citing *Congressman Focuses on Gore Videotape Comment*, Associated Press (July 19, 2000)). However, the news article the majority cites for this assertion says nothing about the Vice President's reaction to, or comments about, the videotape -- nor do any of the other articles cited by the majority.

the e-mail matter than investigating it"[89] *and "it has become known that the one part time lawyer handling the e-mail investigation for the Department has recently left government employment."*[90] *The Department has given the White House "preferential treatment" by failing to investigate whether the e-mail matter involves "obstruction of Congressional investigations of the campaign finance scandal."*[91]

The Facts: The Department's e-mail investigation is being carried out in coordination with Independent Counsel Robert Ray.[92] There is no reason to believe that Mr. Ray and the Justice Department are not pursuing an appropriate investigation.

The report offers no evidence to support its allegation that the Department has relied on one part-time lawyer to handle the e-mail investigation.[93] Asked about this allegation, Attorney General Reno and Deputy Assistant Attorney General Alan Gershel each made clear that they were unable to respond, due to the Department's longstanding policy of not disclosing staffing levels for ongoing investigations.[94] However, the Attorney General assured the Committee that

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[89]Majority Report at vii.

[90]Majority Report at vii.

[91]Majority Report at vii-viii.

[92]Testimony of Alan Gershel, House Committee on Government Reform, *Hearing on Contacts Between Northrop Grumman Corporation and the White House Regarding Missing White House E-Mails*, 35 (Sept. 26, 2000) (stenographic record) (hereinafter "Sept. 26 hearing"). Mr. Gershel assured the Committee that the Department had not impeded or limited the scope of Mr. Ray's investigation, and the Committee has received no information to question this assurance. Sept. 26 hearing at 48.

[93]The majority has repeated this accusation with increasing conviction, despite being unable to cite any evidence to support it. Mr. Burton said in a hearing on September 26 that "We have heard from -- heard the task force was using just one part-time lawyer." Statement of Rep. Dan Burton, Sept. 26 hearing at 41 (emphasis added). In their e-mail report, released shortly thereafter, the majority asserted, "It appears that for at least part of its e-mail investigation, the Justice Department had only one part-time lawyer assigned to its e-mail investigation." House Committee on Government Reform, *The Failure to Produce White House E-Mails: Threats, Obstruction and Unanswered Questions*, 106th Cong., 141 (2000) (stenographic record) (emphasis added). Now, the majority asserts simply that "it has become known that the one part time lawyer handling the e-mail investigation for the Department has recently left government employment." Majority Report at vii (emphasis added).

[94]Transcript of Interview of Attorney General Janet Reno, House Committee on Government Reform, 4 (Oct. 5, 2000) (hereinafter "Attorney General Reno interview");

"there are sufficient resources committed to it based on the recommendations of the prosecutors involved."[95] Similarly, Mr. Gershel observed:

> the Attorney General regularly consults with Robert Conrad, the chief of the campaign financing task force, and me to ensure that the task force has the resources it needs. Bob and I both believe that the task force currently has sufficient staff to handle the White House e-mail matter as well as its other responsibilities.[96]

Mr. Gershel also pointed out that "with respect to the White House e-mail matter the [Department's] task force and the office of the independent counsel are working together in a coordinated investigation. So it is not just the task force's resources that are involved."[97]

Testimony of Alan Gershel, Sept. 26 hearing at 34-35.

[95]Attorney General Reno interview at 9.

[96]Testimony of Alan Gershel, Sept. 26 hearing at 35.

[97]Testimony of Alan Gershel, Sept. 26 hearing at 35. The majority also asserts that the Department has given the White House "preferential treatment" by failing to investigate whether the e-mail matter involves "obstruction of Congressional investigations of the campaign finance scandal." Majority Report at vii. In support of this assertion, the majority claims that "[i]n an October 5, 2000, interview with the Committee, Attorney General Reno made it clear that she would not take proactive steps to determine whether the White House had obstructed Congressional investigations by failing to take steps to produce subpoenaed e-mail records." Majority Report at viii.

This assertion is without merit. The interview with the Attorney General included the following exchange:

> Majority Counsel: . . . is the Department of Justice doing an investigation of any sort of matters that go to Congressional investigations?
>
> Attorney General Reno: I will be happy to check and see what I can provide you based on what might be known or any complaint that you have made of obstruction. But I don't know the full range of your investigations, so I can't tell you.

Attorney General Reno interview at 25.

Moreover, in the course of the interview, majority counsel conceded that the Department had asked the majority months ago which congressional subpoenas may not have been complied with -- and the majority declined to cooperate with this request:

- *Allegation: In July 1999 testimony before the House Rules Committee, Rep. Burton claimed that the Government Reform Committee had received information indicating that the Attorney General "personally" changed a policy related to release of information by the Justice Department so that an attorney she knew "could help her client."*[98]

The Facts: Mr. Burton's allegations concerned a decision by the Justice Department to confirm the lack of existence of records in response to a FOIA request by a Miami attorney, Rebekah Poston. This decision to confirm the lack of records was legal,[99] and it was damaging to Ms. Poston's client.[100] The records produced to the Committee and testimony by the relevant

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> Majority Counsel: Mr. Gershel a number of months ago called me directly and said he wanted to interview me specifically to try and determine whether Congressional subpoenas had not been complied with or whether there was obstruction of a Congressional investigation. I said to him at the time I would be happy to comply with his request for an interview pending consultation with my superiors, but first we had the outstanding question of whether there was a special counsel to be appointed. And I indicated that it would perhaps be counterproductive if I did an interview with him when, as Mr. Raben had indicated -- actually had not yet indicated, but as indicated by you, there was an ongoing determination as to whether a special counsel would be appointed.

Attorney General Reno interview at 32.

[98]Testimony of Chairman Dan Burton, House Rules Committee (July 15, 1999) (available at www.house.gov/reform/oversight/99_07_15db-rules.htm).

[99]Testimony of Richard Huff, House Government Reform Committee, *Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department*, 150 (July 27, 2000) (stenographic record) (hereinafter "July 27 hearing").

[100]Ms. Poston was seeking information for a client, a member of an international religious organization known as Soka Gakkai. Ms. Poston's client had been sued in a Japanese court for libel by a Japanese citizen named Nobuo Abe. The alleged statements at the heart of this lawsuit related to whether Mr. Abe had been arrested or detained in Seattle in 1963. Mr. Abe maintained that he had never been detained and that statements to the contrary made by Ms. Poston's client were defamatory. Ms. Poston's FOIA requests sought records that would have established that her client's statements were true and that Mr. Abe had, in fact, been arrested or detained. *E.g.,* Letter from Russell J. Bruemmer and Patrick J. Carome of Wilmer, Cutler & Pickering, to Richard L. Huff (March 31, 1995) (DOJ–02812 to 02817). The Justice Department's confirmation that no such records existed was adverse to the interests of Ms. Poston's client.

individuals showed that the Attorney General had recused herself from the decision.[101]

- *Allegation: There was an "apparently illegal conduit contribution scheme by the Democratic National Committee to funnel more than a third of a million dollars to the Kansas Democratic Party."*[102] *"The Justice Department failed to pursue the Kansas conduit contribution scheme."*[103]

The Facts: In 1996, Democratic party national committees contributed to Kansas state candidates and county committees, and to Democratic party committees in other states. Some of these candidates, county committees, and state party committees subsequently contributed to the

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[101]Memorandum from Attorney General Janet Reno to Staff of the Attorney General (Apr. 28, 1995) (attached as exhibit 7); House Committee on Government Reform, *Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department,* 154 (July 27, 2000) (stenographic record). The majority also alleges that Ms. Poston took "illegal actions" and that she "Request[ed] Her Private Investigators to Break the Law." Majority Report at 163, 168. The majority's allegation appears to be based on the premise that Ms. Poston inappropriately directed her private investigators to access a restricted FBI database. In testimony under oath before this Committee, however, Ms. Poston denied asking private investigators to break the law. House Committee on Government Reform, *Felonies and Favors: A Friend of the Attorney General Gathers Information from the Justice Department,* 63 (July 27, 2000) (stenographic record). Richard Lucas, the investigator who received instructions from Ms. Poston on what she wanted investigated, also testified that she did not ask him to access restricted information. *Id.* at 50, 55-56, 66-67. In fact, contrary to the majority's allegation, no evidence received by the Committee demonstrates that Ms. Poston instructed private investigators to break the law.

In its discussion of the Poston matter, the majority report also states that according to Mr. Lucas, Barry Langberg, an attorney for Soka Gakkai, hired Jack Palladino, a private investigator, to look into the issue of whether Mr. Abe was arrested in 1963. The majority report alleges that it is possible that through their actions on this matter, Mr. Palladino and Mr. Langberg "broke the law." Majority Report at 162. The Committee, however, never interviewed Mr. Palladino or Mr. Langberg. On October 31, 2000, Mr. Langberg wrote the Committee to address allegations in the majority report that relate to him. According to Mr. Langberg, the majority's account "contains numerous demonstrable factual errors, and recklessly accuses private individuals of criminal wrongdoing without any pretense of due process or any substantive evidence." He also stated that he has "no personal involvement with the activity criticized in the report." Letter from Barry B. Langberg to Rep. Dan Burton and Rep. Henry Waxman (Oct. 31, 2000) (attached as exhibit 8).

[102]Majority Report at 108.

[103]*Id.*

Kansas Democratic Party.[104] Media accounts reported concerns that these actions may have constituted illegal circumvention of a Kansas law that caps contributions by national party committees to state party committees and prohibits making contributions in the name of another.[105]

In 1997, state representative Henry Helgerson wrote the bipartisan Kansas Commission on Governmental Standards and Conduct asking for clarification of the Kansas law.[106] The Commission issued an opinion on this matter on September 11, 1997.[107] Under the Commission's opinion, national party committees could contribute to a Kansas state candidate, Kansas county committee, or other state party, and that candidate, county committee, or state party could subsequently contribute to a Kansas state party committee without violating the Kansas statute. A violation would occur only if the national party committees had an understanding with the entity to which they made the contribution that the money was to be contributed to the state party committee.[108]

In February 1998, the Committee deposed a total of five individuals on this matter, four of whom were Kansas Democratic state legislative candidates in 1996 and one of whom was a Kansas Democratic party official in 1996. All of these individuals received contributions from national Democratic party committees in 1996.[109] All of these individuals also testified that they

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[104]*E.g.*, Deposition of Jim Lawing, House Committee on Government Reform and Oversight, 22-29 (Feb. 18, 1998).

[105]*E.g. Local Demos Say They Felt Need to Repay State Party: Legality of Transfers Questioned*, Winfield Daily Courier (Oct. 9, 1997). The state law provisions at issue are Kan. Stat. Ann. §25-4153 (1996) and Kan. Stat. Ann. §25-4154 (1996).

[106]Letter from Henry Helgerson to Carol Williams (Sept. 3, 1997) (attached as exhibit 9). The Commission is charged with administering, interpreting and enforcing the Kansas Campaign Finance Act and laws relating to conflict of interests, financial disclosure and the regulation of lobbying. *See* the Home Page of the Commission at www.state.ks.us/public/gsc/.

[107]Kansas Commission on Governmental Standards and Conduct, Opinion No. 1997-45 (Sept. 11, 1997) (attached as exhibit 10).

[108]*See id.* (stating that there is no violation of the Kansas statute if "A" gives money to "B" and "B" then contributes the money to "C," "so long as there was not an understanding between 'A' and 'B' that the money was to be contributed to 'C'").

[109]Deposition of Henry Helgerson, House Committee on Government Reform and Oversight, 16 (Feb. 19, 1998); Deposition of Jim Lawing, House Committee on Government Reform and Oversight, 12-13, 22-23 (Feb. 18, 1998) (testifying that he received a contribution in from the Democratic Congressional Campaign Committee in his capacity as chairman of the

did not have any understanding with the national committees from which they received contributions that they would contribute that money to the state party.[110]

According to testimony of individuals in Committee depositions, the Kansas Commission on Governmental Standards and Conduct also investigated the contributions at issue.[111] While the Commission is prohibited by law from commenting on whether an investigation has been instigated or is ongoing,[112] evidence indicates that the Commission has found no wrongdoing regarding this matter. Under Kansas law, the Commission must hold a hearing if, after investigating, the Commission finds that "probable cause exists for believing the allegations of the complaint," and this hearing must be held no more than 30 days after the finding is made.[113]

Sedgwick County Democratic Central Committee); Deposition of Marge Petty, House Committee on Government Reform and Oversight, 14-18 (Feb. 24, 1998); Deposition of Jerald Karr, House Committee on Government Reform and Oversight, 16-17 (Feb. 23, 1998); Deposition of Douglas Walker, House Committee on Government Reform and Oversight, 26-29 (Feb. 23, 1998).

[110]Deposition of Henry Helgerson at 57-58; Deposition of Jim Lawing at 41-42; Deposition of Marge Petty at 14-15, 34-35; Deposition of Jerald Karr at 30, 46; Deposition of Douglas Walker at 26-27, 40. The majority report emphasizes a September 3, 1996, memo from Tressie Hurley to Kansas State Senate candidate Donald Biggs which notes that the Democratic Senatorial Campaign Committee will contribute $1,000 to Senate campaigns and states, "You may keep $200 but then must turn around and contribute $800 to the Senate Victory Fund." Majority Report at 110. According to deposition testimony, however, at the time of this memo, Ms. Hurley was a junior staffer in the office of State Senate Minority Leader Jerald Karr. She was not an employee of any national Democratic party organization or otherwise in a position to act as an agent of such an orgainzation. Deposition of Jerald Karr at 36, 47. The Hurley memo does not therefore demonstrate an agreement between the national Democratic party and Mr. Biggs regarding the national party's contribution to him. Further, the Committee never deposed either Ms. Hurley or Mr. Biggs to explore the significance of the memo.

[111]*See, e.g.*, Deposition of Jim Lawing at 47-48 (stating that he had given a statement and had provided documents to the Commission on the subject of the funds received from the national Democratic Party); Deposition of Douglas Walker at 46 (stating that the Kansas Commission had spoken with him about a lot of the same subjects covered in the Committee's deposition of him).

[112]Kan. Stat. Ann. § 25-4161 (1999).

[113]*Id.*

No such hearing has ever been held on the allegations,[114] which date back to close to four years ago. According to the Commission's executive director, the Commission deals with allegations in as timely a manner as possible, and four years from the time allegations were first made is outside of the realm of timeliness.[115]

II. THE MAJORITY HAS IMPROPERLY SOUGHT TO INJECT POLITICS INTO PROSECUTORIAL DECISIONS

Beyond making unsubstantiated allegations, Mr. Burton has repeatedly sought to interject the Committee into prosecutorial decisions by the Justice Department. These efforts have conflicted with historical practices grounded in the principle of separation of powers. As former Attorney General Ramsey Clark stated:

> If Constitutional separation of powers, integrity and effectiveness in the execution of the laws and the individual rights of witnesses . . . are to be protected, Congress must let the Attorney General perform the duties of that office without demanding investigative materials, or staff recommendations in an ongoing investigation.[116]

A. The Majority's Subpoena of the Freeh and La Bella Memoranda

One example of inappropriate overreaching into prosecutorial decisions was the majority's July 24, 1998, subpoena to the Attorney General for documents authored by FBI Director Louis B. Freeh and former Justice Department campaign finance task force head Charles G. La Bella. These documents contained prosecution recommendations and other sensitive and detailed information regarding the Justice Department's ongoing campaign finance investigation. Both Mr. Freeh and Mr. La Bella opposed release of the documents.[117] As former Attorney General Nicholas deB. Katzenbach stated, "it is hard to imagine a less appropriate subject for a

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[114]Telephone Conversation between Minority Staff and Carol Williams, Executive Director of the Kansas Commission on Governmental Standards and Conduct (Oct. 30, 2000).

[115]*Id.*

[116]Letter from Ramsey Clark to Rep. Henry Waxman (Aug. 5, 1998) (attached as exhibit 11).

[117]At the time of the dispute over the documents, Mr. La Bella testified that release of his memo would be "devastating to the investigations that the men and women of the Task Force are working on right now," and Mr. Freeh testified that release of his memo would not be "prudent." Testimony of Charles G. La Bella, Aug. 4 hearing at 110; Testimony of Louis J. Freeh, Aug. 4 hearing at 110.

subpoena or one more calculated to politicize the Department."[118]

The majority's demands ignored a long history of Justice Department precedents.[119] As the following examples demonstrate, Justice Departments under both Republican and Democratic administrations have recognized an important public policy interest in preserving the confidentiality of internal documents relating to open criminal investigations:

C Franklin Roosevelt Administration: In 1941, a House committee requested all Justice Department investigative materials relating to labor strikes involving naval contractors. Attorney General Robert H. Jackson refused to provide the information, stating: "all investigative reports are confidential documents of the executive department of the Government [and] congressional or public access to them would not be in the public interest."[120]

C Nixon Administration: In 1969, during a House committee investigation into the My Lai massacre, the Army was asked to provide all materials from its ongoing investigation into the incident. Thomas Kauper, Deputy Assistant Attorney General, rejected the request, stating: "If a congressional committee is fully apprised of all details of an investigation as the investigation proceeds, there is a substantial danger that congressional pressures will influence the course of the investigation."[121]

C Ford Administration: In 1976, Rep. Bella Abzug, who chaired a subcommittee of the

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[118]Letter from Nicholas deB. Katzenbach to Rep. Henry Waxman (Aug. 5, 1998) (attached as exhibit 12).

[119]The majority report cites a number of precedents in an attempt to support the proposition that subpoenaing the Freeh and La Bella memoranda was appropriate. Majority Report at 139-43. The precedents cited by the majority, however, do not resemble the circumstances relating to the Freeh and La Bella memoranda. In particular, none of the precedents involves a congressional attempt to obtain a prosecution memorandum during an open criminal investigation. For example, in the Palmer Raids investigation, the document produced was not a prosecution memorandum but a legal analysis of a trial court opinion, and the trial had ended. With respect to the Teapot Dome scandal, at the time the Justice Department produced documents to Congress, it had finished investigating the matter and had finished considering legal action, and the primary document produced was a report from an accountant, not a prosecution memorandum. For additional discussion of these and the other examples cited in the majority report, see House Committee on Government Reform and Oversight, *Contempt of Congress*, 105th Cong., 2d Sess., Minority Views at 136-38 (Sept. 17, 1998).

[120]Opinion of Attorney General Robert H. Jackson (1941).

[121]Thomas E. Kauper, *Submission of Open CID Investigation Files* (Dec. 19, 1969).

Government Operations Committee, requested FBI investigative files concerning domestic intelligence matters. Deputy Attorney General Harold R. Tyler, Jr., refused to provide the information, stating: "if the Department changes its policy and discloses investigative information, we could do serious damage to the Department's ability to prosecute prospective defendants and to the FBI's ability to detect and investigate violations of criminal law."[122]

C Reagan Administration: In 1986, the Justice Department's Office of Legal Counsel concluded that the Attorney General should not disclose to Congress the contents of a report filed with a court pursuant to the Independent Counsel Act. Assistant Attorney General Charles J. Cooper wrote that "the executive . . . has the exclusive authority to enforce the laws adopted by Congress, and neither the judicial nor legislative branches may directly interfere with the prosecutorial discretion of the Executive Branch by directing the executive to prosecute particular individuals."[123]

C Bush Administration: In 1989, the Justice Department's Office of Legal Counsel concluded that agency inspectors general were not required to provide information to Congress about open criminal investigations. Assistant Attorney General Douglas W. Kmiec concluded that there was no obligation to provide such information, stating: "the executive branch has generally declined to make any accommodation for congressional committees with respect to open cases: that is, it has consistently refused to provide confidential information."[124]

As summarized by Charles J. Cooper, Assistant Attorney General during the Reagan Administration in a 1986 legal opinion, the policy of not turning over investigative documents:

> was first expressed by President Washington and has been reaffirmed by or on by Presidents Jefferson, Jackson, Lincoln, Theodore Roosevelt, Franklin Roosevelt, and Eisenhower. *No President, to our knowledge, has departed from this position affirming the confidentiality and privileged nature of open law enforcement files.*[125]

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[122]Letter from Harold R. Tyler, Jr., to Rep. Bella Abzug (Feb. 26, 1976).

[123]Charles J. Cooper, *Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, 10 Op. O.L.C. 68 (Apr. 28, 1996).

[124]Douglas W. Kmiec, *Congressional Requests for Information from Inspectors General Concerning Open Criminal Investigations*, 13 Op. O.L.C. 93 (March 24, 1989).

[125]Charles J. Cooper, *Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, 10 Op. O.L.C. (Apr. 28, 1986). For additional discussion of precedent on this matter, *see* House Committee on Government Reform and Oversight, *Contempt of Congress*, 105th Cong., 2d. Sess., Minority Views at 123-25 (Sept.

Nevertheless, the majority persisted in its demands for the Freeh and La Bella memoranda. In fact, as discussed below, the majority even voted to hold the Attorney General in contempt of Congress in August 1998 after she refrained from appointing an independent counsel and refused to provide the Freeh and La Bella memoranda.[126]

B. The Majority's Use of the Contempt Power

Article II of the Constitution vests the power to execute and enforce the laws of the United States in the executive branch. In particular, the courts have long recognized that criminal prosecution is exclusively the province of the executive branch.[127] Nevertheless, Mr. Burton improperly used the Congress' contempt power to coerce the Attorney General to appoint an independent counsel to investigate the President.

In late July 1998, the conflict between Mr. Burton and the Attorney General over the production of the Freeh and La Bella memoranda was reaching its climax. Mr. Burton told the media that he would hold the Attorney General in contempt of Congress if she did not comply with his subpoena to turn over the documents.[128]

In an effort to reach an accommodation with Mr. Burton, the Attorney General and FBI Director Freeh requested a private meeting with Mr. Burton and Ranking Member Waxman.[129]

17, 1998) (H. Rept. 105-728).

[126]*See* House Committee on Government Reform and Oversight, *Contempt of Congress*, 105th Cong., 2d. Sess. (Sept. 17, 1998) (H. Rept. 105-728).

[127]*E.g., Heckler v. Chaney*, 470 U.S. 821, 832 (1985).

[128]*E.g., Justice Holds Subpoenaed Memos,* Associated Press (July 27, 1998).

[129]This request for a meeting was one of several efforts by the Attorney General to reach an accommodation with the Committee. For example, on July 28, 1998, she and FBI Director Freeh wrote Rep. Burton offering to provide a confidential briefing on appropriate portions of the La Bella memorandum after the Attorney General had completed her evaluation of Mr. La Bella's recommendation. Letter from Attorney General Janet Reno and FBI Director Louis Freeh to Rep. Dan Burton (July 28, 1998) (attached as exhibit 13). On August 4, 1998, the Attorney General reiterated her offer to provide a confidential briefing on appropriate portions of the La Bella memorandum after she had an opportunity to fully review the memorandum, noting that such review should take approximately three weeks. Letter from Attorney General Janet Reno to Rep. Dan Burton (Aug. 4, 1998) (attached as exhibit 14). Further, on August 6, 1998, the Attorney General contacted Mr. Burton by telephone and said that after she had reviewed the La Bella memorandum, she would be willing to appear before the full Committee and, to the extent

During this meeting on July 31, 1998, Mr. Burton told the Attorney General that he would drop his efforts to seek contempt if she would seek the appointment of an independent counsel. As Mr. Waxman wrote to the Attorney General after the meeting:

> The Chairman's remarks were a blatant attempt to influence your decision. You were told that you could avoid being held in contempt of Congress if you acceded to Mr. Burton's demands that you seek appointment of an Independent Counsel. Conditioning a contempt citation on your willingness to appoint an Independent Counsel is clearly coercive.
>
> * * *
>
> Mr. Burton's tactics are not subtle. He knows that you cannot turn over the La Bella memorandum. . . . Thus, Mr. Burton is seeking to place you in an untenable position. In effect, he has given you only two choices: (1) become the first Attorney General in history to be held in contempt of Congress because you cannot turn over the La Bella memorandum or (2) appoint the Independent Counsel that he demands.[130]

The Chairman's spokesman, Will Dwyer, confirmed Mr. Burton's intent. As reported in the *Washington Post* on the following day, Mr. Dwyer conceded that "[t]he only one real objective here is getting an independent counsel, as these documents advise her to do. . . . If she follows that advice, there will be no need for the documents."[131]

Attorney General Reno properly resisted these efforts at intimidation. As she explained on August 4: "Chairman Burton told me Friday that if I triggered the appointment of an independent counsel, I would not have to produce the memos. If I give in to that suggestion, then I risk Congress turning all decisions to prosecute into a political football."[132]

By a party-line vote (24 to 19), the Committee voted on August 6, 1998, to recommend to the House of Representatives that the Attorney General be cited for contempt of Congress. The majority's actions on this matter were the subject of widespread criticism.[133]

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that it would not prejudice the ongoing criminal investigation, explain Mr. La Bella's legal rationale.

[130]Letter from Rep. Henry Waxman to Attorney General Janet Reno (July 31, 1998) (attached as exhibit 15).

[131]*Democrats Say Burton Made Threat Against Reno*, Washington Post (Aug. 1, 1998).

[132]Press Conference of Attorney General Reno, unofficial transcript (LEXIS, "Scripts") (Aug. 4, 1998).

[133]*See Tell Him No, Ms. Reno*, Miami Herald (Aug. 6, 1998) ("Mr. Burton's request is dangerous. It's more than laced with his palpable political motives. Worse, it's also bereft of

C. Subpoenas for Grand Jury Materials

Another example of Mr. Burton's inappropriate intrusion into prosecutorial matters is the majority's efforts to obtain grand jury subpoenas issued by the Justice Department during its campaign finance investigation. To obtain these grand jury materials, the majority issued a subpoena on March 22, 2000, to the Justice Department seeking the grand jury subpoenas issued by the campaign finance task force to the Executive Office of the President (EOP), the White House, the DNC, and the RNC. The majority also issued a subpoena on March 16, 2000, to the EOP asking for grand jury subpoenas provided or served by the campaign finance task force from September 1, 1996, to the present.

The Justice Department responded to the majority's subpoena on April 24, stating that it was unable to provide copies of grand jury subpoenas because "[d]isclosure of information as to any subpoena is prohibited by Rule 6(e) of the Federal Rules of Criminal Procedure," which protects the secrecy of grand jury proceedings.[134] Despite the Department's concerns, on August 3, 2000, the majority proceeded to issue subpoenas to the State Department, the Commerce Department, and the DNC asking for grand jury subpoenas issued by the Justice Department's campaign finance task force. The majority also did not withdraw the subpoena it had issued in March to the EOP.

These attempts to subpoena grand jury subpoenas were improper. They did not recognize longstanding rules that protect the secrecy of grand jury proceedings. According to the United States Supreme Court:

> We consistently have recognized that the proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings. In particular, we have noted several distinct interests served by safeguarding the confidentiality of grand jury proceedings.

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any sign that he has weighed what these memos, if leaked, could do to the Justice Department's own investigation"); *Give Reno Some Room*, St. Petersburg Times (Aug. 6, 1998) ("What is clear is that Burton should wipe away the froth around his mouth and stop demanding information that he has no right to"); *Buck Stops with Reno*, Los Angeles Times (Aug. 6, 1998) ("This is a fishing expedition by Chairman Dan Burton . . . The precedent Rep. Burton seeks could make the executive branch a ground for all sorts of witch hunts by those who second-guess motives and judgments of decision-makers"); *Mr. Burton and Ms. Reno*, Washington Post (Aug. 7, 1998) ("The House Government Reform and Oversight Committee's vote yesterday to cite the attorney general in contempt of Congress is a dangerous political interference in a law enforcement decision that threatens to undermine the Justice Department's campaign finance investigation . . . Mr. Burton's approach to the matter has been nothing less than thuggish").

[134]Letter from Assistant Attorney General Robert Raben to Rep. Dan Burton (Apr. 24, 2000).

> First, if preindictment proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and frankly, as they would be open to retribution as well as to inducements. There also would be the risk that those about to be indicted would flee, or would try to influence individual grand jurors to vote against indictment. Finally, by preserving the secrecy of the proceedings, we assure that persons who are accused but exonerated by the grand jury will not be held up to public ridicule.[135]

The Justice Department appropriately responded to these subpoenas by expressing its "serious concern about the Committee's recent practice of subpoenaing public and private sector entities to produce copies of grand jury subpoenas." According to the Department:

> the practice of "subpoenaing subpoenas" or otherwise using the congressional subpoena power to shadow the Department's ongoing investigations could undermine effective law enforcement by creating a substantial risk that sensitive and confidential investigative information will be disclosed to targets of investigations and to other persons who might use the information to thwart our law enforcement efforts.[136]

Unfortunately, the majority has failed to withdraw its subpoenas or otherwise respond to the Department's concerns.[137]

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[135]*Douglas Oil Company of California v. Petrol Stops Northwest*, 441 U.S. 211, 218-19 (1979) (citations omitted) (emphasis added). The Court further noted that "[o]ne of the several interests promoted by grand jury secrecy is the protection of the innocent accused from disclosure of the accusations made against him before the grand jury." 441 U.S. at 218 (citation omitted).

[136]Letter from Assistant Attorney General Robert Raben to Rep. Dan Burton (Sept. 25, 2000) (attached as exhibit 16).

[137]The majority report also states, "As of October 10, 2000, the DNC continues to refuse to comply" with the Committee's subpoena for grand jury subpoenas. Majority Report at v. The majority report fails to recognize, however, the DNC's substantial efforts to accommodate the Committee. On October 10, 2000, attorneys for the DNC met with Committee staff in an attempt to reach an agreement that balanced the Committee's oversight interests and the DNC's interest in protecting the privacy of individuals who had either appeared before or had been investigated by the grand jury. The DNC first offered to make all grand jury subpoenas immediately available to Committee staff for inspection, provided that the DNC could redact the names of those who had not been publicly identified with the Campaign Financing Task Force's criminal investigation. In a further attempt to satisfy the majority's concerns, the DNC's attorneys also made another preliminary offer, subject to approval by the DNC. The DNC's attorneys proposed that the majority prepare a list of individuals relevant to the Committee's investigation. The DNC attorneys would then compare that list to the grand jury subpoenas and not redact any name

III. THE MAJORITY'S INVESTIGATION HAS BEEN PARTISAN

During the course of the investigation, Mr. Burton has repeatedly alleged that Attorney General Reno's actions are marked by "partisan zeal." The report makes the same findings, stating that "it is hard to escape the conclusion that the Attorney General has acted politically to benefit the President, the Vice President, and her own political party."[138]

As described above, these allegations are unfounded. They are also ironic. The partisanship in this investigation belongs to the Committee not the Justice Department. For four years, Mr. Burton has conducted a blatantly partisan investigation. In his campaign finance investigation, Mr. Burton has issued over 900 subpoenas, 99% of which involved allegations of Democratic abuses. He has also issued over 500 formal requests for documents or information relating to the investigation, over 98% of which also involved allegations of Democratic abuses. The Committee has deposed or called to testify at hearings over 200 witnesses in connection with campaign fundraising allegations, 99% of whom were called to discuss alleged Democratic abuses.

Editorial boards, columnists, and commentators across the country have recognized the partisan nature of the Committee's investigation. They have called the investigation a "soap opera,"[139] a "House investigation travesty,"[140] a "sorry partisan spectacle,"[141] and a "witch hunt in the House."[142] In a May 1998 editorial entitled *The Dan Burton Problem*, the *New York Times* stated: "By now even Representative Dan Burton ought to recognize that he has become an impediment to a serious investigation of the 1996 campaign finance scandals. . . . If the House inquiry is to be responsible, someone else on Mr. Burton's committee should run it."[143] Norman Ornstein, a congressional expert with the American Enterprise Institute, stated, "[F]rom day one,

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that matched, regardless of whether that individual had been publicly identified with the Justice Department's criminal investigation. The majority rejected both offers of accommodation.

[138]Majority Report at i.

[139]*Soap Opera*, Roll Call (Apr. 27, 1998).

[140]*A House Investigation Travesty*, New York Times (Apr. 12, 1997).

[141]*Reno Roast Embarrasses Nobody but Congress*, Los Angeles Times (Dec. 10, 1997).

[142]*The Witch Hunt in the House*, Albert R. Hunt, Wall Street Journal (Apr. 10, 1997).

[143]*The Dan Burton Problem*, New York Times (May 8, 1998). Other editorials include: *Mr. Burton Should Step Aside*, Washington Post (March 20, 1997); *Dan Burton Is a Loose Cannon*, Hartford Courant (May 5, 1998); *Burton Bumbles in Bad Faith*, San Antonio Express-News (May 6, 1998); and *Mistakes Were Made: Burton Inquiry Can't Reach a Credible Conclusion*, Sacramento Bee (May 11, 1998).

Dan Burton did almost everything he could to destroy any chance that this would be seen as a bipartisan effort or an attempt to build a factual basis."[144]

In particular, the majority's oversight of the Justice Department's campaign finance investigation has been marked by partisanship. While the Justice Department's investigation is examining allegations relating to both Republicans and Democrats, the majority has focused on obtaining information relating only to the Justice Department's investigation of Democratic abuses.

On April 11, 2000, the majority wrote the Justice Department requesting dozens of interview summaries (known as FBI "302s") relating to Democratic allegations. At a public Committee meeting on May 3, 2000, Mr. Waxman requested that Mr. Burton also ask the Justice Department to produce to the Committee interview summaries relating to two of the most serious allegations of Republican fundraising improprieties: (1) potential violations involving former Republican National Committee chair Haley Barbour; and (2) potential violations involving Majority Whip DeLay. The request reflected an attempt by Mr. Waxman to bring some balance to the Committee's investigation.

At the May 3 hearing, with the vast majority of Committee members present, Mr. Burton agreed to subpoena the Justice Department for these materials.[145] Mr. Burton stated, "The subpoena in detail will be issued."[146] Specifically, he said that the subpoena would be for the interview summaries that the minority requested as well as the documents and interview requests of the majority, noting, "That way, everything will be in one subpoena."[147] He further said that the subpoena would specify that "all the documents be given jointly to both the majority and minority staff simultaneously."[148] In response to a question as to whether all the materials subpoenaed had to be produced at once, he said: "It was my understanding that there might be a rolling production of these things," but that the materials would be "given in a timely fashion and in a fair and equitable way."[149]

However, one week later, Rep. Burton wrote Rep. Waxman and reneged on this

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[144]*Another Bump In Burton Panel's Road*, Washington Post (May 13, 1998).

[145]*See* House Committee on Government Reform, *Hearing on White House E-mails: Mismanagement of Subpoenaed Record*, 221-28 (May 3, 2000) (stenographic record).

[146]*Id.* at 228.

[147]*Id.* at 225.

[148]*Id.* at 226.

[149]*Id.* at 230.

commitment.[150] He said that he would not issue a subpoena for interview summaries involving Mr. DeLay. He further stated that, with respect to interview summaries concerning Mr. Barbour, he would not issue a subpoena until "the Attorney General has complied with all currently outstanding subpoenas from the Committee."[151] Mr. Burton never issued the subpoena he

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[150]Letter from Rep. Dan Burton to Rep. Henry Waxman (May 11, 2000) (attached as exhibit 17).

[151]*Id.* Mr. Burton stated several reasons for changing his commitment, none of which withstands scrutiny. For example, Mr. Burton claimed that Mr. Waxman's request for interview summaries relating to Mr. DeLay was not proper because at the time of the request Mr. Waxman "failed to disclose" that the Democratic Congressional Campaign Committee (DCCC) was filing a lawsuit against Mr. DeLay. Mr. Burton suggested that Mr. Waxman's request had been "part of a larger, coordinated effort driven by the DCCC to pursue politically motivated attacks against the Majority Whip." This charge was categorically untrue. Neither Mr. Waxman nor anyone on his staff involved with the subpoena request had knowledge of the DCCC lawsuit until after the May 3 hearing in which Mr. Waxman made the request. Mr. Burton made this charge without asking either Mr. Waxman or his staff about the matter. *See* Letter from Rep. Henry Waxman to Rep. Dan Burton (May 12, 2000) (attached as exhibit 18).

Mr. Burton's May 11 letter also stated that with respect to the interview summaries concerning Mr. Barbour, "I agreed to issue a subpoena for the documents you requested, as long as other Justice Department materials already under subpoena are first provided." This statement mischaracterized Mr. Burton's May 3 commitment, in which he agreed to pursue both the majority and minority requests "simultaneously."

In his May 12 letter responding to Mr. Burton, Mr. Waxman noted that Mr. Burton had several options regarding how to proceed with his May 3 commitment:

> First, you could – and should – have honored your commitment and issued the appropriate subpoena.
>
> Second, if you were suspicious of whether there was a connection between the DCCC lawsuit and my request for 302s, you could have asked me personally whether I had been aware of the lawsuit when I made the request or was coordinating with the DCCC on this matter . . . .
>
> Another alternative would have been for you to ask your staff to contact my staff to investigate and discuss your concerns relating to issuing the subpoena. . . .
>
> Alternatively, if you were intent on breaking your commitment regardless of the facts, you could have at least done so in a forthright manner, acknowledging that you had made an agreement you would no longer honor.

promised on May 3, 2000.

Unfortunately, this partisan conduct has continued. For example, the majority recently subpoenaed the DNC for document requests, subpoenas, and interview requests the DNC received from the Justice Department,[152] but has failed to subpoena the RNC for similar Justice Department requests to the RNC.

IV. ACCOMPLISHMENTS OF THE CAMPAIGN FINANCE TASK FORCE

The campaign finance task force of the Department of Justice was launched in December 1996. Contrary to the majority's assertions, the task force has been effective.

At its height, the task force was staffed by 126 people, including 24 attorneys, 67 agents, and 35 support staff.[153] The Justice Department and the FBI estimated that they spent over $31 million on the task force through fiscal year 1999 alone.[154] Mr. Freeh testified that he believed that he had all of the necessary resources to conduct the investigation.[155] Mr. Freeh also testified that "the FBI is not being impeded in any way in conducting our investigation" and that the task force's "marching orders are to go wherever the evidence leads them."[156] Further, Mr. La Bella said that the Attorney General and the Deputy Attorney General " have told me to pursue the evidence wherever it leads. That is what I have done and what I expect the Task Force to

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> Instead, you chose the worst option possible. Without bothering to consult with me, your May 11 letter reneges on your commitment on the basis of untrue allegations that you did not investigate.

Letter from Rep. Henry Waxman to Rep. Dan Burton (May 12, 2000).

[152]Subpoena Duces Tecum from Committee on Government Reform to Democratic National Committee (Aug. 3, 2000).

[153]U.S. General Accounting Office, *Campaign Finance Task Force: Problems and Disagreements Initially Hampered Justice's Investigation* (May 2000) (GAO/GGD-00-101BR).

[154]*See id.*

[155]Testimony of FBI Director Louis Freeh, House Committee on Government Reform, *Hearings on the Current Implementation of the Independent Counsel Act*, 105th Cong., 1st Sess., 1152 (Dec. 9-10, 1997) (H. Rept. 105-89).

[156]Testimony of FBI Director Louis Freeh, House Committee on Government Reform, *Hearings on the Current Implementation of the Independent Counsel Act*, 105th Cong., 1st Sess., 1129 (Dec. 9-10, 1997) (H. Rept. 105-89).

continue to do."[157]

The task force has achieved important successes. It has prosecuted 25 people.[158] So far 19 individuals and one corporation have been convicted.[159]

At bottom, the majority's complaints about Attorney General Janet Reno are based on her failure to initiate legal actions against the President and the Vice President. But her role is not to "get" the President or the Vice President. The Attorney General's responsibility is to follow the evidence where it leads and to apply the law evenhandedly. The record before the Committee indicates that she has fulfilled her responsibility creditably.

[157]Statement of Charles La Bella (May 3, 1998) (attached as exhibit 19).

[158]*Thai Businesswomen Agree to Plead Guilty to Campaign Financing Charges,* U.S. Department of Justice (June 21, 2000) (attached as exhibit 20).

[159]*See id.*

Minority Views
Report on
"Janet Reno's Stewardship of the Justice Department: A Failure to Serve the Ends of Justice"

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