

Union Calendar No. 471

105th Congress, 2d Session - - - - - House Report 105-829

INVESTIGATION OF POLITICAL
FUNDRAISING IMPROPRIETIES AND
POSSIBLE VIOLATIONS OF LAW

INTERIM REPORT

SIXTH REPORT

BY THE

COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT

together with

ADDITIONAL AND MINORITY VIEWS

Volume 3 of 4



November 5, 1998.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, November 5, 1998.

Hon. NEWT GINGRICH,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Government Reform and Oversight, I submit herewith the committee's sixth report to the 105th Congress.

DAN BURTON,
Chairman.

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INVESTIGATION OF POLITICAL FUNDRAISING IMPROPRIETIES AND POSSIBLE VIOLATIONS OF LAW

NOVEMBER 5, 1998.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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

SIXTH REPORT

together with

ADDITIONAL AND MINORITY VIEWS

On October 8, 1998, the Committee on Government Reform and Oversight approved and adopted a report entitled, "Investigation of Political Fundraising Improprieties and Possible Violations of Law." The chairman was directed to transmit a copy to the Speaker of the House.

CHAPTER V, PART A

**THE FAILURE OF GOVERNMENT AGENCIES TO
VIGOROUSLY PURSUE CAMPAIGN VIOLATIONS**

**JORGE CASTRO'S ILLEGAL CAMPAIGN CONTRIBUTIONS,
AND WHY THEY WERE NEVER PROSECUTED**

JORGE CASTRO'S ILLEGAL CAMPAIGN CONTRIBUTIONS, AND WHY THEY WERE NEVER PROSECUTED

INTRODUCTION

In the course of the Committee's investigation, we learned of another source of foreign money—South America. The Committee learned that the New York District Attorney's Office conducted an investigation into the banking activities of the Castro family of Venezuela, and had uncovered evidence of illegal campaign activities by that family. The District Attorney's Office turned this investigation over to the Justice Department, which failed to pursue any charges against the key individuals involved. The Committee followed up on the New York District Attorney's investigation, and brought to light the facts of the Castro case.

I. THE KEY PLAYERS

A. ORLANDO CASTRO LLANES

Born in Cuba, Castro Llanes was head of a wing of that nation's communist party until fleeing the island in 1959 following an alleged dispute with Fidel Castro.¹ After landing in Haiti, Castro Llanes went to Miami, and in 1961 or 1962, depending on the account, arrived in Caracas, Venezuela with just \$150 in his pocket.² By the 1980s, Castro Llanes had become an influential businessman in Venezuela, earning a fortune in the insurance business. He began aggressively expanding his financial empire, becoming active in banking, real estate, finance companies, radio stations and newspapers.³ Ultimately, his Grupo Impresas Latinamericanos included among its holdings, the Banco Progreso in Venezuela, the Banco Progreso de Internacional de Puerto Rico, and the Banco Latinamericano in the Dominican Republic.⁴

In March 1991, following allegations of money laundering, U.S. Customs inspectors ordered the Banco Progreso accounts at New York's Bank America International frozen, along with those of a number of other banks.⁵ Castro Llanes turned to his long-time legal advisor and business associate, Charles Intriago, for assistance. Mr. Intriago had known Castro Llanes for over a decade, and had acted as his principal legal advisor on matters related to the United States. In fact, they were so close that Castro Llanes provided \$80,000 in start-up capital for Intriago's Money Laundering

¹ Ramon Maceiras, *Orlando Castro: La Historia Apasionante de un Coloso de las Finanzas Venezolanas*, (1991) at 49–65.

² *Id.* at 10.

³ See generally *id.*

⁴ *Id.*

⁵ Peter Truell, "Too Close for Comfort?; Inquiry Touches Money Laundering Expert's Backer," *New York Times*, Apr. 4, 1996, at D1.

Alert newsletter.⁶ In addition, Castro Llanes was reportedly seeking to have Intriago appointed U.S. ambassador to Venezuela.⁷ Intriago also organized a defense team for the Banco Progreso matter which ultimately convinced U.S. Customs to release the accounts.⁸

In 1994, following the collapse of the Venezuelan banking system, Castro fled to the United States and settled in Miami. Venezuelan banking regulators seized Banco Progreso that December. Castro was later charged in absentia with bank fraud, embezzlement, and conspiracy by the Venezuelan government.⁹

On April 4, 1996, Castro Llanes was indicted in New York along with his son and grandson on charges of a scheme to defraud in the first degree. He was convicted on grand larceny charges on February 19, 1997, and in April of that year sentenced to a term of 1 to 3 years in prison. The larceny involved defrauding depositors of the Banco Progreso International de Puerto Rico of as much as \$55 million. His crime also cost the government of Venezuela more than \$8 million.

B. ORLANDO CASTRO CASTRO

The U.S.-educated son of Castro Llanes, and uncle of Jorge Castro Barredo, Orlando Castro Castro was president of the Banco Progreso in Caracas, Venezuela. He was convicted along with his father and nephew by the Manhattan District Attorney on charges of bank fraud involving the theft of millions of dollars from a Puerto Rican bank the family controlled. He was sentenced to a term of 2½ to 7 years in prison.¹⁰

C. JORGE CASTRO BARREDO

The grandson of Castro Llanes, Castro Barredo worked in his grandfather's banking empire as president of the Banco Latinamericano in the Dominican Republic. In 1992, Castro Barredo made \$25,000 in illegal foreign conduit contributions to the Democratic party. According to his sworn testimony, these contributions were made at the direction of family lawyer and DNC Trustee, Charles Intriago. Bank documents show that the contributions were reimbursed shortly thereafter by a Venezuelan firm owned by his grandfather.¹¹ Castro Barredo was also charged in the Banco Progreso fraud case.¹²

The bank fraud case was precipitated when an insurance company controlled by the Castro family overdrew its account at their Dominican Bank, and local banking authorities required the institution to increase its deposits by \$3 million. Castro Barredo improperly withdrew \$3.26 million from the family's Puerto Rican bank and deposited it in the Dominican Republic institution, using a portion of the money to purchase a yacht.¹³ Castro Barredo provided testimony to representatives of the Justice Department con-

⁶ Id.

⁷ Interview of James Kindler and Joseph Dawson, Dec. 26, 1997 ("Kindler-Dawson Interview").

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

cerning his knowledge of illegal foreign conduit campaign contributions and his testimony was corroborated independently by documentary evidence obtained by the New York District Attorney's Office.¹⁴

Notwithstanding documentary and testimonial evidence, the Justice Department chose not to bring any charges related to the Castro conduit contributions.¹⁵ On February 19, 1997, Castro Barredo was convicted on the unrelated bank fraud and larceny charges. On December 15, 1997, he was sentenced to a term of 3½ to 10½ years in prison.¹⁶

D. MARIA SIRE CASTRO

Maria Castro is the aunt of Castro Barredo, and the wife of Rafael Castro, another one of Castro Llanes's sons. She made a \$20,000 illegal foreign conduit campaign contribution to the DNC, and a \$5,000 illegal conduit contribution to the Maryland State Democratic party in 1992.¹⁷

E. CHARLES INTRIAGO

The relationship between Castro Llanes and Intriago goes back nearly two decades. After first meeting in 1980, Castro Llanes soon became one of Intriago's clients.¹⁸ Jorge Castro Barredo testified about his social ties with Intriago, making reference to their attending Florida Marlins baseball games together.¹⁹ Castro Barredo also told Committee investigators that Intriago was paid a monthly retainer by Castro Llanes of \$20,000 to \$25,000 per month and acted as his legal advisor on all matters related to the United States. He further stated that on one occasion, during the Venezuelan banking crisis of 1994, he was instructed to pay Intriago \$100,000 by either Castro Llanes or his associate Luzmenia Briceno.²⁰ In 1989, with the help of an \$80,000 investment from Castro Llanes in exchange for a 15 percent interest in the venture, Intriago founded the Money Laundering Alert newsletter.

After getting caught up in a bitterly contested hostile takeover fight for control of the Banco de Venezuela in 1990, Castro Llanes turned to Intriago for help. He soon faced another potentially critical problem and again turned to Intriago. In March 1991, U.S. Customs officials, suspicious of transactions taking place in accounts held by a number of Venezuelan banks in New York, moved to freeze the funds held by those banks. Banco Progreso's account at the Bank America International was among those affected. Intriago put together what Jorge Castro Barredo described as a "Dream Team"²¹ of attorneys and political operatives to obtain release of the funds and was ultimately successful.²²

¹⁴ Venezuelan Money and the Presidential Election, Hearing, Committee on Government Reform and Oversight, Apr. 30, 1998 ("Castro Hearing") at 77-78 (Testimony of Joseph J. Dawson).

¹⁵ See Letter from Lee J. Radek to Richard T. Preiss, Oct. 17, 1997 (Exhibit 1).

¹⁶ Castro Hearing at 9 (Testimony of Jorge Castro Barredo).

¹⁷ Id. at 10, 14 (Testimony of Jorge Castro Barredo).

¹⁸ Interview of Jorge Castro Barredo, Jan. 19, 1998 ("Castro Interview I").

¹⁹ Castro Hearing at 39 (Testimony of Jorge Castro Barredo).

²⁰ Castro Interview I.

²¹ Interview of Jorge Castro Barredo on Sept. 15, 1998.

²² Id.

After being subpoenaed to appear before an executive session of this Committee, Intriago declined to answer questions, invoking the Fifth Amendment to virtually all questions posed.²³ Intriago's attorney, did, however, submit a letter on behalf of Intriago to the Committee, stating in part:

Mr. Intriago is not a government official. He has never held a high elected or appointive government position. He has never been an employee of, or consultant to, the Democratic National Committee. He is not a "friend" or "associate" of the President, the Vice President, or any other high ranking Democratic Party official. He has not applied for, been interviewed for or considered for a government job. He has never had or sought a government contract. Mr. Intriago simply is a respected private lawyer with a previously unblemished record of conduct.²⁴

This statement, is at best, misleading. According to DNC documents obtained by the Committee, Intriago is listed as an "applicant" for a Federal appointment. The documents indicate that he was involved in the 1992 Florida Presidential campaign, and that the recommendation was forwarded on December 16, 1992.²⁵ It indicates his "JOB PREF./AREA OF INTEREST" as "LEGL," likely indicating a legal job preference. It indicates his "AGENCY/DEPARTMENT PREFERENCE" as "Just," likely indicating the Department of Justice.²⁶ The notation also indicates under the title "Job Level", the initials "SL," indicating a senior level position.²⁷

Similarly, the contention that Intriago has never been a "high government official" understates his actual employment history. He was a senior congressional staff member early in his career, and served as a Special Assistant to the Governor of Florida, playing a major role in the development of that state's racketeering laws. He also served as an Assistant U.S. Attorney in Florida.

Mr. Intriago's name also is listed in another DNC document which is a compilation of recommendations for a delegation to attend the 1994 Salvadoran election. Intriago's name is first on the list which also includes such dignitaries as Secretary of Energy Bill Richardson, then mayor of Albuquerque Martin Chavez, and prominent DNC donor Walter Kaye.²⁸ The Committee also obtained a letter dated December 2, 1992, from Intriago to then DNC Chairman Ron Brown addressed "Dear Ron," and stating:

Just a brief note to tell you that I enjoyed meeting you during the campaign in Little Rock and Middleburg. Apparently, I am now a "trustee" of the DNC and am looking forward to assisting you in any way I can.

* * * * *

So that you will know a little more about me, I enclose a couple of recent issues of my publication, Money Launder-

²³ Deposition of Charles A. Intriago, Feb. 20, 1998 ("Intriago Deposition").

²⁴ Castro Hearing at 36 (Statement by Robert Plotkin, Counsel for Charles Intriago).

²⁵ See DNC Document 076440, a review of applicants for political appointments by the newly elected Clinton Administration (Exhibit 2).

²⁶ Id.

²⁷ Id.

²⁸ Memorandum from Martha Phipps to Dana Wyckoff, Feb. 23, 1994 (Exhibit 3).

ing Alert, together with some background information. I think this is an issue on which President Clinton can make some headway in dealing with the drug and white collar crime problems.²⁹

II. CASTRO'S ILLEGAL CONTRIBUTIONS

On September 15, 1992, Charles Intriago called Jorge Castro Barredo at his office in the Dominican Republic, and asked him to make several contributions to the DNC.³⁰ Castro Barredo recalls that Intriago said either that "we are going to make some contributions to Clinton's campaign," or that "your grandfather wants to make contributions to Clinton's campaign."³¹ Intriago told Castro Barredo that he and his uncle, Rafael Castro, should make the contributions, because they were U.S. citizens.³² At this point, Castro Barredo told Intriago that Rafael did not have a bank account, but that Rafael's wife, Maria Sire Castro, had a bank account, and was a U.S. citizen.³³ Intriago then told Castro Barredo that he should write one check to the DNC for \$20,000, and another check to the Ohio State Democratic party for \$5,000.³⁴ Intriago also told Castro Barredo to have Maria Castro write a check for \$20,000 to the DNC, and a check for \$5,000 to the Maryland State Democratic party.³⁵ After Castro Barredo's telephone conversation with Intriago, he requested that his uncle have his aunt draft the two checks that Intriago had requested.³⁶

Castro Barredo was slightly confused, however, by Intriago's instructions, and he asked Intriago to send a fax with written instructions for how to draft the checks.³⁷ Castro Barredo received the fax the following day. On the fax, Intriago listed out each contribution that Castro Barredo and Maria Castro were supposed to make. At the bottom of the fax, Intriago wrote in Spanish: "I want you to send me these today by Federal Express."³⁸

At the time that he made the contributions, Castro Barredo knew that he and his aunt would be reimbursed.³⁹ Castro Barredo had no interest in politics, had never voted, and had no interest in giving \$25,000 to support any political party.⁴⁰ Most importantly, during their telephone conversation about the contributions, Intriago assured Castro Barredo that he and his aunt would be reimbursed by "one of his grandfather's companies."⁴¹

Several days after Castro Barredo sent the requested checks to Intriago, Intriago called him and requested that he send a new check. Intriago told Castro Barredo that he was not going to use

²⁹ Letter from Charles Intriago to Ron Brown, Dec. 2, 1992 (Exhibit 4).

³⁰ Castro Hearing at 13.

³¹ Castro Interview I.

³² *Id.*

³³ *Id.*

³⁴ *Id.*; see Checks of Jorge Castro Barredo to Ohio Victory Fund, DNC Victory Fund '92, and Kentucky Democratic party (Exhibit 5).

³⁵ *Id.*; see Check of Maria Sire Castro to DNC Victory Fund (Exhibit 6); Check of Maria Sire Castro to Maryland Victory Fund (Exhibit 7).

³⁶ *Id.*

³⁷ *Id.*

³⁸ See Committee Exhibit of fax cover sheet (Exhibit 8); see also Fax Message from Charles Intriago to Jorge Castro, Sept. 16, 1992 (original) (Exhibit 9).

³⁹ Castro Hearing at 12-13 (Testimony of Jorge Castro Barredo).

⁴⁰ Castro Hearing at 12.

⁴¹ Castro Hearing at 12-13.

the \$5,000 check Castro Barredo had written to the Ohio state party, and instead, asked Castro Barredo to write a new \$5,000 check to the Kentucky State Democratic party.⁴² On September 29, Castro Barredo did so, and sent the check to Intriago. However, days later, Intriago called again, and told Castro Barredo that he would not use the Kentucky check, and instead, asked Castro Barredo to draft a \$5,000 check to the Florida Democratic party.⁴³ Castro Barredo, exasperated, asked why he had to keep writing new checks.⁴⁴ Intriago responded “that’s the way they want it.”⁴⁵ Castro Barredo did not ask for any further explanation, and sent the requested check to Intriago.

On September 24, 1992, Castro Barredo received a wire transfer to his account for \$24,990.⁴⁶ Records indicate that the wire transfer came from Inversiones Latinfin, a company owned by Orlando Castro Llanes.⁴⁷ Castro Barredo testified that Inversiones Latinfin does no business in the United States.

A. THE CASTROS’ RED CARPET TREATMENT

After his family contributed \$50,000 to the Democratic party, Castro Llanes received red carpet treatment from the Clinton Administration over the coming year. Immediately after Bill Clinton’s election in 1992, Castro Llanes told Castro Barredo that they were hopeful that Intriago would be appointed as ambassador to Venezuela.⁴⁸ While this goal did not come to fruition, Intriago did give the Castro family increased access to Washington, DC, after President Clinton’s election.

Castro Llanes, Intriago and Castro Barredo all attended the January 1993 inauguration of President Clinton.⁴⁹ In October 1993, Castro Llanes, Intriago, Castro Barredo, and Castro Castro returned to the United States. The first day that the group was in Washington, Castro Llanes and Intriago went to the White House for a reception for DNC donors.⁵⁰ At this event, Castro Llanes had a picture taken with President Clinton.⁵¹ Castro Barredo was not invited to this event, even though it was he, not Castro Llanes, who had contributed \$25,000 to the DNC.

The following day, the Castro group traveled to the State Department, where they met with State Department officials Perry Ball and Monica Adler.⁵² It was Castro Barredo’s understanding that Intriago had set up the meeting at the State Department.⁵³ The purpose of the meeting was to discuss the ongoing investigations

⁴² Castro Interview I; see Exhibit 6.

⁴³ Id.; see Check from Jorge Castro Barredo to Florida Democratic party (Exhibit 10).

⁴⁴ Castro Hearing at 26.

⁴⁵ Id.

⁴⁶ See Account Statement of Jorge F. Castro, International Bank of Miami, September 1992 (Exhibit 11); Wire Transfer Information, NationsBank, Sept. 24, 1992 (Exhibit 12).

⁴⁷ Wire Transfer Statements (Exhibits 13–14). See also Trust Statement for Banco Industrial de Venezuela (listing Inversiones Latinfin as one of Orlando Castro Llanes’ companies).

⁴⁸ Castro Interview I at 4.

⁴⁹ Castro Hearing at 29.

⁵⁰ Castro Hearing at 29–31.

⁵¹ Photograph of Orlando Castro Llanes and President Clinton, Oct. 14, 1993 (Exhibit 15). A set of photos of Charles Intriago and Orlando Castro Llanes were sent to Intriago by the DNC. See Letter from Eric Sildon to Charles Intriago, June 21, 1995 (Exhibit 16).

⁵² Castro Interview I.

⁵³ Id.

of the Castro family and the various allegations that had been leveled against the family about money laundering.⁵⁴

B. INTRIAGO'S TIES TO THE DEMOCRATIC PARTY

Intriago himself made over \$52,000 in contributions to the DNC during the 1992 election cycle. These include contributions to the Democratic State Central Committee of Maryland, the Democratic Congressional Campaign Committee ("DCCC"), the DNC, the Colorado Democratic party, Senator Tom Harkin, the Illinois Democratic party, the Nebraska Democratic Future Fund Committee, and the Ohio Democratic party.⁵⁵ After raising more than \$10,000 at a Miami dinner honoring Vice President Gore in 1993, Intriago became a member of the DNC's Business Leadership Forum.⁵⁶

In the course of attending various DNC fundraising events, Intriago had the opportunity to come into close contact with other members of the DNC's elite. One of the most important of these was Charles "Bud" Stack, a DNC Trustee, who, along with Intriago was a major donor to an April 29, 1993, dinner honoring Vice President Gore. Intriago received help from Stack in arranging a meeting between Castro Llanes and President Clinton.⁵⁷ Intriago became a DNC Trustee in 1992, evidenced by a letter written by Intriago on December 2, 1992.⁵⁸

III. THE NEW YORK DISTRICT ATTORNEY'S INVESTIGATION

In December 1994, the Latin American banking community was rocked by the collapse of three major financial institutions, the Banco Progreso in Venezuela, the Banco Progreso Internacional de Puerto Rico, and the Banco Latinamericano in the Dominican Republic. These institutions were all part of Group Impresas Latinoamericanas, Orlando Castro Llanes' financial empire.⁵⁹ Following the collapse of these financial institutions, the New York District Attorney's Office initiated an investigation into possible violations of banking law by the Castro family.⁶⁰ In the course of the investigation, an Assistant District Attorney and several investigators were granted permission to examine the files of the Banco Latinamericano in Santo Domingo, one of the Castro family banks. Banco Latinamericano's president was Jorge Castro Barredo, Castro Llanes' grandson.⁶¹

While conducting their search, the New York investigators discovered a number of documents in the office of Castro Barredo's secretary, including the fax dated September 16, 1992, from Intriago instructing Castro Barredo to make conduit contributions. The New York investigators also discovered copies of checks showing Castro Barredo's contributions to the Democratic party.⁶²

⁵⁴ Id.

⁵⁵ See FEC website, www.tray.com/fecinfo.

⁵⁶ See Memorandum from Team Florida to Nancy Jacobson, Laura Hartigan, Jan Hearst, Sam Newman, May 7, 1993 (Exhibit 17).

⁵⁷ Truell, Peter, "Too Close For Comfort," the New York Times, Apr. 4, 1996.

⁵⁸ Exhibit 5.

⁵⁹ Kindler-Dawson Interview.

⁶⁰ Kindler-Dawson Interview.

⁶¹ Castro Hearing at 75 (Testimony of Joseph J. Dawson); see also Kindler-Dawson Interview.

⁶² See Exhibits 5-7.

Later, upon their return to New York, the District Attorney's Office subpoenaed a number of bank records including those of Jorge Castro Barredo and Maria Sire Castro. The bank records showed that both of the \$20,000 checks to the DNC Victory Fund 1992 Federal Account had been cashed, but that Castro Barredo's first two state party checks had not been cashed. They did confirm, though, that Castro Barredo's \$5,000 check made out to the Florida Democratic party had been cashed.⁶³ More importantly, the records showed that on September 24, 1992—just 8 days after the fax—both Jorge Castro Barredo and Maria Sire Castro received wire transfers to each of their accounts in the amount of \$24,990.⁶⁴ Taken together, these documents support the assertion that an illicit transaction consisting of a conduit contribution reimbursed by a non-U.S. entity took place.

IV. THE JUSTICE DEPARTMENT'S HANDLING OF THE CASTRO CASE

The New York District Attorney's Office had uncovered convincing evidence of a serious violation of Federal campaign law, and they decided to refer the matter to Federal prosecutors. Since most of the criminal acts involved in the case had occurred in Miami, the District Attorney's Office referred the matter to the Federal prosecutors in the Southern District of Florida. In the referral letter, Assistant District Attorney John Moscow wrote to Richard Gregorie, Senior Litigation Counsel in the U.S. Attorney's Office in Miami, to inform him of what had been discovered:

[T]he checks and wire transfer relate to a series of violations of the laws relating to campaign financing. That is, two people sent \$25,000 each to a political party and received reimbursement for those political contributions from an off-shore company.⁶⁵

Mr. Moscow also forwarded copies of the documents which had been obtained in the course of the bank fraud investigation. At this same point in time, the District Attorney's Office also referred another aspect of the Castro investigation, involving customs law violations, to Federal prosecutors in the Southern District of New York.

Mr. Moscow followed up on the letter by meeting with Gregorie in Miami on October 17, 1996.⁶⁶ Further follow-up to this meeting took the form of two letters sent to the Miami Assistant U.S. Attorney on October 28, 1996, and October 29, 1996.⁶⁷ On February 24, 1997, two additional packets of documents were forwarded to Miami by the New York District Attorney. These packets included:

- The fax from Alert International discovered in Santo Domingo.
- Copies of checks issued by Jorge Castro Barredo and Maria Sire Castro to DNC "Victory Funds."

⁶³ See Exhibit 10.

⁶⁴ See Wire transfer documents (Exhibits 13–14).

⁶⁵ Letter from John W. Moscow to Richard Gregorie, Oct. 9, 1996 (Exhibit 18).

⁶⁶ Castro Hearing at 77 (Testimony of Joseph J. Dawson).

⁶⁷ Letters from John W. Moscow to Richard Gregorie, Oct. 28, 1996 (Exhibit 19) and Oct. 29, 1996 (Exhibit 20).

- A wire transfer document showing that on September 13, 1994, Castro Barredo sent Intriago \$100,000.
- Two canceled checks issued by Castro Barredo, one for \$20,000 to the DNC Victory Fund '92 Federal Account and one for \$5,000 to the Florida Democratic party Federal Account.
- Account statements from the International Bank of Miami N.A. for the account of Jorge Castro Barredo showing the checks were cashed.
- Two canceled checks issued by Maria Castro, one in the amount of \$20,000 to the "DNC Victory Fund 1992 Federal Account" and one for \$5,000 to the Maryland Democratic party Federal Account.
- The NationsBank account statements for Maria Sire Castro showing that the check was cashed.
- Wire transfer documents showing that \$25,000 was wired to both Jorge Castro Barredo and Maria Sire Castro from Banco Latino by order of Inversiones Latinfin on September 24, 1996.
- Shareholder documents showing that Inversiones Latinfin was owned by Castro Llanes.⁶⁸

On March 11, 1997, Joseph Dawson of the New York District Attorney's Office spoke with a Miami Federal prosecutor and discussed the issue of the statute of limitations for prosecuting the campaign law case against Castro. The prosecutors agreed that since the fax transmission occurred and the checks were written in the fall of 1992, the statute would expire in the fall of 1997.⁶⁹

A. CASTRO COOPERATES

At the same time that the New York District Attorney's Office was discussing the conduit contributions case with the Miami U.S. Attorney's Office, they were also holding discussions about obtaining Jorge Castro Barredo's cooperation. Castro Barredo had been convicted, along with his grandfather and uncle, on February 19, 1997. An agreement was ultimately reached, and Jorge Castro Barredo agreed to be debriefed by the New York District Attorney's Office.⁷⁰

The debriefings took place on March 20, 1997 and April 3, 1997. In the course of the debriefings, Castro Barredo stated that he made contributions of \$20,000 to the DNC, and \$5,000 to a state Democratic party at Intriago's instructions, and that he was reimbursed for the contribution by one of his grandfather's companies.⁷¹ According to Castro Barredo, Maria Sire Castro also made a \$20,000 contribution to the DNC and a \$5,000 contribution to a state Democratic party at Charles Intriago's direction, and was similarly reimbursed by Castro Llanes.⁷² Castro shared with the prosecutors the entire story of how he had come to contribute to the Democratic party, how he had been reimbursed, and what the family had received for the contributions. The testimony given by Castro to the prosecutors was the same that he gave the Commit-

⁶⁸ Letter from John W. Moscow to Richard Gregory Esq. [sic], Feb. 24, 1997 (Exhibit 21).

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

tee in interviews, and in its hearing.⁷³ In the Committee's hearing, the District Attorney working on the case confirmed that Castro was truthful throughout interviews and debriefings with their office:

COUNSEL. Has Mr. Castro ever told you anything about conduit contributions that has later proven to be false?
Mr. PREISS. No.⁷⁴

Following the debriefing of Castro Barredo by the New York prosecutors, they arranged for Castro Barredo to meet with Federal prosecutors on May 28, 1997.⁷⁵ Just prior to the meeting, Preiss spoke with Assistant U.S. Attorney Bruce Udolf from the U.S. Attorney's Office in the Southern District of Florida and again expressed his concern over the potential statute of limitations problem.⁷⁶ They agreed that the likely statute of limitations for a prosecution relating to the Castro contribution expired on September 16, 1997, or 5 years from the date of Intriago's fax to Castro Barredo.⁷⁷ Roughly 1 week after Castro Barredo talked with the Federal prosecutors, a Federal prosecutor in Miami called Preiss, thanking him for the cooperation and courtesy provided by the New York District Attorney's Office.⁷⁸ He also stated that his office intended to pursue the matter, and that its investigation could be completed before the statute of limitations expired.⁷⁹

B. THE CASTRO CASE IS TAKEN BY THE PUBLIC INTEGRITY SECTION

In late June or early July 1997, Preiss received a phone call from Castro Barredo's attorney, Marc Nurik, stating that the Justice Department's Public Integrity Section had taken the Castro case away from the prosecutors in the Southern District of Florida.⁸⁰ Nurik said that he had spoken with the head of the Justice Department's Public Integrity Section, Lee Radek, and was concerned that Radek had nothing substantive to say about the Justice Department's plans for the case.⁸¹ Nurik feared that the Justice Department would allow the statute of limitations to expire, leaving his client with nothing to show for his cooperation.⁸²

After confirming that the case had been transferred, Preiss attempted to speak to Lee Radek. Preiss spoke with Radek's assistant, but the assistant refused to put Preiss through unless he had a "referral number" for the case.⁸³ Preiss then asked that whoever was handling the case contact him.⁸⁴ An exchange between the Committee Counsel and Mr. Preiss concerning his attempts to contact Radek raises serious questions about the responsiveness of the

⁷³ Castro Hearing at 82.

⁷⁴ Id. at 82 (Testimony of Richard T. Preiss).

⁷⁵ Id. at 79 (Testimony of Richard T. Preiss).

⁷⁶ Id.; see also Kindler-Dawson Interview.

⁷⁷ Interview of Richard Preiss and Joseph Dawson, Jan. 19, 1998 ("Preiss-Dawson Interview") at 1.

⁷⁸ Castro Hearing at pp. 79–80.

⁷⁹ Id.

⁸⁰ Preiss-Dawson Interview.

⁸¹ Id.

⁸² Id.

⁸³ Id.

⁸⁴ Castro Hearing at 88–89 (Testimony of Richard T. Preiss).

Justice Department to the apparent violation of law which was connected to a DNC trustee:

COUNSEL. Now, Mr. Preiss, did you try and have a conversation with Mr. Radek?

Mr. PREISS. Yes.

COUNSEL. What was the result?

Mr. PREISS. I was not put through to him.

COUNSEL. Now, it's my understanding—correct me if I'm wrong—that you were told that Mr. Radek would not speak to anyone unless they had a referral number for the case, correct?

Mr. PREISS. That's correct.

COUNSEL. And do you know whether Mr. Castro's lawyer had such a referral number?

Mr. PREISS. If he did, he didn't give it to me.

COUNSEL. Did anybody ever give you a referral number for this case?

Mr. PREISS. No, I don't think we were ever given a referral number. I don't think anybody had a referral number. Maybe there was a referral number inside the Department of Justice, but, again I wouldn't be privy to that, so I don't know.

COUNSEL. Right, but Mr. Castro's attorney was not an employee of the Department of Justice, so he had the same status as you.

Mr. PREISS. No he was not an employee of the Department of Justice.

COUNSEL. OK. And I don't know whether this is a question you can answer or not, but were you concerned at the time that Mr. Castro's attorney was given more attentive treatment at the highest levels of the Department of Justice than you?

Mr. PREISS. Well, I thought at the time, I think I said in the conversation that I couldn't understand why the defense attorney's phone call could be taken the day before, but mine couldn't be and I was the prosecutor and he was the defense lawyer. I think that's what I said to the person who answered the phone.⁸⁵

The willingness of Mr. Radek to accept a phone call from a defense attorney and at the same time refuse to accept a phone call from a New York Assistant District Attorney who referred the case is curious. At the same time, however, it is not the most troubling aspect of the case. Of particular concern is the decision of Justice Department officials in Washington to ignore evidence which strongly suggests that not only was an illegal conduit contribution made, but that it was made in close coordination with a prominent Democratic contributor who is a lawyer and who was getting directions from another unknown party.

⁸⁵ Id. at 89 (Testimony of Richard T. Preiss).

C. THE CASTRO CASE DIES

Roughly 1 week later, Preiss was called by Peter Ainsworth, a trial attorney from the Justice Department's Campaign Finance Task Force. Ainsworth told Preiss that he was handling the Castro case, and had in his possession the notes and documents from the meeting the other Federal prosecutors had had with Castro Barredo.⁸⁶ Preiss offered to make Castro Barredo available for an interview, and stated that he was willing to request a sentencing delay if necessary. The attorney told Preiss that he did not want to speak with Castro Barredo, but did want to speak with the New York prosecutors and to review some documents.⁸⁷

On July 23, 1997, Ainsworth came to New York accompanied by an FBI agent, spoke with the New York prosecutors, reviewed the documents which corroborated Castro Barredo's testimony, and took with him photocopies of some of the documents.⁸⁸ At this meeting, Preiss and Dawson told Ainsworth that they were willing to delay Castro Barredo's sentencing pending the Justice Department's review of Castro Barredo's contributions.⁸⁹ The New York District Attorneys recommended the delay in sentencing so that Castro Barredo would continue to have an incentive to cooperate. Requesting such a delay in sentencing was the standard prosecutorial practice that they had followed in the past.⁹⁰ In addition, while Ainsworth was at their office, Preiss and Dawson both reminded Ainsworth that the statute of limitations on the Castro case likely expired on September 16, 1997.⁹¹

The following month, the New York prosecutors asked for and received a stay in Castro Barredo's sentencing.⁹² On August 19, 1997, and then again on September 23, 1997, the New York District Attorney's Office requested delays in Castro Barredo's sentencing.⁹³ Preiss also provided additional information to Ainsworth after Castro Barredo's sentencing was delayed.⁹⁴ In his letter to Ainsworth, Preiss again asked that the Justice Department let him know what their plans were concerning this case.⁹⁵

After returning from a vacation in late September 1997, Preiss called the Task Force attorney several times to find out what the status of the case was.⁹⁶ He was concerned that the perceived September 16 deadline would pass without any action from the Justice Department.⁹⁷ Eventually, he received a voice mail message thanking him for his patience. Despite the lack of response from the Justice Department, the New York District Attorney again requested that sentencing be delayed once more, and it was, this time until October 20, 1997.⁹⁸

Preiss wrote to Ainsworth again on October 10, 1997, stating:

⁸⁶ Preiss-Dawson Interview.

⁸⁷ Castro Hearing at 80 (Testimony of Richard T. Preiss).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Castro Hearing at 103-104.

⁹¹ Preiss-Dawson Interview.

⁹² Castro Hearing at 80.

⁹³ *Id.*

⁹⁴ Letter from Richard T. Preiss to Peter Ainsworth, Sept. 4, 1997 (Exhibit 22).

⁹⁵ *Id.*

⁹⁶ Preiss-Dawson Interview.

⁹⁷ *Id.*

⁹⁸ Castro Hearing at 81 (Testimony of Richard T. Preiss).

Jorge Castro Barredo is currently scheduled to be sentenced on October 20, 1997. We referred a matter to the Department of Justice in late 1996 and Castro Barredo is a witness who has been interviewed by representatives of the Department of Justice in connection with an investigation of Charles A. Intriago.⁹⁹

* * * * *

Please advise us whether the Department of Justice intends to make any submissions regarding Castro Barredo's cooperation or lack of cooperation in your investigation and send us a copy before October 20, 1997. If you wish us to request a delay in the sentencing of Castro Barredo, please advise us immediately how long a delay you would like us to request and the basis for the delay in order that we may convey that information to the court.¹⁰⁰

A week later, Castro Barredo's attorney called Preiss, stating that he had received a copy of a letter from Lee Radek, chief of the Justice Department's Public Integrity Section to Preiss advising him that the Department would neither be asking for a further postponement of Castro Barredo's sentence, nor submitting a letter on his behalf. In the letter, Radek stated:

[W]e have concluded that there is at this time no further role for him [Castro Barredo] to play in matters under investigation by the Task Force.¹⁰¹

Castro Barredo was sentenced on December 15, 1997, to between 3½ to 10½ years in prison on bank fraud charges. No charges have ever been filed against Charles Intriago by the Justice Department. When he was called to testify by the Committee, Mr. Intriago invoked his Fifth Amendment rights.¹⁰²

The frustration of the New York District Attorney's Office with the Justice Department was clear from the testimony of Preiss and Dawson before the Committee. In fact, at one point during their dealings with the Justice Department, the District Attorney's Office considered taking the Castro case back from the Justice Department. Mr. Dawson testified to this fact before the Committee:

COUNSEL. Just one last question, and I'll address this to you, Mr. Dawson. Did you at any time have great enough concerns that you discussed or contemplated trying to take the case back and have your own office do something with the conduit contributions case?

Mr. DAWSON. Yes, we had conversations about it.

* * * * *

Mr. BURTON. Let me followup on that. When you had conversations about it, were those conversations involving Mr. Intriago?

Mr. DAWSON. Well, I'm reluctant to answer the question only because it involves questions between—I mean con-

⁹⁹Letter from Richard Preiss to Peter Ainsworth, Oct. 10, 1997 (Exhibit 23).

¹⁰⁰Id.

¹⁰¹Memorandum from Marc S. Nurik to Richard T. Preiss with attached letter from Lee J. Radek, Oct. 17, 1997 (Exhibit 24).

¹⁰²See Intriago Deposition.

versations between Assistant District Attorneys in our office, and the question whether to basically take back a matter that had already been referred is sort of a touchy area.¹⁰³

CONCLUSION

The Castro case represents one small episode in a large pattern of illegal campaign contributions in the 1992 and 1996 elections. However, the Castro case stands out from the others for the way it was so obviously mishandled by the Justice Department. The Justice Department was presented with clear evidence that a major DNC fundraiser was involved in directing conduit contributions to the DNC. Moreover, they had evidence that Mr. Intriago was receiving guidance on how to direct those contributions from some higher authority, presumably within the Democratic party. Inexplicably, the Justice Department failed to pursue this case, and let the statute of limitations on the case expire, effectively preventing anyone else from pursuing it.

A key point in the testimony of the New York District Attorneys, Dawson and Preiss, came during an exchange with Chairman Burton:

Mr. BURTON. You thought Mr. Intriago should have been investigated?

Mr. DAWSON. That the matter should have been investigated.

Mr. PREISS. We thought the matter should have been investigated.

Mr. BURTON. Including Mr. Intriago.

Mr. DAWSON. Well, to be honest with you Mr. Chairman, we had already looked into some of Mr. Intriago's transactions ourselves, and we had referred all of this stuff. So, I guess it's no secret that this was among, I suppose, that he would be among the matters we had referred.

Mr. BURTON. You thought it was worth them looking at.

Mr. PREISS. Absolutely, that's why we referred it.¹⁰⁴

The investigation into the illegal conduit contributions of the Castro family leaves many unanswered questions. Among the most pressing unresolved issues are:

- The role Charles Intriago played in funneling illegal conduit contributions to the DNC and its various state affiliates.
- The possibility that the solicitation of such contributions was coordinated with senior officials of the DNC.
- The circumstances surrounding the transfer of the Castro family case from the Southern District of Florida to the Justice Department's Public Integrity Section.
- Why the Justice Department chose not to prosecute a case where there was clear and compelling evidence to show that several crimes had been committed.
- Why the FEC failed to act on the clear evidence of election law violations presented in the Castro family case.

¹⁰³ Castro Hearing at 107.

¹⁰⁴ Id. at 88 (Testimony of Joseph J. Dawson and Richard T. Preiss).

- Why, for more than 2 months, the Attorney General has denied the request of the Committee to interview Richard Gregorie, the Assistant U.S. Attorney involved in the investigation of the Castro case before it was taken away by the Public Integrity Section. Gregorie likely has detailed information about the reasons that the Castro case was taken to Public Integrity, but the Attorney general has never responded to multiple requests made by the chairman to interview Mr. Gregorie.

It is the opinion of the Committee that the Public Integrity Section of the Department of Justice was derelict in its duty to pursue clear evidence of crimes including wire fraud, mail fraud, conspiracy and campaign finance violations related to the Castro case. The Justice Department's failure to act on this case prevented the American people from learning the truth about illegal campaign fundraising activities going back to the 1992 presidential election. The Committee was able to uncover only part of the truth, the story of how Jorge Castro and his aunt made \$50,000 in illegal contributions to the DNC. However, there are two more critical questions that the Committee has been unable to answer: why did the Castro family make the contributions, and who was telling Charles Intriago how to direct these contributions? These are facts that could have been discovered by a timely prosecution of Charles Intriago. However, because of the Justice Department's malfeasance in the Castro case, the truth may never be discovered.

[Supporting documentation follows:]

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CHAPTER V, PART B

**THE FAILURE OF GOVERNMENT AGENCIES TO
VIGOROUSLY PURSUE CAMPAIGN VIOLATIONS:**

**FEC ENFORCEMENT PRACTICES AND THE CASE
AGAINST FOREIGN NATIONAL THOMAS KRAMER: DID
PROMINENT DNC FUNDRAISERS RECEIVE SPECIAL
TREATMENT?**

FEC ENFORCEMENT PRACTICES AND THE CASE AGAINST FOREIGN NATIONAL THOMAS KRAMER: DID PROMINENT DNC FUNDRAISERS RECEIVE SPECIAL TREATMENT?

I. INTRODUCTION

Another foreign contributor who came to the Committee's attention was Thomas Kramer. Mr. Kramer, a German citizen with considerable real estate holdings in the South Beach area of Miami, illegally contributed over \$322,600 to national, state, and local candidates of both the Democratic and Republican parties.¹ The Tampa Tribune noted the donations and published an article in September 1994 questioning whether or not Kramer was eligible to make political contributions.² The following week, Kramer "voluntarily" disclosed his illegal activity, claiming ignorance as to the illegality of his campaign contributions.

Upon learning that Kramer's contributions might not be legal, almost all of the contributed money was returned to Kramer by the parties involved.³ The FEC ultimately fined Kramer, his secretary (Terri Bradley), the law firm of Greenberg Traurig Hoffman Lipoff Rosen & Quentel, P.A. ("Greenberg Traurig"), and the Republican Party of Florida ("RPF") for giving or receiving Kramer's contributions. The penalties associated with the Kramer contributions totaled \$503,000. Mr. Kramer was individually fined \$323,000—the largest penalty of its kind ever assessed by the FEC.⁴

The two individuals most closely identified with soliciting Kramer's contributions were Marvin Rosen, the former Finance Chairman of the Democratic National Committee ("DNC"), and Howard Glicken, a former Vice Finance Chairman of the DNC and close political associate of Vice President Gore. Mr. Glicken was charged on July 9, 1998, by the Department of Justice's Campaign Financing Task Force and pled guilty to two misdemeanor violations stemming from his role in the Kramer solicitations.⁵ The FEC fined Greenberg Traurig—the law firm hired by Kramer to handle immigration matters and which counts Marvin Rosen as a partner—\$77,000 for soliciting illegal contributions from Kramer with knowledge of his foreign national status. When asked who at the firm be-

¹The Committee's investigation focused only on the state and national contributions.

²Louis Lavelle, "Developer's donations questioned," Tampa Trib., Sept. 28, 1994, at Florida/Metro 1.

³The Republican Party of Florida [RPF] did not return \$95,000 of the \$205,000 it received. The RPF successfully argued that the money had been placed in a redistricting account that it was legally permitted both to receive and spend money contributed by foreign nationals. The FEC agreed with the RPF's position. Conciliation Agreement, *In the Matter of Republican Party of Florida (federal/non-federal accounts) and James H. Stelling, as treasurer, MUR 4398*, Feb. 20, 1997, at 1.3 (Exhibit 1).

⁴Robert Jackson, "German Given Record Fine in Campaign Donation Case," L.A. Times, July 19, 1997, at A16.

⁵Jane Bussey, "Political money probe nabs Miamian," Miami Herald, July 10, 1998, at 9A.

sides Rosen solicited contributions from Kramer, the FEC reported that:

The only Greenberg-Traurig individual specifically identified as a solicitor of Mr. Kramer's contributions in the file of this matter is Marvin Rosen.⁶

During the course of the Committee's investigation, the explanations given by FEC staff members only served to raise further skepticism as to the conviction with which the FEC pursued the Rosen and Glicken investigations. Indeed, the FEC has never adequately explained why it failed to bring a case against Rosen individually, or why it initially failed to pursue a case against Glicken. Notwithstanding the fact that neither Rosen nor Glicken was fined by the FEC—despite evidence demonstrating that these two individuals were the only solicitors who had reason to know that Kramer was ineligible to make contributions—FEC General Counsel Noble stated on March 31, 1998, that *no one at the FEC ever even called Rosen or Glicken about the contributions.*⁷ It should be further noted that Kramer was not contacted by the FEC until a year and a half after first disclosing his illegal contributions to the commission. Yet, in announcing that it would not conduct enforcement proceedings against Glicken, the FEC made the following statement in December 1997:

[B]ecause of Mr. Glicken's high profile as a prominent Democratic fundraiser, including his potential fundraising involvement in support of Vice President Gore's expected presidential campaign, it is unclear that this individual would agree to settle this matter short of litigation.⁸

FEC counsels and Commissioners, in both the FEC conciliation agreement and in subsequent testimony before the Committee, argued that this statement referred to a statute of limitations that was about to expire at the time Glicken's name was discovered in conjunction with his solicitation of Kramer.⁹ They argued that discovering Glicken's name at such a late point made bringing a case against Glicken difficult for the Commission and would complicate the settlement process for the other involved parties.¹⁰ This position, however, cannot explain away the fact that Kramer submitted an affidavit in December 1994—approximately 4 years before the statute of limitations would expire—which put the FEC on notice that a key fundraiser for the Democratic party may have knowingly solicited his illegal contributions.¹¹ Furthermore, the FEC's statement linking Glicken to Vice President Gore as an apparent reason

⁶Federal Election Commission Enforcement Actions: Foreign Campaign Contributions And Other FECA Violations Before the House Committee on Government Reform And Oversight, 105th Cong., 2d sess. 114 (1998).

⁷Id. at 80 (statement of FEC General Counsel) (emphasis added).

⁸General Counsel's Report, *In the Matter of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., et al*, MUR 4638, Dec. 19, 1997, at 2.3–2.4 (Exhibit 2).

⁹Federal Election Commission Enforcement Actions, supra note 6 at 80–81 (statement of FEC General Counsel). General Counsel Noble stated that the FEC “did not find Mr. Glicken's name until July 1997, and that particular contribution, where there was a suggestion that it was a contribution in the name of another, or solicited as a contribution in the name of another, the statute of limitations would have run at the end of April of this year.” Id. at 81.

¹⁰Id. at 82.

¹¹Affidavit of Thomas Kramer, Dec. 27, 1994 (Exhibit 3); see also Letter from Roger M. Witten to Joan McEnery and Mary L. Taksar, Dec. 27, 1994 (Exhibit 21).

for not pursuing the matter appears to be a particularly ill-considered message that the FEC does not prosecute cases when met with resolve and political connections. Notwithstanding the fact that many of the recipients of Kramer's donations had no knowledge of his foreign national status, the Thomas Kramer matter demands vigorous attention for two reasons:

- (1) Kramer's first and third federal contributions were conduit contributions made at the request of, and with the knowledge of, very prominent Democratic fundraisers; and
- (2) the FEC appears to have missed the mark entirely—prominent national fundraisers should be penalized heavily if they encourage others to break the law.

An analysis of FEC practices and procedures relevant to the Thomas Kramer matter follows this chapter as Appendix 1.

II. THOMAS KRAMER: HIGH PROFILE GERMAN DEVELOPER

A. BACKGROUND

Thomas Bernhard Kramer was born in Bad Soden, Germany on April 27, 1957. He worked at Shearson Lehman Hutton Inc. in Frankfurt from 1983 until 1988, leaving Germany the following year after his plan to buy up East German pre-reunification real estate proved unsuccessful. He settled in Miami during the early 1990s and remains in the United States as a resident on a tourist visa.¹²

Mr. Kramer's lack of U.S. citizenship would certainly not surprise anyone remotely familiar with the Miami South Beach scene. Leading a high profile life colored with self-promotion, Kramer was often described in newspapers and national magazines by such monikers as "the impulsive German whiz kid"¹³ or "the German multimillionaire."¹⁴ During the early 1990s, he amassed more than \$40 million in property on South Beach and Star Island—often paying cash for his acquisitions. The Miami Herald once ran a full color picture of Kramer on the cover of its Tropic insert describing Kramer as "The German Tycoon Who Wants To Rebuild South Beach in His Own Image."¹⁵

FEC General Counsel Lawrence Noble stated in testimony before this Committee that, to his understanding, Kramer was definitely known to be a German investor in the South Beach, Miami area. Mr. Noble further pointed out that Kramer's immigration status "was a question of whether or not it was obvious or not he was a foreign national and whether or not he was what's called a green card holder in this country."¹⁶ Mr. Noble's statement shows that Kramer's immigration status was thus something certainly in need of scrutiny. Notwithstanding public information that might have led potential solicitors to question Kramer's nationality, the evidence obtained by the Committee demonstrates that Marvin Rosen

¹²Christine Evans, "Kramer vs. Kramer," Miami Herald, May 9, 1993, at 9. Notwithstanding requests to the Department of Justice for immigration information on Thomas Kramer, this Committee has not received as much cooperation as expected.

¹³Evans, *supra* note 12.

¹⁴Christine Evans, "The Mysterious Stranger," Tropic, Jan. 3, 1993, at 11.

¹⁵Tropic Magazine Cover, Jan. 3, 1993 (Exhibit 4).

¹⁶*Federal Election Commission Enforcement Actions*, *supra* note 6 at 35 (statement of FEC General Counsel).

and Howard Glicker clearly had knowledge that Kramer was ineligible to make political contributions. The sections of this chapter discussing the roles played by Rosen and Glicker in the Kramer solicitations will explore such evidence in detail.

The DNC and Kramer's Questionable Immigration Status

The Committee uncovered additional evidence demonstrating that the DNC was on, at a minimum, constructive notice of Kramer's questionable immigration status. Notwithstanding the aforementioned newspaper articles describing Kramer's foreign national status, documents show that the DNC conducted background NEXIS research on the Miami-based developer which turned up a Forbes magazine article describing Kramer as a "German investor."¹⁷ The DNC's own "Event Form" for Chairman David Wilhelm for a June 10, 1993, Vice Presidential dinner described Kramer as being "[b]orn in Germany."¹⁸ The form did not mention Kramer's exact immigration status, leaving the legality of his ability to make political contributions a matter of uncertainty.

Despite his questionable status, Kramer earned a DNC Business Leadership Forum position due to the fundraising efforts he undertook for an April 29, 1993, dinner for Vice President Gore.¹⁹ A DNC memo dated May 7, 1993, to party finance directors demonstrated why Kramer was considered an attractive target for campaign funds:

Tom Kramer—Gave \$25,000 to the event. Is the developer who will build much of South Miami Beach and is worth tens of millions. Make him a Trustee and stroke him and he'll do more than \$50,000 for the program.²⁰

Other employees at the DNC also targeted Kramer directly. Eric Sildon, Director of Membership Services for the DNC, included Kramer on a list of potential invitees to a Florida event for President Clinton "because things like this might get him jazzed-up to start writing those big checks."²¹ Mr. Kramer's name appeared on call sheets for both Laura Hartigan, Director of the DNC's Trustee Program, and for David Wilhelm, the then-DNC Chairman.²² Mr. Wilhelm also drafted a letter to Kramer and his wife on May 27, 1994, inviting them to a June 1994 DNC National Presidential Dinner.²³ National Finance Chairman Terry McAulliffe also invited Kramer to the DNC's 1994 Business Leadership Forum's Issue Conference and to the DNC's National Presidential Dinner.²⁴ As a result of such targeted solicitation, Kramer eventually attained DNC Managing Trustee status.²⁵ Along with his numerous con-

¹⁷ DNC Major Donor Screening Form for Olympus Holdings, Inc. and corresponding background information (Exhibit 5).

¹⁸ Event Form for Chairman Wilhelm, June 10, 1993 (Exhibit 6).

¹⁹ Charles Intriago, another South Florida Democratic Fundraiser and DNC Trustee was also in attendance. See "Charles Intriago and Illegal Political Contributions from Venezuela" section of this report).

²⁰ Florida Donors Memorandum, May 7, 1993, at 7.5 (Exhibit 7).

²¹ Clinton in Florida Memorandum, Sept. 20, 1993 (Exhibit 8).

²² Laura Hartigan Calls (Exhibit 9); see also Call Sheet for Chairman David Wilhelm, Nov. 16, 1993 (Exhibit 10).

²³ Chairman David Wilhelm Letter to Mr. and Mrs. Tom Kramer, dated May 27, 1994 (Exhibit 11).

²⁴ Invitation to Thomas Kramer to the 1994 Business Leadership Forum's Issue Conference (Exhibit 12).

²⁵ Invoice Dates DNC Managing Trustees, at 13.7 (Exhibit 13).

tributions and invitations to various DNC causes and events, Kramer also began to gain access to both the Vice President and the First Lady: Mr. Kramer likely attended a private dinner with the Vice President on June 10, 1993, at the Four Seasons Hotel in Georgetown²⁶ and was also scheduled to be seated at the First Lady’s table at another DNC event.²⁷

B. CONTRIBUTIONS

Mr. Kramer made numerous contributions to national and state candidates of both the Democratic and Republican parties between April 1993 and March 1994. He made the contributions in his own name, in the name of his companies, in his wife Catherine Burda Kramer’s name, and in his secretary Terri Bradley’s name. In an affidavit filed with the FEC, Kramer said:

[N]o one who solicited or accepted my candidate contributions ever asked me about my immigration status, advised me that I was illegal to contribute, or rejected my political contributions because of my citizenship.²⁸

The Committee’s investigation uncovered no evidence contradicting this claim for the majority of recipients. Two facts, however, stand out. First, Marvin Rosen’s law firm—Greenberg Traurig—did immigration work for Kramer, thereby putting Rosen and his colleagues on clear notice that Kramer was not eligible to make political contributions. Second, there appeared to be clear and convincing evidence that Kramer was counseled on how to break the law by Howard Glicken. Because Glicken coached Kramer on making conduit contributions through Kramer’s secretary, it is appropriate to assume that he understood that Kramer himself would not make the contributions.

On August 5, 1996, Kramer entered into a conciliation agreement with the FEC stating that “[r]espondent Thomas Kramer made a total of \$322,600 in contributions either directly, through his secretary, through unknown intermediaries, or as an officer through his various corporations which were used in connection with elections for local, State and Federal office, in violation of 2 U.S.C. §§441e and 441f.”²⁹ The two conduit contributions made through his secretary Terri Bradley, the first and third contributions made by Kramer,³⁰ are detailed in the chart below:

Contributions Made in the Name of Terri Bradley³¹

Date	Recipient	Amount	Returned?	Solicitor
3/20/93	Mitchell for Senate	\$1,000	Yes	Marvin Rosen ³²
4/28/93	DSCC	\$20,000	Yes	Howard Glicken ³³

³¹ Bradley is no longer employed by the Portofino Group.

³² Sandler Letter to Rodriguez, Sept. 3, 1997, at 18.3, 18.11 (Exhibit 18).

³³ DSCC Finance Division Check Tracking Memorandum (Exhibit 19).

²⁶ NMR Event Brief, June 10, 1993 (Exhibit 14). Kramer was slated to sit at Chairman Wilhelm’s table. Table Diagram (Exhibit 15).

²⁷ The First Lady’s Table (Exhibit 16). Mark Jimenez, who is also currently under investigation for campaign fundraising abuses, was also listed on the diagram. *Id.*

²⁸ Affidavit, *supra* note 11.

²⁹ Conciliation Agreement, *In the Matter of Thomas Kramer et al. MUR 4398*, Aug. 5, 1996 (Exhibit 17).

³⁰ See Affidavit, *supra* note 11 at 3.3.

Kramer focused on these two contributions in his December 1994 affidavit. The contributions are distinct from his other illegal contributions in that they involve violations of two Federal election law provisions—2 U.S.C. § 441e, making illegal contributions by a foreign national and § 441f, making illegal contributions in the name of another. This chapter will show that both Rosen and Glicker sought contributions from Kramer knowing he was a foreign national and that Glicker encouraged him to make contributions through a conduit. Anyone soliciting a contribution from Kramer knowing he was a foreign national or encouraging him to make the contribution through a conduit would thus be conspiring to violate Federal election law provisions.

C. THE CASE AGAINST THOMAS KRAMER

On September 28, 1994, the Tampa Tribune published an article entitled “Developer’s donations questioned,” bringing into question the more than \$500,000 contributed by the “flamboyant German developer.”³⁴ Shortly thereafter, Kramer brought the matter to the attention of the FEC. The somewhat unorthodox method by which the case arrived at the FEC was noted by FEC Commissioner McGarry during one of the Pre-Matter Under Review, or Pre-MUR, hearings:

I’m convinced also in my own mind that if it weren’t for the *Tampa Tribune* we wouldn’t be seeing this case. It is sua sponte yes, but I always am less sympathetic when someone is accelerated, eh, to jump in and do something and bring it to our attention when it’s publicized in a major newspaper.³⁵

On October 4, 1994, Kramer’s counsel wrote to FEC General Counsel Lawrence Noble expressing his client’s desire to voluntarily disclose his violations of the Federal Election Campaign Act (“FECA”).³⁶ The case was docketed as Pre-MUR 307 (which later became MUR 4398 as the investigation continued). A longer letter and an affidavit from Kramer disclosing the contributions he made to the DNC and to the Republican party of Florida followed in December.³⁷ In the affidavit, Kramer cited the September 1994 Tampa Tribune article, which spotlighted his illegal contributions, as providing the impetus for his decision to come forward. Kramer claimed that he was “not knowledgeable about federal campaign finance laws” at the time he made his political contributions.³⁸ Both the letter and the affidavit state that Kramer was never advised that a foreign national could not make candidate contributions.

The fact that the FEC did not discover the identities of the solicitors of Kramer’s illegal contributions until over 2½ years after receiving Kramer’s admissions, together with the FEC’s General Counsel citing a then-expiring statute of limitations as a reason not to pursue a case against the solicitors, brings into question the

³⁴ Lavelle, *supra* note 2.

³⁵ FEC Pre-MUR 307/MUR 4398 proceedings, June 25, 1996.

³⁶ Letter from Roger M. Witten to General Counsel Noble, Oct. 4, 1994 (Exhibit 20).

³⁷ Letter from Roger M. Witten and Margaret L. Ackerley to the Office of the General Counsel, Dec. 27, 1994 (Exhibit 21); see also Affidavit, *supra* note 11.

³⁸ Affidavit, *supra* note 11.

FEC's management of this case. Indeed, FEC Commissioner Joan Aikens acknowledged a problem during one of the MUR hearings:

My first objection to this was to the length of time this was sitting around for a sua sponte complaint.³⁹

Commissioner Aikens further noted:

I understand the misfortunes that befell the matter, but I do find it distressing to have a sua sponte matter involving both corporate and foreign national contributions delayed this long. It would seem that something like this should be flagged to be sure that it doesn't fall between the cracks.⁴⁰

The FEC ultimately discussed the cases in Executive Session on four occasions,⁴¹ and handed down the following fines: Terri Bradley was fined \$21,000 in July 1996; Kramer \$323,000 in August 1996; the Republican Party of Florida \$82,000 in March 1997; and the law firm Greenberg Traurig \$77,000 in February 1998. At the time, Kramer's fine was the largest ever assessed by the FEC for an illegal campaign contribution by an individual.⁴² The FEC decided to concentrate its case against these four entities in order to maximize the possibility of entering into conciliation agreements. For various other reasons—reasons which will be examined and explored in this chapter—the FEC decided not to pursue a case against Marvin Rosen or Howard Glicken, both closely involved with the Kramer conduit contributions. (*The personal involvement of these individuals will be discussed in detail in the "Marvin Rosen, Howard Glicken and Their Solicitations of Thomas Kramer" section of this chapter*).

D. THE CASE AGAINST THE REPUBLICAN PARTY OF FLORIDA ("RPF")

On February 20, 1997, the RPF voluntarily entered into a Conciliation Agreement with the FEC for contributions it accepted from Kramer. The agreement noted that the party accepted the following contributions from Kramer: (1) Separate contributions of \$100,000 and \$5,000 from the Kramer-owned Portofino Group on June 4, 1994; and (2) \$100,000 from Kramer on March 3, 1994, \$5,000 of which was deposited into the party's Federal account with the balance being transferred into a non-Federal account and then transferred into a segregated redistricting account. The RPF argued, and the FEC later agreed, that it did not need to return \$95,000 of the \$205,000 it received because it had been legally placed into a redistricting account. The FEC noted in the agreement that funds used solely for non-campaign related redistricting issues are exempt from the foreign national prohibition at 2 U.S.C. §441.⁴³ The \$95,000 transferred by the party was thus, according to the FEC, legally permissible under campaign finance law. Nothing in this agreement pointed to any evidence whatsoever that anyone within or related to the RPF knowingly solicited contributions from the

³⁹ FEC Pre-MUR 307/MUR 4398, *supra* note 35.

⁴⁰ *Id.*

⁴¹ Noble Memorandum to the Commission, May 4, 1998 (Exhibit 23).

⁴² Jackson, *supra* note 4.

⁴³ *In the Matter of Republican Party of Florida*, *supra* note 3. The Committee believes that this aspect of Federal election law should be evaluated to determine whether it is appropriate.

foreign national or had direct knowledge of Kramer's status as a foreign national.

E. THE CASE AGAINST GREENBERG TRAUIG

Because of the FEC's inability to reach a settlement with Greenberg Traurig as part of the broader Kramer-related MUR 4398—and so as to not adversely prejudice the successfully completed portion of MUR 4398—the Commission severed the activity concerning Greenberg Traurig into a separate matter and launched an investigation into the law firm's involvement in Kramer's contributions.⁴⁴ The investigation into Greenberg Traurig's actions was assigned the MUR number 4638.

The FEC's case against Kramer from the outset, according to FEC Associate General Counsel Lois Lerner, targeted Greenberg Traurig:

Our focus . . . was to proceed against him [Kramer] and the law firm. Ordinarily in the past, we had not really proceeded against solicitors in these kinds of cases, but here we had very specific information regarding the law firm[.]⁴⁵

According to Lerner, "Mr. Kramer had said that it was individuals in the law firm that had solicited him and that was how we had proceeded."⁴⁶ Kramer's secretary, Terri Bradley informed the FEC that a named partner at Greenberg Traurig had solicited Kramer for illegal contributions. (*For a discussion of the FEC's case against Rosen—whom the Committee suspects may be the "named partner" in question—see the "Marvin Rosen" portion of the following section.*)

The FEC has not been clear about the frequency with which it proceeds against the solicitors of illegal foreign or conduit contributions. In an exchange before this Committee, FEC Associate General Counsel Lerner suggested that it was *virtually unprecedented* for the FEC to target the solicitors:

Mr. BURTON. Let me just follow up, if I might. You have gone after individuals who illegally or unethically solicited contributions that were not legal, have you not?

Ms. LERNER. Foreign national contributions, I believe there's only been one other instance where we have pursued a solicitor.

Mr. BURTON. Is that right? Only one other?

Ms. LERNER. I believe so.

Yet according to arguments made by FEC Staff Attorney Jose Rodriguez to the Commissioners during the FEC's MUR hearing:

There is a violation for someone who solicits the foreign national contributions, but not for the conduit. And having looked at some of our past practice through the MURS, I don't believe we've actually held anyone in violation of the

⁴⁴General Counsel's Report, *In the Matter of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., MUR 4638*, Oct. 27, 1997, at 23.2 (Exhibit 23).

⁴⁵*Federal Election Commission Enforcement Actions*, *supra* note 6 at 39 (statement of FEC Associate General Counsel).

⁴⁶*Id.*

foreign national prohibition for simply being a conduit. *We have held people certainly for soliciting funds* on behalf of the [political] committee, but not for being a conduit.⁴⁷

Greenberg Traurig was presumably targeted because of its particular and indisputable knowledge of Kramer's foreign national status. Yet it was Marvin Rosen—the DNC Finance Chairman, the lawyer who held Kramer as a client, and the actual solicitor of some of Kramer's contributions—who was in a unique and significant position. These factors make the reality that the FEC targeted Greenberg Traurig, rather than Rosen individually, even more difficult to comprehend.

Greenberg Traurig eventually expressed a desire to settle the matter, and did so based on the \$91,000 the firm admitted soliciting from Kramer.⁴⁸ The agreement noted that the firm lawyers working on the immigration matters were aware of Kramer's foreign national status.⁴⁹ The agreement did not detail which contributions the respondent solicited or which specific lawyers at the firm were aware of his immigration status.

It should be noted, however, that the FEC may have actually given Greenberg Traurig (and Marvin Rosen) an unfair advantage when it decided to split the case into two investigations. By splitting the case, the FEC was allowed to place into the public domain all of the facts involving all of the parties except Greenberg Traurig. The law firm, with which Kramer had placed his trust to advise him of the laws of this country and which in turn advised him to break the law by making illegal contributions, was thus given a chance to further distance itself from Kramer by splitting itself off into a far less public investigation.

It should be further noted that Kramer's attorney objected to splitting off the Greenberg Traurig case. In a letter written to the FEC on June 20, 1997, Kramer's counsel wrote:

We are advised that the Commission has taken the very rare, if not unprecedented, action of severing the above-referenced MUR [MUR 4398] to create a new MUR for one respondent that has failed to reach a conciliation agreement with the Commission.

* * * * *

We have been told that in severing this matter into two separate MURs, the Commission will redact from the public record of MUR 4398 certain facts that are essential to a fair understanding of the case as it concerns our client, Thomas Kramer. Specifically, we understand that references in our December 27, 1994 voluntary disclosure letter and in Mr. Kramer's accompanying affidavit to his having made contributions at the suggestion and with the advice of counsel will be omitted. . . . The planned deletions would omit a critically relevant fact—that Mr. Kramer made many of his contributions at the suggestion of a law firm that knew of his foreign national status. Because the

⁴⁷ FEC Pre-MUR 307/MUR 4398, *supra* note 35 (emphasis added).

⁴⁸ Certification and Conciliation Agreement, *In the Matter of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., et al. MUR 4638*, Dec. 31, 1997, at 24.3 (Exhibit 24).

⁴⁹ *Id.*

omissions will obscure the fact that Mr. Kramer had every reason to believe he was acting within the law when he made campaign contributions, the public's understanding of the facts will be skewed in a manner grossly unfair to Mr. Kramer.⁵⁰

Kramer's counsel further pointed out that at no time did Kramer ever advocate selectively publishing the facts surrounding his contributions. On the contrary, Kramer advocated full disclosure. Whether by intention or by accident, the splitting of the case into two separate MURs may have placed Kramer—who voluntarily came forward and disclosed all his improprieties completely and accurately—at a disadvantage, while placing Greenberg Traurig in a more favorable position.

III. MARVIN ROSEN, HOWARD GLICKEN, AND THEIR SOLICITATIONS OF THOMAS KRAMER

A. MARVIN ROSEN'S INVOLVEMENT

1. Background

Marvin S. Rosen is a shareholder in the Miami-based law firm Greenberg Traurig. He has a long history of political fundraising. He personally raised more than \$300,000 for Walter Mondale's pre-nomination campaign in 1984.⁵¹ Mr. Rosen also served as chairman of Michael Dukakis' national finance board of directors in 1988 and was one of former Florida Governor Reubin Askew's chief fundraisers.⁵² He has also raised money for a number of Democratic Senators. He was elevated by the DNC to trustee status after raising more than \$50,000 for an April 1993 dinner in Miami honoring Vice President Gore.⁵³ He served as a fundraiser for the Summit of the Americas conference in Miami and as head of the DNC Business Council.

Mr. Rosen became Finance Chairman of the DNC in September 1995. He did not, however, take a leave of absence from his private practice upon assuming the chairmanship—resulting in criticism from some of his colleagues for mixing personal and party business.⁵⁴ As Finance Chairman, Rosen oversaw a staff of 110 people—setting broad strategy for raising funds, deciding where to hold Clinton fundraisers, and soliciting money from donors. He has since sought to distance himself from the investigation of campaign finance violations, stressing his chairmanship position was voluntary and claiming that others had day-to-day management responsibilities.⁵⁵ Press accounts have reported that the DNC is paying his legal bills.⁵⁶

⁵⁰ Letter from Roger M. Witten and Margaret L. Ackerley to General Counsel Noble, June 20, 1997 (Exhibit 25).

⁵¹ Jackson, Brooks, "Dukakis Nears a Fund-Raising Record With Big Boost From Greek-Americans," *Wall Street Journal*, Sept. 21, 1987, at A1.

⁵² Kenneth S. Allen, "Costly decision: Askew pays price for leaving race," *St. Pete. Times*, May 12, 1988, at 1B.

⁵³ Florida Donors Memorandum, *supra* note 20.

⁵⁴ Michael Weisskopf and Susan Schmidt, "Some Clouds Over a Rainmaker; As Democratic party Finance Role Grew, So Did Lobbying Firm," *the Washington Post*, Jan. 26, 1998, at A8.

⁵⁵ *Id.*

⁵⁶ Susan Schmidt, "Democrats Renew Attacks on House Panel After Staff Turmoil in Political Funds Probe," *the Washington Post*, July 3, 1997, at A4.

According to then-DNC Chairman Don Fowler, Rosen conducted his fundraising under the control of Deputy White House Chief of Staff Harold Ickes: the finance division reportedly “took their mission and charter from the White House and seemed to do what the White House wanted done.”⁵⁷ In November 1995, Rosen allegedly estimated that 20 telephone calls by Clinton and 15 calls made by Gore would raise \$1.2 million,⁵⁸ and two lists of potential donors were prepared for the President and Vice President.⁵⁹ Mr. Rosen may have also been involved with setting up coffees with the President: an unidentified fundraiser stated in a newspaper article on February 26, 1997, that Rosen said “[u]se the coffees to get the money,” thereby acting against White House guidelines.⁶⁰

2. A. Pattern of Questionable Fundraising

Although he was the key DNC finance official during the 1996 campaign, Marvin Rosen has to date been largely overlooked in the campaign finance investigation. During his tenure as DNC Finance Chairman, Rosen was connected and involved with a number of questionable activities:

- Rosen’s law firm was retained by Mark Jimenez and his company Future Tech International, Inc. Jimenez, Future Tech International, and his employees donated \$800,000 since 1993 to President Clinton, Democratic causes and other related groups. Jimenez says that he was introduced to the world of political fundraising through the Miami firm. Future Tech began making contributions to the DNC in 1993.⁶¹ Mr. Rosen solicited \$50,000 from Jimenez as detailed on a March 24, 1994, DNC Executive Finance Summary. Jimenez visited the White House 12 times beginning in April 1994. Twenty-two employees of Future Tech each gave a \$1,000 contribution to Clinton-Gore ’96 at a Bal Harbour fundraiser in September 1995. Many or all of these appear to be conduit contributions.⁶² Jimenez was Florida’s largest DNC contributor in 1996.⁶³

On September 30, 1998, Jimenez was indicted by the Justice Department Campaign Financing Task Force. The 17 count indictment was for, “organizing, making and concealing illegal conduit contributions to a number of Democratic campaigns, including the 1996 Clinton/Gore primary committee.”⁶⁴

- Rosen was personally directed by President Clinton to hire controversial fundraiser John Huang after the DNC had ignored the suggestion of Joe Giroir to hire Huang. Giroir was a friend of both the President and of the Riady family. Ickes

⁵⁷“Democrats’ Fowler: Donors Got Access On White House Word,” *Inv. Bus. Daily*, Sept. 10, 1997, at A1.

⁵⁸Don Van Natta, Jr., “Fundraising fell short, report says,” *New York Times*, Sept. 29, 1997, at A8.

⁵⁹David Dahl, “Lawyer Implies Clinton may have made calls,” *St. Pete. Times*, Sept. 22, 1997, at A1.

⁶⁰Lena H. Sun, “Grand Jury Begins Hearing Testimony in DNC Fund-Raising Probe,” *the Washington Post*, Feb. 27, 1997, at A17.

⁶¹Jill Abramson, Jonathan Friedland, and Marcus W. Brauchli, “*Latin Connection: DNC Donor with Ties to Paraguay Presses Its Case in White House*,” *Wall Street Journal*, Feb. 20, 1997, at A1. Jimenez was born in the Philippines and is a legal resident of the United States. He has links to the Paraguay government. Tom Squitieri, “White House link to Paraguay probed,” *USA Today*, Feb. 24, 1997, at 6A.

⁶²William March, “Feds examine campaign largess,” *Tampa Trib.*, Dec. 3, 1997, at 1.

⁶³*Id.*

⁶⁴Press Release, Department of Justice, Sept. 30, 1998.

called Rosen twice in the autumn of 1995 before Huang was finally hired.⁶⁵ Former DNC Finance Director Richard Sullivan, before the Senate Governmental Affairs Committee, testified that: “My sense of it at the time was that Harold had called Marvin on—twice about it over the period of a couple of weeks, and that is when Marvin acted on it.”⁶⁶ Rosen was prompted to hire Huang after President Clinton approached him on November 8, 1995, at an event held at the Historic Car Barn: Rosen, in a deposition before the Senate Committee on Governmental Affairs, stated that “I believe as part of the conversation, [the President said] something along the lines that he came highly recommended or something, but I did believe that it was an approving comment at the time.”⁶⁷ Rosen and Fowler soon thereafter gave Huang the title of Vice Finance Chairman, the No. 2 or No. 3 position at the DNC (according to Sullivan).⁶⁸

- Rosen reportedly approved of the inclusion of Wang Jun, head of a Chinese arms-trading company under investigation for alleged involvement in weapons smuggling, at a February 6, 1996, coffee because now-indicted fundraiser Charlie Trie and Ernie Green, a friend of the President’s and a Managing Trustee of the DNC, were helping Huang raise money for a then-upcoming fundraiser.⁶⁹ Rosen also gave John Huang the go ahead for the July 30, 1996, dinner at the Jefferson Hotel which raised \$488,000 for the President.⁷⁰

- Rosen’s firm was also hired by Roger Tamraz, an Egyptian-American oil financier wanted in Lebanon on embezzlement charges. Tamraz hired Greenberg Traurig and donated money to the Democratic party to promote himself and his proposal to build a \$2.5 billion oil pipeline from the Caspian Sea region of Central Asia to Western markets. Tamraz contributed about \$300,000 to Democrats in 1995 and 1996. A Federal grand jury is seeking to determine if anyone tried to bribe or pressure any Clinton administration officials into supporting Tamraz and his plan.⁷¹

Tamraz claimed that the firm was hired for legal advice on regaining some of his properties seized in Lebanon. The connection evidently came through Tamraz’ hiring of Greenberg Traurig lawyer Victoria Kennedy, wife of Senator Ted Kennedy.⁷² Rosen and Sullivan met with Tamraz at the Four Seasons Hotel in Washington, DC on October 6, 1995. Tamraz complained that he had been frozen out from the White House.

⁶⁵ Don Van Natta, Jr., “President Linked to Urgent Enlisting of Top Fundraiser,” *New York Times*, July 7, 1997, at A1.

⁶⁶ *Investigation on Illegal or Improper Activities in Connection with the 1996 Federal Election Campaign Part I Before the Senate Committee on Governmental Affairs*, S. Hrg. 105-300 92 (1997) (statement of Richard Sullivan).

⁶⁷ *Id.* at 1663 (statement of Marvin Rosen).

⁶⁸ *Id.* at 99 (statement of Richard Sullivan).

⁶⁹ Alan C. Miller and Glenn F. Bunting, *Ex-DNC Official May Pose Biggest Party Threat*, *July 9, 1997*, at 1.

⁷⁰ See generally Tom Squitieri, “Democrats knew Huang might be trouble,” *USA Today*, Feb. 19, 1997, at 09A.

⁷¹ David B. Ottaway and Dan Morgan, “Senate panel to study saga of access and oil,” *Austin American-Statesman*, Sept. 9, 1997, A8.

⁷² Edward Walsh, “Tamraz Defends Political Donations; Access to Top Officials Was ‘Only Reason’ Pipeline Promoter Testifies,” *the Washington Post*, Sept. 19, 1997, at A1.

Rosen promised to look into it. Tamraz was later admitted to four White House functions.⁷³

Tamraz testified before the Senate Committee on Governmental Affairs during its campaign finance inquiry. When asked by Senator Joseph Lieberman whether he thought he got his “money’s worth” for the \$300,000 he gave, Tamraz replied, “I think next time I’ll give \$600,000.”⁷⁴

- The DNC assumed \$25,000 in bills incurred at Chicago’s Four Seasons Hotel during the 1996 Democratic Convention. Greg Cortes, an attorney from Puerto Rico, had picked up the tab for Rosen’s \$3,000-a-night suite, as well as part of the tab for treasurer Scott Pastrick, after the hotel refused to provide free rooms. Much of the bill was paid through wire transfers. The DNC was concerned that the wire transfer may have come from Cortes’s South American business associates and thus decided to pick up the tab. The DNC also failed to report Cortes’ payment as an in-kind contribution to the party in its FEC filings.⁷⁵

3. Marvin Rosen and the Kramer Solicitations

Terri Bradley told the FEC she was able to identify the Greenberg Traurig partner who solicited contributions from Kramer, and was aware of both telephone and fax solicitations evidencing such solicitation.⁷⁶ This information was conveyed during a telephone conversation between her lawyer and Jose Rodriguez, the staff attorney assigned to the case, in September 1997. Rodriguez was asked about this information during a Committee hearing:

A: We had some discussion about the language that we could include. Of course, what they wanted was some language showing that the client relied on, uhm, legal advice from the law firm. If I understand correctly, we told them that we would provide some of this language. We would not identify the law firm of course. Nor would we include language showing that the law firm solicited a number of the contributions. But we would allow some language showing the client’s reliance on legal advice.⁷⁷

Q: And I guess my question is up until 1997, what was done to try to deal with this very clear, specific request and, obviously a violation of the law because Ms. Bradley did, in fact, make a \$20,000 conduit payment, didn’t she?

A: Yes she did.

Q: OK. And what steps did you take to try to find out who this person was?

⁷³Gregory Vistica and Michael Issikof, “A Shadowy Scandal,” *Newsweek*, Mar. 31, 1997, at 34.

⁷⁴Investigation on Illegal or Improper Activities in Connection with the 1996 Federal Election Campaign Part VII Before the Senate Committee on Governmental Affairs, S. Hrg. 105–300 184 (1997) (statement of Roger Tamraz).

⁷⁵Charles Babcock, “DNC Assumes Hotel Bills First Paid by Business Consultant,” *the Washington Post*, Jan. 8, 1997, at A14.

⁷⁶Office of the General Counsel Memorandum of Telephone Call or Visit, Sept. 11, 1997 (Exhibit 26).

⁷⁷FEC Pre-MUR 307/MUR 4398, *supra* note 35.

A: The steps that were taken were taken during the conciliation process, and I can't go into detail because it's confidential information.

Q: I understand.

A: We sought to gain further information on this transaction during the negotiations for conciliation. We did not—the conciliation negotiations went quickly incidentally, settlement was reached quickly. Later on in the investigation when we could not find settlement or reach settlement with the law firm, we inquired further, and that brings us to the conversation you saw earlier on the Telecon and other information that you have in your possession.⁷⁸

Associate General Counsel Lerner testified before this Committee during the same hearing that “there’s also information that there were other people in the law firm who were also involved in the solicitations, not just Mr. Rosen.”⁷⁹ Yet in a statement provided to the Committee after its March 31, 1998, hearing, the FEC reported that:

The only Greenberg-Traurig individual specifically identified as a solicitor of Mr. Kramer’s contributions in the file of this matter is Marvin Rosen.⁸⁰

Based on evidence provided to the Committee by the FEC itself, it thus appears that Rosen was the “named partner” to whom Bradley was referring. Unfortunately, the Committee was not able to learn the identity of the “named partner” directly from Bradley because she asserted her Fifth Amendment rights before this Committee.

The Committee also discovered that Rosen solicited \$60,000 from Kramer at an event in March 1994 and another \$65,000 from Kramer through his companies. Both of the contributions violated 2 U.S.C. § 441e.⁸¹

B. HOWARD GLICKEN’S INVOLVEMENT

1. Background

Howard M. Glicken was born on November 16, 1943, in Miami. He serves as the Chairman of the Board of the Americas Group and is the former chairman of the Commonwealth Group,⁸² the College Democrats of America, and Jillian’s Entertainment Corporation.⁸³ He was fired from a Miami bank in 1983 after accepting

⁷⁸ *Federal Election Commission Enforcement Actions*, *supra* note 6, at 60.

⁷⁹ *Id.* at 40 (statement of FEC Associate General Counsel).

⁸⁰ *Id.* at 114.

⁸¹ DNC Check Tracking Form for 35 Star Island Inc. (Exhibit 27); Executive Summary for Mr. Tom Kramer (Exhibit 28); DNC Finance System report on Tom Kramer (Exhibit 29); DNC Response to Committee Interrogatories, Mar. 30, 1998 at 30.3 (Exhibit 30); see also Karpel, Craig, “Al Gore’s Ties to Dirty Money in Miami,” Apr. 4, 1994, at 1.

⁸² The business addresses are: Alhambra Plaza, Suite 620, Coral Gables, FL 33134; 1 Massachusetts Ave. NW, Suite 850, Washington, DC 20001; One Boston Street, 30th Floor, Boston, MA 02108.

⁸³ Jillian’s owns a chain of billiard parlor/restaurants in Miami, Seattle, Cleveland, and Boston. Jillian’s was formerly known as Carom. Carom was one of two Miami companies indicted by an Atlanta based grand jury on charges of money laundering as part of Operation Polar Cap. Polar Cap was a nationwide attack on the financial end of the Medellin cocaine cartel. David Sedore, “Carom and Analysts Say Indictment Misses the Mark,” S. Fla. Bus. J., Dec. 2, 1991, at 1. Falk and Duvan Arboleda, former chairman of the Orexana Corp. (another company in-

a commission that his boss considered to be a kickback.⁸⁴ Mr. Glicken also once headed MetalBanc Corp.,⁸⁵ a precious-metals trading company indicted in a case involving laundering drug money.⁸⁶ The charges were dropped, but in a settlement agreement Glicken created a subsidiary that agreed to pay the government \$375,000. Mr. Glicken was never charged, but testified under a grant of limited immunity at the trial of his former partner, Harry Aaron Falk.⁸⁷ Mr. Falk is currently serving a 27-year sentence.⁸⁸ Committee investigators learned that another partner indicted in the MetalBanc investigation, Duvan Arboleda, was murdered in Colombia in early 1998.⁸⁹

2. Prominent Fundraiser With Strong Ties to Vice President Gore

Mr. Glicken has known Vice President Gore since 1987, serving as the Florida Finance Chairman during then Senator Gore's 1988 Presidential campaign. The license plates on Glicken's two Jaguars were, at one point, "Gore 1" and "Gore 2."⁹⁰ He is known to show photos of a \$6,000 pool table that he arranged to have donated to Vice President Gore's home.⁹¹ In addition, his son, Monte Glicken, once worked for Mr. Gore during his tenure as Vice President.⁹² According to a newspaper article, Glicken "frequently advises the Vice President on ways to attract young people into the party."⁹³ A request for a West Wing Tour made by Eric Sildon at the DNC noted such strong ties to Vice President Gore: "Howard is one of our strongest supporters and has been a close friend of the Vice President's for many, many years."⁹⁴

Over the years, Glicken has developed an expertise in Latin American business and reportedly counsels the Vice President on Latin American affairs.⁹⁵ He testified before a July 1994 joint House International Relations Committee hearing on trade and the Western Hemisphere.⁹⁶ Mr. Glicken was also hosted in Argentina

dicted by the grand jury) were named in the indictment. *Id.* Arboleda was murdered in Colombia in spring 1998.

⁸⁴ Phil Kuntz and Jill Abramson, "Glicken Raises Millions, Visits the White House Often, Arranges Introductions," *Wall Street Journal*, Apr. 29, 1997, at A1.

⁸⁵ MetalBanc bought Jillian's by paying an undisclosed sum for a 51 percent interest in the chain of pool halls. Patrick Danner, "Banc Shot: MetalBank Prepares to Take on Billiards Industry," *S. Fla. Bus. J.*, Mar. 26, 1990, at 1. MetalBanc started Metal Resources Corp. in 1987 as a mean to capitalize on opportunities in Brazil and other markets. "Public Offering Set by Dealer of Precious Metals," *S. Fla. Bus. J.*, July 6, 1987, at 1.

⁸⁶ Phil Willon, "Fundraiser for Gore Reaps Dividends," *Tampa Trib.*, Feb. 11, 1998, at 6.

⁸⁷ Phil Kuntz and Jill Abramson, "Access Granted: A Fund-Raiser for Gore Retools His Career With an Aura of Clout," *Wall Street Journal*, Apr. 29, 1997, at A1.

⁸⁸ *Id.*

⁸⁹ Phone Interview of Cynthia Arboleda, Ex-Wife of Duvan Arboleda, in Washington, DC (June 2, 1998). Mrs. Arboleda attended the funeral of her ex-husband with her two children. According to Mrs. Arboleda, Duvan Arboleda was murdered in Envigado, Colombia on May 9, 1998. His cause of death was attributed to multiple gunshot wounds. *Id.*

⁹⁰ Tamara Lytle, "Friend of Gore avoids fine for illegal donations," *Orl. Sentinel*, Feb. 12, 1998, at A8.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Hillary Stout, "Gore Lays Strong Groundwork for the Future," *Wall Street Journal Eur.*, Jan. 9, 1996, at 2.

⁹⁴ West Wing Tour Memorandum, Oct. 22, 1993 (Exhibit 31).

⁹⁵ Hillary Stout, "Gore Lays Strong Groundwork for the Future," *Wall Street Journal Eur.*, Jan. 9, 1996, at 2. Glicken also serves/served on the board of the Make-A-Wish Foundation of South Florida. Peter Bernard, "Legal Aid Builds Its Staff With Promotions, Hiring," *Sun-Sentinel* (Ft. Lauderdale Fla.), Feb. 1, 1995, at 7.

⁹⁶ *The Summit of the Americas Hearing Part I: Prospects for or Trade within the Hemisphere Before the Subcommittee on Economic Policy, Trade and Environment and the Subcommittee on*

Continued

by Ambassador James Cheek and twice stayed as a guest of U.S. Ambassador to Chile Gabriel Guerra Mondragon at the official residence.⁹⁷ Mr. Glicken even accompanied the late Commerce Secretary Ron Brown on a 1994 export promotion tour through Latin America. His mere presence troubled some delegation members: Mr. Glicken's "wheeling and dealing" reportedly "evoked squeamishness among a number of officials at Commerce."⁹⁸ His inclusion thus raised the specter of political considerations possibly affecting Commerce Department decisionmaking.⁹⁹ Despite such controversy, Glicken prepared a memo for the Vice President upon returning from the trip. This memo appeared to raise some concerns by staff members based on handwritten notes written on the letter's face.¹⁰⁰

The Miami businessman has also been considered for administration appointments. Mr. Glicken's nomination to the President's Export Council was approved by President Clinton in a March 1994 memo.¹⁰¹ After additional FBI information on Glicken arrived, however, his candidacy was withdrawn. No reason was listed for the application's withdrawal.¹⁰² Mr. Glicken was also considered a "strong candidate" and a "good fit" for the Delegation to the Inauguration of the new Colombian President.¹⁰³ The recommendation memo noted that "Howard is on the Executive Board . . . of the Maimi (*sic*) Coalition for a Drug Free Community—a famous international drug interdiction and prevention program. He served in this organization with Janet Reno until she was appointed Attorney General."¹⁰⁴ Mr. Glicken was also considered a priority for participation in the Miami Hemispheric Conference, according to a DNC memo.¹⁰⁵

Mr. Glicken has also been an active party fundraiser. He helped raise money for the Democrats in 1992 and raised \$2 million for the party in 1996. He was elevated to trustee status (along with Rosen) after raising more than \$50,000 for the April 29, 1993, Miami dinner honoring Vice President Gore.¹⁰⁶ He served as Co-Chairman of the December 1994 Miami-based Summit of the Americas' business contingent.¹⁰⁷ He attended coffees with both the President and the Vice President, flew on Air Force One, and visited the White House on at least 70 occasions—staying overnight in the Lincoln Bedroom at least once.¹⁰⁸ He co-chaired a March

the Western Hemisphere of the House Committee on International Relations, 103d Cong., 2d sess. (1994).

⁹⁷ Kuntz, *supra* note 87 at A8.

⁹⁸ Paul Blustein, "A Cloud Over Commerce; Politics May Have Tainted Choices, Policy," *the Washington Post*, Dec. 22, 1996, at A1.

⁹⁹ *Id.*

¹⁰⁰ Glicken Letter and Memorandum to Vice President Gore, May 10, 1994 (Exhibit 32). Two notations, which appear to be written in different handwriting, read "David—We Better Discuss In Person—Thanks J.Q.," and "Jack/David: Will you pls. Handle this—politics of whether we mention this to Secy. Brown. Beth."

¹⁰¹ Candidate for Presidential Appointment Memorandum, Mar. 22, 1994 (Exhibit 33).

¹⁰² Individual Information Sheet on Prospective Presidential Appointees, May 5, 1997 (Exhibit 34).

¹⁰³ Delegation to Columbia [*sic*] Memorandum, July 28, 1994 (Exhibit 35).

¹⁰⁴ *Id.*

¹⁰⁵ Hemispheric Conference Memorandum to Laura Hartigan, Aug. 16, 1994 (Exhibit 36). Marvin Rosen was also considered a priority. *Id.* Mark Jimenez was also a suggested participant and Thomas Kramer and Neal Harrington were considered as general priority. *Id.*

¹⁰⁶ Florida Donors Memorandum, *supra* note 20 at 7.2.

¹⁰⁷ M. Delal Boer, "Latin American Free Trade Stumbles," *Wall Street Journal*, Asia, Nov. 2, 1994, at 6.

¹⁰⁸ Howard Glicken: Democratic Events Attended (Exhibit 37).

1994 Miami dinner honoring the President and Mrs. Clinton, which raised \$3.4 million. Senator and DNC Chairman Chris Dodd wrote Glicker a letter on February 27, 1995, expressing his pleasure at seeing him at a White House dinner and appreciating his “diligence and hard work as a Managing Trustee of the Democratic party.”¹⁰⁹ President Clinton thanked Glicker personally—who was seated in the front row—during his opening remarks at the fundraiser. President Clinton also thanked Glicker in his remarks given at an April 1996 Miami fundraising event. In total, Glicker raised \$2 million for the 1996 Clinton-Gore team. Vice President Gore thanked him personally for his role in a Miami fundraiser which raised \$3.4 million.

Apart from his role as a fundraiser, Glicker appears to have combined his political activities with his business ventures. In 1996, he founded the Americas Group (which counts former Senator George Mitchell as a board member) as a vehicle to encourage business deals between the United States and Latin America.¹¹⁰ Mr. Glicker reportedly took a group of South American businessmen and politicians to meet President Clinton at a December 1996 reception at Miami’s Biltmore Hotel.¹¹¹ He also met with officials from the personnel and political affairs offices, the NSC, and the Presidential and Vice Presidential staffs.¹¹² On another occasion in 1996, Glicker brought a client from Brazil to meet Ronald Klain, Vice President Gore’s Chief of Staff.¹¹³

3. *The Case Against Howard Glicker*

Mr. Kramer’s secretary, Terri Bradley, made a \$20,000 contribution to the Democratic Senatorial Campaign Committee (“DSCC”) after someone unknown to Bradley—later revealed to be Glicker—approached Kramer. According to Staff Attorney Rodriguez, in testimony before this Committee and in documents produced by the FEC, Bradley overheard a conversation between Kramer and another individual who asked Kramer if there was “anyone else who could make the contribution in your place.”¹¹⁴ The solicitor promised that the “requested contribution would make Mr. Kramer a member of the ‘inner circle’ with various accompanying perks.” Bradley told the FEC that she would divulge the name of the Democratic fundraiser suggesting the illegal scheme in exchange for immunity from prosecution.¹¹⁵ The Committee attempted to interview Bradley but, as previously noted, she asserted her Fifth Amendment rights before the Committee. The plea agreement Glicker entered into focused on Bradley’s DSCC contribution—the questionable contribution referenced along with the “prominent fundraiser” language that resulted in tremendous public criticism

¹⁰⁹Dodd Letter to Glicker, Feb. 27, 1995 (Exhibit 38).

¹¹⁰The SEC objected to the merger of Americas Group, which Glicker founded in 1996, with Advanced Electronic Support Products in 1996. A group of shareholders amounting to 18 percent of the fund are suing Americas Group for “blatant self-interest.” See S. Fla. Bus. J., Dec. 2, 1991, at 1.

¹¹¹Kuntz, *supra* note 87.

¹¹²Kuntz, “Democratic Fund-Raiser Glicker Visited White House Officials Scores of Times,” *Wall Street Journal*, May 5, 1997, at A20.

¹¹³*Id.*

¹¹⁴Office of the General Counsel Memorandum of Telephone Call or Visit, *supra* note 76.

¹¹⁵Tamara Lytle, *supra* note 90.

and which played a significant part in the Committee's March 31, 1998, hearing.

Despite all of the controversy surrounding this Democratic party insider, the FEC decided in December 1997 not to pursue a case against Glicker. This decision was made in the face of strong evidence demonstrating that Glicker had knowingly solicited an illegal contribution from a German national through a conduit straw donor. In an unusual announcement, the FEC cited "Mr. Glicker's high profile as a prominent Democratic fundraiser" and "potential fundraising involvement in support of Vice President Gore's expected presidential campaign" as reasons *not* to pursue a case against Glicker.¹¹⁶ During testimony before this Committee, the FEC General Counsel stated that his office first learned Glicker's name only a few months before the statute of limitations governing the case would expire. Yet, as previously noted, the FEC was first provided with information by Kramer himself that someone within the Democratic party knowingly solicited the illegal contribution as early as December 1994.

When asked during the Committee's March 1998 hearing why the FEC did not pursue a case against Glicker more aggressively, FEC General Counsel Lawrence Noble stated:

We did not pursue the investigation of Mr. Glicker because it was—most of the activity at issue was 1993 activity; some was 1994. We have a 5-year statute of limitations. Mr. Glicker's name came up late in the process. We have not found reason to believe against Mr. Glicker. We would have had to start from the beginning with Mr. Glicker. The statute of limitations on the main part of a solicitation runs this April.¹¹⁷

* * * * *

What we were interested in with Mr. Glicker was the suggestion that he may have suggested to somebody that they make a contribution in the name of another. And that took it up to another level which is why we held on to that part of the case, thinking that we might be able to do something about it. But by the time that—that was in the DSCC information. We did not find Mr. Glicker's name until July 1997, and that particular contribution, where there was a suggestion that it was a contribution in the name of another, or solicited as a contribution in the name of another, the statute of limitations would have run at the end of April of this year.¹¹⁸

It should be noted that the FEC did not "find Mr. Glicker's name until July 1997" because, in actuality, it did not send a subpoena to the DSCC until June 10, 1997.¹¹⁹ Documents produced in response to this subpoena revealed that Glicker had solicited the Bradley contribution. No explanation given by the commission has adequately addressed why the FEC waited until 2½ years after re-

¹¹⁶ General Counsel's Report, *supra* note 8 at 2.3–2.4.

¹¹⁷ Federal Election Commission Enforcement Actions, *supra* note 6 at 67–68 (statement of FEC General Counsel).

¹¹⁸ *Id.* at 81.

¹¹⁹ Letter from Marc E. Elias to Rodriguez (Exhibit 39).

ceiving Kramer's affidavit (which highlighted the DSCC contribution)¹²⁰ to send interrogatories to the DSCC. It is thus the Committee's opinion that this explanation—given the amount of money involved, the fact that the case was brought *sua sponte*, and the involvement of two of the most prominent Democratic fundraisers—is simply incomprehensible.

IV. THE DEPARTMENT OF JUSTICE'S INVOLVEMENT IN THE KRAMER MATTER

On July 22, 1997, FEC Staff Attorney Jose Rodriguez wrote an e-mail requesting that "LL check with Justice to determine if they have any interest in pursuing the reported Kramer/Bradley activity criminally."¹²¹ "LL" was a reference to FEC Associate General Counsel Lois Lerner. Ms. Lerner responded to Rodriguez' e-mail 3 days later, noting that she had spoken to Craig Donsanto (her contact at the Department of Justice). She stated that Donsanto thought that the Department was no longer pursuing the law firm (Greenberg Traurig), Kramer, or anyone else involved in the case.¹²² Ms. Lerner noted that Donsanto would check with the U.S. Attorney in Florida "to be sure." Lerner conveyed her belief that Donsanto thought that he might be able to get the department to "sign off on as to our potential witness."¹²³ The Committee believes that Terri Bradley was this "potential witness."

An e-mail exchange during September suggests that the FEC was at least attempting to obtain immunity for Bradley.¹²⁴ In December, however, the FEC signed off on its General Counsel Report and decided against pursuing a case against Howard Glicken:

While this Office would generally recommend a reason to believe finding against Mr. Glicken and conduct an investigation into the two DSCC contributions, because of the discovery complications and time constraints addressed above, and the fact that the transactions at issue take place during the 1993–1994 election cycle, this Office does not now recommend proceeding against this identified individual or the DSCC.

Similarly, this Office does not recommend further proceedings concerning the two DNC contributions apparently solicited by Mr. Glicken. Unlike the DSCC contributions, the larger of these two contributions would not be time barred until March 1999—approximately a year and 4 months from now. However, because of Mr. Glicken's high profile as a prominent Democratic fundraiser, including his potential fundraising involvement in support of Vice President Gore's expected presidential campaign, it is unclear that this individual would agree to settle this matter short of litigation. Therefore, rather than continuing this matter for an unspecified period in pursuit of one participant and because of the low prospect for timely resolution, the age

¹²⁰ See Affidavit, *supra* note 11 at 3.3.

¹²¹ "Bradley Issue" e-mail, July 22, 1997 (Exhibit 40).

¹²² Kramer e-mail, July 25, 1997 (Exhibit 41).

¹²³ *Id.*

¹²⁴ "Latest from Bradley" e-mail, Sept. 15, 1997 (Exhibit 42).

of the matter and the already successful resolution concerning all principles in this case, this Office does not recommend further proceedings concerning these two DNC contributions either. Instead, this Office recommends closing of the entire file in MUR 4638.¹²⁵

Once the conclusion about Glicken and his association was reported in a major newspaper, the interest of the Department of Justice in the matter was notably increased. Such interest is obvious in an e-mail sent by Lois Lerner to Lawrence Noble on February 12, 1998:

Donsanto just called. They've seen the "offending language." While he was sure there must be more to the story than this was Gore's friend, he wanted to know why this hadn't been referred to DOJ. He said that Task Force would be revving up an investigation unless he could provide them with something clarifying this. While I have no problem with them investigating, I thought it would be useful to provide them with whatever statement we make to the press.¹²⁶

Despite the Justice Department's previous lack of interest in these matters, the Task Force did indeed 'rev up' an investigation and entered into a factual proffer and plea agreement with Glicken on July 9, 1998—3 months after this Committee held its hearing reviewing the FEC's management of the Kramer matter—in which Glicken admitted to criminal violations of FECA by soliciting political contributions from a foreign national and by causing a political contribution to be made in the name of another.¹²⁷ Based on the agreement, Glicken potentially faces up to 2 years in prison and a fine of \$200,000. The Justice Department recommended a fine of \$80,000 and a minimum of 500 community service hours. Mr. Glicken also "expressed a desire to provide substantial assistance to the Government in the investigation and prosecution of others after entering his guilty plea"¹²⁸ and that he "shall cooperate fully with federal law enforcement authorities."¹²⁹ Mr. Glicken also promised to "make himself available to all Government agencies[.]"¹³⁰ If Glicken's guilty plea agreement is accepted by the Court, and Glicken fulfills each of the terms within the agreement, then:

[T]he Government agrees that it will not further prosecute defendant for his conduct that is the subject of this plea agreement or for any other election code-related conduct known to the Government as of the date of defendant's guilty plea pursuant to this agreement, or which becomes known as a result of his cooperation pursuant to this agreement.¹³¹

¹²⁵ General Counsel's Report, *supra* note 8 at 2.4.

¹²⁶ "GREENBERG TRAUIG (sp?)" e-mail, Feb. 12, 1998 (Exhibit 43).

¹²⁷ United States of America v. *Howard Glicken Factual Proffer and Plea Agreement*, (D. D.C. July 9, 1998), at 1 (Exhibit 44).

¹²⁸ *Id.* at 44.10–44.11.

¹²⁹ *Id.* at 44.2–44.3.

¹³⁰ *Id.* at 44.11.

¹³¹ *Id.* at 44.4–44.5.

Taking into account the weight of the evidence against Glicker, it appears as if the Miami businessman entered into what potentially could be an overly favorable plea agreement. Mr. Glicker's role in soliciting contributions from other Florida-based campaign contributors on behalf of the DNC and other Democratic causes has yet to be fully investigated by this Committee. However, the Committee has uncovered evidence showing that Glicker also solicited contributions from Neal Harrington and Calvin Grigsby's company, Fiscal Funding¹³²—contributions which led to the indictment of both Harrington and Grigsby, along with Carmen Lunetta, in the June 1998 Port of Miami conduit contribution scandal.¹³³ Whether or not such evidence was available to the Department of Justice at the time it entered into the plea agreement with Glicker, which would determine whether or not such action would fall within the aforementioned immunity agreement, is not known by the Committee. Glicker asserted his Fifth Amendment rights before the Committee unless granted immunity.

Because Glicker has exercised his Fifth Amendment rights in regards to the Committee's inquiry, the Committee's investigation into further misfeasance on Glicker's part has been impeded. This is not the cooperation that Glicker promised upon signing his plea agreement. The Committee has not been able to explore why the two additional illegal Kramer contributions solicited by Glicker—a \$25,000 contribution at Vice President Gore event and \$40,000 contribution at a President Clinton fundraiser—were passed over by both the FEC and the Department of Justice.¹³⁴ The Committee is also not privy to information the Department of Justice may have in its possession regarding any additional campaign fundraising improprieties that may have been committed by Glicker. The Committee is thus not aware of which improprieties would be covered by the immunity agreement if it were to be upheld by the U.S. District Court for the District of Columbia.

V. CONCLUSION

FEC's handling of the Kramer matter brings into serious question the Commission's goals and effectiveness. Several points need to be emphasized. Notwithstanding the knowledge that a high-profile Democratic party fundraiser was allegedly involved, the case received little attention by the FEC for nearly 1½ years after Kramer first disclosed his improprieties. In actuality, the FEC did not send an inquiry to the DSCC regarding the contribution until 2½ years after receiving Kramer's affidavit. Perhaps more important, the FEC appears to have done nothing to pursue the allegations of wrongdoing against Marvin Rosen. Although the Committee recognizes that the FEC must prioritize its many cases, few things would rival in importance the possibility that one of the titular heads of either the Democratic or Republican parties is involved in

¹³² 1994 Florida Presidential Dinner Donors, at 45.3 (Exhibit 45).

¹³³ *United States of America v. Carmen Lunetta, Calvin Grigsby and Neal Harrington* (So. D. FL June 3, 1998) (Exhibit 46). Messrs. Glicker and Harrington, along with Charles Intriago and Mark Jimenez (both of whom have asserted their fifth amendment rights before our Committee) were noted guests at a December 1994 Brickell Key dinner hosted by Vice President Gore. Vice President's Guest List, Dec. 11, 1994 (Exhibit 47).

¹³⁴ DNC Response to Committee Interrogatories, Mar. 30, 1998 at 30.3 (Exhibit 30).

criminal conduct that cannot be explained away by “fuzzy” or “complicated” election laws.

In addition, the case ultimately resulted in over \$500,000 in fines, including the largest personal fine of its type. Such fines, however, barely totaled more than the contributions themselves (all of which were returned to the contributors).

Finally, the FEC made a public statement in which it seemingly admitted that it was not pursuing a case against Glicker *because of* his prominence and strong ties with Vice President Gore. Prominent national fundraisers should face the same consequences as any other citizen if they encourage others to break the law. The FEC, in neglecting to investigate and pursue such blatant violations of campaign fundraising laws, appears to have been derelict in its mandated statutory responsibilities.

APPENDIX 1

FEC PRACTICES AND PROCEDURES RELEVANT TO THE KRAMER MATTER

In order to understand the means by which the FEC conducted the Thomas Kramer investigation, a brief explanation of FEC practices and procedures is necessary. The statutes relevant to the Kramer matter are 2 U.S.C. § 437g, dealing with the enforcement of Federal election campaign laws generally, 2 U.S.C. § 441e, prohibiting contributions by a foreign national, and 2 U.S.C. § 441f, prohibiting contributions in the name of another. The FEC provided to the Committee statistics showing case disposition by fiscal year for cases involving conduit payments and contributions by foreign nationals.¹

A. PRIORITIZATION PROCEDURE

In the early 1990s, the FEC began to reinvigorate its case management system. In 1992, the Commission adopted a criteria worksheet, or “rating sheet,” that provides numerical ratings for its cases.² The following year, the FEC “launched substantial enforcement reform by adopting a comprehensive prioritization system designed to produce timely resolution of major cases.”³ Known as the Enforcement Prioritization System (“EPS”), the specific elements of the system included:

- Creating a detailed and objective method for ranking cases that allow the Commission to identify those which best warrant the use of the FEC’s limited resources.
- Determining, based on resources, the total number of cases the enforcement staff can actively and efficiently pursue at one time.
- Establishing realistic time goals for resolving targeted cases (preferably within an election cycle or less).
- Managing and tracking cases through periodic priority evaluations so that staff assignments can be adjusted as

¹ Case Disposition by Fiscal Year: Cases Involving Conduit Payments under Section 441f (Exhibit A-1) and Case Disposition by Fiscal Year: Cases involving Foreign National Contributions Under Section 441e (Exhibit A-2).

² Introduction to the Enforcement Prioritization System (Exhibit A-3).

³ FEC Press Release, Dec. 13, 1993 (Exhibit A-4).

needed and cases that warrant no further resources can be identified for closing.

- Creating a central enforcement docket system (“CED”) to process incoming cases and assign them as staff become available.⁴

The FEC based its prioritization procedures mostly on confidential standards, some of which include: whether there was knowing and willful intent to violate the law; the apparent impact of the alleged violation on the election process; the amount of money involved; the age and timing of the violation; and whether a particular area of the law that needs attention is involved.⁵

General Counsel Noble told Committee investigators that the focus of the EPS has changed over the years. According to Noble, things like the \$25,000 contribution limit used to be a “big deal” to the FEC, but now things like contributions made by a foreign national are given higher priority.⁶ While the Committee recognizes the FEC’s limited resources, the fact that the Commission periodically changes the degrees of priority for violations of campaign laws inevitably forces oversight bodies, such as this Committee, to question the Commission’s enforcement objectivity. In controversial cases such as the Kramer matter, the FEC can thus argue that seemingly flagrant violations of law were not considered as a priority by the Commission based on standards and criteria which remain confidential to everyone outside of the FEC staff.

B. CASE MANAGEMENT

Any action by the FEC generally begins upon the filing of a complaint alleging violations of Federal election campaign laws. Within 5 days of receiving a complaint, the Commission notifies any person alleged in the complaint to have committed such a violation. Before the FEC votes on the complaint, other than a vote to dismiss, any notified person has the opportunity to demonstrate to the Commission that no action should be taken against such person on the basis of the complaint.

If the Commission, by an affirmative vote of four of its commissioners, finds that it has reason to believe (“RTB”) that a person has committed, or is about to commit, a violation of Federal campaign laws, the Commission shall, through the chairman or vice chairman, notify the person of the alleged violation. The FEC then conducts an investigation of the alleged violation. If the Commission determines, by an affirmative vote of four of its commissioners, that there is probable cause to believe (“PCTB”) that any person has committed, or is about to commit, a violation of Federal campaign laws, the Commission attempts, for a period of at least 30 days, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved. Any attempt to correct or prevent any violations may continue for a period of not more than 90 days. The Commission may not enter into a conciliation

⁴ Id.

⁵ Remarks by Scott E. Thomas, Chairman of the Federal Election Commission, Dec. 13, 1993 (Exhibit A-5).

⁶ Interview with Lawrence Noble, General Counsel of the Federal Election Commission, in Washington, DC (July 2, 1998).

agreement unless pursuant to an affirmative vote of four of its members. A conciliation agreement, unless violated, is a complete bar to any further action by the Commission.

C. FINES, PENALTIES, DEFENSES, AND MITIGATION OF OFFENSES

If the Commission believes that a violation has been committed, a conciliation agreement may include a requirement that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of \$5,000 or an amount equal to any contribution or expenditure involved in such violation. If the Commission believes that a knowing and willful violation has been committed, a conciliation agreement entered into by the Commission may require that the person involved in such conciliation agreement pay a civil penalty which does not exceed the greater of \$10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation.

If the FEC by an affirmative vote of four commissioners, determines that there is PCTB that a knowing and willful violation has occurred or is about to occur, it may refer such apparent violation to the Attorney General of the United States. The FEC cannot legally refer a case to the Department of Justice unless it reaches this PCTB threshold. Both the standards set to reach thresholds of either RTB or PCTB are, for the most part, known only to the FEC staff.

In any case in which a person has entered into a conciliation agreement with the Commission based on the PCTB threshold, the FEC may institute a civil action for relief if it believes that the person has violated any provision of such conciliation agreement. For the Commission to obtain relief in any civil action, the Commission need only establish that the person has violated, in whole or in part, any requirement of such conciliation agreement.

If the Commission is unable to correct or prevent any violation, the Commission may, upon an affirmative vote of four commissioners, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order (including an order for a civil penalty which does not exceed the greater of \$5,000 or an amount equal to any contribution or expenditure involved in such violation) in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business. In certain civil actions instituted by the FEC, the court may grant a permanent or temporary injunction, restraining order, or other order, including a civil penalty which does not exceed the greater of \$5,000 or an amount equal to any contribution or expenditure involved in such violation, upon a proper showing that the person involved has committed, or is about to commit (if the relief sought is a permanent or temporary injunction or a restraining order), a violation of relevant provisions.

Any person who knowingly and willfully commits a violation of relevant Federal campaign laws—which involves the making, receiving, or reporting of any contribution or expenditure aggregating \$2,000 or more during a calendar year—shall be fined, or imprisoned for not more than 1 year, or both. The amount of the fine shall not exceed the greater of \$25,000 or 300 percent of any con-

tribution or expenditure involved in such violation. In the case of a knowing and willful violation of § 441b(b)(3), the penalties shall apply to a violation involving an amount aggregating \$250 or more during a calendar year. Such violation of § 441b(b)(3) may incorporate a violation of § 441c(b), § 441f, or § 441g.

In any criminal action, a defendant may evidence their lack of knowledge or intent to commit the alleged violation by introducing as evidence a conciliation agreement entered into between the defendant and the FEC which specifically deals with the act or failure to act constituting such violation and which is still in effect. The court shall take into account, in weighing the seriousness of the violation and in considering the appropriateness of the penalty to be imposed if the defendant is found guilty, whether the specific act or failure to act which constitutes the violation for which the action was brought is the subject of a conciliation agreement entered into between the defendant and the Commission, the conciliation agreement is in effect and the defendant is, with respect to the violation involved, in compliance with the conciliation agreement.

[Supporting documentation follows:]

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CHAPTER VI
THE HUDSON CASINO REJECTION

THE HUDSON CASINO REJECTION

INTRODUCTION

This section of the report focuses on the rejection by the Department of the Interior (DOI) of an application to take a 55 acre parcel of land into trust with the ultimate objective of establishing an off-reservation gaming facility. This application was made by three impoverished Wisconsin Indian tribes who anticipated going into partnership with the owner of an already existing class III gaming facility. After complying with all of the requirements placed upon the tribes by the Department of the Interior, the Bureau of Indian Affairs (BIA) regional office in Ashland, Wisconsin, and the area office in Minneapolis, Minnesota, both recommended that the application be approved. After those closest to the proposed site recommended the approval of the application on November 14, 1994, a 32 page report was sent to Interior's central office in Washington, DC for final review.¹

For the three tribes this was a day to celebrate because, as DOI spokeswoman Stephanie Hanna noted, the DOI has never overturned an Area Office recommendation to take land into trust for gaming purposes.² The 32 page report from the Minnesota area office discussed a number of factors supporting approval of the application. These included: an agreement for government services, consultation with the city of Hudson, public response to the proposal, impact on the neighboring tribes, environmental impact, and impact on the infrastructure including traffic, lighting, and water. Nevertheless, on July 14, 1995, the Department decided against the recommendation of both the regional and area offices and rejected the tribes' application.³

In the weeks and months following the rejection, it became apparent that it was possible that campaign donations and political considerations may have influenced the Department of the Interior's decision. As the Committee reviewed various campaign finance issues, an investigation into the decisionmaking process was commenced. During the investigation, the Committee deposed and/or interviewed officials from the White House, the Department of the Interior, lobbyists on both sides of the application and representatives from the three applicant Wisconsin Indian tribes. The Committee also subpoenaed documents from various sources including the Department of the Interior, law firms, and lobbyists involved with the application, and a number of individuals close to the case. Additionally, the Committee received relevant documents from the

¹See Denise Homer's Recommendation to the Assistant Secretary for Indian Affairs (Exhibit 1).

²See Cary Spivak, *Did White House Kill a Casino?*, Milwaukee Journal Sentinel, Sept. 14, 1997.

³Letter from Michael Anderson to Rose Gurnoe, Alfred Trepania, and Arlyn Ackley, Sr., July 14, 1995 (Exhibit 2).

ongoing Federal and state litigation surrounding the Department's decision.

On January 21, 22, 28, and 29, 1998, the Committee held public hearings on the issue of whether undue political influence led to the rejection of the application. The Committee heard from witnesses including: the Chairmen of the three adversely affected tribes, Patrick O'Connor (a lobbyist opposed to the application), Secretary of the Interior Bruce Babbitt and a number of officials from the Department of the Interior. These hearings focused on the process by which the Department of the Interior came to reject the recommendations of its area office and the influence of outside entities on the process.

EVENTS LEADING TO THE DENIAL

In late 1993, three impoverished⁴ Wisconsin Indian tribes—the Mole Lake Sakaogon Chippewa, the Lac Courte Oreille Band of Lake Superior Chippewa, and the Red Cliff Band of Lake Superior Chippewa—applied to have the U.S. Government, through the Department of the Interior, take land into trust in Hudson, Wisconsin, for the purpose of gaming.⁵ An existing Class III gaming facility already on the parcel of land required very little modification to add additional gaming devices.⁶ The structure was originally built as a greyhound racing park and included a 10,000 car parking lot to accommodate a capacity crowd. A four lane roadway had already been built by the developer of the existing track to relieve potential congestion problems that could be created by a crowd attending a specific event at the race track. Furthermore, the expected usage of the casino was not greater than that originally anticipated for the greyhound facility.

The applicant tribes moved the application forward according to the prescribed guidelines of the Indian Gaming Regulatory Act (IGRA). After an exhaustive review by both the regional office and the area office of the BIA, including consultation with area officials and the surrounding tribes, the Area Director sent a 32 page recommendation for approval to the central office in Washington, DC.

Once the application arrived in Washington, a number of native American tribes who felt that new competition might jeopardize their casino profits hired lobbyists to bring political pressure on those who might be in a position to reverse the earlier decisions. The tribes hired Patrick O'Connor, a well known lobbyist, former fundraiser for Bruce Babbitt's Presidential bid in 1988, and former DNC treasurer. O'Connor, a name partner at the law firm of O'Connor and Hannan based in Minneapolis, wasted no time in applying significant pressure on the Democratic National Committee (DNC),

⁴According to Arlyn Ackley, Sr., the chairman of the Mole Lake Sokaogon Chippewas, the unemployment rate for his tribe was over 40 percent, and the average household income was approximately \$8,000 per year. George Newago, the chairman of the Red Cliff Chippewa, indicated that his tribe faced over 50 percent unemployment and a household income of \$5,300 per year. Committee interviews with Chairman Arlyn Ackley, Sr., and Chairman George Newago, Dec. 16, 1997.

⁵This is the normal process used by Native American tribes under Section 20 of the Indian Gaming Regulatory Act (IGRA) for the acquisition of "off reservation" land. See 25 U.S.C. §2719 (1988).

⁶In an interview with Committee investigators, Mr. Fred Havenick, the owner of the existing dog track in Hudson, WI, confirmed that no external construction was necessary or planned if the application had been approved.

the President, White House staff, Members of Congress, and the Department of the Interior.

On February 8, 1995, O'Connor set-up a meeting in Minnesota Congressman Jim Oberstar's office with members of the Minnesota Congressional delegation, John Duffy, who served as Counselor to Secretary of the Interior Babbitt, and George Skibine, the head of the Indian Gaming Management Staff (IGMS).⁷ The meeting resulted in a great benefit to the tribes opposed to the application because Duffy agreed to extend the comment period which the Area Director had closed prior to sending her recommendation to Washington. Duffy would later set an April 30, deadline for the comment period. However, he failed to notify the applicant tribes of this special extension, thereby giving the opponents of the application an unfair advantage.⁸ Given that the Department was required to treat all parties evenhandedly, this was a troubling decision.

The February 8, 1995, meeting in Representative Oberstar's office was followed 5 weeks later by another high level contact between the lobbyists against the application and representatives from Secretary Babbitt's office. On March 15, 1995, Patrick O'Connor and former Congressman Thomas Corcoran (a law partner of O'Connor) met with Tom Collier, Secretary Babbitt's Chief of Staff, and Heather Sibbison, Special Assistant to Secretary Babbitt's Counselor John Duffy.⁹ One of the matters discussed at this meeting was "the politics of the project." Collier also told O'Connor and Corcoran that "the final decision would be made by him or Secretary Babbitt 'depending on the level of controversy this application generates.'" ¹⁰

The President is asked for assistance

As early as April 1995, Patrick O'Connor tried to contact Loretta Avent, Special Assistant to the President for Intergovernmental Affairs, the person in the White House who handled Native American issues.¹¹ He faxed material to the White House which discussed his client's opposition to the Hudson application and asked that Avent intervene with Secretary Babbitt on the Hudson application.¹² According to Avent, she did not return O'Connor's call or answer his fax because of legal advice she had received and thus "would not speak with him or any lobbyist or lawyer" about these issues.¹³ Although his initial calls appear not to have been returned, O'Connor capitalized on an opportunity to speak directly with President Clinton when he met with the President, Bruce Lindsey and Linda

⁷Memorandum from Larry Kitto to Lewis Taylor, Feb. 6, 1995 (Exhibit 67). This memorandum states: "Pat O'Connor of our firm is working with Secretary Babbitt's office to confirm his participation in the meeting that will be held on Wednesday, February 8, 1995 at 1:30 p.m. in Congressman Oberstar's office."

⁸An undated letter to Secretary Babbitt from the applicants indicates that they were never informed by the Department of Interior about the extension of the comment period (Exhibit 3). John Duffy, Secretary Babbitt's Solicitor, later notified the tribes in a Mar. 27, 1995, letter to Arlyn Ackley, Sr., almost 7 weeks after the period was opened (Exhibit 4). In fact, this notification might never have occurred if Ackley had not found out about the extension from other sources. Once this came to light, the Department had no choice but to let both sides respond.

⁹Memorandum from Thomas Corcoran to Larry Kitto, Mar. 17, 1995 (Exhibit 68).

¹⁰Id.

¹¹See Patrick O'Connor's Datebook, Apr. 10 and 17, 1995 (Exhibit 5).

¹²Memorandum from Michael T. Schmidt to Cheryl Mills, Apr. 24, 1995 (Exhibit 6).

¹³Memorandum from Loretta Avent to Harold Ickes, Apr. 24, 1995 (Exhibit 7).

Moore at a small fundraising reception in Minneapolis on April 24, 1995.¹⁴

The April 24 entry in O'Connor's calendar reads, "Meeting w/the President on the Hudson Race track issue with Bruce Lindsey and Linda Moore of the White-House staff."¹⁵ This meeting with the President was the breakthrough the tribes and lobbyists had been looking for. O'Connor explained in his state court deposition¹⁶ that President Clinton was receptive to O'Connor's problem:

When he [the President] got to me, I said "Mr. President, the Indian tribes I represent are concerned about a possible casino going in near Hudson, Wisconsin which is across the river." And that's what I said. At that juncture, he said "Bruce." And Bruce [Lindsey] came over . . . [The President] said, "Bruce, talk to O'Connor about his concerns about tribes that he represents." That was it.¹⁷

Ann Jablonski, a lobbyist for the St. Croix Tribe, confirmed through Tom Corcoran, O'Connor's partner, that O'Connor began to "launch into the matter and Clinton called Lindsay [sic] over to script the story and operationalize a response or resolution. He was apparently the one who decided it was a problem Ickes would/could/should take care of."¹⁸ Jablonski also received confirmation that the President was aware of the Hudson situation: "[a]nother partner in the O'Connor and Hannan firm, Tom Schneider, allegedly an FOB [Friend of Bill] who socializes with Bill and Hillary, has confirmed in a conversation with Clinton that Clinton is aware of the Hudson dog track issue."¹⁹

Once the President became involved, the White House reacted with a flurry of activity. Lindsey called back to the White House once he returned to Air Force One in order to determine what was happening with the former DNC Treasurer's problem, and why Avent had not returned his calls.²⁰ O'Connor testified:

I told Bruce the concern we had . . . And I said, "I'm trying to get our side of this matter, this issue, across to the—to the people in Interior because" and I explained . . . "I don't believe we're getting through, although we've been trying." . . . And he [Bruce Lindsey] said, "Well," he said, "I'll get someone to call you on this." I said, "I haven't"—that Loretta Avent call came afterwards. I said, "I haven't been able to get anywhere with Loretta." And he didn't say anything. He said, "I will have someone call you." And that was it.²¹

This brief meeting with the President was the catalyst for White House activity regarding the Hudson casino application. It is likely

¹⁴ See Patrick O'Connor's Datebook, Apr. 24, 1995 (Exhibit 5).

¹⁵ Id.

¹⁶ Patrick O'Connor's deposition was taken in a civil law suit filed by the applicant tribes after DOI rejected the application.

¹⁷ State Court Deposition of Patrick O'Connor, Apr. 18, 1997, p. 61 (Exhibit 8).

¹⁸ Memorandum from Ann Jablonski to Brady Williamson, May 23, 1995 (Exhibit 9).

¹⁹ Id.

²⁰ See Memorandum from Michael T. Schmidt to Cheryl Mills, Apr. 24, 1995 (Exhibit 6).

²¹ State Court Deposition of Patrick O'Connor, Apr. 18, 1997, p. 61 (Exhibit 8).

that Lindsey contacted Ickes shortly before or after his call to Avent because Ickes placed a call to O'Connor that same day.²²

Warning of illegal and improper involvement

It appears that the conversation between Lindsey and the White House staff on April 24 made an impression, prompting the two key White House staffers on Indian issues, Loretta Avent (Special Assistant to the President for Intergovernmental Affairs) and Michael Schmidt (Senior Policy Analyst in the White House Office of Policy Development) to prepare memoranda on the issue. Both memoranda outlined legal, ethical, and political reasons that the White House could not get involved and intervene in the application before the Department of the Interior. It appeared that these memoranda were attempts to explain why the White House should not get involved in the decisionmaking process at Interior. The only reasonable explanation for such quick and forceful opposition to White House involvement was that Lindsey may have suggested such involvement.

Ms. Avent's memorandum to Harold Ickes explains the improper nature of White House intervention in an Interior decision. Avent relied upon advice of the White House counsel's office to arrive at the conclusion that involvement by the White House was improper and illegal:

I just got a call from Bruce in reference to a person named Pat O'Connor, whom I don't know, who has called me on numerous occasions. . . . Following the legal advice we have received concerning these kinds of issues, I have not and would not speak with him or any lobbyist or lawyer. Irrespective of [who] lobbyists and lawyers say they know in this Administration, my first responsibility is to the pres[ident]. Because I am aware of the politics and press surrounding this particular situation, it is in our best interest to keep it totally away from the [W]hite [H]ouse in general, and the pres[ident] in particular. This is such a hot potato (like Cabazon)²³—too hot to touch. The legal and political implications of our involvement would be disastrous. . . . This is a Department of Interior and Justice Department [matter] and that's where it should stay. . . . I explained this to Bruce and he understands the way I operate and I assured him that I would make the call directly to advise the party that called. I will do this as soon as my meeting is over. I'll call later and give you an up-

²²Id. at 79.

²³The Cabazon Band of Mission Indians were involved in litigation with the Federal Government for the operation of slot machines. They also reportedly funneled over \$750,000 into the State of California's Attorney General's race. When asked in her deposition before the Committee about her reference to the Cabazons, Avent replied: "just that it was in court, it was a big court case, and I don't have specifics on it, because I wasn't particularly interested in it other than I just knew it was dealing with gaming and I am not an expert on gaming and I have no expertise in the legal arena at all." (Avent Deposition, Dec. 5, 1997, p. 18). Mark Nichols, the Chief Executive Officer of the Cabazon Band, was indicted in June 1998, and accused "of laundering thousands of dollars in illegal contributions to six Democratic candidates, including President Clinton . . ." (Rosenzweig, David, *California and the West 2 Casino Executives Accused of Laundering Politics*, Los Angeles Times, June 19, 1998).

date. The press is just waiting for this kind of story. We don't need to give it to them.²⁴

Michael Schmidt also drafted a memorandum in response to Lindsey's call. He sent his memo to Cheryl Mills in the White House Counsel's office:

This e-mail is to fill you in more detail about a call that Loretta and I were on with a Lobbyist/Fundraiser named Pat O'Connor . . . Pat called Loretta last week on this issue. As you know, last year WH counsel advised Loretta that she should not meet with lobbyists or lawyers on Indian issues. . . . The White House should not be involved in this issue! . . . As you know, we legally cannot intervene with the Secretary of Interior on this issue. Please have Harold call Don Fowler and explain that there are no secrets in Indian Country, that word of this conversation is already getting out and it would be political poison for the President or his staff to be anywhere near this issue.²⁵

Although these two memoranda indicate that the White House staffers understood that they should not get involved in the Hudson issue, the sentiments contrast with an overlooked sentence in Loretta Avent's memorandum, where she stated: "I am on my way into a meeting with five of our strongest tribal leaders (because of their significant voter turnout)[.]"²⁶ It is somewhat curious that Avent would react so negatively to the Hudson issue and, at the same time, single out Native American leaders—based on partisan political concerns—for special White House treatment. The concern regarding "secrets in Indian country," referred to by Schmidt, appears to have been overridden in this political situation.

As the following pages make clear, others at the White House did not follow the course suggested by Avent. There were numerous subsequent contacts between the Secretary of the Interior's office and White House Deputy Chief of Staff Harold Ickes' office.

The DNC becomes involved

After meeting with the President, O'Connor moved to increase the pressure on the Department of the Interior by involving the DNC. As early as March 1995, O'Connor was attempting to meet with people at the DNC and Interior.²⁷ On April 23, 1995, David Mercer called O'Connor to notify him that a meeting with DNC Chairman Fowler was set for a time after his [O'Connor's] meeting with the Department of the Interior's Chief of Staff Tom Collier.²⁸ On April 28, 1995, Patrick O'Connor and representatives of tribes opposed to the Hudson project met with Don Fowler, White House staff, and staff from various Senate offices.²⁹ Speculating on why lobbyists would meet with the money raising wing of the Democratic party, Judge Barbara Crabb of the U.S. District Court for the Western District of Wisconsin stated in a published opinion: "I can-

²⁴Memorandum from Loretta Avent to Harold Ickes, Apr. 24, 1995 (Exhibit 7).

²⁵Memorandum from Michael Schmidt to Cheryl Mills, Apr. 24, 1995 (Exhibit 6).

²⁶Memorandum from Loretta Avent to Harold Ickes, Apr. 24, 1995 (Exhibit 7).

²⁷Patrick O'Connor Datebook, Mar. 15, 1995 (Exhibit 5).

²⁸Fax from O'Connor & Hannan to Patrick O'Connor, Apr. 23, 1995 (Exhibit 10).

²⁹*Sokaogon Chippewa Community v. Bruce Babbitt*, 961 F. Supp. 1276, 1282 (W.D. Wis. 1997).

not assume that Fowler met with these tribes merely to socialize. They must have expected that Fowler had some ability to affect the decision on plaintiffs' application."³⁰

As it turned out, Judge Crabb appears to have correctly articulated the purpose of the meeting. As one lobbyist who also attended the April 28, 1995, meeting with Don Fowler explained:

The purpose for this meeting is to discuss our position on the Wisconsin Dog Track Fee to Trust proposal with influential democrats in Washington. The people we are meeting with are very close to President Clinton and can get the job done.³¹

The purpose of the April 28, 1995, meeting with the DNC Chairman was also clearly outlined in a memoranda from lobbyist Larry Kitto to the opposing tribes.

The purpose of the meeting was to request the DNC and the Committee to re-elect the President, to help communicate with the White House and the President about why the Department of the Interior should not approve the fee-to-trust land transfer for the Hudson Dog Track. The message was quite simple: all of the people against the project both Indian and non-Indian are Democrats who have a substantially large block of votes and who contribute heavily to the Democratic party. In contrast, all of the people for this project are Republican. Fowler assured the group that he would take this issue up with high ranking officials in the White House[.]³²

Both Chairman Fowler and David Mercer, the Deputy Finance Director of the DNC, understood the potential of helping people who "contribute heavily to the Democratic party." Lewis Taylor, head of the St. Croix tribe, mentioned in a State Court Deposition that contributions to the DNC were discussed. Taylor commented: "I told Mr. Fowler that, you know, that we've got a number of heavy-duty issues that we needed help on and our friends are the Democrats and therefore I think we should donate to assist in some of these causes."³³ Tom Krajewski, a lobbyist working on behalf of the Hudson opponents, passed on information from Kitto, O'Connor's partner and a principal lobbyist for the tribes, that Fowler listened, took notes, asked questions and got the message: "It's politics and the Democrats are against it and the people for it are Republicans."³⁴ When asked about any discussion of campaign contributions, Fowler did not recall and defended himself by saying that he had "no memory."³⁵

It is difficult to believe that Fowler would have a different perception of this meeting. After all, the message was as Larry Kitto said, "quite simple." After the discussions of campaign contributions, Fowler not only promised to contact the White House, but

³⁰ Id.

³¹ Memorandum from John McCarthy to all tribal leaders, Apr. 25, 1995 (Exhibit 11).

³² Minnesota Legislative Update Apr. 24-28, 1995 (Exhibit 12). This lobbying report prepared by Larry Kitto mistakenly notes the meeting as Apr. 18, 1995.

³³ State Court Deposition of Lewis Taylor, Dec. 17, 1996, p. 71 (Exhibit 13).

³⁴ Memorandum from Tom Krajewski to JoAnn Jones, May 3, 1995 (Exhibit 14).

³⁵ Testimony of DNC Chairman Don Fowler before the Senate Committee on Governmental Affairs, Sept. 9, 1997, p. 108.

also promised to urge Harold Ickes, White House Deputy Chief of Staff, to press Secretary Babbitt to “make a closer examination of impact of the [Hudson casino].”³⁶ The above excerpts clearly show a belief on the part of the lobbyists that campaign donations were to be exchanged for policy decisions.

In a document obtained by the Committee from the Democratic National Committee, it seems clear that both Chairman Fowler and David Mercer understood the possible fundraising potential of opponents of the Hudson application. Mercer outlined calls for Chairman Fowler, and under the heading “Pat & Evelyn “Evie” O’Connor” stated:

The O’Connors are on the hook with Peter Knight to raise \$50k for the re-election. I’m meeting with them tonight to talk to them about bringing in the American Indian money of \$50k for the Gala[.] . . . Pat is certain to inquire about the status of the Indian gaming issue at Interior.³⁷

From this it is clear that the DNC had very clear fundraising goals related to O’Connor, and there was a clear understanding that the lobbyist was interested in a policy issue far from the legitimate purview of the DNC.

DNC contacts the White House and Department of the Interior

True to his word, Fowler focused his efforts on the White House and the Department of the Interior. In his testimony before the Senate he stated: “I called Mr. Ickes, explained to him the situation, and I called someone at the Department of the Interior . . . I simply asked that the situation and the facts in that situation be reviewed.”³⁸ However, a memo from DNC counsel Joe Sandler and Neil Reiff to the DNC finance staff updating the “basic legal guidelines for fundraising,” specifically states that:

[I]n no event should any DNC staff ever promise a meeting with or access to any government official or agency in connection with a donation, or ever imply that such contact or access can be arranged, or ever contact an Administration official on behalf of a donor for any reason.³⁹

Although this memorandum was updated after Fowler’s action, Fowler admits that he was also instructed by White House counsel Jack Quinn and House Political Director Doug Sosnik that such contact on behalf of a donor was inappropriate as was White House involvement in the decision of an independent agency.⁴⁰

Ignoring the warnings he received about the impropriety and illegality of such conduct, Fowler continued to contact the White House. On May 5, 1995, he sent a memorandum to Harold Ickes following up on a previous conversation they had about the Hudson casino proposal.⁴¹ Fowler acknowledged in this memo the politics involved and the stance of the DNC supporters:

³⁶Memorandum from Carl Artman to Scott Dacey, May 1, 1995 (Exhibit 15).

³⁷Memorandum from David Mercer to Chairman Fowler, May 19, 1995 (Exhibit 76).

³⁸Testimony of Don Fowler before Senate Committee on Governmental Affairs, Sept. 9, 1997, p. 107.

³⁹Memorandum from Joe Sandler and Neil Reiff to the DNC Finance Staff, Nov. 11, 1995 (Exhibit 16).

⁴⁰Senate Deposition of Don Fowler, May 21, 1997, pp. 260–261.

⁴¹Memorandum from Don Fowler to Harold Ickes, May 5, 1995 (Exhibit 17).

Below is an outline of the issues raised during my meeting with several tribal leaders and DNC supporters who oppose the project. I've also attached a Peat Marwick impact study forwarded by our supporters. Please let me know how we might proceed. . . . The proposal to convert a dog track to a casino is being pushed by American Indian tribes who are supporters of Governor Thompson[.]⁴²

Continued pressure on the White House

Fowler's calls and memorandum only added to the pressure placed upon the White House to intervene on the issue. Ickes had tried to contact O'Connor on a number of occasions but appears to have been unsuccessful.⁴³ O'Connor's May 8, 1995, letter to Ickes, where he expressed his concern that the steps being taken by the officials at the Interior Department were not in his client's best interests, only solidifies the belief that the lobbyists, the DNC and perhaps the White House were working to pressure a decision from Interior:

I have been advised that Chairman Fowler has talked to you about this matter and sent you a memo outlining the basis for the opposition to creating another gaming casino in this area. . . . I am concerned that those at Interior who are involved are leaning toward creating trust lands.⁴⁴

O'Connor then put the issue into terms Ickes, President Clinton's chief fundraiser at the White House, could not easily miss: "I would also like to relate the politics involved in this situation: . . . All of the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee."⁴⁵ O'Connor's purpose in writing the memo admittedly was "to alert Ickes as to the politics involved."⁴⁶ When asked whether he thought the Department of the Interior was required to review the political factors mentioned, Patrick O'Connor testified, "I don't imagine they were."⁴⁷ If these were not areas that the Department of the Interior would be considering for the application, it seems reasonable to conclude that O'Connor was looking to exert political influence upon the Department of the Interior's Hudson decision.

On May 14, 1995, Tom Schneider, another O'Connor & Hannan partner, met with President Clinton and Harold Ickes and elicited Ickes' assurances that he would "follow up" on O'Connor's requests relating to the Hudson application.⁴⁸ Notwithstanding Schneider's denials that he met with the President on this matter,⁴⁹ he did bill his clients for a "meeting with senior White House staff and

⁴² Id.

⁴³ See Letter to Harold Ickes from Patrick O'Connor, May 8, 1995 (Exhibit 18).

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ State Court Deposition of Patrick O'Connor, Apr. 18, 1997, pp. 128-129 (Exhibit 8).

⁴⁷ Id.

⁴⁸ Deposition of Thomas J. Schneider, Dec. 10, 1997, p. 17.

⁴⁹ Deposition of Thomas Schneider, Dec. 10, 1997, p. 15.

POTUS [President of the United States] re expansion of gaming and the dog track and opposition to so doing.”⁵⁰

Harold Ickes’ staff contacts the Department of the Interior

Harold Ickes, apparently, did keep his promise. Indeed, Ickes and his staff kept a close eye on the application from the White House. On May 18, 1995, Ickes’ assistant, Jennifer O’Connor,⁵¹ prepared a memorandum for Ickes updating him on the information received from Patrick O’Connor and where the Department of Interior was in the decisionmaking process.⁵² It is clear from this memorandum that Jennifer O’Connor was in contact with staff familiar with the application at the Department of the Interior. Jennifer O’Connor also was privy to information that Interior was looking to reject the application and advised Ickes that the information “is not public and is confidential at this point.”⁵³

This would not be the last time the White House would contact Interior to receive confidential information kept from the applicant tribes. On June 6, 1995, David Meyers, an employee in Ickes’ office, indicated that he had spoken with Heather Sibbison, Special Assistant to Secretary Babbitt, and that Interior planned to “make an announcement in the next two weeks.”⁵⁴ Sibbison relayed confidential information that Interior was “95% certain that the application will be turned down. . . . [and] they will probably decline because of their “discretion” in this matter.”⁵⁵ Sibbison also mentioned the fact that there was local opposition to the application, but noted that “much of the opposition, however, was a by-product of wealthier tribes lobbying against the application[.]”⁵⁶ The recognition that local opposition was a by-product of lobbying efforts by “wealthier tribes” is particularly troubling. The regional office and the area office had both concluded that local opposition was not sufficient to deny the application. Only after wealthy opponents became involved—and the Department of the Interior had accorded their tribes preferential treatment in the form of an extended comment period—did local opposition become a dispositive issue. Even then, as will be discussed in later sections of this chapter, the “opposition” failed to articulate substantive reasons for denial of the application. The Department’s obvious favoritism tends to undermine the Secretary’s assertion that the denial of the application was appropriate.

Further communication between the White House and the Department of the Interior

Harold Ickes’ office appears to have been the primary contact at the White House for the Department of the Interior. Ickes, in an

⁵⁰ O’Connor and Hannan Billing Records (Exhibit 31).

⁵¹ Jennifer O’Connor is no relation to Patrick O’Connor.

⁵² Memorandum from Jennifer O’Connor to Harold Ickes, May 18, 1995 (Exhibit 19).

⁵³ *Id.*

⁵⁴ Memorandum from David Meyers to Jennifer O’Connor, June 6, 1995 (Exhibit 20).

⁵⁵ *Id.* The quotation marks around the word “discretion” are found in the original. One of the central concerns in the rejection of the Hudson application is whether the Department made its decision according to articulated standards and past practices. It is curious that someone on Harold Ickes’ staff would use quotation marks to describe something the Secretary of the Interior was about to do. Contextually, it seems as though Meyers recognizes that it would not be appropriate in this case to ignore the law, ignore the facts, and decide based on discretion.

⁵⁶ *Id.*

effort to distance himself from the application, testified that he was “peripherally involved” and “Jennifer O’Connor on my staff was the primary person on [the Hudson application].”⁵⁷ Heather Sibbison and Jennifer O’Connor continued communications between the Department of the Interior and the White House, even though O’Connor did indicate that she prefaced all of her conversations with Interior stating “I’m making a status inquiry, don’t want to influence anything, don’t tell me anything you’re not supposed to tell me.”⁵⁸ In addition, Jennifer O’Connor was also in contact with John Duffy’s office. At the time, Duffy was Counselor to the Secretary and one of the top political appointees involved in the decisionmaking process. O’Connor called Duffy’s office on at least two occasions known to the Committee. One conversation was in response to a call from Duffy. The message slip received from Duffy’s office records reads “returned your call.”⁵⁹ Additionally, it is important to note that the “disposition” column read “done” which most likely means that Duffy returned O’Connor’s call.⁶⁰

On June 26, 1995, Jennifer O’Connor faxed a letter to Sibbison inquiring about the Chippewas’ application. The next day, Sibbison faxed back two responses—one indicating that the Department would reject the Chippewa application and the other indicating that the Department was reviewing the matter.⁶¹ This raised strong suspicions of political impropriety in the eyes of Judge Crabb, who stated:

[T]he fact that [Sibbison] sent two letters to the White House with different messages implies that the White House had been involved in the matter already. Also, the mere fact that Sibbison sent two somewhat contradictory letters suggests that the department was aware of the need for some subterfuge in the process to allow Ickes to advance political ends. The letters seem almost to allow Ickes to choose which direction he wanted the Department to take. The more troubling aspect of Sibbison’s June 27 response is that it means the Department had reached a decision on plaintiffs’ application by that date. This undermines the department’s assertion that Deputy Assistant Secretary Anderson was the one making the decision on plaintiffs’ application.⁶²

Judge Crabb’s remarks appear particularly well-founded considering what was happening at the staff level. For example, on July 5—just 2 weeks after the “subterfuge” of the diametrically opposed letters—Troy Woodward, a lawyer in the Solicitor’s office, sent the following e-mail:

Tom [Hartman], George [Skibine] said you were working on an analysis of the Hudson Dog Track proposal and whether the proposed gaming would be in the best interests of the Tribes and not detrimental to the surrounding

⁵⁷ Testimony of Harold Ickes before the Senate Committee on Governmental Affairs, Oct. 8, 1997, pp. 46–47.

⁵⁸ Deposition of Jennifer O’Connor, Sept. 15, 1997, pp. 96–97.

⁵⁹ Department of the Interior telephone record, May 25, 1995 (Exhibit 21).

⁶⁰ *Id.*

⁶¹ Letter from Heather Sibbison to Jennifer O’Connor, June 27, 1995 (Exhibit 22).

⁶² *Sokaogon Chippewa Comm.*, 961 F. Supp. at 1283.

community. Can you please send me an electronic copy of your analysis before 1:30?⁶³

This communication is remarkable for two reasons. First, it shows that 9 days before the decision was made, the key non-political staff had not reached a conclusion about the fate of the application.⁶⁴ Second, and perhaps more important, it shows that there was still no analysis that indicated the application was detrimental to the surrounding community. Nevertheless, 9 days later a political appointee rejected the application, stating: "Because of our concerns over detrimental affects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of local communities directly impacted by the proposed off-reservation gaming acquisition."⁶⁵ Given the extraordinarily arbitrary nature of the decision, Judge Crabb was certainly justified when she speculated that "the Department was aware of the need for some subterfuge in the process to allow Ickes to advance political ends."⁶⁶

Ultimately, communication between the White House and Interior reached a level where according to David Meyers, Sibbison went so far as to ask Jennifer O'Connor for any "feedback" she might have had on the application.⁶⁷ In an extraordinary memorandum from one Ickes staffer to another Ickes staffer, David Meyers writes to Jennifer O'Connor: "[Sibbison] stated that they will probably decline without offering much explanation, because of their 'discretion' in this matter. She asked that if you have any feedback please call her with your thoughts."⁶⁸ As already discussed, the use of quotation marks for "discretion" is curious. More important, the fact that the Secretary of the Interior's Special Assistant was telling Harold Ickes' staff that Interior would reject the application "without offering much explanation" cannot be given an innocent explanation. Given the weight of all the evidence before this Committee, the real reason that the rejection would be made "without offering much explanation" is that there was no evidence to offer. Mere incompetence cannot explain why the government would reject an application without properly justifying its decision. Not only is such action the definition of "arbitrary and capricious," it is also, given the almost-certainty of litigation when a decision is not supported by valid reasoning, contemptuous of the taxpayer who must pay for the agency's misfeasance in court.

The communication which has received the most speculation and attention, however, appears to have been from Harold Ickes to Secretary Babbitt himself.

⁶³ E-mail from Troy Woodward to Tom Hartman, July 5, 1995 (Exhibit 65).

⁶⁴ All produced copies of memoranda prepared by Tom Hartman show that far from finding that the application was a detriment to the surrounding community, he concluded the opposite—that the application was not a detriment to the surrounding community. See, e.g., Memorandum from Indian Gaming Management Staff to Director, Indian Gaming Management Staff, June 8, 1995 (Exhibit 44); see also Memorandum from George Skibine to Assistant Secretary—Indian Affairs, undated (Exhibit 45). Both of these memoranda are marked "draft." However, no other memoranda were produced as final work product, and there are no other staff memoranda to the contrary prior to the rejection letter.

⁶⁵ Letter from Michael Anderson to Rose Gurnoe, Alfred Trepania, and Arlyn Ackley, Sr., July 14, 1995 (Exhibit 2).

⁶⁶ *Sokaogon Chippewa Comm.*, 961 F. Supp. at 1283.

⁶⁷ Memorandum from David Meyers to Jennifer O'Connor, June 6, 1995 (Exhibit 20).

⁶⁸ *Id.*

Additional significant communications prior to the denial

Although evidence shows frequent communication between the White House and the Department indicating the application would be denied, there was no such communication with the applicant tribes. The applicants had a number of contacts with Interior officials and were not informed of any significant—let alone fatal—defects in their application. Indeed, in May 1995, Paul Eckstein,⁶⁹ a lawyer and friend of Secretary Babbitt's who worked on behalf of the Chippewas, had a conversation with Secretary Babbitt during which Babbitt reportedly promised to meet personally with the tribal Chairmen and Eckstein if a problem with the application arose.⁷⁰

On May 17, 1995, tribal representatives, Fred Havenick, and Paul Eckstein met with John Duffy. In this meeting Duffy did not identify any specific problem with the application. Nevertheless, he did convey that he did not believe the application would be a "slam dunk."⁷¹ This was one of the only comments made by Duffy in the meeting. In an effort to look deeper into the matter, the group met with George Skibine and Thomas Hartman that same day. In this meeting the group discussed the technical aspects of the application and no problems were identified.⁷² That night, however, staff at Interior met and reported to the White House that a preliminary decision to reject the application had been reached.⁷³ Not only was this not communicated to the applicant tribes, they had not even been given a clear understanding of what they needed to do to correct any perceived defects in the application. Given the Department's previous efforts to work with applicant tribes to perfect applications—including in one situation hiring mediators to broker applicant/community harmony—there has yet to be advanced a reasonable explanation for the Department's approach to this application. If the decision was made under appropriate circumstances, as Secretary Babbitt has repeatedly argued, there would have been no reason to withhold critical information from the applicants, while at the same time favoring the opponents.

George Skibine and Thomas Hartman had the opportunity to articulate any perceived problems when they met again with Paul Eckstein and Fred Havenick on May 31, 1995. Interestingly, there were no problems identified and Eckstein and Havenick left believing the application was on its way to approval.⁷⁴ Either Skibine and Hartman did not know that a decision had been made, or they refused to help the applicant tribes. Hartman, however, may not

⁶⁹Paul Eckstein is a long time friend of Secretary Babbitt. The two met at Harvard Law School in 1962 and returned to Arizona to practice law. In 1967, Babbitt was hired by a small law firm in Phoenix where Eckstein was working. In 1974, Babbitt left the firm when he was elected Arizona Attorney General. In 1978 Babbitt was elected Governor of Arizona. Throughout Babbitt's political career, Paul Eckstein has been a part of his inner circle of advisors. For example, Eckstein ran Babbitt's re-election for Governor in 1982. Needless to say Eckstein and Babbitt were close friends. (Committee Staff Interview with Paul Eckstein; see also Senate testimony of Paul Eckstein, Oct. 30, 1997, pp. 13–14).

⁷⁰Testimony of Paul Eckstein before the Senate Committee on Governmental Affairs, Oct. 30, 1997, p. 18; see also Senate Deposition of Paul Eckstein, Sept. 30, 1997, p. 29.

⁷¹Senate Deposition of Paul Eckstein, Sept. 30, 1997, p. 88. In his deposition before this Committee, John Duffy remembered the phrase "not a slam dunk," but did not recall having had any discussions about problems with the application with "the applicant tribes or any other representatives." Deposition of John Duffy, Jan. 26, 1998, pp. 40–41.

⁷²Id. at 35–36.

⁷³See Memorandum from Jennifer O'Connor to Harold Ickes, May 18, 1995 (Exhibit 19).

⁷⁴Committee Staff interview with Fred Havenick.

have known about the preliminary decision, because as late as June 16, 1995, he relayed to Eckstein that the staff report was just passed to Skibine and there were no problems that could not be cured.⁷⁵ Eckstein later called George Skibine on June 26, 1995, seeking an additional status report. To Eckstein's surprise, Skibine refused to talk about the application for fear that he would lose his job.⁷⁶ Again, this adds to the concern that the Hudson decision was not made on the merits.

Inconsistencies in Secretary Babbitt's statements

There is substantial evidence that Ickes called Secretary Babbitt in order to influence the Department's decision on the Chippewa's application. Paul Eckstein testified in a sworn affidavit:

Later that day, on July 14, 1995, I met with Secretary Babbitt. I asked the Secretary if he would delay the release of the decision of the Tribes' application until the following Monday to allow time for the Tribes to attempt to respond to the political pressure being exerted against the application. Secretary Babbitt said that the decision could not be delayed because Presidential Deputy Chief of Staff Harold Ickes had called the Secretary and told him that the decision had to be issued that day.⁷⁷

When word of Eckstein's assertion was disseminated, Secretary Babbitt denied the account. Babbitt immediately denied any contact with Ickes or that Ickes played any role in the decision. Secretary Babbitt even denied ever using Ickes' name in front of Eckstein. In an August 30, 1996, letter to Senator John McCain, Secretary Babbitt stated:

I must regretfully dispute Mr. Eckstein's assertion that I told him that Mr. Ickes instructed me to issue a decision in this matter without delay. I never discussed the matter with Mr. Ickes; he never gave me any instruction as to what the Department's decision should be, nor when it should be made.⁷⁸

Judge Crabb, in the Federal law suit filed in Wisconsin against the Department of the Interior, correctly noted: "[i]t would be improper to dismiss Eckstein's assertion just because Babbitt denies it."⁷⁹ Indeed, Secretary Babbitt, upon further reflection, gave Senate Governmental Affairs Committee Chairman Fred Thompson another contradictory statement about what happened:

[W]hile I did meet with Mr. Eckstein on this matter shortly before the Department made a decision on the application, I have never discussed the matter with Mr. Ickes or anyone else in the White House. Mr. Ickes never gave me instructions as to what this Department's decision should be, nor when it should be made. I do believe that Mr. Eckstein's recollection that I said something to the effect

⁷⁵ Affidavit of Paul Eckstein, Jan. 8, 1996 (Exhibit 23).

⁷⁶ Id. This is Eckstein's recollection of the exchange.

⁷⁷ Id.

⁷⁸ Letter from Secretary Bruce Babbitt to Senator John McCain, Aug. 30, 1996 (Exhibit 24).

⁷⁹ Sokaogon, 961 F. Supp. at 1284.

that Mr. Ickes wanted a decision is correct. Mr. Eckstein was extremely persistent in our meeting, and I used this phrase simply as a means of terminating the discussion and getting him out the door.⁸⁰

In testimony before the Committee on Government Reform and Oversight and the Committee on Governmental Affairs, Babbitt indicated that his statements were not only truthful but consistent.⁸¹ A simple reading, however, would lead to the opposite conclusion.

One of the most damaging and troubling pieces of Eckstein testimony revolved around the alleged rhetorical question asked of Eckstein by Secretary Babbitt. The question involved campaign contributions given to the Democratic party.⁸² Secretary Babbitt is said to have indicated that “these tribes [donated] on the order of half a million dollars, something like that.”⁸³ This statement, if true, constitutes an illegal sale of government policy for campaign contributions. Secretary Babbitt has said he has “no recollection” of mentioning contributions with anyone from the White House, the DNC, or anyone else.⁸⁴ However, the difference between his correspondence to Senator McCain and then to Senator Thompson—combined with direct evidence of White House contacts with the Secretary’s office and direct and circumstantial evidence relating to improper decisionmaking at the Department of the Interior—make the Secretary’s statement less than credible. Furthermore, Secretary Babbitt’s willingness to make misrepresentations about smaller matters—for example, Governor Thompson’s position on the application or whether the decision was based solely on Section 20 of the Indian Gaming Regulatory Act—adds to the sense that he has not been candid about his involvement in the Hudson matter.

“Possible DOJ involvement”

In a document produced to the Committee pursuant to subpoena, Scott Keep, an employee in the Solicitor’s office, sent the following e-mail to Heather Sibbison, Hilda Manuel, Michael Anderson, Tom Hartman, Paula Hart, George Skibine and Troy Woodward:

DOJ [Department of Justice] has found a reference in one of the documents or testimony to possible DOJ involvement in the Hudson dog track matter. Are any of you aware of any involvement by anyone at DOJ in the Hudson dog track matter prior to the decision on July 14? . . . If anyone has any recollection of a contact from DOJ, please advise me.⁸⁵

Apart from this one reference, the Committee is not aware of any Department of Justice involvement with the Hudson application

⁸⁰ Letter from Secretary Bruce Babbitt to Senator Fred Thompson, Oct. 10, 1997 (Exhibit 25).

⁸¹ Testimony of Secretary Bruce Babbitt before the Committee on Government Reform and Oversight, Jan. 29, 1998, p. 797; see also Testimony of Secretary Bruce Babbitt before the Committee on Governmental Affairs, Oct. 30, 1997.

⁸² Senate Deposition of Paul Eckstein, Sept. 30, 1997, p. 53.

⁸³ *Id.*

⁸⁴ Testimony of Secretary Bruce Babbitt before the Committee on Government Reform and Oversight, Jan. 29, 1998, p. 791; see also Testimony of Secretary Bruce Babbitt before the Committee on Governmental Affairs, Oct. 30, 1997.

⁸⁵ E-mail from Scott Keep to Heather Sibbison, Hilda Manuel, Michael Anderson, Tom Hartman, Paula Hart, George Skibine, Troy Woodward, Nov. 17, 1997 (Exhibit 72).

prior to the rejection of the application on July 14, 1995. It is entirely possible, however, that such a contact would have relevance to the Committee's investigation.

PROBLEMATIC ASPECTS OF THE HUDSON DECISION

Large contributors got what they wanted

During the 1996 election cycle, tribes opposed to the Hudson application donated at least \$356,250 to the DNC and other Democratic party causes during the 1995–1996 election cycle.⁸⁶ This figure does not include money donated by the lobbyists paid by the opponents or other “intangibles,” such as the fundraiser held in the home of lobbyist Tom Schneider which raised \$420,000 for Clinton Gore '96 the night before the decision to deny the application was made.⁸⁷

Prior to the fundraiser at his home, Schneider had elicited Ickes' promise to “follow up” on Patrick O'Connor's requests regarding the dog track in Hudson, Wisconsin.⁸⁸ According to Schneider: “my experience, due to sort of a personal relationship with the White House, is when people say they are going to follow up, they usually will follow up.”⁸⁹

These large donations from Native Americans were not merely coincidental. On the contrary, the Democratic National Committee and Clinton/Gore '96 campaign staff were actively soliciting such contributions from Native American tribes.

It is also interesting to note the pattern of wealthy Native American contributors getting what they wanted where off-reservation gaming was concerned. The Sault Ste. Marie Chippewa gave at least \$384,964 to the Democrats in 1995–1996⁹⁰ and received approval from the Department of the Interior to open a gaming facility over 300 miles from their reservation.⁹¹ The Mashantucket Pequots gave over \$409,625 in 1995 and 1996 to the Democrats and the Department of the Interior not only approved their application, but hired mediators to try to alleviate some of the extraordinary local opposition to the expansion of gambling. Indeed, the Committee received one document from the DNC on August 28, 1998—7 months after the Committee held hearings on this subject—which shows that Richard Hayward, the Chairman of the Mashantucket Pequots, is listed as: “Wrote \$500,000 +” to the DNC.⁹²

The opposing tribes in the Hudson matter contributed (through Patrick O'Connor) at the same time that opposition tribe lobbyists were meeting with White House and DNC staff (through O'Connor)

⁸⁶ See Committee on Government Reform and Oversight Chart (Exhibit 26).

⁸⁷ See Vern Shen and Karl Vick, “*Schaefer and Bentley's Latest Pitch*,” the Washington Post, July 20, 1995.

⁸⁸ Deposition of Thomas Schneider, Dec. 10, 1997, pp. 16–17.

⁸⁹ *Id.*

⁹⁰ A “movie list” of attendees at White House movies was produced to the Committee which lists “Bernard (Chippewa Indians)” along with Ted Sioeng, Charlie Trie, Arief Wiradinata and 16 others. See movie list (Exhibit 27). At one point, the DNC appeared to be feeling great urgency regarding matters pertaining to this tribe. In a call sheet dated Feb. 22, 1996, Mark Thomann called Richard Sullivan and the following message was recorded: “[c]an we overnight a Finance Board packet to his Indians.” (Exhibit 28).

⁹¹ The tribe's casino application was vetoed by the Governor of Michigan and therefore the casino was not built.

⁹² This is a sum far greater than that known prior to the recent production of documents (Exhibit 29).

on the Chippewas' application.⁹³ Patrick O'Connor also testified that he met with David Mercer, the Deputy Finance Director of the DNC, several times after his April 28 meeting with Chairman Fowler to discuss "how many Indians we could get to attend the presidential gala" (\$1,000 or \$1,500 donation required) in June.⁹⁴ Patrick O'Connor had a goal to raise \$25,000 from the Tribes for that fundraiser,⁹⁵ and he also recalled that he and Larry Kitto met with Terry McAuliffe, the National Finance Chairman of the Clinton/Gore '96 Committee, and was asked for more \$1,000 donations from members of tribes opposed to the application.⁹⁶ O'Connor was also responsible for a fundraiser on October 23, 1996, in Minneapolis, Minnesota, honoring Vice President Gore, in which 17 of the 20 attendees were members of tribes opposed to the Hudson casino, or their lobbyists.⁹⁷ Thus, the Vice President went to a fundraiser that was—with the exception of only three attendees—composed exclusively of beneficiaries of the Hudson decision.

In testimony before the Senate Governmental Affairs Committee, when asked about the contact Patrick O'Connor had with Deputy Finance Director David Mercer while the Hudson application was under consideration at the Department of the Interior, Fowler could not remember anything about Mercer's contacts with those opposed to the application.⁹⁸ However, Chairman Fowler admitted that "one could infer that the casino matter was discussed[.]"⁹⁹ Although O'Connor has denied any link between DNC solicitations and his clients' donations, a review of his daybook would reasonably lead to a different conclusion. Because O'Connor billed his Native American clients for the time he spent discussing and coordinating campaign donations with the DNC and Clinton/Gore '96 staff,¹⁰⁰ it is reasonable to conclude that Patrick O'Connor believed that these contributions were intertwined with defeat of the Chippewas' application before the Department of the Interior.

A review of O'Connor's calendar is one of the clearest indications that campaign dollars were exchanged for influence in the decision-making process at the Department of the Interior. On the day the application was denied, Patrick O'Connor wrote in his daily planner: "need to follow up with Harold Ickes at the White House, [Don] Fowler at the DNC and Terry Mac [Auliffe] at the Committee to reelect—outlining fundraising strategies."¹⁰¹ In addition to the entry in O'Connor's calendar he also billed the St. Croix tribe for the fundraising discussions with Ickes, Fowler, and McAuliffe.¹⁰² The fact that O'Connor was engaged in "follow up" discussions on the very day the Hudson application was denied indicates that fundraising dollars played a larger role in the decision than anyone is willing to admit.

Given the direct and circumstantial evidence indicating a political decision, it is hardly surprising that O'Connor's clients and the

⁹³ State Court Deposition of Patrick O'Connor, Apr. 18, 1997, pp. 71–72 (Exhibit 8).

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Id. at 87–88.

⁹⁷ VPOTUS Reception list, Oct. 23, 1996 (Exhibit 30).

⁹⁸ Testimony of Don Fowler before the Committee on Governmental Affairs, Sept. 9, 1997.

⁹⁹ Id.

¹⁰⁰ See O'Connor & Hannan billing records (Exhibit 31).

¹⁰¹ Patrick O'Connor Datebook, July 14, 1995 (Exhibit 5).

¹⁰² O'Connor & Hannan billing records, July 14, 1995 (Exhibit 31).

lobbyists against the Hudson application began contributing after the Chippewas' application was denied, and O'Connor had cemented the "fundraising strategy" with the White House, DNC and Clinton/Gore '96. Furthermore, 2 months later, on September 14, 1995, Patrick O'Connor and Larry Kitto sent out personal invitations encouraging opposition tribe members to attend \$1,000 per person Presidential and Vice Presidential fundraisers.¹⁰³ In the invitation, O'Connor and Kitto reiterated their belief that President Clinton and his staff intervened on behalf of the opposing tribes: "As witnessed in the fight to stop the Hudson Dog Track proposal, the Office of the President can and will work on our behalf when asked to do so."¹⁰⁴ This feeling was also shared by at least one of the tribes who wrote to thank both the President and the DNC Chairman. The President of the Ho-Chunk Nation wrote to Chairman Don Fowler:

On behalf of the Ho-Chunk Nation, I want to thank you for your help in the successful effort to defeat the Hudson casino. Numerous people contributed to the Department of Interior decision. You were particularly instrumental in helping the Department understand the significance and importance of their decision.¹⁰⁵

President Clinton's efforts also did not go unappreciated: "On behalf of the Ho-Chunk Nation, I want to thank you for your role in the decision to deny the request to approve the Hudson casino."¹⁰⁶ Shortly before the decision to reject the application was made, at the time that the White House was getting involved in the Hudson application, Chairman Fowler received a memorandum from one of his staffers. This memorandum states: "Craig Smith, White House Assistant to Political Affairs, and Judy DeAtley, DNC Western Political Desk, met this week with Indian representatives to discuss political and campaign strategies."¹⁰⁷ This memorandum indicates much greater coordination with Native Americans than previously known. It also includes material from Kevin Gover—then a lawyer/lobbyist in the private sector and now the Assistant Secretary for the Bureau of Indian Affairs—stating that: "[t]he tribes can be major financial players in California, Minnesota, Wisconsin, Florida, New Mexico, and Washington."¹⁰⁸

It appears to be far from coincidental that this flurry of political activity involving Native Americans was taking place as the Department of the Interior was deciding to reject the advice of its own area and regional offices.

The applicant tribes were not given the opportunity to cure any of the application's alleged defects

While the opponents celebrated their victory and sent letters of appreciation to the President, the decision to reject the application took the applicant tribes by surprise. The applicant tribes have

¹⁰³ Letter from Patrick O'Connor and Larry Kitto, Sept. 14, 1995 (Exhibit 32).

¹⁰⁴ Id.

¹⁰⁵ Letter from JoAnn Jones to Don Fowler, Aug. 3, 1995 (Exhibit 33).

¹⁰⁶ Letter from JoAnn Jones to President Clinton, Aug. 3, 1995 (Exhibit 34).

¹⁰⁷ Memorandum from Alejandra Castillo to Don Fowler, June 23, 1995 (Exhibit 35).

¹⁰⁸ Memorandum from Kevin Gover and Cate Stetson to Craig Smith and Judy DeAtley, June 19, 1995 (Exhibit 36).

consistently complained that they were never consulted in advance about the alleged problems the Department of the Interior found in the application. This is a critical point, and the record supports this position.

The statutory language of Section 20, reads: “[land may be placed into trust if] the Secretary, *after consultation with the Indian tribe . . . determines that a gaming establishment . . . would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community[.]*”¹⁰⁹ It is true that members of the Interior Department met with tribal leaders, but the tribal leaders were not consulted about any problem which would have jeopardized the application. Indeed, the consultation that did take place resulted in both the Area and Regional office approving the application. There was no subsequent consultation that put the applicants on notice that the Secretary’s office had identified problems that had not already been addressed or solved at the Area and Regional levels. Furthermore, there was no indication that the Department was going to change its policy just for the Hudson application and discard the standard that opposition, to be considered, had to be supported by “factual documentation.”¹¹⁰ Given the Department’s role in the Sault Ste. Marie and Pequot applications to help facilitate accommodations with the local communities, there are strong indications that the decision may have been driven by political motives.

The conclusion appears to be inescapable: where contributors of large amounts of money were involved, the Secretary’s office appears to have helped the contributors. In the Hudson application, the Secretary’s office again helped the large contributors—this time by failing to notify the applicants that the comment period had been reopened and then denying the application without informing the applicants of defects or providing a chance to cure the alleged defects.

David Jones, the Assistant U.S. Attorney representing the Department of the Interior in the ongoing law suit regarding this matter, identified the problem that the Department would face when it became clear that the applicant tribes had not been consulted about potential problems with the application. Jones wrote:

Now that we have reviewed the administrative record in greater depth, we have determined that the alleged problems with the 2719 [Section 20 of IGRA] process are significant. We are primarily concerned about our ability to show that the plaintiffs were told about and given an opportunity to remedy the problems which the Department ultimately found were outcome-determinative. Area Directors are told to give applicants an opportunity to cure problems, and it will be hard to argue persuasively that

¹⁰⁹Section 20 of the Indian Gaming Regulatory Act has been codified at 25 U.S.C. § 2719(b)(1)(A) (emphasis added).

¹¹⁰Hilda Manuel, in a letter to Representative Gunderson, stated that “any opposition should be supported by factual documentation.” Letter from Hilda Manuel to Representative Steve Gunderson, Mar. 2, 1995 (Exhibit 38). This issue is discussed fully in the next section of this chapter.

applicants lose this opportunity once the Central Office begins its review.¹¹¹

Jones goes even further to note:

The administrative record, as far as we can tell, contains no record of Department meeting or communications with the applicant tribes in which the Department's concerns were expressed to the plaintiffs.¹¹²

The reason that there was nothing in the record is that the Department simply failed to identify such problems in advance. Had there been a problem that would appropriately have led to the rejection of the application, the Department of the Interior would have had some record of the problem. Furthermore, it is likely that at least one employee of the Department of the Interior would have told the applicants that there was a problem that would prove fatal unless cured.

The following exchange from George Skibine's deposition confirms David Jones' conclusion that the applicants were not given an opportunity to cure defects:

Q: To clarify the meaning of my question, here were three poor tribes that had presented an application to the Department of the Interior, and you were making a determination as to whether to approve the application or deny the application. If you, as the director of the IGMS staff, identified a particular problem that might lead to the rejection of the application, did you consider it important to communicate that directly to the applicant tribes to give them an opportunity to cure the problem?

A: Good question. I don't think that I did that on this application, the first application I considered as head of the gaming office. If I were to do that again different now, you know, it might be different, it might be something I would consider doing, but at that time, I didn't do it. In other words, we did not[.]¹¹³

Skibine elaborated further in the following exchange during his deposition:

Q: Now if you had shared the June 29 draft with the applicants, is it possible they might have come back and offered accommodations to the problems you identified?

A: If we had done more consultation with them and told them, yes, it's possible. We didn't do that in this instance.¹¹⁴

If the Department of the Interior was acting in good faith, it would have given the tribes an opportunity to cure the alleged defects. Because Interior acts as a middleman—the collector of information supporting or opposing the application—it has historically been responsible for keeping the tribes informed of problems. In other situations where political considerations were not driving the

¹¹¹ Letter from David Jones to Scott Keep, Feb. 14, 1996 (Exhibit 37).

¹¹² *Id.*

¹¹³ Deposition of George Skibine, Jan. 13, 1998, p. 61 (Exhibit 69).

¹¹⁴ *Id.* at 121.

decision, Interior kept the applicants informed of the issues. In one case they even hired a mediator to solve the problems between the applicants and the local opponents.¹¹⁵ Particularly given the fact that George Skibine recognized that the local opposition was “largely generated” by lobbyists opposed to the application,¹¹⁶ it is legitimate to ask why a mediator would be hired in one case and not in another. One answer that naturally suggests itself is that to hire a mediator for the Mashantucket Pequots benefited Democratic contributors, and to hire a mediator for the three Chippewa applicants would have worked against Democratic contributors.

In the Hudson application, no one from DOI’s central office even visited the proposed site in Hudson, Wisconsin, to see any of the alleged problems first hand. As for the central tenet of the rejection—opposition by the surrounding communities—the Department of the Interior went so far as to misrepresent to this Committee and to a Federal judge the facts pertaining to support for the application.¹¹⁷

The Department changed its policy regarding off-reservation applications just before deciding Hudson

It is clear that the Department would have acted appropriately if it made a finding, supported by fact, that the proposed Hudson casino would have been a “detriment to the surrounding community.” Because the record did not support such a finding, the Secretary’s office changed the approach to evaluating off-reservation gaming applications, and decided that unsupported opposition within the community would be enough for a finding that the proposal would be a detriment to the surrounding community. In its rejection of the application, the Department has morphed the Section 20 “detrimental to the surrounding community” standard into a policy that the existence of opposition to an application is a “detriment to the surrounding community.”

The Department of the Interior has not publicly discussed this policy change. In communications obtained by this Committee pursuant to subpoena, however, Department officials have admitted that a new policy was used to decide the Hudson application. Furthermore, it is clear that the applicants were not informed of the new ground rules for deciding their application.

One clear statement that a new policy was used to decide the Hudson application is found in an internal communication between Secretary Babbitt’s Special Assistant Heather Sibbison, and Michael Gauldin, a Department spokesman responsible for answering questions about the Hudson decision. Almost 2½ years after the decision was made, Sibbison—who was also the go-between with

¹¹⁵ See Deposition of Hilda Manuel, Jan. 6, 1998, pp. 81–82.

¹¹⁶ E-mail from George Skibine to Heather Sibbison, Paula Hart, Tom Hartman, Troy Woodward and Kevin Meisner, June 30, 1995 (Exhibit 46).

¹¹⁷ As will be discussed later in this chapter, the Department of the Interior significantly misrepresented the amount of support for the application in the record submitted for the purposes of the Federal litigation in Wisconsin. The Department of the Interior also failed to inform the court that their own Solicitor’s office found opposition by elected officials to be irrelevant. See e-mail from Kevin Meisner to Heather Sibbison, Mar. 23, 1995 (Exhibit 56). In this e-mail, Meisner states that he is also sending the e-mail to another Department of the Interior lawyer named Tim Elliot “who should be able to shed some further light on this question.” No documents were produced to this Committee regarding Mr. Elliot’s position on this matter. Notwithstanding Mr. Elliot’s potential role as a witness in this matter, however, Elliot represented all Department of the Interior employees in depositions taken by this Committee.

the White House for the Hudson matter—made the following statement in a confidential internal e-mail:

[I]t has been our position, *first articulated in Hudson*, that expressed opposition from local elected officials essentially is prima facie evidence of detriment.¹¹⁸

David Jones, the Department of the Interior's own attorney in the civil litigation in Wisconsin, adds to our understanding of Sibbison's statement:

The second, and related, problem is that *the Department appears to have changed its past policy* of requiring "hard" evidence of detriment to the community. The plaintiffs will therefore argue that they had no notice, either through past policy or through direct Departmental communication, that the "soft" concerns expressed by local officials would jeopardize their application.¹¹⁹

Even more enlightening is George Skibine's explanation of the role of Counselor to the Secretary John Duffy. Skibine noted:

The Department (Duffy) made a decision that the opposition of the local communities was evidence per se of detriment, and that the Department was not going to require the communities for detailed evidence to back up their opposition.¹²⁰

This was a departure from Department practice and established a new standard to assess trust applications. It is certainly a departure from Acting Deputy Commissioner of Indian Affairs Hilda Manuel's letter to Representative Gunderson—drafted just 4 months before the rejection—which pointed out that "any opposition should be supported by factual documentation."¹²¹ Thus, in the Hudson case, Babbitt's counsel established a new policy—one not articulated anywhere or shared with any of the applicants.

Further illustrating the departure from what was standard practice up until the Hudson application, Kevin Meisner, an attorney at the Department of the Interior, disagreed with Duffy's decision and wrote a memorandum to a number of Department employees involved in the Hudson decision (Troy Woodward, George Skibine, Paula Hart, Tom Hartman, and Larry Scrivner). Meisner stated:

¹¹⁸ E-Mail from Heather Sibbison to Michael Gauldin, Dec. 16, 1997 (emphasis added) (Exhibit 54).

¹¹⁹ Memorandum from David Jones to Scott Keep, Feb. 14, 1996 (emphasis added) (Exhibit 37).

¹²⁰ Memorandum from George Skibine to Scott Keep, Assistant Solicitor, Aug. 5, 1996 (Exhibit 51). Heather Sibbison characterizes Duffy as the person "most centrally involved" in the decision. Although he did not have the actual decisionmaking authority, Sibbison answered in the affirmative when asked if Duffy "was much more involved in meetings and deliberations about this particular application than Mr. Anderson." Deposition of Heather Sibbison, Senate Committee on Governmental Affairs, Sept. 26, 1997, p. 118–119. In a memorandum prepared by Troy Woodward, Duffy's role is further explained: "Duffy thinks that the local communities may veto off-reservation Indian gaming by objecting during the consultation process of Section 20. I expressed the opinion, advocated by George [Skibine] and which we have used to evaluate objections in the past, that the consultation process does not provide for an absolute veto by a mere objection, but requires that the objection be accompanied by evidence that the gaming establishment will actually have a detrimental impact (economic, social, developmental, etc.)." Memorandum by TMW [Troy Woodward], July 6, 1995 (Exhibit 77).

¹²¹ Letter from Hilda Manuel to Representative Steve Gunderson, Mar. 2, 1995 (Exhibit 38).

My view on this matter is that the bald objections of surrounding communities including Indian tribes are not enough evidence of detriment to the surrounding communities to find under Section 20 of IGRA that the acquisition for gaming will be detrimental to the surrounding communities.

Specific examples of detriment must be presented by the communities during the consultation period in order for us to determine that there will be actual detriment. A finding of detriment to surrounding communities will not hold up in court without some actual evidence of detriment. In this case the gaming office did not think that the information obtained during the consultation period was enough to show actual detriment to the surrounding community.¹²²

In addition to making the point about unsupported objections not being sufficient to establish detriment to the community, Meisner provides a clear window into what actually happened prior to the revisions and political cover-up following the decision. By pointing that the “gaming office did not think that the information obtained during the consultation period was enough to show actual detriment to the surrounding communities,” a dispassionate observer can only wonder what Secretary Babbitt meant when he told this Committee that “the Department based its decision solely on the criteria set forth in Section 20 of the Indian Gaming Regulatory Act.”¹²³ If Section 20 requires a finding that an application not be a detriment to the surrounding community, and Secretary Babbitt maintains that the decision was based on Section 20 of IGRA, and his own staff stated 8 days before the rejection that the gaming office did not have evidence of actual detriment, there should be little surprise that this Committee has a significant problem with the following language from the rejection letter: “Because of our concerns over detrimental effects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of the local communities directly impacted by this proposed off-reservation gaming acquisition.”¹²⁴

Two significant problems flow from this policy change: (1) the applicants were not informed that new rules were being invented for, and applied to, their application; and (2) the abrupt shift in policy defied a valid Presidential directive prohibiting the Department from changing policy without providing advance notification to the tribes.¹²⁵ Indeed, the change of policy conflicts with Section 20 of

¹²²Memorandum from Kevin Meisner to Troy Woodward, George Skibine, Paula Hart, Tom Hartman, and Larry Scrivner, July 6, 1995 (Exhibit 52).

¹²³Testimony of Secretary of the Interior Bruce Babbitt, Jan. 29, 1998, p. 776.

¹²⁴Letter from Michael Anderson to Rose Gurnoe, Alfred Trepania and Arlyn Ackley, Sr., July 14, 1995 (Exhibit 2).

¹²⁵President's Memorandum for the Heads of Executive Departments and Agencies: Government-to-Government Relations With Native American Tribal Governments, 59 Fed. Reg. 22951 (1994). In pertinent part, this Memorandum states: “In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following: . . . (b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals” (Exhibit 66).

IGRA, which requires “consultation with the Indian tribe”¹²⁶ prior to a determination that the proposal would be a detriment to the surrounding community. It can hardly be argued that the Secretary consulted with the applicants if they were unaware that a new policy was being used to consider the application.

George Skibine, allegedly the key decisionmaker in the rejection of the application, lends support to a statement by Sibbison that the Department had changed its policy. In an e-mail to Hilda Manuel, Bob Anderson, Heather Sibbison, Michael Anderson, Scott Keep, Dave Etheridge, Tom Hartman, and Nancy Pierskalla, dated March 17, 1997, he states:

Plaintiffs informed us that a pivotal question in their decision to resubmit an application is whether the Department again stand by its position that the “naked” political opposition of the surrounding communities without factual support is enough for the Secretary to refuse to make a finding that the proposed acquisition is not detrimental to the surrounding community. . . . We told them we would confer with policy makers within the Department and let them know the outcome. . . . I think that it is a fair question for plaintiffs to ask.¹²⁷

It is significant that Skibine does not take issue with the fundamental premise of the question. This admission that “factual support” was absent from the decision goes directly to the question of whether the decision was improperly made, and whether the Department has tried to cover up this fact. The Committee is left with a significant question: Why would “naked” political opposition without factual support ever be a legitimate reason to deny an application? Prior to Hudson, it was not a sufficient reason and nowhere in the record is there a discussion of why the Department felt compelled to change the policy without even notifying the parties that there had been a change. Again, the circumstantial evidence points to an improper motive.

Secretary Babbitt made his position clear in a statement to the New York Times: “This department does not force off-reservation casinos upon unwilling communities.”¹²⁸ However, prior to the Hudson decision, mere opposition was not enough—there had to be an objective showing of detriment. For example, in her letter to Representative Gunderson, Hilda Manuel stated:

You request clarification on whether or not the Bureau of Indian Affairs (BIA) considers the views of parties opposing a fee-to-trust acquisition by a tribe for gaming purposes. Because of the contentious nature of fee-to-trust acquisitions for gaming purposes, public sentiment and concerns of the negative impacts of casino gambling are two of the several issues that are common. The Department of the Interior (Department) is sensitive to these issues. Consequently, we want to take this opportunity to assure you that comments opposing fee-to-trust acquisition receive the

¹²⁶ 20 U.S.C. § 2719(b)(1)(A).

¹²⁷ E-Mail from George Skibine to Hilda Manuel, Mar. 17, 1997 (Exhibit 57).

¹²⁸ Secretary of the Interior Bruce Babbitt, *Letter to the Editor*, the New York Times, Jan. 4, 1998.

highest consideration during the review process. However, *it is important to point out that any opposition should be supported by factual documentation. If the opposing parties do not furnish any documented evidence to support their position, it is difficult, if not impossible, to make a finding that the acquisition is not detrimental to the surrounding community as required by the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §2719.*¹²⁹

The commonsense rationale for this standard is obvious: opposition based on racism, for example, would hardly be an acceptable reason for rejecting an application. Thus, to be a part of the decisionmaking process, “factual documentation” of opposition was always required prior to Hudson. George Skibine, during his deposition, understood this concept. When asked whether he would accept a claim of opposition and a claim of harm “without any research,” he replied:

No; I think that we would need to look at what justification you submit.¹³⁰

The weakness of the Department’s position regarding the Hudson application is illustrated by an exchange between Committee counsel and Mr. Skibine during his deposition:

Q: [A] longtime Hudson business person wrote in support [of the application] and states that the opposition to the acquisition is receiving money from opposing Indian tribes. Is this an observation that you investigated at the time you were analyzing whether to approve or reject the application?

Skibine: No, it was not an allegation we investigated.

Q: Do you know whether it is correct or incorrect?

Skibine: No, I don’t know whether it is correct or incorrect.

Q: Would it make a difference if it was correct?

Skibine: I think that if it was correct, it would make a difference, yes.¹³¹

Given that the Department of the Interior was basing its rejection—at least according to the Department—on opposition from the local community, it would seem that fundamental fairness would have required an inquiry into whether it was true that people were receiving money for their opposition to the application. Forced to admit that it would have made a difference if the allegation were true, Skibine has essentially conceded the Department’s case—the Department failed to examine a potentially dispositive factor, which makes it well-nigh impossible to argue that “the right decision was made in the right way and for the right reasons.”¹³²

Indeed, the Department’s intellectual position is even worse. By changing the policy to allow opposition to constitute a prima facie case of detriment to the community, as Sibbison stated in her e-

¹²⁹ Letter from Hilda Manuel, Acting Deputy Commissioner of Indian Affairs, to Hon. Steve Gunderson, Mar. 2, 1995 (emphasis added) (Exhibit 38).

¹³⁰ Deposition of George Skibine, Jan. 13, 1998, p. 44.

¹³¹ Id. at p. 133.

¹³² Testimony of Secretary of the Interior Bruce Babbitt, Jan. 29, 1998, p. 769.

mail to Michael Gauldin,¹³³ the Department is conceding that it would be acceptable in future cases if the opposition was bought by a special interest or, in the extreme, the opposition was grounded on a racist reaction to the applicant. In the final analysis, the failure of the decisionmakers to look beneath the surface of the opposition makes it appear that they were less interested in a fair decision than in arriving at a predetermined goal, by whatever means necessary.

In the Hudson application, there was certainly opposition. There was also, however, support for the application, and it appears that quantitatively there was more support than opposition. Perhaps more important to the making of a principled decision, there is hardly any “factual documentation” to back up the opposition. Furthermore, to return to the point emphasized in the previous section, there was no opposition that was beyond cure if the applicants had been informed of the basis for the opposition. In addition, as will be discussed later, the Department misrepresented the amount of support for the application before this Committee and a Federal court. Given the importance placed on community opposition, this leads to a serious concern that the quantity of support and opposition was manipulated in order to validate the pre-determined outcome of the Hudson application denial.

The reasons advanced for the rejection of the application are contradicted by information obtained by this Committee

A review of the recommendations prepared by the career professionals working for the Department of the Interior gives insight into not only what the career civil servants were thinking, but also what the applicant tribes were expecting from their meetings with Interior officials. The Finding of No Significant Impact (“FONSI”),¹³⁴ the first Area Office recommendation,¹³⁵ the second Area Office recommendation,¹³⁶ the recommendation from the Indian Gaming Management Staff (IGMS), signed by Thomas Hartman (the IGMS economic specialist)¹³⁷ and George Skibine’s redraft of the IGMS memorandum,¹³⁸ all support the conclusion that the application was on its way to being approved by the career professionals at the Department of the Interior. The only letter or memorandum to the contrary is Michael Anderson’s three page rejection letter written on July 14, 1995.¹³⁹ Indeed, it is particularly troubling that there are no memoranda recommending that the application be rejected. One reasonable conclusion as to why no such memoranda were prepared is that the facts, as developed, did not support such a position being committed to paper.

¹³³ E-mail from Heather Sibbison to Michael Gauldin, Dec. 16, 1997 (Exhibit 54).

¹³⁴ Finding of No Significant Impact, Sept. 14, 1994 (Exhibit 41).

¹³⁵ Memorandum from Denise Homer, Area Director to Ada Deer, Assistant Secretary—Indian Affairs, Nov. 15, 1994 (Exhibit 42).

¹³⁶ Memorandum from Denise Homer, Area Director to Ada Deer, Assistant Secretary—Indian Affairs, Apr. 20, 1995 (Exhibit 43).

¹³⁷ Memorandum from Indian Gaming Management Staff to the Director of the Indian Gaming Management Staff, June 8, 1995 (Exhibit 44). Although it was marked “draft” it was signed by Thomas Hartman.

¹³⁸ Memorandum from George Skibine to Assistant Secretary—Indian Affairs, undated (Exhibit 45). Skibine denies that he had any input into this memorandum.

¹³⁹ Letter from Michael Anderson to Rose Gurnoe, Alfred Trepania, and Arlyn Ackley, Sr., July 14, 1995 (Exhibit 2).

The three page rejection letter signed by Michael Anderson points to “detriment to the surrounding community” as the reason for the denial. However, George Skibine, allegedly the most important of the decisionmakers, made the following statement in an internal memorandum after the decision was made:

It is true that extensive factual findings supporting the local communities’ objections are nowhere to be found.¹⁴⁰

This is a crucial point considering that Skibine acknowledges: “The point here, and a very crucial one, is that the Department has to rely on the record, and the opposition of the local communities in the record is the evidence relied upon.”¹⁴¹

Supporting Skibine’s after-the-fact recognition that “extensive factual findings supporting the local communities’ objections are nowhere to be found,”¹⁴² is an acknowledgment by him that as of June 30, 1995, just 2 weeks before the rejection, the IGMS had tentatively reached the conclusion that the application would not be detrimental to the surrounding community:

Tom Hartman of my staff also prepared a memo regarding the section 20 “not detrimental” analysis. Unfortunately, I have not been able to finish the review because of computer difficulties. Our tentative conclusion is that the record permits us to make a finding that a gaming establishment at that location will not be detrimental to the surrounding community.¹⁴³

Of particular interest to the Committee is the timing of this e-mail when compared to other correspondence from the Secretary’s office. On June 6, 1995, *before* Skibine stated that the record indicated that the proposal would not be detrimental to the surrounding community, Heather Sibbison, Special Assistant to Secretary Babbitt, relayed to the White House that Interior was “95% certain that the application [would] be turned down.”¹⁴⁴ On June 27, 1995, Sibbison wrote to the White House indicating that the application would be denied, and the decision “may be made public at the end of the week.”¹⁴⁵ This leads to a fundamental question: how could the decision based on Section 20 have followed the recommendations of career officials if 3 days after Ms. Sibbison had confirmed the application’s denial to the White House, Skibine indicated that the IGMS position was that the application would “not be detrimental to the surrounding community.”

Skibine’s statement about “our tentative conclusion” is consistent with representations made in the record about impact on the community. For example, the Indian Gaming Management Staff (IGMS) made the following observations about “detriment to the community”:

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and

¹⁴⁰ Memorandum from George Skibine to Scott Keep, Aug. 5, 1996 (Exhibit 51).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ E-mail from George Skibine to Heather Sibbison, June 30, 1995 (emphasis added) (Exhibit 46).

¹⁴⁴ Memorandum from David Meyers to Jennifer O’Connor, June 6, 1995 (Exhibit 20).

¹⁴⁵ Memorandum from Heather Sibbison to Jennifer O’Connor, June 27, 1995 (Exhibit 22).

the Agreement for Governmental Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing Class III pari-mutuel wagering would not be detrimental to the surrounding community[.]¹⁴⁶

Inconsistencies such as the one between this statement and Michael Anderson's rejection letter lead to the justifiable suspicion that the decision was made for reasons other than those publicly advanced. Furthermore, how could the applicants have addressed the perceived "defect" if the record did not support an argument that the "defect" existed?

Another clear contradiction of the rationale advanced in the July 14, 1995, rejection is found in an e-mail from George Skibine to Heather Sibbison, Paula Hart, Tom Hartman, Troy Woodward, and Kevin Meisner. Skibine states:

I also sense that even if the Town of Hudson and the Town of Troy embrace the proposal, we may still not change our position because of political opposition on the Hill, largely generated by the Minnesota and Wisconsin Tribes who oppose this acquisition.¹⁴⁷

This admission makes a mockery of Secretary Babbitt's assertion that the decision was "the right decision made in the right way and for the right reasons."¹⁴⁸ After spending so much effort in attempts to convince Congress that the decision was predicated on local opposition, this e-mail shows that Skibine understood that the Department of the Interior was prepared to disregard the views of both Hudson and the closest neighboring town. Indeed, even the Governor of Wisconsin understood that there was support for the application. When asked if the December 1992 referendum in Hudson indicated local support, Thompson replied "Yes."¹⁴⁹

Heather Sibbison also expressed concerns that it might not be wise to include references to other Native American opposition to the Hudson application. In an e-mail 2 weeks before the rejection, she stated:

[W]e may not want to include in our rationale the opposition of the other tribes, because I think it is possible that if the three Tribes came back with stellar support from their local towns and Congressman, we might look at the proposition in a new light—but even in that case, the Minnesota tribes will still be against it. And also, I agree with Collier's uneasiness about some tribes getting all of the

¹⁴⁶Memorandum from the Indian Gaming Management Staff to the Director of the Indian Gaming Management Staff (George Skibine), June 8, 1995. (Exhibit 44) The memo was signed by Mr. Hartman even though there is a stamp located on the bottom of the document indicating "Draft." Additionally, Mr. Hartman in his deposition indicated that the memo was a compilation of views from a number of the staff. See Deposition of Thomas Hartman, Dec. 8, 1997, pp. 81–82.

¹⁴⁷E-mail from George Skibine to Heather Sibbison, Paula Hart, Tom Hartman, Troy Woodward and Kevin Meisner, June 30, 1995 (Exhibit 46).

¹⁴⁸Testimony of Secretary of the Interior Bruce Babbitt, Jan. 29, 1998, p. 769.

¹⁴⁹Doug Stohlberg, *Thompson Says He "Won't Stop" Casino at Dog Track*, Hudson Star Observer, Feb. 10, 1994 (Exhibit 71).

goodies at the expense of other tribes—theoretically they all should have equal opportunities.¹⁵⁰

Sibbison's observation is curious because it stresses political factors and not legal factors. Her concern that there would be a problem with the perception of certain tribes "getting all the goodies" appears to have no place in a principled decision, made on the merits.

The record provides no indication of what came to light between June 30—when Skibine stated that "our tentative conclusion is that the record permits us to make a finding that a gaming establishment at that location will not be detrimental to the surrounding community"—and July 14, when Anderson rejected the application. Because there is no indication in the record of what could have changed the minds of the staff, it is reasonable to conclude that "detriment to the surrounding community" was the pretext for the rejection, and that the failure to announce that the Department was changing its policy in this case was necessary because the debate would have become infinitely more complicated, and the grounds for appeal to Federal court would have been strengthened.

Political considerations appear to have influenced the decision

Secretary Babbitt has said publicly that the Hudson decision was the "right decision made in the right way for the right reasons."¹⁵¹ A review of the above material does not support this statement. It is simply inexplicable for the Department to have made a decision without support in the record for that decision. Furthermore, but for political considerations, it seems the Department could have delayed the final decision in order to provide the applicants a chance to remedy any alleged defects.

In addition, lobbyists' notes of meetings with Interior staff call into question the integrity of Interior's decisionmaking process. In a May 25, 1995, memo lobbyist Scott Dacey discussed meetings with Mike Anderson, George Skibine, and Thomas Hartman. In these meetings the process for reviewing the application under section 20 of IGRA was discussed. As of this meeting Michael Anderson apparently not only did not want to establish a precedent against tribes wishing to bring land into trust into the future, he also acknowledged that the law was not on their side.¹⁵²

Dacey went on to explain that "[r]eaching the 'detrimental' standard is difficult [to establish]. According to Tom Hartman, all of the economic impact statements are of no value in this assessment. The addition of a new Indian gaming establishment to the market area brings 'normal competitive pressures.'" ¹⁵³ When asked about competitive pressure and the role it played in finding "detriment," Hartman had the following response:

The only policy I was aware of, and it was articulated verbally by the Deputy Commissioner of Indian Affairs, was that economic competition was "not detrimental," that we couldn't pick one tribe out over another. And even from a business standpoint, the reason you have a McDonald's on

¹⁵⁰ E-mail from Heather Sibbison to George Skibine and Troy Woodward, June 30, 1995 (Exhibit 75).

¹⁵¹ Testimony of Secretary Bruce Babbitt, Jan. 29, 1998, 769.

¹⁵² Memorandum from Scott Dacey to Debbie Doxtator, May 25, 1995 (Exhibit 53).

¹⁵³ *Id.*

one corner and a Burger King on another and a Wendy's on the third corner is because there are synergisms in a lot of these, so you can't—it is very difficult from an economic standpoint to say, when you add another casino that it ruins everybody else's business. If that was the case, then the second person moving into Las Vegas would have ruined it for everybody, and I think we know that that is not the case.¹⁵⁴

According to Dacey, Mike Anderson relayed that the Department was “trying to keep this issue on the merits” and would “try to thread the needle on this request.”¹⁵⁵ The memo concluded:

Things might change when the politicians like Babbitt and Duffy become involved, but without the law on their side it will be difficult to “kill the deal.”¹⁵⁶

On July 14, 1995, the Department of the Interior did in fact “kill the deal.” The Department relied upon a finding of detriment in the face of the career professionals who had stated that there was no articulated detriment. Interestingly enough, Dacey noted in his memo that if Babbitt were to come out against the Hudson application he would “find his excuse in Section 151.”¹⁵⁷ It is significant that a lobbyist for the opponents was being briefed on the legal analysis at the Department, while the applicants were being told nothing. Indeed, given what was discovered during the Committee's investigation, it is reasonable to speculate that Interior officials did not inform the applicant tribes about perceived problems because either the problems were not supported by past practice and current fact, or the concern that by identifying “problems,” the applicants would have an opportunity to cure. Given the obvious preferential treatment given the opponents of the application, there appeared to be little interest in allowing the applicants an opportunity to address the Department's concerns. Although George Skibine now states that he would have done things differently, it is hard to believe that Interior officials would not have worked with the applicant tribes—unless the ulterior motive was to help the opponents achieve their objective.

It is significant that the Department was prepared to take the unprecedented step of rejecting the application for off-reservation gaming using a 151 analysis. Kevin Meisner confirmed this when he wrote on July 11, 1995, “I thought after the Friday meeting that everyone (except Duffy who we had not yet consulted) agreed that there was not enough evidence supporting a finding of “detriment” to the surrounding community under section 20 and therefore we would decline to acquire the land under 151.”¹⁵⁸ Notwithstanding the fact that “everyone” agreed the decision could not be made under Section 20, Secretary Babbitt has repeatedly said that the Department based its decision solely on the criteria set forth in Section 20.¹⁵⁹

¹⁵⁴ Deposition of Thomas Hartman, Dec. 8, 1997, p. 37.

¹⁵⁵ Memorandum from Scott Dacey to Debbie Doxtator, May 25, 1995 (Exhibit 53).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ E-mail from Kevin Meisner to George Skibine and Troy Woodward, July 11, 1995 (Exhibit 55).

¹⁵⁹ Testimony of Secretary of the Interior Bruce Babbitt, Jan. 29, 1998, p. 776.

Perhaps even more revealing, the Department of the Interior was prepared to reject the Chippewas' application even if the local officials were uniformly behind the application. George Skibine, in an e-mail to Sibbison, Hart, Hartman, Woodward, and Meisner stated: "I also sense that even if the Town of Hudson and the Town of Troy embrace the proposal, we may still not change our position because of political opposition on the Hill, largely generated by the Minnesota and Wisconsin Tribes who oppose this acquisition."¹⁶⁰ This is a curious conclusion in that the question of congressional participation had already been addressed by the Department's solicitors office. Kevin Meisner, an attorney for the Department, stated prior to the final resolution: "I think the question of whether a Congressman can participate in the state consultation process for taking land into trust for gaming under IGRA (25 U.S.C. 2719(b)(1)(a)) should be answered in the negative. . . . My feeling is that it would not be appropriate for Federal Congresspersons to comment[.]"¹⁶¹ Skibine's statement that the application would be rejected even if there was complete support from the affected towns, shows the transparency of the Secretary's claim that the Department made the right decision for the right reasons.

Thomas Hartman stated under oath that Interior was concerned about the political ramifications of Interior approving the application and a Republican Governor rejecting it. Hartman had the following to say:

In the meetings I had been in, the negatives of taking the land into trust had certainly been discussed. A concept that had been tossed out was that in a Democratic administration and a Republican governor, to ignore the local input and impose a casino on an unwilling community and then have the Republican governor say, well, look at those ridiculous Democrats doing this again, was not viewed as being the best position to be in. So I know when they say "probably a bad idea to create a land trust," there were plenty of ideas thrown out to indicate that some people in those meetings thought it was a bad idea to create a land trust in this case.¹⁶²

Whether Democrats would suffer political consequences for following the law and past Department of the Interior practice should never have even been considered as a factor in the decisionmaking process.

Michael Anderson—decisionmaker or political puppet?

When asked whether he was the decisionmaker in the Hudson case, Michael Anderson, the Deputy Assistant Secretary for Indian Affairs, stated "That is correct."¹⁶³ Despite this assertion, evidence reviewed by the Committee showed that Anderson appeared to play

¹⁶⁰ E-mail from George Skibine to Heather Sibbison, June 30, 1995 (Exhibit 46).

¹⁶¹ E-mail from Kevin Meisner to Heather Sibbison, Mar. 23, 1995 (Exhibit 56). It is somewhat ironic that discussion of this matter during Committee hearings often that such opposition by elected leaders. Meisner's position that such opposition was not relevant is the only expression of Department policy produced by the Department pursuant to the Committee's document request and subpoena, and it is curious that many argued such opposition was relevant when the Solicitor's office at Interior indicated that it was not.

¹⁶² Deposition of Thomas Hartman, Dec. 8, 1997, p. 54.

¹⁶³ Deposition of Michael Anderson, Jan. 14, 1998, p. 38.

little or no role in the actual decision. Anderson admitted that he spent only 4–5 hours on the Chippewas' application and that he did not read or review the 32 page recommendation to approve the application provided by the Department's area office.¹⁶⁴

Anderson did, however, express a concern about the detrimental impact that the casino would have on the nearby St. Croix Chipewewa. When asked about this, he had the following exchange:

A: I believe the nature of the concern was that they had developed a market for the casino in that area, and that they felt that there would be a detrimental impact to their market if another casino was located nearby. I believe they also may have provided studies to that effect as well.

Q: So correct me if I'm wrong, it is a valid opposition for an opposing tribe to object on economic grounds?

A: Yes, and the letter states that as a factor.¹⁶⁵

After Committee lawyers pressed Anderson, he admitted that he was aware that the St. Croix tribe gaming operation was "very profitable."¹⁶⁶ Although Anderson was aware of the general financial status of the St. Croix tribe he testified that he did not review any of the market information provided to the Department regarding the impact of the Hudson application and relied solely on the staff for this information.

A: I didn't review specific market information. I was informed by the staff, the Indian Gaming Management Staff, that there was an impact and that was also contained in the letter, the decision letter as well. There may have been discussions about the location and the market area that was developed by St. Croix, but I don't recall any specifics.

Q: Do you recall who on the Indian Gaming Management Staff told you that, or communicated that to you?

A: I don't remember who the major staff advisors on the market impact would have been. George Skibine and Tom Hartman.¹⁶⁷

This testimony is of particular interest because Hartman, the economic specialist for the Indian Gaming Management Staff, has testified that a casino in Hudson would not have had a detrimental impact on the surrounding community. Hartman also signed a memorandum compiled by the Indian Gaming Management Staff to this effect and included an analysis of the detriment on surrounding tribes.¹⁶⁸ Michael Anderson, however, had never seen or been told of this analysis before he signed the rejection letter on July 14, 1995.¹⁶⁹ If Anderson was not aware of the analysis compiled by the staff responsible for reviewing these applications, he must have received direction from another source.

There are numerous additional examples of Anderson being unaware of significant information. For example, he was not aware of

¹⁶⁴ Senate Deposition of Michael Anderson, Sept. 26, 1997, pp. 66–67.

¹⁶⁵ Deposition of Michael Anderson, Jan. 14, 1998, pp. 24–25.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 28.

¹⁶⁸ See memorandum from Indian Gaming Management Staff to Director Indian Gaming Management Staff, June 8, 1995 (Exhibit 44).

¹⁶⁹ Deposition of Michael Anderson, Jan. 14, 1998, p. 29.

a contract for services signed by the applicant tribes and the community authorities in Hudson, Wisconsin, which would have mitigated a number of the concerns and objections mentioned in the actual rejection letter.¹⁷⁰ Anderson also was unaware that Heather Sibbison had sent letters to the White House indicating how the decision would be made.¹⁷¹ This is critical because Sibbison sent these letters to the White House before George Skibine had prepared his first draft of the denial letter on June 29, 1995. Anderson testified that not only did Heather Sibbison not consult him on these letters, but he was unaware that the Department of the Interior's position had ever been communicated to the White House.¹⁷²

Notwithstanding his representations to the contrary, it appears that Anderson's role in the decisionmaking process was limited. His conduct in this matter is consistent with that of someone who was going along with a decision already made, and his failure to inquire about any of the salient facts, and his obvious concern for the wealthy Democratic contributors opposed to the application, raise serious questions about his involvement.

CONTRADICTIONS AND CHANGING STORIES

In addition to the major contradictions already discussed, including the contradiction between Secretary Babbitt and Paul Eckstein regarding contacts with Harold Ickes, whether the Secretary mentioned political contributions by the opposing tribes to Democratic organizations, Secretary Babbitt's belief that his letters to Senator McCain and Senator Thompson were consistent, and Babbitt's statement that the decision was based solely on section 20 of IGRA, there are a number of other contradictions which require further explanation.

Was the President contacted about the Hudson application after the initial meeting with Patrick O'Connor?

There is contradictory testimony over whether Tom Schneider, a lobbyist at O'Connor & Hannan and good friend of the President's, communicated with the President about the Hudson dog track application. O'Connor & Hannan billed a total of \$4,000 to their clients for Tom Schneider's time on the dog track matter, a fact that was initially withheld from this Committee.¹⁷³ In fact, the billing entry unambiguously reads: "meeting with senior White House staff and POTUS [President of the United States] re. Expansion of gaming and the dog track and opposition to doing so."¹⁷⁴

Schneider has testified that O'Connor asked him to stop by an event at the Mayflower hotel because the President was there for an event.¹⁷⁵ Schneider did stop by the event: "I talked to [the President] for a few minutes, did not say anything about the Hud-

¹⁷⁰Id. at 70-71. See also Agreement for Government Services (Exhibit 70). Attached to the Agreement is a letter from the Mayor of Hudson stating: "I think you will find, as you review the attached material, that the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size." Also attached is a referendum showing that a majority of those who cast ballots were supportive of the proposed casino.

¹⁷¹Senate Deposition of Michael Anderson, Sept. 26, 1997, p. 29.

¹⁷²Id. at 29-31.

¹⁷³See O'Connor & Hannan billing records (Exhibit 31).

¹⁷⁴Id.

¹⁷⁵Deposition of Thomas Schneider, Dec. 10, 1997, p. 15.

son Dog Track, and saw Harold Ickes there. Ickes said “that he had told Pat that he was going to look into it. I said to Harold that I thought that it deserved looking into and I would appreciate it if he would.¹⁷⁶ He further clarified his communication with the President by stating: “I absolutely did not talk to the President then or ever about the dog track and the Indians.¹⁷⁷

Schneider’s story is contradicted by Thomas Corcoran, a former member of Congress and fellow partner of Schneider’s at O’Connor & Hannan. Corcoran noted:

The only other contact that I know of with respect to anybody from O’Connor & Hannan with the President was a casual contact, not really a lobbying contact, that Tom Schneider told me about, as I recall a day or so after it happened. Mr. Schneider is a good friend of the President. He was attending a reception, I believe at the White House, and they were just chatting. And in the course of that chat the President indicated that Pat O’Connor had mentioned this dog track to him. They both had a pretty good laugh about the fact that the President of the United States had been informed about a dog track in Wisconsin, and I must say that Tom and I had a pretty good laugh about it as well.¹⁷⁸

This version of events is supported by Schneider’s billing records at O’Connor & Hannan. The billing entry reads as follows: “Indian matter regarding racetrack gaming and Hudson dog track. Telephone discussion and meeting with senior White House staff and POTUS [The President] re[garding] expansion of gaming and the dog track and opposition to so doing.”¹⁷⁹

Fred Havenick was told that the DNC and Clinton/Gore ’96 played a significant role in the Hudson rejection

Fred Havenick, the owner of the existing dog track in Hudson, Wisconsin, attended a Democratic fundraiser in Florida on August 15, 1995. At this fundraiser, Havenick spoke with Terry McAuliffe, the Clinton/Gore ’96 Finance Chairman. The following is Fred Havenick’s sworn testimony before the Committee on Government Reform and Oversight:

[J]ust a month after the rejection. I was at a fund-raising event in Florida where I ran into Terry McAuliffe, chairman of the finance committee for the President’s re-election campaign. After the meeting, I went to say hello to Terry. I’ve known Terry for quite some time, mostly through his political activities. At the same time, Terry approached me with a large smile on his face and said, what’s doing in doggiedom? I said that we were having an enormous problem with an Indian gaming project in northern Wisconsin. He said, oh, I know all about that; to which I responded, come into my office, a private corner of the meeting room. I recall that Terry said, I took care of that

¹⁷⁶ Id.

¹⁷⁷ Id. at 19.

¹⁷⁸ Deposition of Thomas Corcoran, Dec. 10, 1997, p. 30.

¹⁷⁹ O’Connor & Hannan Billing records, Oct. 2, 1995 (Exhibit 31).

problem for you. I was baffled and asked him what he meant. I recall that he said, I got Delaware North's Indian casino project killed, the one that would have competed with you. I set up the meeting with Fowler and others and turned it around. I told Terry that was my project and I was the one who owns the track in Hudson. His face dropped. He was clearly in shock and said little else.¹⁸⁰

McAuliffe clearly thought he was helping a Democratic contributor when he helped "kill" the application. Terry McAuliffe had known Havenick for quite some time through his activity as a Democratic contributor. This relationship began in the mid-1980s when Havenick and McAuliffe were both members of the Democratic Senatorial Campaign Committee. Havenick also came into contact with McAuliffe at numerous Democratic fundraising events.¹⁸¹

A meeting at Lac Courte Oreilles produced diametrically opposed affidavits from the Department of the Interior and the applicant tribes

On December 3, 1996, George Skibine went to a meeting at the La Courte Oreilles reservation to meet with members of the applicant tribes. This meeting was set up because of a potential settlement arrangement with the law suit filed by the tribes against the Department of the Interior. According to a number of people who attended the December 3, 1996, meeting the following exchange occurred:

Q: How did [the application] not get approved the first time?

A: We approved it, but when it got to the Secretary's office politics took over.¹⁸²

Frederick R. Roach, Fred Havenick, Mary Ann Polar, Peter A. Liptack, J.W. Cadotte, Arlyn Ackley, Sr., and DuWayne Derrickson all signed affidavits to this effect. In response to these sworn affidavits, the Department of the Interior produced affidavits from individuals with a differing recollection of events.¹⁸³ Skibine in his testimony had this to say about the meeting:

We were contacted by the Lac Courte Oreilles tribe to come to Wisconsin to discuss with them the problems that the Wisconsin tribes had with the upcoming renegotiation of their Class III gaming contracts with the State of Wisconsin. And we agreed to come there to make a presentation about compact negotiation. At the same time, the tribes asked us to come and discuss with them, the three tribes, either the day before, to discuss with them and give technical advice on placing land in trust, in general. We clarified to them that we could not and would not discuss the Hudson—the litigation involving the Hudson Dog

¹⁸⁰ Testimony of Fred Havenick, Jan. 21, 1998, pp. 117–118 (emphasis added). Terry McAuliffe was not deposed by this Committee. He did, however, dispute the accuracy of Havenick's account.

¹⁸¹ *Id.*

¹⁸² See Affidavits of Frederick R. Roach, Fred Havenick, Mary Ann Polar, Peter A. Liptack, J.W. Cadotte, Arlyn Ackley, Sr., and DuWayne Derrickson (Exhibit 58).

¹⁸³ See Affidavits of Nancy Pierskalla, Troy Woodward, Tim LaPointe, Paula Hart, and Robin Jaeger (Exhibit 59).

Track at this meeting . . . we made that absolutely clear to the Lac Courte Oreilles tribe that this was not going to happen. And they told us that they would inform the other two tribes there that the litigation and whatever happened during the litigation of the Hudson Dog Track would not be discussed.¹⁸⁴

Skibine's explanation before the Committee is undermined by a letter from Ray Wolf, the Vice-Chairman of the LCO Governing Board. Wolf wrote:

George Skabine [sic], the Director of the BIA Office of Indian Gaming Management and Nancy Pierskella, Land Acquisition Specialist for his office, have suggested they come to Wisconsin on Tuesday, December 3 to meet only with the Chippewa tribes interested in acquiring off reservation land for the purposes of establishing a casino, specifically, Hudson.

The purpose of the BIA meeting is to provide technical assistance to Mole Lake, Red Cliff, and Lac Courte Oreilles. Mr. Skabine [sic] is aware of the need for discretion as his office is scheduled to meet the next day with all of the Wisconsin tribes to provide technical assistance on gaming compact negotiations.¹⁸⁵

In interviews with Mark Goff, lobbyist for the applicant tribes, and J.W. Cadotte, a member of the Lac Courte Oreilles tribe, Committee investigators learned that there were two meetings held on December 3, 1996. The first meeting was a smaller meeting held at the council headquarters, and the second was a large meeting held at the LCO bingo hall. This is an important fact which can explain why the two sets of affidavits are diametrically opposed. Most of the Interior officials who signed affidavits regarding a December 3, 1996, meeting did not attend the initial meeting at the tribal headquarters.¹⁸⁶ This is a fact that should have been known to the attorneys preparing the affidavits, and to Mr. Skibine, who apparently attended both meetings and failed to reflect this fact in his affidavit.

Shannon Swanstrom, attorney for the Red Cliff tribe, took notes at the December 3, 1996, meeting with George Skibine. In these notes, Ms. Swanstrom wrote a quote from Skibine as follows: "I find that [Hudson] in best interests of tribes and not to detriment of surrounding community, will send letter to governor."¹⁸⁷ This information places Skibine's testimony before this Committee in question.

¹⁸⁴ Testimony of George Skibine before the Committee on Government Reform and Oversight, Jan. 22, 1998.

¹⁸⁵ Letter from Raymond Wolf to Arlyn Ackley, Sr., and Rose Gurnoe, Nov. 7, 1996 (Exhibit 60).

¹⁸⁶ Committee interview with Mark Goff and J.W. Cadotte, Dec. 15, 1997.

¹⁸⁷ See Notes taken by Shannon Swanstrom, Dec. 3, 1996 (quotation in the original) (Exhibit 61).

The Department of the Interior misled the Committee and a Federal district court in Wisconsin with the information contained in the administrative record

The administrative record detailing this case was compiled by the Department of the Interior for the ongoing litigation over this matter in Wisconsin. The Committee reviewed the material and believes that Interior officials may have tried to mislead those who received the record. First, the record does not adequately reflect support for the application to take land into trust. A review of the material received by the Committee pursuant to its subpoena revealed the following support: a petition totaling 114 pages of signatures,¹⁸⁸ another petition of 38 full or partial pages,¹⁸⁹ 207 cards,¹⁹⁰ and 127 letters.

The record prepared for the litigation, however, reflects a lesser amount of support and inaccurately indicates that there was more opposition than support. The Department's Solicitor took affirmative steps at a hearing conducted by this Committee to provide misleading information about the extent of the support for the application. The following exchange occurred before this Committee:

Mr. HORN. Mr. Secretary, your counsel, to be charitable about it, misrepresented the record in terms of that document when he said it was referred to the court. We got the document finally and what is in the court's binder is not that document. Here is the difference: 797 cards, letters and petition signatures are on that computerized document to which your counsel, the Solicitor of Interior, I think, referred, and we have in the original document, which is not in the court record, 1,413 petition signatures. In other words, counsel is saying it was all the same and it is just some were typed and Xeroxed and what not and some were in hand, and that means 616 people were left out. And I don't particularly appreciate that misrepresentation . . .

Mr. LESHY. I am told by staff that Mr. Hartman, who had the handwritten signatures converted to type script, eliminated duplicate signatures so that these 716 or however many there were taken out were actually in there twice.¹⁹¹

This testimony is particularly interesting when compared with the memo authored by George Skibine, the head of the IGMS, which states: "Several thousand cards, letters, and petition signatures have been received in support of an Indian casino at the Hudson dog track."¹⁹² Mr. Leshy's statement, given every benefit of the doubt, does not explain how "several thousand cards, letters, and petition signatures" were represented by 797 names compiled by the Department to provide the Federal Court in Wisconsin a sense

¹⁸⁸ Petition of General Support (Exhibit 62).

¹⁸⁹ Letter to Secretary Babbitt from petition signatories, Jan. 26, 1994 (Exhibit 63).

¹⁹⁰ Letter from Wisconsin resident to George Skibine (with attached cards), June 5, 1995 (Exhibit 64).

¹⁹¹ See Jan. 29, 1998 hearing testimony before the Committee on Government Reform and Oversight, pp. 932-933.

¹⁹² Memorandum from George Skibine to Assistant Secretary—Indian Affairs, undated (Exhibit 45).

of how much support there was for the application. The record, read at face value, misrepresents the facts and support associated with this application. The 38 page petition alone would probably have had more than 797 signatures. Because the full 38 pages have not been included in either the record compiled for litigation, or the material produced to this committee, it is not possible to determine the precise number. The figure of support rises when the additional 114 page petition and other forms of support are included. Although it is curious that the Department appears to have actively misrepresented the lack of support for the application, it is consistent with the need to make this point so as to support the theory of the rejection.

The Department of the Interior provided misleading information to Congress prior to the decision to reject the application was made

At least one representative who came out in opposition to the application apparently received false information from Secretary Babbitt's office, perhaps in an effort to "educate" individuals in order to encourage them to oppose the application. In a letter to Secretary of the Interior Bruce Babbitt, Representative Steve Gunderson stated: "According to your office, since Congress passed the IGRA in 1988, the Secretary of Interior has *never* approved the acquisition of off-reservation land to be used for casino gambling."¹⁹³ The information provided to Representative Gunderson—that "the Secretary of the Interior has never approved the acquisition of off-reservation land to be used for casino gambling"—is false. Hilda Manuel, Deputy Commissioner at BIA, when asked about Congressman Gunderson's assertion stated "It's not correct."¹⁹⁴

Once again, the veracity of Department of the Interior representations about the Hudson decision is called into question when one considers that false information was provided to Congress even before the application was rejected. There certainly appears to be a self-fulfilling aspect to the Secretary's office response to Congress—the information provided appears now to have helped pave the way for the decision to reject.

The role of Section 20 in the decision

In the rejection letter, Michael Anderson also informed the applicants that even if the Section 20 problems were satisfied, the Secretary would reject the application under another statutory provision known as Section 151. There is no indication in the record, however, that the Department ever analyzed the application according to the provisions of Section 151. Furthermore, Secretary Babbitt told this Committee: "[T]he Department based its decision solely on the criteria set forth in Section 20 of the Indian Gaming Regulatory Act."¹⁹⁵

On review, however, this statement does not appear to be entirely correct. Perhaps the most direct indication is from George

¹⁹³ Letter from the Honorable Steve Gunderson to Secretary Bruce Babbitt, Apr. 28, 1995 (emphasis in the original) (Exhibit 47).

¹⁹⁴ Deposition of Hilda Manuel, Jan. 6, 1998, p. 50.

¹⁹⁵ Testimony of Secretary of the Interior Bruce Babbitt, Jan. 29, 1998, p. 776.

Skibine, the head of the Indian Gaming Management Staff, who made the following statement in a deposition before this Committee:

Q. If I asked you the question, the decision to reject the Hudson Dog Track application was based solely on section 20 of the Indian Gaming Regulatory Act, would you say that that was correct or false?

A. It would be false.¹⁹⁶

The confusion over how the application would be rejected is seen in an exchange of e-mails in the days before the decision was made. In an e-mail to Skibine and Heather Sibbison, Kevin Meisner states:

Why are we changing our analysis to deny gaming under Section 20? I thought after the Friday meeting that everyone (except Duffy who we had not yet consulted) agreed that there was not enough evidence supporting a finding of "detriment" to the surrounding communities under Section 20 and therefore we would decline to acquire the land under 151.¹⁹⁷

In an indication that John Duffy was the driving force behind the ultimate decision on how the rejection would be made, Meisner sent the following message to Troy Woodward:

Troy: Apparently Bob Anderson did review the letter late Monday. I checked with him Tuesday and he thought that since Duffy wanted the Section 20 finding so badly that we would let the letter go through. I still think that there was not enough evidence for a section 20 finding of detriment.¹⁹⁸

Once again, this exchange of e-mails shows that there were significant concerns about whether there was evidence to support a finding under Section 20 of IGRA. Given the strong feelings that there was not enough evidence to make such a showing, it is all the more curious that Secretary Babbitt continues to maintain that the decision was based "solely on the criteria set forth in Section 20 of the Indian Gaming Regulatory Act."¹⁹⁹

¹⁹⁶ Deposition of George Skibine, Jan. 13, 1998, p. 17. In a document that runs counter to many of the other important documents related to the Hudson matter, George Skibine makes the following request of lawyers in the Solicitors office: "As you know, I am drafting a document relating to the acquisition of the Hudson dog track by three Indian tribes in Wisconsin. The letter will decline to take the land into trust pursuant to the IRA and Part 151 relying on the discretionary authority of the Secretary not to take such land into trust. The acquisition is for gaming purposes, but we want to avoid making a determination under Section 20 of IGRA." E-mail from George Skibine to Dave Etheridge, Kevin Meisner and Troy Woodward, June 6, 1995 (Exhibit 73). This communication is particularly strange because others on Skibine's staff were not aware of the decision in early June, and all indications are that the record had not provided support for a finding that the application was a detriment to the community. Furthermore, it is curious that Skibine would come right out and say that there was a desire to avoid making the decision under Section 20 of IGRA. One can speculate that he wanted to avoid setting a precedent by making the decision under Section 20 without employing the traditional Section 20 criteria.

¹⁹⁷ Exchange of e-mails between Kevin Meisner and Heather Sibbison, George Skibine and Troy Woodward, July 11, 1995 (Exhibit 74).

¹⁹⁸ *Id.*

¹⁹⁹ Testimony of Secretary of the Interior Bruce Babbitt, Jan. 29, 1998, p. 776.

The Department of the Interior mischaracterized Governor Thompson's public position against the expansion of gambling

Notwithstanding representations from a number of Department officials that Governor Thompson was opposed to the Hudson application, he stated: "I will not promote and I will not block. I'm on the tail end of the process, and if everyone else, including the local people, approves it before me, I won't stop it."²⁰⁰ Although there is nothing in the record to indicate anything to support his position, Babbitt has stated that the Governor opposed the dog track.²⁰¹

Governor Thompson did make statements about opposition to the spread of gambling. However, in this case, he had apparently discussed a deal where the tribes would each give up their rights to a second casino if the Governor would approve the Hudson casino. Thus, there would be *fewer* casinos allowed in Wisconsin if the Hudson application were approved. Fred Havenick explained the proposal before the Committee:

If you wanted to say that you were against the expansion of gambling, there are currently 17 casinos operating in Wisconsin. This really would have reduced that number by 3 . . . it would be almost a 20 percent reduction in the total number of casinos[.]²⁰²

The record contains no indication that the Department made an effort to obtain Governor Thompson's views on the Hudson application. Therefore, it seems inappropriate that it would make representations about whether he would, or would not support the application.

DEPARTMENT OF THE INTERIOR COMPLIANCE WITH DOCUMENT
REQUESTS

On August 20, 1997, the Department of the Interior was asked to provide documents pertaining to the Hudson matter. The compliance date for this request was September 8, 1997. Unfortunately, however, Interior failed to respond adequately to this Committee's legitimate request.

On October 23, 1997, Interior provided one file of records. On November 3, 1997, another file of records was produced. At this point, the Committee was under the impression that production of records—with the exception of a record prepared for litigation in Wisconsin, which the Committee initially elected not to receive—was complete.

On December 11, 1997, during a deposition before this Committee, Robin Jaeger, the Superintendent of the Regional Office in Wisconsin had the following exchange with Committee counsel:

Q: When did you receive communication that you are requested to produce documents about the Hudson dog track matter?

²⁰⁰ Doug Stohlberg, "Thompson Says he 'Won't Stop' Casino at Dog Track," Hudson Star Observer, 2/10/94.

²⁰¹ See Testimony of Secretary Bruce Babbitt before the Government Reform and Oversight Committee, Jan. 29, 1998, p. 946.

²⁰² Testimony of Fred Havenick before the Government Reform and Oversight Committee, Jan. 29, 1998.

A: Yesterday.²⁰³

This revelation prompted the Committee to take the unusual step of issuing a subpoena to a government agency. On December 12, 1997, Interior received a subpoena to produce all documents related to the Hudson matter. The compliance date for this subpoena was January 2, 1998.

The following is a list of dates and productions received from the Department of the Interior after it received this Committee's subpoena:

- December 17, 1997: One file containing records.
- January 2, 1998: Six boxes of records.
- January 13, 1998: One file containing records. Information included records related to Ada Deer, whose deposition was taken that day.
- January 16, 1998: One file containing records.
- January 17, 1998: One file containing records.
- February 13, 1998: Copies of e-mails.

But for the deposition of Robin Jaeger, and the belated discovery that the Department of the Interior had failed to produce all relevant documents, the Committee would have been denied significant, probative material.

WHITE HOUSE CLAIMS OF PRIVILEGE DELAYED THE COMMITTEE'S
INVESTIGATION

The White House appeared to be particularly concerned about turning over to the Committee a number of documents that indicated the President had some level of familiarity with the Hudson application. Many months were consumed while the White House argued that some documents responsive to legitimate requests made by the Committee were "subject to executive privilege."

The Committee did ultimately receive relevant documents from the White House. The original of one document with the following message has still not been provided to the Committee:²⁰⁴

Leon

What's the deal on the Wisconsin tribe Indian dispute?

BC

The author of this note is the President, and the White House argued that Congress should not receive this document. Both this Committee and the Congressional Research Service²⁰⁵ disagreed with the Counsel to the President's legal analysis that executive privilege applied to this document, and to the other documents withheld for a considerable period of time.

CONCLUSION

Evidence obtained by this Committee indicates that the decision to reject the Hudson application did not comport with factual evidence and past practice. The fact that the Department of the Interior has continued to misrepresent how and why the decision was

²⁰³ Deposition of Robin Jaeger, Dec. 11, 1997, p. 11-12.

²⁰⁴ Exhibit 78.

²⁰⁵ Memorandum from American Law Division, Congressional Research Service, to Honorable Dan Burton, Dec. 3, 1997 (Exhibit 79).

made makes Secretary Babbitt's alleged comments to Paul Eckstein about Harold Ickes' role in the decision and the importance of Native American political contributions seem an accurate reflection of the facts. Secretary Babbitt's protestation that he did not make the statement about contributions and that he did not mean the statement about Ickes ring hollow in the face of the candid statements of his staff about what was really going on in the Department's decisionmaking process.

[Supporting documentation follows:]

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CHAPTER VII
PROCEDURAL BACKGROUND OF THE CAMPAIGN
FINANCE INVESTIGATION



PROCEDURAL BACKGROUND OF THE CAMPAIGN FINANCE INVESTIGATION

I. BUDGET

The Committee on Government Reform and Oversight was allocated funds from the Reserve Fund established by the House of Representatives to carry out its additional responsibilities entailed in the campaign finance investigation. These funds were used to hire additional staff, purchase additional equipment, and pay for travel associated with the investigation.

In 1997, the first year of the investigation, the Committee was allocated \$3.8 million from the House Reserve Fund. The Committee spent approximately \$2.4 million on the investigation.¹ In 1998, the Committee was allocated an additional \$1.8 million from the Reserve Fund, and it expects to spend approximately two-thirds of that amount.² The minority was allocated 25 percent of the Committee's investigative funds and permanent funds.

The Ranking Minority Member has made a number of public statements regarding the amount of money spent by the Committee on the investigation. Congressman Waxman stated on several occasions that the Committee spent \$6 million on the campaign finance investigation. The Chairman has publicly corrected the Ranking Member, and pointed out that less than \$4 million was spent on the investigation by the majority and minority staff combined.

II. SUBPOENA POWER

Throughout the 105th Congress, the Chairman has had the power to issue subpoenas pursuant to Committee Rule 18, which reads in relevant part as follows:

The chairman of the full committee shall:

* * * * *

(d) Authorize and issue subpoenas as provided in House Rule XI, clause 2(m), in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the committee. . . .³

House Rules XI, clause 2(m), in turn, states:

The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chairman of the committee pursuant to such rules and under such limitations as the committee may prescribe.⁴

¹ See Letter from Chairman Dan Burton to Congressman Henry Waxman, May 11, 1998.

² See Letter from Chairman Bill Thomas to Chairman Dan Burton, Mar. 25, 1998.

³ House Committee on Government Reform and Oversight Rule 18.

⁴ House Rule XI(2)(m)(2)(A).

The Committee rule was adopted at the Committee's first organizational meeting of the 105th Congress, on February 12, 1997. The rules, including the subpoena rule, were adopted by unanimous voice vote.⁵ No Democrat objected to the Committee rules, and only one amendment to the rules was offered by Congressman Waxman. His amendment was accepted by unanimous voice vote.⁶ Congressman Waxman took notice of the subpoena provision in the Committee rules, but did not object to it. Rather, he asked that the Chairman consult with the minority a sufficient period of time before the issuance of the subpoena, stating that "I assume that in order for consultation with the minority to be a real opportunity, that you will try to contact us in sufficient time so we can have an opportunity to discuss it."⁷ The Chairman indicated that he intended to inform the minority in advance of his intent to issue a subpoena, and has done so throughout the course of the investigation.⁸

The power delegated to the Chairman by the Committee is consistent with the past practices of the Government Reform and Oversight Committee, as well as a number of other House committees. For example, in the 105th Congress, the Committee on International Relations and the Committee on Small Business both had substantially similar rules.

In April 1997, the Committee approved a Document Protocol. The Protocol established procedures for maintaining documents as well as rules for the issuance of subpoenas, and created a working group to review the release of documents. The Document Protocol made clear that the Committee minority would be consulted prior to the issuance of all subpoenas, unless they were issued on an emergency basis.⁹ Although the Document Protocol merely codified the practices that had been agreed to at the February business meeting, Congressman Waxman changed his position and at that time objected to the Chairman's power to issue subpoenas. During the April 10, 1997, business meeting, Congressman Waxman claimed that if the protocol were adopted, it would:

Give Chairman Burton unprecedented power that no Member of Congress has ever had; and, in fact, nobody in the country has had the power that he would have invested in him. . . . I want to emphasize that no other investigation by a committee of the Congress has ever had such powers in its chairman.¹⁰

Congressman Waxman then offered an amendment to the Document Protocol that would require a Committee vote on any disputed subpoenas.

Congressman Waxman's arguments regarding the nature of the Chairman's power to issue subpoenas were false. Not only did a number of other Committees in the 105th congress have the same power, but past congressional committees conducting investigation

⁵ Organizational Meeting, House Committee on Government Reform and Oversight, Feb. 12, 1997, at 23.

⁶ Id. at 22.

⁷ Id. at 17.

⁸ Id. at 16-17.

⁹ Protocol for Documents, Apr. 10, 1997, at (A)(2) (Exhibit 1).

¹⁰ Business Meeting, House Committee on Government Reform and Oversight, Apr. 10, 1997, at 10-11.

had the same power. The committees conducting the Iran-Contra, October Surprise, Filegate, and Travelgate investigations all had this same subpoena power.

Under the procedures established by the April 10, 1997, Document Protocol, the Chairman provided notice to the minority when he intended to issue a subpoena.¹¹ Within a 24-hour period, the minority was to provide the Chairman with any suggestions regarding how it sought to improve or modify the subpoena.¹² After that 24-hour period, the Chairman could issue the subpoena.¹³ The Protocol also allowed the Chairman to issue subpoenas without prior notice if delay would hinder the Committee's ability to obtain certain documents or testimony.¹⁴ This authority was rarely used by the Chairman.

The Committee operated under this procedure until June 1998. At that time, the minority insisted upon a change in Committee rules as a condition for voting in support of granting immunity to four witnesses. The Chairman, after consultation with several members, offered a compromise package of rules changes, and on June 23, 1998, the Committee adopted them. With regard to subpoenas, these provisions similarly required the Chairman to provide subpoenas to the minority for a 24-hour period during which the minority could suggest modifications or object to the subpoenas.¹⁵ If the minority objected to a subpoena, the Chairman was required either to convene a meeting of the Subpoena Working Group, or bring the subpoena to a vote of the Committee.¹⁶ The Subpoena Working Group was a group composed of the Chairman, the Ranking Minority Member, the Vice Chairman, a member selected by the Chairman, and a member selected by the Ranking Minority Member.¹⁷ The Working Group was to discuss subpoenas before it, and, if it was unable to reach consensus, hold a vote on whether the Chairman should issue the subpoena.¹⁸ The Chairman agreed to be bound by the decision of the Working Group.¹⁹ This procedure has been used by the Committee since June 23, 1998.

III. DOCUMENT PROTOCOL

The April 10, 1997, Document Protocol also addressed the procedures used by the Committee to store and release documents obtained by the Committee in the course of the campaign finance investigation. The Protocol was later changed in June 1998 in such a way as to modify the document release provisions.

As initially adopted, the Protocol allowed the release of nonpublic documents through one of three means: (1) agreement between the Chairman and Ranking Minority Member; (2) agreement or vote of the Document Working Group; or (3) vote of the full Committee.²⁰ Under the first provision, the Chairman could notify the Ranking

¹¹ Protocol for Documents, Apr. 10, 1997, at (A)(2)(a) Exhibit A.

¹² Id.

¹³ Id.

¹⁴ Id. at (A)(2)(b).

¹⁵ Protocol for Documents, June 23, 1998, at (A)(2)(a) (Exhibit 2).

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Protocol for Documents, Apr. 10, 1997, at (C)(3).

Minority Member of his intent to release documents, and if the Chairman and Ranking Member agreed, the documents could be released.²¹ If the Chairman and Ranking Minority Member could not agree on the release of documents, the Chairman could convene a meeting of the Document Working Group to consider the release.²² The Working Group was composed of the Chairman, the Vice Chairman, the Ranking Minority Member, and two members selected by the Chairman and Ranking Minority Member, respectively.²³ The Working Group was to consider the release of documents, and attempt to reach consensus about the release of documents.²⁴ If it was unable to reach consensus, the Chairman could request the Working Group to render a vote regarding the release of documents.²⁵ This vote was to be binding upon the Chairman.²⁶

The procedure outlined in the April 10, 1997, Document Protocol was used successfully by the Committee for over 1 year, until it was modified by the Committee on June 23, 1998.²⁷ The vote of the Committee on June 23, 1998, modified the Protocol to eliminate the Document Working Group, and to allow only two means of document release: (1) agreement between the Chairman and Ranking Minority Member; or (2) vote by the full Committee.²⁸

IV. DEPOSITION AUTHORITY

On June 20, 1997, the House of Representatives passed H. Res. 167 to provide special investigative authorities for the Committee's campaign finance investigation. This resolution provided the Committee with the power to take depositions and interrogatories from witnesses in the investigation. Chairman Burton requested this authority to assist the Committee in its work of gathering information relevant to the campaign finance inquiry. The powers granted to the Committee by the House of Representatives were consistent with investigative authorities granted to investigative committees in the past.

The Committee met on June 18, 1997, to adopt Committee rules 20 and 21, which governed the taking of depositions, interrogatories and letters rogatory.²⁹ The Committee passed the new rules by a vote of 22 to 17.³⁰ Later on June 18, Chairman Burton and Congressman Waxman testified before the Rules Committee on H. Res. 167. The Rules Committee then passed H. Res. 167, which was considered on the House floor on June 20, 1997. H. Res. 167 passed the House by a vote of 216 to 194.³¹

The major power granted to the Committee by H. Res. 167 was to conduct staff depositions. Under the procedures established by H. Res. 167 and Committee Rule 20, the Chairman had the author-

²¹ *Id.* at (C)(3)(a).

²² *Id.* at (C)(3)(b).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Business Meeting, House Committee on Government Reform and Oversight, June 23, 1998.

²⁸ See Protocol for Documents, June 23, 1998, at (C).

²⁹ See Business Meeting, House Committee on Government Reform and Oversight, June 18, 1997.

³⁰ *Id.* at 234.

³¹ Congressional Record, June 20, 1997, at H4091.

ity to order the taking of depositions of witnesses after consulting with the Ranking Minority Member.³² This power was consistent with the power granted to chairmen in the congressional investigations relating to the Assassinations Investigation, Iran-Contra, and October Surprise.³³ The resolution also authorized the Chairman to issue interrogatories to witnesses, to be answered under oath.³⁴ Finally, it authorized the Committee to apply for the issuance of letters rogatory and other forms of international assistance.³⁵

V. RULES REQUIREMENTS

A. COMMITTEE ACTION AND VOTE

Pursuant to clause 2(l)(2) (A) and (B) of House Rule XI, a majority of the Committee having been present, the resolution recommended in this report was approved by voice vote.

B. STATEMENT OF COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(l)(3)(A) of House Rule XI and clause 2(b)(1) of House Rule X, the findings and recommendations of the Committee are contained in the foregoing chapters of this report.

C. STATEMENT ON NEW BUDGET AUTHORITY AND RELATED ITEMS

Pursuant to clause 2(l)(3)(B) of House Rule XI and Section 308(a)(1) of the Congressional Budget Act of 1974, the Committee finds that no new budget authority, new spending authority, new credit authority, or an increase or decrease in revenues or tax expenditures result from an enactment of this resolution.

D. STATEMENT OF CBO COST ESTIMATE AND COMPARISON

Pursuant to House Rule XI(2)(1)(3)(C) and Section 403(a) of the Congressional Budget Act of 1974, the Committee finds that a statement of Congressional Budget Office cost estimate is not required as this resolution is not of a public character.

E. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to House Rule XI(2)(1)(4), the Committee finds that a statement of Constitutional authority to enact is not required as this resolution is not of a public character.

F. CHANGES IN EXISTING LAW

Pursuant to House Rule XIII(3), the Committee finds that a statement of changes in existing law is not necessary, as the resolution does not alter existing law.

³²House Resolution 167 at 2; House Committee on Government Reform and Oversight Rule 20.

³³See Hearing, House Committee on Rules, June 18, 1997, at 8–11 (testimony of Chairman Dan Burton).

³⁴House Resolution 167 at 2.

³⁵Id.

G. STATEMENT OF COMMITTEE COST ESTIMATE

Pursuant to House Rule XIII(7)(a), the Committee finds that a statement of Committee cost estimate is not necessary as this resolution is not of a public character.

H. STATEMENT OF FEDERAL MANDATES

Pursuant to the Unfunded Mandates Reform Act and Section 423 of the Congressional Budget Act of 1974, the Committee finds that a statement of Federal mandates is not necessary as this resolution is not of a public character.

[Supporting documentation follows:]

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ADDITIONAL VIEWS OF HON. DAN BURTON

INTRODUCTION

Throughout the Committee's investigation into illegal campaign fundraising, the Committee's Democratic minority has engaged in a pattern of making public statements that are purposefully misleading. The "Preliminary Minority Views on the Campaign Finance Investigation," handed out to reporters at the Committee's business meeting on Thursday, October 8, are rife with assertions that are misleading at best and deliberately false at worst.

As Chairman of a committee conducting an investigation of the Clinton Administration, I expected that the Committee on Government Reform and Oversight—and myself personally—would be subjected to unfair and partisan attacks. Many chairmen of prior committee investigations have learned that it comes with the territory. This is, after all, the same Administration which attacked its own FBI Director when it became known that he endorsed an independent counsel for the campaign finance investigation. And a member of the minority, Mr. Lantos, even resorted to attacking a Committee witness, Independent Counsel Donald Smaltz, by comparing him to a Nazi.¹

I cannot help but recall earlier broadsides leveled at my predecessor, Congressman Bill Clinger of Pennsylvania, as honorable and statesmanlike a figure as one could hope to find in the Congress. I remember the parting comments Mr. Waxman had for the gentlemanly Chairman Clinger 2 years ago: "I leave this committee with absolute disgust for it and its Chairman."²

One of the more disappointing legacies of this Committee's investigation has been the failure of even one member of the minority party to stand up and challenge the wrongdoing and excesses of its own party. Despite the fact that over 120 people connected with fundraising for the President's campaign either took the Fifth or fled the country, and despite the Committee's receipt of volumes of evidence of illegal contributions and stunning access to the White House by people who went on to be indicted, not a single Member of President Clinton's party on the Committee rose to the occasion in the tradition of Howard Baker in the Watergate hearings or Warren Rudman during the Iran/Contra hearings. To the contrary, Members of the minority party in this investigation often acted more like defense attorneys rather than investigators on the chief oversight committee in the U.S. House of Representatives.

A broad look at the minority's preliminary views distributed on October 8, 1998, makes an important statement about the prior-

¹ Representative Lantos was roundly criticized for his highly inappropriate comments in numerous editorials including the Washington Post, ". . . And the Assault on Mr. Smaltz," Dec. 14, 1997; and the Wall Street Journal, "Ms. Reno's Carapace," Dec. 12, 1997.

² Nancy E. Roman, "GOP feels bite of 'bulldog' Waxman," the Washington Times, May 6, 1998.

ities of the Democratic minority in this investigation. The minority devotes 80 pages and 366 footnotes to partisan attacks against the majority. In most cases, the criticisms are blatantly false, intentionally misleading, or petty in nature.

As for charges of illegal campaign activities by the Clinton Administration, the Democratic National Committee, and high-level Democratic donors accused of funneling foreign money into Democratic campaigns—the substance of the investigation—the Democrats devoted only 12 pages with a sparse 8 footnotes. The implications are clear: despite the mountains of documentary evidence, and the existence of a list of 120 people connected with fundraising for Democratic campaigns who either took the Fifth or left the country, the Democratic minority chose to devote the lion's share of its resources to political attacks against the Republican majority. This sets a poor precedent for the conduct of the minority party in future Congressional investigations.

The frequency with which the truth is stretched in the minority's preliminary views makes it nearly impossible to respond fully to all of the distortions. The Committee's majority report sets out in detail the fundraising improprieties by the key DNC fundraisers and is backed up by extensive documentation. Given the lack of seriousness with which the minority's criticisms seem likely to be treated, a point-by-point refutation seems unnecessary. In the interest of brevity, I will only respond here to some of the more egregious assaults on the truth.

I. THE DEMOCRATS ACTED AS DEFENSE COUNSEL FOR THE DNC AND KEY FOREIGN MONEY FIGURES

In its initial response to the Committee report on campaign finance matters, the minority wrote extensively on the lack of bipartisanship on the part of the majority. Congressman Waxman cited the Watergate and Iran-Contra investigations as models of bipartisanship. Yet what Congressman Waxman failed to mention is that it was a cooperative Republican minority examining its own party which made the previous investigations bipartisan. Frequently minority members and staff during the campaign finance investigation have employed tactics more typical of an aggressive defense attorney rather than serious Congressional investigators with important Congressional oversight responsibilities. The following examples illustrate this point.

A. THE MINORITY'S PRELIMINARY RESPONSE TO CHAPTER 3 OF THE COMMITTEE INTERIM REPORT DEFENDS DEMOCRATIC RETENTION OF ILLEGAL AND SUSPECT CONTRIBUTIONS AND IGNORES THE FACTS

The minority's response to chapter 3 of the Committee's Interim Report can be summed up by the following statement (in their own words): "The DNC has returned contributions when it has had a good faith basis to believe that the contributions are illegal or otherwise inappropriate." The facts tell a different story as the majority outlined in extensive detail in Chapter 3 of the Committee's Interim Report. The minority's preliminary views had no credible defense for the continued retention by the DNC and Democratic enti-

ties of hundreds of thousands of dollars in illegal and/or suspect contributions.

The minority states that “perhaps around \$100,000” of the \$1.8 million in suspect or illegal contributions appear to warrant further scrutiny by the DNC. While \$100,000 is a start, the facts show the figure to be approximately 18 times that amount. In fact, K&L International’s \$150,000 contribution to the DNC alone surpasses the minority’s figure. The majority concluded that K&L’s contribution was illegal after interviewing witnesses, reviewing checking account records, wire transfer information, cashier’s check information, and publicly available corporate information. The minority simply ignores the evidence.

Furthermore, on several occasions the majority characterized contributions as “suspect” instead of “illegal” because the Committee lacked the information necessary to conclude without hesitation that the contribution was illegal. One such example was the three \$15,000 contributions made by Lippo subsidiaries Hip Hing Holdings, San Jose Holdings, and Toy Center Holdings. In the case of the subsidiaries’ 1993 contributions totaling \$45,000, the DNC has retained them based upon the fact that the subsidiaries were not reimbursed for the contributions by a foreign source, namely the Lippo Group. At the time the Committee’s Interim Report was released, the minority report and the DNC position may have been tortured, but arguable.

However, documents produced to the Committee the day after the Interim Report was released indicate that shortly after their contributions were made, all three subsidiaries were reimbursed \$15,000 each—the full amount of their contributions—with funds originating from the Lippo Group of Jakarta, Indonesia. This evidence validates the work of the majority investigators and serves to confirm what the majority believed: the three \$15,000 contributions were made illegally.

Despite the fact that many of the contributors whose contributions have been questioned have either left the country or taken the Fifth Amendment, there should be little doubt that evidence will continue to emerge that will enable the Committee to shift contributions from the suspect category to the illegal category.

B. THE MINORITY REPEATEDLY DEFENDED MAJOR DNC FUNDRAISER
CHARLIE TRIE

The preliminary minority views released by the ranking minority member are consistent with the minority’s position throughout this investigation. The minority has continually tried to minimize Trie’s offenses. However, even the minority did not attempt to defend Trie against the conclusive evidence offered in the Committee’s report detailing Trie’s central role in making and orchestrating conduit contributions to the DNC.

Oddly, the minority faults the Committee’s report for failing to prove that Trie was a Chinese spy.³ However, few have ever alleged that Trie was a spy. Rather, allegations have been made, and substantial evidence has been uncovered, showing that Trie re-

³Preliminary Minority Views on the Campaign Finance Investigation, Oct. 8, 1998, (“Preliminary Minority Views”) at 86.

ceived large amounts of money from sources connected to communist China. Trie then used this money to funnel political contributions to the DNC. There is also strong evidence indicating that Trie and his associate Antonio Pan may have received funds from the Lippo Group to funnel political contributions to the DNC. These are the allegations that have been made against Trie, and they have been corroborated by the Committee's investigation.

The Committee has also uncovered substantial evidence indicating that Trie did attempt to influence United States foreign policy to benefit the PRC. This evidence was detailed in the Committee's report, and was conveniently ignored in the minority's preliminary views.⁴ While it is unknown if Trie was acting as an agent for the Chinese government, Trie's statements at meetings of the Bingaman Commission and written statements indicate that he was attempting to influence the United States to treat the PRC more favorably.

C. THE MINORITY DEFENDED MAJOR DNC FUNDRAISER ERNIE GREEN

The minority's preliminary report again came to the defense of another figure in the campaign finance scandal, Ernie Green. The minority claimed that "speculation" was the sole basis for the allegations against Green, and that the report presented "no evidence" to rebut Green's denials of wrongdoing.⁵ Again, the minority has ignored the substantial evidence of wrongdoing detailed in the Committee's report. The report contains extensive evidence relating to Mr. Green's highly unusual financial transactions that coincided with his efforts, and those of Charlie Trie, to have the Chairman of CITIC, Wang Jun, invited to a White House coffee. Green deposited over \$38,000 in cash into his bank in a number of small deposits, and has not offered any definitive explanation for the source of these deposits, despite repeated invitations to do so by the Committee.

The minority also ignored the fact that Green likely offered false testimony before the Committee. Green received \$11,500 from Charles Trie, despite his sworn statements that he never received money from Charlie Trie. Evidence received since the Committee approved its report proves that at least \$9,500 of the money that Trie gave to Green originated with Chun Hua Yeh, a Chinese businessman with extensive ties to the Chinese government.⁶

The minority report makes it clear that they accept Green's denials at face value, despite the fact that Green has repeatedly misled the Committee. They also ignore the facts regarding Green's unusual financial transactions and summarily dismiss questions about whether these transactions may have been connected in any way with his political contributions. The minority relies primarily on two facts to support this conclusion: first, that Green could af-

⁴See Preliminary Minority Views at 86-87.

⁵Preliminary Minority Views at 87.

⁶See NationsBank wire transfer report (Exhibit 1) (showing transfer of \$9,500 from Manlin Fong to the Green/McKenzie Group); Account Statement of Manlin Fong, January 1996 (Exhibit 2) (showing deposit of \$30,000 before wire transfer to Green/McKenzie); Cashier's Check for \$30,000 to Yah Lin Trie (Exhibit 3) (showing that the \$30,000 cashier's check came from Trie); Cashier's Check for \$30,000 (Exhibit 4) (showing that the cashier's check was drawn on American International Bank account 008453489); signature card for American International Bank account of Chun Hua Yeh (Exhibit 5).

ford to make sizable political contributions; and second, that Green has “a history of making political contributions.”⁷ Both of these claims are misleading. First, it is true that Green does have substantial assets. However, many individuals proven to be conduit contributors in this investigation have had adequate assets to cover their contribution—they have simply opted not to use those resources to make their contribution. The minority’s reliance on Green’s “history of contributions” is also misleading. While Green had raised hundreds of thousands of dollars for the DNC from other donors, he had never made a contribution greater than \$3,700 before he met Charlie Trie.⁸ Then, after he met Trie, he gave two contributions totaling \$56,000. There are a number of disturbing inaccuracies and inconsistencies in Green’s testimony regarding these contributions that have not been explained. It is disappointing that the minority has shown no desire to ask the serious questions that are raised by the activities of this long-time Democratic party supporter.

D. THE MINORITY DEFENDED MAJOR DNC FUNDRAISER CHARLES INTRIAGO

Ever since the Committee began investigating the illegal campaign contributions made by the Castro family of Venezuela in 1992, the Committee minority has attempted to defend the major Democratic figure implicated by the Castros, Charles Intriago. Intriago is a prominent Florida attorney, and a major supporter of the Democratic party. Despite the evidence against Mr. Intriago, who took the Fifth before the Committee, the Democrats defended him vigorously. In this case, the defense offered by Congressman Waxman and his staff has been valuable to Mr. Intriago, since he has taken the Fifth, and has remained silent since the Committee’s investigation began.

At the Committee’s hearing on the Castro contributions on April 30, 1998, Congressman Waxman introduced into the record a statement by Robert Plotkin, counsel for Mr. Intriago.⁹ In this statement, Plotkin denied any wrongdoing by his client. Congressman Waxman also defended Intriago’s decision to take the Fifth: “Mr. Intriago didn’t come here because he didn’t think it would do him any good. Mr. Castro is here because he thinks this might do him a lot of good.”¹⁰ Apparently, Congressman Waxman thinks that witnesses are justified in not cooperating with Congressional investigations if it doesn’t “do them any good.”

In addition to its heavy reliance on the self-serving statements of Intriago’s lawyer, the minority repeatedly attacked Jorge Castro, who offered substantial evidence implicating Intriago in illegal activity.¹¹ At the hearing, and again in their preliminary views, the minority has attacked Castro’s credibility, and clearly taken sides with Charles Intriago. In doing so, Congressman Waxman and many other Democrats have ignored substantial documentary evi-

⁷ Preliminary Minority Views at 87.

⁸ See FEC Records of Contributions of Ernest G. Green, www.tray.com/fecinfo.

⁹ Venezuelan Money and the Presidential Election, Hearing, Committee on Government Reform and Oversight, Apr. 30, 1998, (“Castro Hearing”) at 35.

¹⁰ Castro Hearing at 44.

¹¹ Castro Hearing at 38–55.

dence that confirms Jorge Castro's account. They have also ignored the sworn testimony of two career prosecutors from the New York District Attorney Robert Morgenthau's office, who testified that Castro's testimony was consistent with everything that Castro had always told them, and that Castro had never told them anything about his political contributions that later proved to be false.¹²

The minority's preliminary views make the claim that the Castro family received no special treatment in return for their illegal contributions to the DNC.¹³ However, the record shows that Charles Intriago set up a meeting between the patriarch of the Castro family and two high-level State Department officials at the time that the Castros were under investigation for involvement in money laundering. The Castros took advantage of this meeting to promote themselves with the U.S. Government and discredit allegations of money laundering which were plaguing them at the time. The minority refers to this visit as a "courtesy meeting," vastly understating the importance of this meeting to the Castros.¹⁴

Finally, the minority's preliminary report claims that the Department of Justice is still investigating the allegations made by Castro against Intriago.¹⁵ While it may be true that the Justice Department is investigating Mr. Intriago for a number of potentially illegal acts, it is not clear that his role in arranging Jorge Castro's illegal political contributions is among them. The statute of limitations for such a prosecution has passed, and if the Justice Department is still investigating Castro's allegations against Intriago, it merely provides further evidence of the disorganized state of the Justice Department's campaign finance investigation.

E. THE MINORITY EMPLOYED QUESTIONABLE TACTICS AGAINST A WITNESS WHO TESTIFIED UNFAVORABLY ABOUT DNC OFFICIAL JOHN HUANG

During the campaign fundraising investigation the minority attacked a witness whose testimony was not favorable to the DNC or the White House. David Wang was a witness at the Committee's first hearing. Under a grant of immunity, Wang testified that he made two conduit contributions at the request of John Huang—one from his own bank account and one from the bank account of his friend, Daniel Wu, who lived in Taiwan.¹⁶

In an attempt to discredit Mr. Wang, the minority placed in the Committee record what purported to be a summary of an interview with David Wang's father, James Wang, conducted by two minority counsel. David Wang had testified in his deposition that his father was with him when John Huang came to his house and asked for the contributions. As Mr. Wang's father did not speak English well, minority counsel attempted to communicate with him in broken Mandarin Chinese. The staff summary said in part, "James Wang

¹² Castro Hearing at 82.

¹³ Preliminary Minority Views at 90–91.

¹⁴ *Id.* at 91.

¹⁵ *Id.*

¹⁶ David Wang testified that he was solicited by John Huang and Antonio Pan to make \$10,000 in contributions to the DNC in his and his associate's name. Wang was then reimbursed by Pan with \$10,000 cash, making the transaction a conduit contribution. "Conduit Payments to the Democratic National Committee: Hearing Before the House Committee on Government Reform and Oversight," 105th Cong., 1st sess. (1997).

told us that he was neither present at any meetings nor aware of any conversations in which John Huang asked David Wang to make a campaign contribution.”¹⁷

What the minority did not inform the majority members of the Committee or the public was that they had faxed a similar statement to James Wang and asked him to sign it. David Wang’s lawyer informed the Committee that James Wang refused to do so because it was not correct. Subsequently, David Wang’s attorney submitted a handwritten statement from James Wang confirming that he was at the meeting with John Huang, and that John Huang did ask David Wang to make the contributions in question.¹⁸ It is disappointing that the minority would submit a statement for the record that they knew was disputed by the witness without informing the Committee of that fact. Furthermore, it is disturbing that minority counsel attempted to intimidate Mr. Wang to sign the minority affidavit even after he told the committee it was inaccurate.

The minority insisted that it was impossible that John Huang met with and solicited David Wang in Los Angeles on the date about which Wang testified, August 16, 1996. The minority then distributed several statements and receipts allegedly indicating that John Huang was in New York between August 10–19, 1996. These statements were not sworn testimony before the Committee. In fact, John Huang’s attorney assisted the Democrats in gathering the statements. John Huang refused to personally refute Wang’s testimony, as Huang had asserted his Fifth Amendment right against self-incrimination.

Mr. Wang’s attorney addressed the Committee regarding the minority’s assertions:

First, the notion that Mr. Wang would perjure himself on this question seems to me so facially implausible as not to be seriously entertained.

To say that somebody would falsely say that he was a conduit for John Huang is absurd. I can’t think of any person in the world that you would want to associate yourself with less than John Huang.

If Mr. Wang could have possibly said that he didn’t know Mr. Huang and had not engaged in illegal transactions with him, I assure you, he would have done so. He would not be here today. He would not be in front of the grand jury, and he would not be in the largest problem he has ever faced.¹⁹

Although the minority might have argued that Wang was mistaken about the dates, as Wang’s attorney argued, it is beyond comprehension that Wang would lie when he was already admitting to illegal acts. In any event, all the records show that the money given to the DNC was illegal, a fact from which the minority sought to divert attention.

¹⁷ Id., Exhibit 128, p. 354.

¹⁸ Id., Exhibit 127, p. 353.

¹⁹ “Conduit Payments to the Democratic National Committee: Hearing Before the House Committee on Government Reform and Oversight,” 105th Cong., 1st sess. 276 (1997) (Statement of Michael Carvin, attorney for David Wang.)

II. THE DEMOCRATS DEFENDED SIOENG FAMILY CONTRIBUTIONS TO THE DNC WHILE ENGAGING IN A BLATANTLY PARTISAN ATTACK ON SENATE CANDIDATE MATT FONG

During the course of the Committee's investigation of Ted Sioeng, 28 people either asserted their Fifth Amendment rights, fled the country, or refused to testify. During that time the minority made little or no effort to participate in the investigation of Sioeng.

The minority has alleged that ". . . Chairman Burton ignored Republican abuses even while investigating parallel allegations against Democrats."²⁰ This statement overlooks the fact that during the course of the majority's investigation of Ted Sioeng several Republican entities and candidates were either deposed, interviewed, or had their bank records subpoenaed. The majority staff deposed or interviewed, with the minority, several witnesses with connections to the Republican party. These included Matt Fong, the current Republican candidate for Senate in California, Steven Walker, Jr., former Comptroller of the National Policy Forum, Daniel Wong, former Republican mayor of Cerritos, California, and Julia Wu, a Republican from southern California with connections to Matt Fong.

The minority has continually attempted to minimize the efforts of the Committee in order to further its own political purposes. At times, the minority has contradicted itself in obvious ways. One of the most glaring examples involves Representative Waxman's comments concerning the testimony of Kent La, a key figure in the Sioeng investigation. In a floor statement made on May 19, 1998, Representative Waxman stated the following:

The Department of Justice does have serious reservations about immunizing Kent La. In a letter dated April 22, 1998, the Department of Justice expressed its view that "if Mr. La were to testify publicly at this time, the Department's criminal investigation could in fact be compromised. Even if Mr. La were to testify in a closed session, any disclosure or leak of that testimony, whether intentional or inadvertent, could seriously compromise the investigation and any subsequent prosecutions." The numerous leaks of information during the course of Committee's investigation suggests that the confidentiality that the Department of Justice has requested could not be maintained.²¹

The Department of Justice has requested that the Committee not release the deposition of Kent La, for fear that doing so would compromise an ongoing criminal investigation.²² Yet, despite Mr. Waxman's protests concerning leaks and the Department of Justice's concerns, it was Mr. Waxman himself who violated that agreement when he characterized Mr. La's testimony during a Committee hearing. Mr. Waxman, who at the time had not read or heard Mr. La's testimony, stated that there was nothing relevant in the testi-

²⁰ Preliminary Minority Views on the Campaign Finance Investigation, Committee on Government Reform and Oversight at 5.

²¹ 144 Congressional Record H3452-02.

²² Letter from L. Anthony Sutin to Chairman Burton, Aug. 28, 1998.

mony,²³ which appears inconsistent with the position of the Department of Justice and violates the terms of the Committee's agreement.

The minority's preliminary report states that "none of the 12 witnesses whose depositions have been made public provided testimony supporting the allegations that Mr. Sioeng was an agent of the Chinese government, engaged in lobbying for the Chinese government, or made political contributions on behalf of the Chinese government."²⁴ This statement completely ignores many aspects of the testimony gathered by the majority staff. In fact, several witnesses testified about Mr. Sioeng's connections to officials at the PRC embassy, consulate and central government.²⁵

The minority also ignores Mr. Sioeng's strong connections to the PRC government through his business ventures. The majority has documented that Mr. Sioeng operates a cigarette distribution and production network in Singapore in partnership with the PRC government. Sioeng and his partner, the PRC's largest tobacco company, produce and export Hongtashan (Red Pagoda Mountain) cigarettes.

A. DEMOCRATS MOUNT A PARTISAN DEFENSE OF SIOENG'S DNC CONTRIBUTIONS

The majority report presented a cogent and thorough analysis of the \$400,000 in foreign and other questionable contributions made to the DNC by Ted Sioeng, his family, and his business associates. The minority response entirely sidestepped the majority's analysis. In response, the minority retreats behind issues of fact it knows the Committee cannot conclusively resolve due to the stonewalling campaign waged by Ted Sioeng's family and its attorneys and business associates. But the Potemkin village created by the minority cannot obscure the results of the Committee's painstaking investigation, which determined that \$310,000 of the \$400,000 contributed by Sioeng to the DNC appears to have been funded from bank accounts in Hong Kong and Indonesia.

The minority's tortured struggle to defend the DNC is evident in its inconsistent stances on the foreign money Sioeng funneled into the political system. First, the minority writes, "there is not evidence in the record indicating that the Sioeng-related contributions to the DNC were illegal." Later, the minority backs away from this blanket assertion and acknowledges that foreign money transferred into Sioeng-family accounts ultimately funded contributions to the DNC. The minority's preliminary report states, "Although the U.S. bank accounts of Ms. Elnitiarta and the Panda companies received foreign wire transfers, this does not necessarily mean that political contributions drawn from these accounts are illegal."

In distilled form, the minority's position is that demonstrating the DNC contributions were funded by transfers from Hong Kong and Indonesia is not enough to prove they are illegal, or even that

²³ House Committee on Government Reform and Oversight, "Hearings on the Need for an Independent Counsel in the Campaign Finance Investigation," 105th Cong., 2d sess., 67 (Aug. 4, 1998).

²⁴ Preliminary Minority Views on the Campaign Finance Investigation, Committee on Government Reform and Oversight at 89.

²⁵ See Deposition of Daniel K. Wong, 3/12/98; Deposition of Robert Prins, 1/27/98; Deposition of Johnny Ma, 2/12/98.

they should be returned by the DNC. This argument misses the mark for several reasons. First, the Committee has shown that under FEC regulations and practice, the \$100,000 contributed to the DNC by Panda Estates is illegal because it was funded with foreign money, not domestic receipts. The minority has not and cannot challenge this point directly. Second, as explained in the Committee report, the \$250,000 in DNC contributions made or directed by Sioeng's daughter Jessica are likely illegal due to Ted Sioeng's probable involvement in the decisionmaking process.²⁶ This point, as well, is unchallenged by the minority. Third, the contention that Sioeng's DNC contributions are "not necessarily" illegal is unfair. The reason the Committee cannot ascertain for certain whether some of the contributions are illegal is that the information needed to make such determination is being fiercely guarded by Sioeng, his family, and their lawyers. All of this is spelled out in great detail in the Committee's report—the 28 persons who asserted their privileges against self-incrimination, fled the country, or otherwise refused to speak to the Committee, the promises of cooperation made and broken by the family's lawyers—and stands unrefuted.

B. THE MINORITY ENGAGED IN TRANSPARENT AND UNFAIR ATTACK OF MATT FONG, WHO IN CONTRAST TO THE DEMOCATS PROMPTLY RETURNED MONEY LINKED TO TED SIOENG

In contrast to the vigorous defense the minority mounts of the Sioeng contributions to the DNC, the minority spends considerable time attempting to smear Republican Senate candidate Matt Fong. In its preliminary report and an article in the October 22, 1998 issue of *Roll Call*, the minority accuses Mr. Fong of providing conflicting testimony to the House and Senate and concludes the Sioeng-related contributions he received were illegal.²⁷

Not once does the minority report mention that Mr. Fong returned all of the \$100,000 in contributions he received from Sioeng and Panda Estates and that he did so a year-and-a-half ago—almost immediately upon learning of the questionable nature of Sioeng's contributions. Nor does the minority point out that the DNC has kept all \$400,000 in Sioeng-related contributions it received during the 1996 election cycle, including \$150,000 from the same Sioeng company from which Matt Fong received funds, Panda Estates. Nor does it mention that California law contains no prohibition on receiving contributions from foreign nationals and that, hence, Mr. Fong—in stark contrast to the DNC—returned money he legally may have been able to keep.

Instead, the minority attempts to divine inconsistencies from the testimony of a Senate candidate, locked in an extremely close race, and who voluntarily agreed to be deposed on three separate occasions by the House and Senate and returned all of the Sioeng money in stark contrast to the DNC. What the minority has not done is spell out any supposed "inconsistencies" or explain their significance.

²⁶ See *The Sioeng Family's Contributions and Foreign Ties*, Section VII. Note that the \$250,000 figure includes the \$100,000 contributed to the DNC by Panda Estates.

²⁷ Amy Keller, "House Democratic Report Targets Fong," *Roll Call*, Oct. 22, 1998, p. 3.

The minority report refers to a supposed inconsistency relating to “how [Mr. Fong’s] campaign came to receive a second contribution from Mr. Sioeng.” In both his Senate and House depositions, Mr. Fong stated clearly that he did not know how the second check made its way to his campaign offices. He testified that it may have been messengered or dropped off, or in it may have been in the sealed envelope Sioeng handed Fong when he went to pick up the first check.²⁸ Moreover, the Committee sees no significance in how the check ended up in Mr. Fong’s campaign offices given that his testimony is abundantly clear on the point that he never saw it.

C. THE MINORITY MISCHARACTERIZES SIOENG’S CONTRIBUTION TO THE NON-PROFIT NATIONAL POLICY FORUM AS ILLEGAL

The minority alleges that federal law bars foreign nationals from contributing to “any campaign for elected office, state or federal.”²⁹ In addition, the minority implies that a \$50,000 contribution from Panda Industries, Inc., to the National Policy Forum was somehow disbursed to the Republican National Committee.³⁰ As a result, the minority contends that the “NPF contribution is another example of a foreign contribution to the RNC.”³¹

Nothing could be further from the truth. The comments are a clumsy attempt to shift the focus from wrongdoing by the Democratic National Committee and the Clinton-Gore campaign. Moreover, they are again calculated politically to damage Matt Fong, who is running for a U.S. Senate seat in California.

The Committee notes that ranking minority member Waxman made numerous comments decrying the investigation as a waste of time, money, and resources since—in his view—the Committee was duplicating the work of the Senate Governmental Affairs Committee’s Special Investigation. Nevertheless, Mr. Waxman chooses to respond to the interim report by rehashing discredited allegations against the National Policy Forum first aired during 3 full days of Senate hearings over a year ago. The Thompson Committee also conducted more than a dozen depositions on the topic, and reviewed literally thousands of pages of documents.

Aside from the partisan bent, there are several problems with the minority’s views regarding the NPF. First and foremost, there is ample evidence and testimony that the NPF was separate and distinct from the RNC. Haley Barbour, who served as NPF chairman, addressed that very point in testimony before the U.S. Senate Governmental Affairs Committee, Special Investigation. Mr. Barbour stated that NPF had “its own separate board of directors . . . its own separate management, its own separate staff, its own separate offices, had its own separate bank accounts, had filed its own separate tax returns, [and] had its own separate books.”³² Mr. Barbour is supported by both witness testimony and the documentary record. For example, the former Comptroller of the NPF, under questioning from minority counsel in his House

²⁸ Compare House Fong Depo., Vol. I, at 32; 11–14 & 35; 10–17 with Senate Fong Depo., at 37; 6–9 & 40: 13–15.

²⁹ Preliminary Minority Views on the Campaign Finance Investigation, Committee on Government Reform and Oversight, at 115.

³⁰ *Id.* at 116.

³¹ *Id.*

³² S. Hrg. 105–300, Part III at 156.

deposition, discussed in detail the great lengths to which NPF went to ensure a separation from the RNC.³³

Also rebutting the minority's contention is the fact that NPF was a non-profit corporation established under Section 501(c)(4) of the U.S. Tax Code.³⁴ Such entities can legally accept donations, gifts, and loans from U.S. persons, foreign nationals, domestic corporations, and foreign corporations.³⁵ If, as the minority alleges, it was illegal for the NPF to accept \$50,000 from Panda Industries, it was equally unlawful for Vote Now '96, a non-profit group linked to the Clinton-Gore campaign,³⁶ to accept \$100,000 from a Philippine national.³⁷ However, the minority made no such demands about Vote Now '96, a group which directed funds that ultimately helped Democratic candidates.

Finally, three sections from two congressional reports find no evidence that the Panda Industries' contribution to the NPF was made with foreign funds.³⁸ One of those sections was written by minority members of the Senate Governmental Affairs Committee. An obvious question is whether the minority is ignoring the views of their Senate colleagues in an effort to score political points against Mr. Fong.

D. CONCLUSION

The minority's attempt to tar Matt Fong is a transparent attempt to assist the campaign of his opponent, Senator Barbara Boxer. The minority's unsubstantiated attack against a Republican candidate who promptly returned questionable Sioeng-related contributions and cooperated with the Committee stands in stark contrast to their refusal to question the DNC's indefensible decision to keep more than \$300,000 in clearly illegal contributions from Sioeng's family and friends—all of whom have refused to cooperate with the Committee's investigation.

III. THE HUDSON CASINO REJECTION—MISREPRESENTATIONS BY THE DEMOCRATS

Committee Democrats argue that because the central figures in the Hudson casino rejection tell us that they acted appropriately, then surely it must be so. This Luddite application of Congressional oversight is consistent with the minority practice of taking all denials of impropriety by Democrats at face value, changing the subject and putting up roadblocks. It is also consistent with the minority tactic of sweeping under the carpet that which begs legitimate inquiry.

In its interim report, the majority points to significant problems with the Department of the Interior decisionmaking process over the Hudson casino application. At the very least, these problems stand for the proposition that the process was unfair to the applicants, that the decisionmakers failed to follow Department of the

³³ See Deposition of Stephen A. Walker.

³⁴ S. Hrg. 105-300, Part III at 215.

³⁵ Section 501(c)(4) of U.S. Tax Code.

³⁶ Deposition of Harold Ickes conducted by the U.S. Senate Governmental Affairs Committee, Special Investigation, June 27, 1997, at 39.

³⁷ S. Rept. 105-167, Vol. 3, at 3666.

³⁸ See S. Rept. 105-167, Vol. I, at 972; S. Rept. 106-167, Vol. 4, at 5573; See Chapter 4D, "The Sioeng Family's Contributions and Foreign Ties."

Interior policy and that the Secretary ignored a Presidential directive. At their worst, they stand for the proposition that Department of the Interior personnel were involved in illegal conduct. In either case—whether the government is being unfair to citizens or whether the law was broken—there is no doubt that Congress has a reason to exercise its oversight authority.

The Democratic minority has apparently decided to ignore the problems identified by this Committee's investigation. For the record, it is worth reviewing the "Preliminary Minority Views" section on the Hudson casino decision in order to point out what the minority Democrats chose to ignore and what they chose to misstate.

A. WHAT THE MINORITY FAILED TO MENTION REGARDING THE HUDSON CASINO REJECTION

First. The Democratic minority appears unconcerned that Paul Eckstein has testified that Secretary of the Interior Bruce Babbitt told him that Harold Ickes was responsible for the timing of the rejection. Eckstein is a man whose life-long ties of personal friendship to Secretary Babbitt would normally make him privy to candid observations and whose reputation for veracity has never been questioned.

Second. The Democratic minority finds it unremarkable that the Secretary of the Interior allegedly referred to large campaign contributions to Democratic interests during a meeting on the Hudson matter.

Third. The Democratic minority ignores the fact that wealthy contributors, led by a lobbyist who had once been the Democratic National Committee's top money man, were given an unfair advantage over the Hudson applicants. They find it unremarkable that the Secretary of the Interior's Counsel would reopen a comment period for opponents of the application—who also happened to be significant political contributors—and not even inform the applicants.

Fourth. The Democratic minority, whose preliminary views are infused with references to imaginary examples of unfairness to witnesses, fails to comment on the fact that the policy used to make the Hudson decision had never been used before and had never been articulated prior to the decision. The fact that the three poor tribes involved in the Hudson application were not advised of the decisionmaking criteria is disturbing, and goes against principles of fundamental fairness. Indeed, the Department of the Interior's own lawyers recognize that "the administrative record, as far as we can tell, contains no record of Department meeting or communications with the applicant tribes in which the Department's concerns were expressed to the plaintiffs."³⁹ This is inexcusable. Even George Skibine—the man described by the minority as "the career civil servant who recommended that the application be rejected"⁴⁰—admitted that the Department failed to tell the applicants why the Department had concerns with the application.⁴¹

It is hard to fathom how the minority, so concerned about "fairness" in its preliminary views, would be so eager to participate in

³⁹ Letter from David Jones to Scott Keep, Feb. 14, 1996.

⁴⁰ Preliminary Minority Views on the Campaign Finance Investigations, p. 67.

⁴¹ Deposition of George Skibine, Jan. 13, 1998, p. 61.

the cover-up of the Department of the Interior's conduct in the Hudson matter.

Fifth. The fact that the Department of the Interior failed to give the applicant tribes an opportunity to remedy the perceived deficiencies in their application is also of little consequence to the minority Democrats. Other Native American tribes who were large contributors to the DNC were given opportunities to cure problems. Therefore, it is curious that the Interior Department did not at any stage give the applicants an opportunity to cure perceived deficiencies. The failure to provide an opportunity to cure can only reasonably be explained in the context of improper motive.

Sixth. The fact that the Department of the Interior planned in advance to reject the application "without offering much explanation"—and that they shared this intelligence with Deputy Chief of Staff Harold Ickes's office—also proved to be unremarkable to the Democratic minority. Given the obvious need for agencies to avoid charges that they have acted in an arbitrary fashion, and given the dictates of fundamental fairness that agencies provide an indication of the criteria upon which decisions are based, it is hard to understand why the minority would not be troubled by this fact.

Seventh. The Democratic minority argues simplistically that "local officials from the Hudson town council up to the Republican Governor Tommy Thompson opposed [the application], as did the local congressman, Republican Steve Gunderson." This ignores the reality that George Skibine admitted that "it is true that extensive factual findings supporting the local communities' objections are nowhere to be found."⁴² It ignores the fact that Representative Gunderson was provided erroneous information provided to him by the Secretary of the Interior's office. It misstates Governor Thompson's position. It ignores the fact that a Hudson referendum had supported the application. It ignores that fact that the Town of Hudson had even entered into a contract for services in the expectation that the application would be approved. It even ignores the fact that the witness who testified about the community opposition had herself attempted to get a contract to run a concession at the proposed casino.

Most important, the minority ignores the extraordinary revelation by George Skibine that he sensed "that even if the Town of Hudson and the Town of Troy embrace the proposal, we may still not change our position because of political opposition on the Hill, largely generated by the Minnesota and Wisconsin Tribes who oppose this acquisition."⁴³ This observation provides an indication of what is most obviously wrong with the Department of the Interior's conduct. The failure to tell the applicants that the perceived opposition was to be the determinative factor—particularly when the only Interior employees to ever visit Hudson had come to a different conclusion—coupled with the admission that the Department was willing to disregard support from local citizens, makes a mockery of everything the Department has said about this matter. How could it be the "right decision . . . made in the right way and for

⁴² Memorandum from George Skibine to Scott Keep, Aug. 5, 1996.

⁴³ E-mail from George Skibine to Heather Sibbison, Paula Hart, Tom Hartman, Troy Woodward and Kevin Meisner, June 30, 1995.

the right reasons” as Secretary Babbitt has argued,⁴⁴ if the Department was unwilling to treat the applicants fairly?

Consider the words of Secretary Babbitt’s Special Assistant, Heather Sibbison:

[W]e may not want to include in our rationale the opposition of the other tribes, because I think it is possible that if the three Tribes came back with stellar support from their local towns and Congressman, we might look at the proposition in a new light—but even in that case, the Minnesota tribes will still be against it. And also, I agree with Collier’s [Chief of Staff to Secretary Bruce Babbitt] uneasiness about some tribes getting all the goodies at the expense of other tribes—theoretically they all should have equal opportunities.⁴⁵

The minority is not troubled by this admission that the Hudson applicants were not given the same opportunities as other tribes. An admission that this Administration gives wealthy DNC contributors better opportunities and that the contributors to the DNC are “getting all of the goodies” would normally be of interest to Congressional investigators.

Eighth. There is an allegation in the record that local opposition to the application was being financially underwritten by wealthy contributors to the DNC. Even though George Skibine admitted that this would be relevant to determining how to weigh community support or opposition, the Department of the Interior failed to investigate this charge. As with other significant matters, the Democratic minority failed to find fault with the Department. Indeed, they fail to comment on this matter.

The list of problems in the decisionmaking process could be extended for many pages. As is clear in the Majority interim report, these problems would suggest to a non-partisan observer that something was seriously amiss at the Department of the Interior. As Judge Barbara Crabb noted in the section of a published opinion that discussed actions taken by the Secretary of the Interior’s Special Assistant, Heather Sibbison, the action “suggests that the department was aware of the need for some subterfuge in the process to allow Ickes to advance personal ends.”⁴⁶ As might be expected, the minority Democrats failed to refer to this observation by a Federal judge appointed by President Jimmy Carter.

Overall, the problems identified lend support to the sworn testimony of Paul Eckstein that the Secretary of the Interior said he was influenced by the White House, and that he was thinking about campaign contributions when he was involved in the decisionmaking process.

B. DISTORTIONS AND INCORRECT STATEMENTS BY THE DEMOCRATS

The minority Democrats made a number of statements in their preliminary views that simply are not true. The following are some of the attempts to mislead.

⁴⁴Testimony of Secretary of the Interior Bruce Babbitt, Jan. 9, 1998, p. 769.

⁴⁵E-mail from Heather Sibbison to George Skibine and Troy Woodward, June 30, 1995.

⁴⁶*Sokaogon Chippewa Community v. Bruce Babbitt*, 961 F. Supp. 1276, 1283 (W.D. Wis. 1997).

First. The minority states that depositions taken “established that the decision was based on the merits.” This is a ludicrous reading of the depositions which, overall, lend support to the concern that there was something grievously wrong in the Department’s decisionmaking. Taken together, the depositions provide support for Secretary Babbitt’s statement to Paul Eckstein that the White House was involved in the decisionmaking and that campaign contributions were a factor.

Second. The minority states that “the evidence showed that the Department had sound reasons for rejecting the casino application.” In fact, the evidence shows the reasons articulated for the rejection were not supported by the record. It further shows that the Department of the Interior gave advantages to wealthy contributors that were not given to non-contributors, misled at least one Congressman, and failed to notify anyone that the Department was changing its decisionmaking criteria just for the Hudson case. The record also shows that the Department misled a Federal court in Wisconsin.

Third. The minority states that Governor Thompson of Wisconsin opposed the application. In making this claim, they ignore Governor Thompson’s own statement—made in Hudson to Hudson residents—that he would not stop the application.

Fourth. The minority states categorically that “the land would have been used for casino gambling, which is illegal under Wisconsin law.” However, there are numerous casino gambling venues in Wisconsin, and such a blatant attempt to mislead can only be understood in terms of the need to bend the truth for partisan purposes.

Fifth. The minority states that the majority conceded that “the decision was correct on the merits.” This is simply not true. Many members noted their opposition to gambling, and indicated that they might not have been supportive of the application because of their opposition to gambling. The same members, however, recognized that state and Federal laws permit gambling in some areas, and that the issue before the Committee was whether the Department of the Interior had followed the law, its own regulations, and its own past practices. The failure to grasp the difference between opposition to gambling and the duty of legislators to uphold the law is stunning.

Sixth. In its constant attempt to marginalize evidence, the minority states that Fred Havenick’s allegation that George Skibine once stated that the Hudson application was killed because of politics was supported “by affidavits from two officials of the disgruntled applicant tribes.” In fact, there were seven affidavits, not two.

C. CONCLUSION

The Attorney General of the United States felt compelled to appoint an Independent Counsel to examine Secretary Babbitt’s statements and the Hudson matter in general. Given the Attorney General’s aversion to appointing Independent Counsels—seen so clearly in the campaign finance scandal—it is difficult to see why minority Democrats expend so much time and effort defending the indefensible. If even Attorney General Reno recognized that an Independent Counsel might have to investigate the Department of the Interior

conduct surrounding the Hudson rejection, then surely the Democratic minority could at least follow her lead and maintain a semblance of objectivity.

IV. THE DEMOCRATS ENGAGED IN A PATTERN OF MAKING FALSE STATEMENTS ABOUT THE MAJORITY'S INVESTIGATION AND MISCHARACTERIZATIONS ABOUT THE MAJORITY'S ACTIONS

A. FALSE STATEMENTS ABOUT THE COMMITTEE'S BUDGET

The false statements that the minority has made about the Committee's budget are a case study of how the minority has manufactured information in order to advance partisan interests. At a March 31, 1998 hearing, ranking member Henry Waxman asserted that the Committee had spent \$5 million over the first year of the investigation.⁴⁷ At a subsequent hearing on April 30, Mr. Waxman inflated his figure, accusing the majority of having spent \$6 million on the investigation.⁴⁸

Both figures grossly overstated the funds spent by the Committee. Congressman Waxman's repeated mischaracterizations caused reporters to use erroneous figures in news articles. The Wall Street Journal reported, "Democrats estimate that, overall, Mr. Burton has spent more than \$5 million on the investigation . . ." ⁴⁹ Along the same lines, Roll Call Newspaper printed a chart in its July 13, 1998 edition, listing Mr. Waxman's estimate of \$6 million for the Committee's expenditures on the investigation.⁵⁰

However, Roll Call, in an article entitled "Democrats' Report Doesn't Add Up," lampooned Democrat generated cost estimates for Congressional investigations included in a partisan report produced by House Minority Whip Richard Gephardt. The article stated, in part:

The Democratic price tag ignores committee funds allocated to Democrats (typically one-quarter to one-third of each panel's budget); assumes incorrectly that some GOP staffers are spending 100 percent of their time working on investigations; and includes millions of dollars that Republicans have not spent, according to a review of the report."⁵¹

Mr. Waxman's efforts were clearly part of a larger Democratic leadership effort to spread disinformation about legitimate investigations into an Administration which already has had seven Independent Counsels appointed by its own Attorney General. Mr. Waxman even had the General Accounting Office waste \$300,000 to determine how much it cost for agencies to respond to appropriate oversight requests from Congress.⁵²

⁴⁷Hearing on FEC Enforcement Actions, Committee on Government Reform and Oversight, Mar. 31, 1998, p. 16.

⁴⁸Hearing on Venezuelan Money and the Presidential Election, Committee on Government Reform and Oversight, Apr. 30, 1998, p. 11.

⁴⁹Jeanne Cummings, "Burton's Campaign-Finance Probe is Drawing Criticism for Mounting Costs and Slow Progress," the Wall Street Journal, Mar. 27, 1998.

⁵⁰Rashidah Goodwin and Jim Vanderhei, "Democrats' Report Doesn't Add Up," Roll Call, July 13, 1998.

⁵¹Id.

⁵²Letter to the Honorable Dan Burton from Theodore C. Barreaux, Associate Director, General Accounting Office, Oct. 23, 1998.

Even after the majority provided a detailed accounting of the Committee's expenditures, Congressman Waxman continued to misstate the amount of money the Committee had spent. On May 11, 1998, Chairman Burton wrote a letter to Congressman Waxman providing him with an itemized accounting of the Committee's investigative expenditures for 1997—\$2.4 million.⁵³ The figure included the salaries of all Committee staff who worked on the investigation, both from the Committee's permanent budget and its separate investigative budget. It also broke down the spending into nine separate categories, including equipment, overtime, travel, consultants, and supplies.

Even after receiving the detailed accounting he had requested earlier, Mr. Waxman and his staff continued to mislead the public about the Committee's expenses. The minority's preliminary views, prepared by Mr. Waxman's staff for the Committee's October 8 meeting, stated that the Committee had spent \$7.4 million on the illegal fundraising investigation,⁵⁴ a figure that is wildly exaggerated and misses the mark by more than \$3 million. The minority report incorrectly asserted that \$5.7 million had been expended on staff salaries alone. This figure was apparently based on an estimate that the majority had 50 staff working on the investigation at any given time⁵⁵—a number that was provided without attribution and apparently made up out of whole cloth.

In fact, at its peak, the majority had no more than 35 staff working on the investigation. At the beginning of 1997, and following the August recess of 1998, the number of majority staff was significantly lower. For instance, in 1997, the Committee's investigative budget of \$3.8 million was not approved by the Committee on House Oversight until March 25, 1997. Prior to this, the investigative staff numbered less than one dozen. The investigative staff was gradually augmented through the spring and summer, and did not reach its peak of 35 until the fall.

The accurate figures for investigative staff salaries and overtime are:

1997: \$1.56 million
1998: \$1.33 million⁵⁶

The combined total through August 1998 equals \$2.9 million, a far cry from the minority's estimate of \$5.7 million. What is more, 25 percent of those funds were set aside for minority staff. Only 75 percent of those funds were expended for majority staff.

The minority also neglected to state instances in which the Committee did not spend or returned significant amounts of money allocated to the investigation. For instance, in 1997, \$1 million of the Committee's \$3.8 million investigative budget was allocated for investigative detailees. Most of these funds were left unspent after Congressman Waxman blocked the Committee from obtaining FBI detailees.⁵⁷ In 1998, the Committee was allocated \$1.8 million from the House Oversight Committee's Reserve Fund. Of that amount,

⁵³ Letter to Congressman Waxman from Chairman Burton, May 11, 1998.

⁵⁴ "Preliminary Minority Views on the Campaign Finance Investigation," Oct. 8, 1998, p. 44.

⁵⁵ *Id.* p. 45.

⁵⁶ Committee payroll records through August 1998.

⁵⁷ Letter from Representative Waxman to Chairman Burton, July 18, 1997. In most instances, Federal agencies require a Memorandum of Understanding signed by both the chairman and the ranking member before detailing personnel to congressional committees.

the Committee returned \$500,000 in unused funds to the House Oversight Committee.⁵⁸

In total, the Committee spent approximately \$2.4 million on its investigation into illegal fundraising activities in 1997. While it is difficult to determine an exact amount spent to date in 1998 because recording and payment of official expenses are typically delayed by several months, the Committee expects to spend less in 1998 than it did in 1997. A reasonable estimate of the Committee's total investigative expenditures for the 2 year period would not exceed \$4 million to \$4.25 million.

It is hard to understand why the Committee's ranking member would continue to publicize false estimates of the Committee's expenditures, even after being notified in May of this year that his figures were inaccurate. This is an example of the purposeful use of falsehoods to deflect attention from the campaign finance scandal and the facts uncovered by the Committee.

B. FALSE STATEMENTS ABOUT THE COMMITTEE'S WORK

The minority views published by Congressman Waxman did not stop at trying to deceive the American people about the Committee's expenses. They also tried to deceive the public about the Committee's work. For instance, the minority played elaborate word games to try to make it appear that the Committee had held fewer hearings than it had. In listing the number of hearings held by other investigative committees, the minority listed "days of hearings held." For instance, the minority report states that the Senate Governmental Affairs Committee held 33 days of public hearings.⁵⁹ However, when describing the number of hearings held by the House Government Reform and Oversight Committee, the minority report states that only 9 hearings were held.⁶⁰ It neglects to explain that the Committee's hearings on Interior Secretary Bruce Babbitt and allegations of corruption at the Interior Department lasted 4 days, or that hearings into Johnny Chung's unusual access to the White House lasted 2 days.

Along the same lines, the minority views were misleading about the subject matter of the hearings. For instance, the minority report states that, "in 1998, the Committee did not hold a single day of investigative hearings on the role of foreign contributions in the 1996 campaign."⁶¹ The wording of this sentence was carefully crafted to avoid recognizing hearings the Committee held on foreign money in the 1992 and 1994 campaigns.⁶² Furthermore, the minority fails to recognize the numerous instances in which the Committee released documents or other information to the public when hearings could not be held because witnesses had either asserted their Fifth Amendment rights not to incriminate themselves or fled the country.

⁵⁸Letter from Chairman Burton to Chairman Thomas, Oct. 8, 1998.

⁵⁹"Preliminary Minority Views on the Campaign Finance Investigation," Oct. 8, 1998, p. 45-46.

⁶⁰Id.

⁶¹Id.

⁶²The Committee held hearings on Mar. 31, 1998 and Apr. 30, 1998 regarding foreign money in the political system.

It is disappointing that the minority would feel compelled to use such petty tactics in an investigation into a matter as important as the role of illegal foreign money in our elections.

C. FALSE STATEMENTS ABOUT LEAKS

The Democratic minority has also falsely accused the majority of leaking. At the Committee's August 6, 1998 meeting, Congressman John Tierney inserted a document into the Committee record titled, "History of Committee Leaks."⁶³ The document, prepared by Congressman Waxman's staff, was circulated to reporters attending the meeting.

However, not a single instance cited in the two-page document was actually a Committee leak. For instance, the first incident cited in the document occurred on another Committee during a previous Congress. Congressman Burton had not yet been elected Chairman of the Government Reform and Oversight Committee, and the Committee had not yet commenced its investigation of campaign finance improprieties and possible violations of law. What is more, the documents in question, John Huang's phone logs from the Commerce Department, were not classified or covered under any protocol or confidentiality agreement.

The minority similarly mischaracterized other incidents they defined as leaks. For instance, Congressman Waxman accused the majority of leaking information from staff interviews. However, it is a well-established principle that staff notes of informal interviews are considered staff work-product and are not covered under the Committee's document protocol. Chairman Burton informed Congressman Waxman of this fact in writing in March 1998.⁶⁴ It is profoundly disappointing that the minority would persist in promulgating false and misleading information months after being informed in a clear and unambiguous way that their facts were wrong.

In another instance, the "Talking Points" handed out by the minority on August 6, 1998, asserted:

The most repugnant leak occurred when Chairman Burton leaked subpoenaed Bureau of Prisons tape recordings of Webster Hubbell's private phone conversations with his wife and others.⁶⁵

However, the Hubbell prison tape recordings were not leaked. Two prison tape recordings of Mr. Hubbell's conversations were entered into the Committee record and made public on December 9, 1997.⁶⁶ Chairman Burton informed Congressman Waxman of this fact by letter on March 27, 1998 after Congressman Waxman publicly accused him of leaking the tapes.⁶⁷ Additional tapes were made public by a vote of the Committee's 5-person working group

⁶³ Hearing on Whether to Hold the Attorney General in Contempt of Congress, Committee on Government Reform and Oversight, Aug. 6, 1998, p. 120 of the committee transcript.

⁶⁴ Letter from Chairman Burton to Congressman Waxman, Mar. 27, 1998.

⁶⁵ Hearing on Whether to Hold the Attorney General in Contempt of Congress, Committee on Government Reform and Oversight, Aug. 6, 1998, p. 120 of the committee transcript.

⁶⁶ Hearing on the Current Implementation of the Independent Counsel Act, Committee on Government Reform and Oversight, Dec. 9, 1997, p. 212-213.

⁶⁷ Letter from Congressman Waxman to Chairman Burton, Mar. 20, 1998; Letter from Chairman Burton to Congressman Waxman, Mar. 27, 1998.

on April 15, 1998, as authorized by the Committee's document protocol.

Mr. Hubbell, who resigned under a cloud from the Justice Department in March 1994, received hundreds of thousands of dollars in fees from friends and supporters of the President at a time that he was under criminal investigation and his testimony was being sought in the Whitewater matter. Among the lucrative arrangements Hubbell secured was a \$100,000 consulting fee from the Lippo Group in June 1994. This fee was paid at a time when James Riady and John Huang had numerous meetings at the White House, including a visit with the President. At the same time, James Riady also met with Webster Hubbell.⁶⁸

Mr. Hubbell was one of the first witnesses called by the Committee, and among the first to assert the Fifth Amendment in refusing to cooperate. His refusal to cooperate led the Committee to seek other avenues to determine why the Riady family paid Hubbell, who asked them to do so, and what they sought in return. One source of information to which the Committee turned were hundreds of hours of tape recordings of Mr. Hubbell's telephone conversations from prison. The tapes included discussions Hubbell had about his contacts with John Huang and discussions he had with White House official Marsha Scott. Mr. Hubbell also discussed factual matters related to his legal case with his wife throughout the tape recordings. As in all Federal penal institutions, prisoners are made aware by large signs that their conversations are being recorded.⁶⁹ The Committee's subpoena for these tapes was lawful and warranted and the public release of the documents was done through proper committee procedures.

The mischaracterizations and misinformation about the release of the tapes were again, in large part a partisan distraction to run from troubling facts. Once questions arose about the informal transcript logs provided by the Committee as a guide for the press when the tapes were released, the Committee released the tapes in their entirety when questions arose in order to clear up any misunderstandings. There was never any intent or effort to omit any information for political purposes. In fact, from the first days the tapes were released, reporters were encouraged to listen to the prison tapes themselves. Inadvertent errors on the committee's informal logs should not minimize the importance of the information in the tapes themselves. While the Washington Post raised questions about the release of the tapes and the editing, the editorial board still acknowledged the importance of the tapes to the public debate:

Still, with all the caveats, the tapes appear to raise questions both about Mr. Hubbell's conduct and about the

⁶⁸See Chapter 4A of the Committee majority report for further discussion of the connections between the Riadys, John Huang and Webster Hubbell.

⁶⁹Mr. Hubbell himself acknowledged that he knew he was being taped when in a Mar. 25, 1996 tape recording, Mr. Hubbell specifically reminded his wife that they were on a "recorded phone." Mr. Hubbell also cautioned one of his benefactors, Bernard Rapoport, in an Oct. 13, 1995 letter about his calls: "You can't call, but I can call you if you are willing to take a collect call. . . . Also understand that all my calls are monitored and recorded."

White House's behavior toward the former associate attorney general while he was in prison.⁷⁰

Again on May 6, the Washington Post editorialized:

The White House spin—that the errors in the transcripts somehow render the tapes themselves insignificant—is unconvincing.⁷¹

In a May 5, 1998 appearance on "Nightline," even Congressman Waxman was compelled to admit that, "there are things in those tapes that are disturbing to me, but I don't know the answer to them."⁷² However, to date, the serious questions about payments to Mr. Hubbell remain unanswered by Mr. Hubbell, the Riadys, and John Huang—all key players in a highly questionable \$100,000 payment to Mr. Hubbell when he was a target in a serious criminal investigation related to the President and First Lady.

The Democrats did not just erroneously claim that the Hubbell prison tape recordings were "leaked," they also falsely claimed the tapes themselves were "doctored." This falsehood was routinely repeated by Democrats. The minority had their own copies of the actual tapes for months and knew that no physical alterations were ever made to any tape recordings. Unfortunately, the false accusation that the tapes were "doctored" continues to be perpetuated by Democrats. For example, Judiciary ranking Democrat John Conyers perpetuated this falsehood in a May 10, 1998 appearance on "Fox News Sunday:"

BRIT HUME. Congressman Conyers, what do you think that Webb Hubbell meant when he said on a conversation he knew was being taped that I guess I'll have to—I think the quote was "roll over again." What do you think he meant by roll over again?

Rep. CONYERS. Sir, the tapes that were released by the Chairman Dan Burton, my friend from Indiana, were doctored.

Mr. HUME. There was no doctoring of any tapes, sir. There was an edited transcript. The tapes were released in full. My question to you is what do you think he meant by roll over again?

Rep. CONYERS. I said—I said the tapes were doctored.

Mr. HUME. Yes, you were incorrect about that. They were released in their entirety. What was edited were the transcripts. My question for you, what do you think he meant when he said roll over again?

Rep. CONYERS. I have absolutely no idea.

Mr. HUME. Would you like——

Rep. CONYERS. What do you think he means?

Mr. HUME. Would you like to find out sir?

Rep. CONYERS. Well I don't have any reason to find out. I mean, what do I need to know for?⁷³

⁷⁰"The Hubbell Tapes," the Washington Post, May 3, 1998.

⁷¹"Mr. Burton's Transcripts," the Washington Post, May 6, 1998.

⁷²"Nightline," ABC News, May 5, 1998.

⁷³"Fox News Sunday," May 10, 1998.

As was often the case with the Democrats, their zeal for avoiding the facts, made them less than active participants in any real search for the truth. As for other misrepresentations about supposed "leaks," in their preliminary minority views issued on October 8, the Democrats made a tacit admission that many of their earlier accusations of leaks were false. Many of the same incidents labeled leaks in the August 6 document released by the minority were reclassified under a more ambiguous heading in the minority views of October 8. However, the minority persisted in classifying several authorized releases of information which served the public's right to know the facts as leaks,⁷⁴ in the face of all of the evidence to the contrary.

D. FALSE ACCUSATIONS ABOUT ABUSE OF WITNESSES

The Democratic minority's accusations about abuse of witnesses have bordered on the absurd. At one point in its minority views, the minority complains that the Committee deposed an Interior Department employee who is a diabetic. The minority had the audacity to suggest that the deposition interfered with the employee's ability to monitor his insulin with absolutely no basis in fact.⁷⁵

Obviously, the deposition posed no risk to the health of the employee, George Skibine, who was afforded frequent opportunities to take breaks. For the minority to suggest that someone who suffers from diabetes is physically incapable of participating in a deposition is an insult to people who cope with diabetes on a day-to-day basis. Furthermore, the fact of the medical condition was not brought to majority counsel's attention until the proceeding was well underway. As soon as the condition was disclosed, Mr. Skibine was offered any accommodation that he considered necessary.

Along the same lines, after an investigative trip to Los Angeles in August 1997, Congressman Waxman attacked the majority investigators for knocking too loudly on people's doors, wearing suits and ties, and "sitting in a full-sized Chevrolet" as they waited for an individual to return home from work.⁷⁶ It is unclear to this day whether Mr. Waxman's objections rested on the size of the car or its make and model.

During this same trip, Congressman Waxman accused majority staff of "bullying," "staking out," "accosting," and "interrogating" Felix Ma.⁷⁷ Of course, this description does not bear even the faintest resemblance to what actually happened. In reality, Committee staff had a brief and cordial discussion with Mr. Ma outside his house when he arrived home. Mr. Ma told the staff that he wished he could introduce them to his wife, and he did so when she arrived home a few minutes later. Mr. Ma also told the investigators that he was happy to have the opportunity to clear up the fact that he was not the Felix Ma who worked for the Lippo Group and contributed \$25,000 to the DNC. Mr. Ma explained that he had also

⁷⁴"Preliminary Minority Views on the Campaign Finance Investigation," Oct. 8, 1998, p. 40-41.

⁷⁵Id. p. 30-31.

⁷⁶Letter from Congressman Waxman to Chairman Burton, Sept. 4, 1997.

⁷⁷"Preliminary Minority Views on the Campaign Finance Investigation," Oct. 8, 1998, p. 18-19.

been contacted by numerous reporters and Democratic fundraisers seeking additional contributions.⁷⁸

The minority also accused the majority of “squandering taxpayer dollars” by sending three Committee staff to Florida “to retrieve a computer disk that could have been mailed to the Committee for the cost of first-class postage.”⁷⁹ What the minority failed to mention was that the primary purpose of the trip was to interview the individual who had possession of the disk, something which obviously could not be done through the mail. To compound the problem, after his staff supported making the trip and agreed to keep the trip confidential, Congressman Waxman held a press conference to criticize it.⁸⁰

Following this series of irresponsible, misleading and highly partisan attacks, it should come as little surprise that the majority decided to conduct separate investigative travel and interviews.

E. FALSE STATEMENTS ABOUT THE COMMITTEE’S VOTE HOLDING THE ATTORNEY GENERAL IN CONTEMPT

The minority has made repeated false claims about the Committee’s efforts to compel the production of documents from the Justice Department. In July 1998, the Committee issued a subpoena calling for production of both the Freeh and La Bella memoranda which advised the Attorney General that the law required the appointment of an independent counsel in the campaign finance investigation. The minority has consistently opposed the Committee’s efforts to conduct legitimate oversight of the Department of Justice and has misrepresented key facts and the law throughout the Committee’s oversight process. The Committee has had a number of concerns about the Justice Department’s campaign finance investigation, and has held two hearings about that investigation.

The Attorney General has never complied with the Committee’s subpoena for the Freeh and La Bella memoranda. She has never raised any claim of privilege to justify her failure to comply with the Committee’s subpoena. Rather, she has simply refused to produce the required documents, citing various false rationales that compliance with the subpoena would jeopardize the Justice Department’s investigation. The Committee’s subpoena specifically called for grand jury information to be redacted.

In their preliminary report, the minority claims that the Attorney General’s refusal to comply with the Committee’s subpoena was “consistent with 100 years of precedent.”⁸¹ This claim is yet another example of the type of misleading statement that the minority is willing to make to serve their political purposes. Documents such as the memoranda subpoenaed by the committee have been produced to investigative committees repeatedly throughout the last 80 years. The details of these cases have been discussed extensively at Committee business meetings, and in the Committee’s contempt report.⁸²

⁷⁸ Letter from Chairman Burton to Congressman Waxman, Sept. 30, 1997.

⁷⁹ “Preliminary Minority Views on the Campaign Finance Investigation,” Oct. 8, 1998, p. 47.

⁸⁰ Letter from Chairman Burton to Congressman Waxman, July 23, 1997.

⁸¹ Preliminary Minority Views at 35.

⁸² See “Report by the Committee on Government Reform and Oversight together with Additional Views, Minority Views, and Additional Minority Views on the Refusal of Attorney General

While the minority's misrepresentations are disturbing, it is the minority's complete lack of interest in overseeing the Justice Department that is more troubling. The Committee has uncovered substantial evidence indicating that the Justice Department is not thoroughly investigating the campaign finance scandal. Furthermore, at least one senior official at the Department of Justice has shown a clear disdain for the law and the campaign finance investigation. On October 2, 1998, the Washington Post reported the following:

A Senior Justice Department official said that some investigators have concluded that Huang does not have information that would support the prosecution of the Democratic officials who received and spent the funds he raised or the White House officials who promoted his career in Washington.⁸³

Given that the Department has apparently not even talked to John Huang according to news reports, it is troubling that statements such as this are attributed to the Department of Justice. Although General Reno has recently informed the Committee that an Office of Professional Responsibility investigation has been opened over this statement, this is not reassuring given the fact that the target of the investigation may be one of the key decisionmakers when the Department decides whether to appeal recent rulings regarding criminal indictments of DNC fundraisers Charlie Trie and Maria Hsia. Given these facts, it is disturbing that, rather than be part of a bipartisan effort to ensure that the executive branch does what it is trusted to do, the minority has attempted to impede the Committee's work.

V. DEMOCRATS MADE TORTURED ARGUMENTS ALLEGING "ASIAN BASHING"

The Democratic minority makes a tortured argument that the investigation of illegal campaign contributions is insensitive "to the concerns of Asian-Americans." This is consistent with their failure to focus on the people who put so many in legal jeopardy. According to Representative Lantos, "there is a grave danger that stereotyping and Asian bashing will become and, in many instances, have become part and parcel of this investigation."⁸⁴ The Committee, however, focused on illegal conduct and those who attempted to break the law. While it is regrettable that so many Democratic operatives exploited Asian-Americans, it is certainly not the fault of Republicans on this Committee.

In their cynical effort to characterize this Committee's work as racist, minority Democrats also quoted Francey Lim Youngberg. However, the minority failed to point out that Youngberg is hardly a disinterested party—the group she headed, the Congressional Asia-Pacific American Caucus Institute—received \$35,000 from

Janet Reno to Produce Documents Subpoenaed by the Government Reform and Oversight Committee," Sept. 17, 1998, H. Rept. 105-728, 105th Cong., 2d sess.

⁸³ Roberto Suro, "Prosecutor's Approach to Huang Signals Shift in Campaign Probe," the Washington Post, Oct. 2, 1998, A17.

⁸⁴ House Committee on Government Reform and Oversight, Committee Vote on Immunity, 105th Cong., 1st sess., 18-19 (1997) (quoted in Preliminary Minority Views on the Campaign Finance Investigation, p. 21).

Charlie Trie, one of the central figures in the campaign finance scandal.

During the course of the investigation, the minority also made harsh allegations of racial impropriety against the Committee's inquiry into a \$10,000 contribution made on August 18, 1996, by Helen Chien. On Sunday, October 5, 1997, a reporter on the television program "Face the Nation" commented on this Committee's concern over the Chien contribution: "Committee Democrats are in a furor about this, because they say all of it took place after the Democrats checked out the couple and found they had done nothing wrong; their contribution was perfectly proper. Committee Democrat Tom Lantos says the couple was subjected to abusive questioning just because they had Asian surnames[.]" Representative Lantos continued to assert that the majority was acting improperly in a "Dear Colleague" letter dated October 9, 1997: "We must all take the experience of this couple—who gave a perfectly legal donation—to heart. This couple have [sic] been subjected to repeated interviews and abusive questioning by investigators working for Dan Burton."

Notwithstanding the overwrought protestations of minority Democrats, on March 25, 1998, the DNC in a letter to the FEC acknowledged that the \$10,000 contribution from Helen Chien was in fact returned for cause:

Based on our analysis of allegations contained in the indictments returned in the cases of *United States v. Yah Lin "Charlie" Trie et al.*, U.S. District Court for the District of Columbia, Jan. 28, 1998, and *United States v. Maria Hsia*, U.S. District Court for the District of Columbia, Feb. 18, 1998, the DNC has determined that it now has information suggesting that certain contributions that at the time they were received, did not appear to be unlawful, were in fact contributions made in the name of another . . . A list of these contributions is attached.⁸⁵

The list of contributions included that of Helen Chien in the amount of \$10,000. The majority has not heard from Mr. Lantos regarding the DNC's action in this regard. Aside from the inappropriate and partisan zeal to play the race card to discredit a legitimate investigation, there is no reason to have made the race-baiting accusations against the majority when we raised questions about contributions which the DNC has itself now deemed necessary to return. Such conduct has been an extremely disappointing aspect of the minority's participation in this investigation.

The minority also failed to take into account a comment by former White House Deputy Chief of Staff Harold Ickes:

I think this current flap is very, very minor. What you basically have is a group of people, Asians, who are just beginning to participate in the political system, who are not

⁸⁵ Letter from Joseph E. Sandler, Esq., to Lawrence Noble, Esq., Mar. 25, 1998; see also Federal Grand Jury Indictment of Yah Lin "Charlie" Trie, U.S. District Court for the District of Columbia, Jan. 28, 1998; Federal Grand Jury Indictment of Maria Hsia, U.S. District Court for the District of Columbia, Feb. 28, 1998.

fully aware of all the rules. They are used to doing business in a different way in their homeland.⁸⁶

Such self-serving and patronizing comments ignore the fact that those who encouraged the giving were certainly in a position to know what was right and what was wrong. John Huang, for example, is a highly educated individual who was placed in a senior Commerce Department position. He had direct access to the President of the United States. Other fundraisers under scrutiny—Charlie Trie, Maria Hsia, Charles Intriago, Howard Glickin, Marvin Rosen, Johnny Chung, Gene and Nora Lum, to name but a few—are also for the most part highly educated and politically savvy. The only “homeland” they are used to doing business in is the United States, and it is absurd to say that they were just beginning to participate in the political process. John Huang had been very active in fundraising in 1992, and others had been involved years earlier. Charlie Trie, for example, began contributing to Bill Clinton’s campaigns in the 1980s. These individuals used others for their own improper ends, and for anyone to be cynical enough to blame those who were exploited as conduits is patronizing and indicative of the blame-everyone-else-and-cover-your-tracks mindset that the Committee has been faced with.

Those who would attempt to distract would do well to take a look at a document produced by the Democratic National Committee (“DNC”). Generated by the DNC’s office of Asian Pacific Affairs, it is titled “Affinity Group Endorsement Project (Slice & Dice).”⁸⁷ Here is how the “Slice and Dice” program characterized the “special interests” of various ethnic groups: Hmong—Bungee Jumpers, Japanese—Golfers, Hawaiian—Cigar Smokers, Chinese—Senior Citizens, Korean—Gay/Lesbian. The apparent stereotyping of ethnic groups by special interests along the lines envisioned by the DNC would appear to be a far more fruitful avenue for an investigation of racial insensitivity than the Committee’s efforts to determine whether there were illegal efforts to influence U.S. elections. Rather than defend those who point to how Asian-Americans “are used to doing business in a different way in their homeland,” the scrutiny should properly be on how Harold Ickes and the DNC did business in their homeland.

It is disappointing that the Minority would attempt to exploit race, while at the same time cover up the DNC’s sordid efforts to “Slice & Dice” American citizens into absurd special interest groups.

DAN BURTON.

[Supporting documentation follows:]

⁸⁶ An Insider Looks Back—Harold Ickes Faces Uncertainty, *Newsday*, Dec. 26, 1996.

⁸⁷ DNC Document F 0047206 (Exhibit 6).

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ADDITIONAL VIEWS OF HON. PETE SESSIONS

Mr. Chairman, in a desperate attempt to focus attention away from the Clinton foreign money scandal, the Democratic minority is attempting to find a scandal where none exists.

Representative Henry Waxman alleges that House Majority Whip Tom DeLay was involved in a scheme to raise illegal campaign funds for the congressional campaign of Brian Babin in Texas. Mr. Waxman bases this contention on the credibility and charges of one Peter Cloeron.

Mr. Cloeron claims that at a Babin campaign event in 1996 that Representative DeLay was present, DeLay and his staff in a lunch meeting encouraged him to undertake an illegal campaign to fund the election efforts of Brian Babin.

Representative DeLay has repeatedly and unambiguously denied these outrageous claims. DeLay has said that he has never encouraged, solicited or proposed any effort to circumvent Federal campaign laws, and he never would.

Peter Cloeron's claim is false, unsubstantiated, and potentially libelous—and the minority knows it. His claims against Congressman DeLay are nothing more than an attempt to inflict the maximum political damage possible to the campaign of Brian Babin.

A quick scan of Mr. Cloeron's public statements about this affair demonstrates his lack of credibility.

It should be known that Mr. Cloeron has been convicted of criminal violations of Federal law. He admitted multiple violations of the Campaign Finance Reform Act, and has been subject to civil penalties by the Federal Election Commission. He is looking for someone, besides himself, to blame for his illegal activities.

Mr. Cloeron's own contradictory statements raise further questions about his credibility. For example, on November 1, 1997, the Houston Chronicle reported that Mr. Cloeron said that he was contacted directly by "Triad officials," rather than by Mr. DeLay or his staff, with respect to making illegal contributions to organizations that would, in turn, make contributions to the Babin campaign.

In the same article, Mr. Cloeron indicated that he was "contacted by Triad officials because he was a conservative who had given to a number of Republican campaigns, including that of Majority Whip Tom DeLay." As FEC records clearly indicate, Mr. Cloeron is not now, nor has ever been, a contributor to DeLay. It appears that the truth is not an obstacle in Cloeron's campaign of deceit and destruction.

Similarly, in an August 6, 1998 article in the Houston Chronicle, Mr. Cloeron modified his earlier allegation and was now saying that his alleged discussion with Congressman DeLay was not as specific as he earlier suggested. According to Cloeron, "my discussion with DeLay on this, over lunch, lasted two or three minutes. It was not like we spent a lunch hour."

Indeed, in this article, Mr. Cloeron indicated that “it wasn’t like [DeLay] was saying ‘Hey, you were up against the wall (having given the maximum contribution), but we’ve got a different way to do this and here’s the way you do it.’ It was more a statement to the effect of Babin being outspent by his opponent.”

Now Cloeron has changed his story again and Mr. Waxman doesn’t seem to care.

Given the contradictory public statements made by Mr. Cloeron in the media, his motivations, and the efforts of the minority to desperately change the subject from the Clinton scandals, it becomes apparent that the minority is attempting to engage the American people in a rouse. The American people won’t fall for it. These charges appear baseless.

PETE SESSIONS.