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ONE HUNDRED SIXTH CONGRESS

Congress of the United States

House of Representatives

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April 13, 1999

The Honorable Janet Reno
Attorney General
United States Department of Justice
Washington, DC 20530

Dear Attorney General Reno:

On March 26, 1999, I wrote you regarding a March 22 letter you received from Chairman Burton asking you to investigate possible criminal violations by Charles N. Duncan, who has served since 1994 as Associate Director of the Office of Presidential Personnel at the White House. In that letter, I noted that I was preparing an analysis of the evidence relating to Mr. Duncan. I am now providing you with this information.

As I wrote in my March 26 letter, I believe that Chairman Burton's allegations are an indefensible smear against Mr. Duncan and that Chairman Burton's letter grossly distorts the facts and omits extensive exculpatory evidence. Chairman Burton's allegations are based almost entirely on his staff's notes taken during an informal interview of a former Senate staffer, Steven Clemons. Mr. Clemons, however, has repudiated Chairman Burton's characterization of his statements. Furthermore, there is additional extensive evidence which contradicts Chairman Burton's allegations.

A reprehensible practice is emerging in the Government Reform Committee in which the majority asks the Department of Justice to consider criminal charges against individuals whose testimony before the Committee is inconsistent with the majority's theories regarding misconduct in the Clinton Administration. On September 17, 1998, Rep. McIntosh wrote you to request that the Department of Justice investigate whether Deputy Counsel to the President Cheryl Mills committed perjury, lied to Congress, or obstructed justice during the Committee's White House Database investigation. This criminal referral was based on nothing more than a dispute involving the timing of the production of certain documents. More recently, on March 12, 1999, Chairman Burton wrote to ask you to investigate "several false statements" allegedly made to the Committee by Democratic contributor Ernest G. Green. The allegations against Mr. Green were promptly leaked to Robert Novak, who repeated them in his March 18 column in the Washington Post.

Unfortunately, Chairman Burton's referral regarding Mr. Duncan appears to be part of this practice.

I. CHAIRMAN BURTON'S ALLEGATIONS

Chairman Burton believes that Charles Duncan may have made false statements in his April 20, 1998, answers to six interrogatories from the Committee. Three of the answers concerned possible communication between Mr. Duncan and Mr. Clemons when Charlie Trie was under consideration for an appointment to the Commission on United States-Pacific Trade and Investment Policy ("Bingaman Commission"). In his answers, Mr. Duncan stated that he never said Mr. Trie's name came from high levels in the Administration; that he never said Mr. Trie was a "must appointment"; and that to the best of his recollection, no one ever expressed opposition to Mr. Trie's appointment to the Bingaman Commission.

The other three answers concerned the role of political contributions in appointments. Mr. Duncan stated that he never checked the amount that potential appointees to the Bingaman Commission contributed to the DNC or the Clinton/Gore campaign; that he never checked the amount that potential appointees to other positions gave to either the DNC or the Clinton/Gore campaign; and that he did not keep in his possession a list of donors or supporters of the DNC or the Clinton/Gore campaigns.

Chairman Burton believes that Mr. Duncan's responses may be false because they are "irreconcilable" with notes that his staff took during an interview with Mr. Clemons, who was a staff member in Senator Jeff Bingaman's office during the time that the Administration was forming the commission. According to the majority's interview notes, Mr. Clemons told Chairman Burton's staff that Mr. Duncan told Mr. Clemons that Mr. Trie's appointment came from "high up in the White House"; that Mr. Trie was an "absolutely must appointment"; and that Mr. Duncan "checked all recommendations for the Bingaman Commission against a list of donors to the DNC and the campaign." Also according to the notes, Mr. Clemons sent a series of e-mails and had a series of phone conversations with Mr. Duncan in which he objected to Mr. Trie being on the Bingaman Commission.

II. THE ACTUAL RECORD DOES NOT SUPPORT CHAIRMAN BURTON'S ALLEGATIONS

A. Steven Clemons Has Repudiated Chairman Burton's Allegations

The so-called "testimony" of Steven Clemons referred to in Chairman Burton's letter is almost the entire basis for Chairman Burton's claims that Mr. Duncan made false statements to the Committee. Yet even Mr. Clemons disagrees with Chairman Burton's characterizations of his statements.

Steven Clemons was interviewed in his office by two junior attorneys on the majority Committee staff on December 5, 1997, and on December 10, 1997. The minority staff was not invited to these interviews, nor was Mr. Clemons represented by counsel. Mr. Clemons never testified under oath before the Committee -- either in a hearing or in a deposition -- and he never was asked to answer written interrogatories. The "testimony" referred to by Chairman Burton is

not testimony, but the majority staff's notes characterizing what Mr. Clemons told them.

Chairman Burton released his staff members' interview notes in February 1998. Mr. Clemons immediately issued a statement complaining about the release and disputing the accuracy of the notes, a copy of which is attached. According to the statement released by Mr. Clemons on February 25, 1998:

I had never seen these notes before, and I have never been given an opportunity by the Committee to acknowledge whether they accurately represent the discussion I had with members of the majority staff of the House Government Reform and Oversight Committee. In fact, the notes have significant inaccuracies and misrepresentations . . . about the important matters which were discussed.

Moreover, Mr. Clemons's statement that the majority's characterization of his interview contained "significant inaccuracies and misrepresentations" was confirmed by the minority staff. After the majority staff attorneys interviewed Mr. Clemons, two attorneys from my staff interviewed him, including my Chief Investigative Counsel. Unlike the majority's previous interviews, this interview occurred in the presence of Mr. Clemons' counsel.

During this interview, Mr. Clemons said that the minority staff asked him much more specific and comprehensive questions about Mr. Trie's appointment to the Bingaman Commission than he had been asked in his prior interviews by the majority attorneys. In fact, Mr. Clemons provided information that puts his contacts with Mr. Duncan in a vastly different context than that provided in the majority staff's interview notes. For example, Mr. Clemons said that he never had more than a very brief conversation with Mr. Duncan; that he believed Mr. Duncan was not a decision maker; and that Mr. Duncan never mentioned the Democratic National Committee, donors, or political contributions. Mr. Clemons said that Mr. Duncan told him that Mr. Trie was a small businessman and that small business experience was important on the Bingaman Commission.

B. Documentary Evidence Contradicts Chairman Burton's Allegations

Documentary evidence also raises questions about the accuracy of the facts in the majority interview notes. For example, while the notes say that Mr. Clemons "raised objections to two other individuals being appointed: Ko-Yung Tung and Jackson Tai," a letter from Senator Bingaman to President Clinton states that the Senator "think[s] there is a good rationale for Ko-Yung Tung [and] Jack Tai" being appointed to the Bingaman Commission. *See* Letter from Senator Jeff Bingaman to President Bill Clinton (July 26, 1995).

Furthermore, in discussing the Executive Order that changed the size of the Bingaman Commission to allow more than 15 members, the majority notes say that "[t]his expansion was in no way done at Bingaman's request." However, a letter from Senator Bingaman specifically suggests that "the Executive Order be amended" to allow more commissioners. *See id.* In fact, documents show that less than two months after the date of this letter from Senator Bingaman, the Administration began working on amending the Executive Order to allow more than 15

members.

C. **Chairman Burton Omitted Sworn Testimony which Fully Supports Mr. Duncan's Account**

Chairman Burton's letter also failed to inform you that the Committee deposed a number of other witnesses whose testimony indicates that Mr. Duncan was truthful in his testimony regarding Charlie Trie's appointment to the Bingaman Commission. Each one of these deponents corroborated Mr. Duncan's account.

1. **The Deposition Testimony of Lottie Shackleford, Bob Nash, and Ernest Green**

Mr. Duncan testified in his deposition that he had conversations about Mr. Trie with three people who knew Mr. Trie from Arkansas: Lottie Shackleford, Bob Nash, and Ernest Green. All three were deposed by the Committee. Their testimony corroborates the deposition testimony of Mr. Duncan.

Lottie Shackleford. In her deposition, Ms. Shackleford, a former mayor of Little Rock, testified that Mr. Duncan asked her about Mr. Trie. Deposition of Lottie Shackleford at 52. Ms. Shackleford testified that she spoke favorably of Mr. Trie to Mr. Duncan, did not discuss Mr. Trie's political contributions with Mr. Duncan, and indicated that Mr. Trie was fit to serve in a government position. *Id.* at 52-55. This is consistent with Mr. Duncan's testimony. Deposition of Charles Duncan at 98-99, 101-02.

Bob Nash. Mr. Nash, the head of the Office of Presidential Personnel, testified in his deposition that Mr. Duncan asked him about Mr. Trie, that he spoke favorably of Mr. Trie to Mr. Duncan, and that he told Mr. Duncan that he felt that Mr. Trie was qualified to serve on the Bingaman Commission. Deposition of Bob Nash at 92-93. This is consistent with Mr. Duncan's testimony regarding his conversation with Mr. Nash. Deposition of Charles Duncan at 99.

Ernest Green. Mr. Green also testified in his deposition that he recommended to Mr. Duncan that Mr. Trie receive an Administration appointment, and that they had a follow-up conversation where Mr. Duncan told Mr. Green that Mr. Trie was being considered for a trade advisory board and asked if Mr. Green would support him. Deposition of Ernie Green at 127, 137-38. This is consistent with Mr. Duncan's testimony regarding his conversation with Mr. Green. Deposition of Charles Duncan at 99-100.

2. **The Deposition Testimony of Phyllis Jones and Peter Scher**

Mr. Duncan also spoke about Mr. Trie's appointment with the U.S. Trade Representative staff. The deposition testimony of Phyllis Jones corroborates the deposition testimony of Mr. Duncan. Furthermore, the deposition testimony of Peter Scher is not only consistent with the testimony of Mr. Duncan, but directly refutes the majority staff's characterization of what was purportedly said during the interview of Mr. Clemons.

Phyllis Jones. Ms. Jones was the Assistant U.S. Trade Representative who served as the “gatekeeper” for the many names suggested for the 34 advisory committees associated with USTR. Names came from sources such as members of Congress, the State Department, the Commerce Department, and the National Economic Council. Deposition of Phyllis Jones at 23, 37, 106. Ms. Jones testified that the Administration was seeking candidates with diverse backgrounds of geographies, ethnic groups, industries, and business size for the Bingaman Commission. *Id.* at 21. Ms. Jones said that Mr. Duncan brought Mr. Trie’s name to her attention, and that Mr. Trie was suggested because he was both a small businessman and an Asian-American -- not because of his political contributions or affiliation with the DNC. *Id.* at 58-60. Ms. Jones also corroborated Mr. Duncan’s testimony that he never described Mr. Trie as a “must appointment” or stated that his name had come from a “high level” in the Administration. *Id.* at 59-60. This is consistent with Mr. Duncan’s testimony about his conversations with Ms. Jones.

Furthermore, Ms. Jones testified that neither Steven Clemons nor anyone else in Senator Bingaman’s office ever raised any concerns about Charlie Trie being appointed to the Bingaman Commission. *Id.* at 83. She recalled receiving no e-mails or other written documents expressing concern about Mr. Trie’s appointment from Mr. Clemons or anyone else, and she was unaware of anyone expressing concern about Mr. Trie to Mr. Duncan. *Id.* at 83-84.

Peter Scher. Mr. Scher was the chief of staff to the United States Trade Representative in 1995. He testified that he spoke to Steven Clemons about the Bingaman Commission, but that Mr. Clemons never said he was frustrated by the appointment process, never said that there were too many political people on the Bingaman Commission, and never indicated a concern about the quality of the people on the Bingaman Commission. Mr. Scher’s sworn testimony also directly refutes the majority staff’s notes of their interview with Mr. Clemons, which said that “Clemons told Scher that he was worried about the quality of the appointments.” Mr. Scher testified that Mr. Clemons never told him he was concerned about the quality of the appointments. Deposition of Peter Scher at 32.

As is obvious from these summaries, Mr. Duncan’s extensive testimony about Charlie Trie’s appointment to the Bingaman Commission was fully corroborated by the sworn testimony of other important and credible witnesses whose testimony has not been challenged.

D. Chairman Burton Misquoted Testimony to Make It Appear Incriminating

One of Chairman Burton’s chief allegations is that Mr. Duncan made a false statement to Congress when he stated in his answers to the interrogatories that “no one expressed opposition” to Mr. Trie. According to Chairman Burton, Mr. Duncan’s statement is “flatly contradicted by Clemons’ account.”

Unfortunately, Chairman Burton selectively quoted Mr. Duncan’s answer. What Mr. Duncan actually said was, “To the best of my recollection, no one expressed opposition to me.” Given the substantial inaccuracies in the notes taken by Chairman Burton’s staff, it is unclear if

Mr. Clemons did express opposition to Mr. Trie to Mr. Duncan. Even if such opposition were expressed, however, Mr. Duncan's failure to recall Mr. Clemons's statement could not possibly be the basis for criminal charges. During the time period in question, Mr. Duncan was handling hundreds, if not thousands, of presidential nominations. Under these circumstances, it is not surprising that Mr. Duncan would be unable to recall, three years later, whether opposition was expressed to one of 18 members of a minor commission.

Thus, you should not be misled by Chairman Burton's selective editing. A normal and understandable inability to recall is not a federal criminal offense.

III. ADDITIONAL KEY INFORMATION THAT CHAIRMAN BURTON LEFT OUT OF HIS LETTER

Throughout his letter to you, Chairman Burton repeatedly creates a misleading impression by leaving out critical facts. By omitting this information, Chairman Burton creates the appearance of wrongdoing when, in fact, none is present. The following are some examples of such material omissions.

A. White House Donor Lists

According to Chairman Burton, a key piece of evidence that Mr. Duncan lied to the Committee is a database spreadsheet of potential appointees from the Office of Presidential Personnel that is "entirely composed of major donors and supporters of the DNC and the Clinton-Gore campaign." Chairman Burton's theory appears to be that only contributors and supporters were considered for presidential appointments.

Chairman Burton, however, omitted the fact that this list is actually a heavily redacted list produced by the White House in response to the Committee's requests for the names of contributors considered for appointments. It does not include the names of any individuals who did not make contributions who were considered for appointments.

The appointments to the Bingaman Commission themselves corroborate Mr. Duncan's deposition testimony that "the fact that someone made a contribution does not disqualify them from consideration. Nor is it the sole criteria upon which appointments are based." Deposition of Charles Duncan at 177-78. Of the 18 commissioners, at least six were Republicans, one was a political independent sponsored by Republican Senator Orrin Hatch, and others were not politically active, including a college professor, a journalist, and a senior fellow at the Council on Foreign Relations.

B. Obstruction of the Investigation

In Chairman Burton's letter, he repeatedly accused Mr. Duncan of obstructing the Committee's investigation. For example, he states that "[i]f Charles Duncan knowingly made false statements to the Committee, those statements prevented the Committee from learning the whole truth about the appointment of Charlie Trie to a governmental post."

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In fact, however, Mr. Duncan actually cooperated extensively with congressional investigators. Mr. Duncan appears to have done everything asked of him throughout the congressional campaign finance investigations. On August 13, 1997, he appeared voluntarily for a deposition by the Senate Committee on Governmental Affairs that lasted over two hours. He then voluntarily appeared before this Committee for another deposition on September 4, 1997, that lasted an additional 5 hours and 42 minutes. This deposition testimony makes clear that Mr. Duncan in no way "repeatedly attempted to avoid answering fundamental questions regarding Trie's appointment," as Chairman Burton alleges in his letter.

Mr. Duncan also agreed to testify voluntarily before the Committee in February 1998. Chairman Burton, however, canceled the hearing the night before Mr. Duncan was scheduled to testify.

Finally, Mr. Duncan voluntarily responded to the Committee's April 1998 interrogatories even after Chairman Burton made available to the press his staff's interview notes with Steve Clemons.

IV. CONCLUSION

Charles Duncan is a long-time government employee whose public service has spanned several administrations and whose reputation has been, until now, unblemished. I hope that the Department of Justice Campaign Finance Task Force will evaluate Chairman Burton's allegations against the objective facts in the record.

Sincerely,



Henry A. Waxman
Ranking Minority Member

Attachment

cc: Members of the Committee on Government Reform
David Vicinanza, Esq.