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ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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EXECUTIVE SESSION MATERIALS FOR MEMBERS AND AUTHORIZED STAFF ONLY

September 10, 1997

The Honorable Dan Burton
Chairman
Committee on Government Reform and Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Burton:

Over the past two months, 39 depositions have been taken by your staff as part of the campaign finance investigation. These depositions have lasted over 160 hours -- more than four hours per deposition. Over 80 additional depositions have been scheduled or requested, including 10 that are scheduled for this week alone.

Only a few members of the Committee have participated in these depositions. On the Democratic side, Representatives Lantos, Kanjorski, Maloney, Barrett, Cummings, Turner, and I have all sat in on depositions. On the Republican side, you have briefly sat in on one deposition. The vast majority of Committee members have not participated in any depositions.

I am writing, therefore, to convey my impressions and those of my staff about the depositions. As Committee members, we have an obligation to ensure that the deposition process is not abused. Unfortunately, as described below, I believe that the depositions are being conducted in a way that no member of the Committee should countenance and that would never be tolerated in any public proceeding.

I. The Depositions Lack a Coherent Focus

Your eight-month investigation has cost our Committee millions of dollars. By this point, it is reasonable to expect concrete results from the investigation. In the Senate, for instance, 14 days of hearings have already been held. At a minimum, the investigation should have a coherent focus -- with the depositions being used to examine a defined set of topics in depth.

Unfortunately, there is no focus to the depositions. The depositions appear to be taken

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haphazardly, without any discernible investigative strategy or plan. In fact, it appears that the depositions are being used primarily as fishing expeditions by the majority staff.

The list below is a small but representative sample of the topics pursued by the majority staff as the depositions have progressed:

1. The responsibilities Holli Weymouth performed for Mark Middleton
2. How Webster Hubbell obtained office space
3. How Webster Hubbell obtained employment
4. The flights Wayne Reaud and Truman Arnold made on Air Force One
5. The time Truman Arnold first heard of the White House database
6. Why Susan Lavine had a "hard pass" that allowed her to enter the White House
7. Why B.J. Thornberry did not file a DNC FEC report in October 1996
8. How the President learned about Webster Hubbell's billing dispute
9. Vernon Jordan's knowledge of Ron Brown's relationship with Nolanda Hill
10. White House polling requests during the 1996 election
11. Minyon Moore's get-out-the-vote efforts for the DNC
12. The activities of the DNC's Office of Membership Services
13. The activities of the Presidential Legal Expense Trust
14. The size of the DNC's media budget
15. The activities of the 1992 Presidential Inaugural Committee
16. The President's 50th Birthday Celebration
17. The activities of the Bingaman Commission
18. Vernon Weaver's activities at the Small Business Administration in the 1970s
19. The responsibilities Yusuf Khapra performed for Mack McLarty
20. The responsibilities Alejandra Castillo performed for Don Fowler
21. The responsibilities Janice Enright performed for Harold Ickes
22. Bernard Rapoport's overnight stay at the White House
23. The personal relationship between Harold Ickes and Dick Morris
24. The responsibilities Evan Ryan performed for Maggie Williams
25. Ron Brown's trade missions to China
26. The labor dispute at a Sprint subsidiary in San Francisco
27. How the DNC issue-advocacy ads were created
28. Dick Morris's fee arrangements with President Clinton
29. David Watkins's use of White House helicopters
30. Susan Thomases's business dealings with James Riady
31. Senator Sasser's appointment as Ambassador to China
32. Bernard Nussbaum's resignation
33. The delivery of flowers to the First Lady's office
34. Hazel O'Leary's charitable solicitations

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35. Efforts to defeat Prop. 209 in California
36. The nomination of March Fong Eu as Ambassador to Micronesia

Viewed in isolation, it may be possible to justify pursuing some of these topics in the depositions. Viewed collectively, however, the list illustrates how disorganized the depositions have become. I would urge you to review the deposition transcripts to comprehend the full scope of the majority's questioning. I believe you will be struck by the fact that virtually none of the witnesses have had any detailed knowledge about any of the principal figures in the investigation, such as John Huang or Charlie Trie. The result has been that although over 160 hours of depositions have been conducted, the Committee has learned virtually nothing that has not previously been reported in the press or uncovered by Senator Thompson.¹

II. The Depositions Frequently Seek Information Beyond the Investigation's Scope

In addition to their lack of focus, the depositions have frequently strayed beyond the scope of the investigation. Under H. Res. 167, depositions can be taken to investigate only "political fundraising improprieties and possible violations of law." Over the objections of the minority, however, Chairman Burton's staff have repeatedly pursued questions that do not fall within this confined scope. Questions have gone so far afield that Dick Morris was even asked, "Did there come a time when Mr. Stephanopoulos told you about the discovery of life on Mars?"

The overall approach of the majority is characterized by a comment one of the attorneys working for the majority told a member of the minority staff during the August recess. According to one majority counsel, he and his colleagues had been instructed to "blow off" any objections raised by the minority because witnesses will answer almost any question in order to finish the deposition and avoid having to return at a later date.

Specific examples of improper questions are described below. As these examples

¹The one exception to the majority's scatter-shot approach has been the inquiry into the circumstances surrounding Webster Hubbell's employment after he left the Justice Department. The majority staff has attempted to probe this issue thoroughly, calling 8 witnesses with first-hand knowledge of the circumstances surrounding Mr. Hubbell's employment. This inquiry, however, has to date refuted the majority's suspected conspiracy theory. Each of the witnesses has testified that the witness acted out of personal friendship for Mr. Hubbell -- not as part of a White House conspiracy to affect Mr. Hubbell's Whitewater testimony. Moreover, the investigation into Webster Hubbell has inexplicably broadened to encompass Mr. Hubbell's 1993 confirmation, his work at the Department of Justice, and his role in the replacement of U.S. Attorneys after the 1992 election.

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illustrate, the majority staff appears to believe that it has been granted an essentially limitless mandate to conduct depositions on any topic it desires. Indeed, majority counsel have so asserted on the record. For example, in the deposition of Charles Duncan, the majority counsel asserted that the majority's authority under H. Res. 167 to depose witnesses regarding "political fundraising improprieties and possible violations of law" should "be read in the disjunctive," thereby authorizing the majority to investigate any "possible violation of law" regardless of whether it is related to political fundraising.

A. Questions That Pry into Private Lives

On numerous occasions, the majority staff has sought personal information from witnesses that falls outside the scope of the investigation. For example, Janice Enright was asked what type of car she drives. Karen Hancox was asked, "Did you ever receive a drug test?" Yusuf Khapra was asked for the name of his girlfriend. Evan Ryan was asked if Maggie Williams ever received personal phone calls in the office. Dick Morris was asked if he knew of any legal problems in Harold Ickes' background: "You hail from New York as Mr. Ickes does. Are you familiar with his -- do you have any personal knowledge about any legal problems in his background?" Mr. Morris also was asked if he ever "talked to the President about how he treated David Watkins or Betsy Wright." These sorts of questions may have a voyeuristic appeal, but they are irrelevant to this investigation.

The majority has also often sought the social security number of a witness during a deposition. Such a question implies that the majority is investigating the witness, and serves no purpose other than intimidation.

B. Questions That Relate to Whitewater

The events popularly known as "Whitewater" have been examined exhaustively both by Independent Counsel Kenneth Starr, who has spent over \$30 million on his ongoing investigation, and by Senator D'Amato in hearings last year. While Whitewater may be a particular obsession to some, I think most of the Committee members would be surprised to learn that it has become a major focus of the depositions.

Nevertheless, this is exactly what has happened. Witnesses such as Michael Berman, Jim Blair, Vernon Jordan, Jim Lewin, Dick Morris, Mike Schaufele, and Mickey Kantor have been questioned about their knowledge concerning Whitewater. For example, Mr. Schaufele was questioned concerning the Castle Grande investment project, the business dealings of a Whitewater figure named Seth Ward, and other Whitewater-related matters. The majority has even tried to investigate Whitewater-related work done by the President's private lawyer, asking

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Dick Morris, "Did you speak to [Bob Bennett] on matters related to Whitewater?" Recently, Committee attorneys also have been asking witnesses such as Dick Morris and Maggie Williams about a San Francisco attorney named Jack Palladino, and whether he was hired in 1994 to investigate Rep. James Leach, who at the time was investigating Whitewater matters.

These Whitewater inquiries are beyond the scope of the deposition authority granted to the Committee under H. Res. 167 because they do not involve "political fundraising improprieties and possible violations of law."

C. Questions That Relate to Democratic Political Strategy

The majority has also strayed beyond the permissible scope of depositions by seeking to uncover elements of Democratic political strategy. For example, Michael Berman, a private citizen who advised the Clinton/Gore campaign, was intensively questioned about the media budgets for the Clinton-Gore and DNC campaigns. He was asked, for instance:

Were you aware of efforts to have large media budgets in the summer and fall of 1995?

To your knowledge, was money raised for media budgets?

Were you aware of any efforts to direct large volumes of money to media in the fall of 1995?

But do you have any knowledge of efforts to have massive media buys in the fall of 1995?

Do you have any knowledge of Dick Morris in September of 1995 driving efforts to get a \$10 million media budget approved?

Do you have any general knowledge of any discussions between Mr. Ickes and Mr. Morris about the need for raising large amounts of money in the fall of 1995?

Similarly, Doug Sosnik, the White House political director, was questioned for more than two hours on the general functioning of the DNC's issue and advertising strategy. And Dick Morris, a former top strategist for the President, was asked such questions as "Did you advise Mrs. Clinton at all on her health care reform policies?" and "Did you conduct polls regarding Whitewater or Filegate or other matters that arose?"

These questions are inappropriate. It is an abuse of the deposition power -- as well as blatantly partisan -- to attempt to use depositions to uncover confidential Democratic political

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strategies.

III. The Depositions Are Abusive to Witnesses

Perhaps the most serious problem of all is the burden that the depositions unfairly impose on witnesses. Simply put, the majority counsel seem incapable of conducting competent depositions. Witnesses are regularly asked repetitive questions and questions about which they have no knowledge. They are misled about the subject of the deposition, confronted with documents that they have never seen before, and are subjected to attempts to "trap" or "rattle" them. In short, many innocent witnesses are treated as if they were targets in a criminal investigation.

A. The Maggie Williams Deposition

The 10 ½ -hour deposition of Maggie Williams, which was conducted on August 27 by the chief investigative counsel for the majority, illustrates many of the problems witnesses encounter. First, Ms. Williams was misled about the focus of the deposition. Prior to the deposition, Ms. Williams's attorney had been informed that the questioning would focus primarily on Ms. Williams's contacts with Johnny Chung. These contacts are a legitimate area of Committee inquiry, since Mr. Chung is alleged to have delivered a DNC contribution to Ms. Williams at her White House office. At the deposition, however, the majority counsel announced that the deposition also would include "general fund-raising issues," Webster Hubbell, and "the main characters -- John Huang, Charlie Trie, the Riadys." As it turned out, the majority counsel asked about a host of other matters as well. Questions about the central issue of Mr. Chung did not appear until about 7 hours into the deposition.

At the deposition, Ms. Williams was repeatedly subjected to long exchanges of repetitive questions. For example, the majority counsel asked Ms. Williams about a May 9, 1996, meeting that Ms. Williams allegedly attended. Ms. Williams testified that she could not recall any specific meeting on that date. Nevertheless, the majority counsel persisted in asking about this meeting over and over again. The following are only a few of the many questions asked:

Do you recall prior to this May 9th meeting ... if Harold actually had told you anything related to Charlie Trie?"

In this May 9 meeting, did anyone indicate there had been an earlier meeting several weeks before with the First Lady and Harold Ickes about Mr. Trie?

And in this May 9th meeting, did Mr. Cardozo talk about the investigative group's investigation of ... the donations in general?

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These are the notes that Harold Ickes made from the May 9th meeting. ... Does that refresh your recollection as to whether Mr. Cardozo ... had discussed, you know, that Charlie Trie was specifically the person giving these large donations?

The majority counsel then informed Ms. Williams that Michael Cardozo had testified that he called Williams prior to the May 9 meeting. Ms. Williams testified that she didn't recall Mr. Cardozo doing so. The majority counsel then proceeded to ask several more times if Ms. Williams recalled Mr. Cardozo calling to set up the meeting:

And so you don't recall talking to him on the phone about setting up this meeting?

You have no knowledge of who invited them or how they ended up in your office about the meeting?

[Y]ou don't have a recollection of Mr. Cardozo calling to set up a meeting?

I think Mr. Cardozo indicated that he called you, so I am trying to figure it out if you have a recollection of how it came about?

As it turned out, not only were these questions redundant, they were also erroneous. Much later in the deposition, the majority counsel acknowledged that Mr. Cardozo never called about the May 9 meeting, conceding that "when I said that I thought Cardozo called you about the May 9 meeting it was actually the April 4 meeting."

The Williams deposition is filled with other similar examples of repetitive questioning. For instance, the majority asked a series of repetitive questions and wasted a considerable amount of time on the topic of visits by Mark Middleton to the White House. After Ms. Williams testified that she did not recall specific meetings with Mark Middleton at the White House, the deposition went off the record to allow her to carefully review an exhibit consisting of several pages of Secret Service records listing the dates and the times Mr. Middleton visited the White House. Ms. Williams then testified that "the dates mean nothing to me" and "it doesn't refresh my recollection." Despite Ms. Williams's close examination of the records and her testimony that it did not refresh her recollection, the majority counsel then went on to direct her attention to specific entries in the records she had just reviewed, repeatedly reading the times of day of the Middleton visits and asking whether the information assisted Ms. Williams. Again, Ms. Williams said that she did not recall any information about what Mr. Middleton was doing at the White House on those dates. In this repetitive and abusive process, the only time Ms. Williams was able to elaborate on the meetings was one occasion when the majority counsel provided her with separate documentation containing additional information that refreshed her recollection.

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Ms. Williams was also asked many questions about events with no known connection to her. Thus, she was asked whether she had ever met Jack Palladino, a San Francisco attorney allegedly hired to investigate Rep. James Leach; whether she knew about the activities of the "Back to Business Committee"; and whether she had any knowledge of the charitable contributions solicited by Hazel O'Leary. Not surprisingly, Ms. Williams had no knowledge about these topics. No justification was given for subjecting her to this kind of fishing expedition.

During the first 10 hours of the deposition, the minority's chief investigative counsel sought permission on several occasions to ask short clarifying questions. The majority counsel, however, repeatedly denied the minority counsel the opportunity to ask any questions, even when the minority's question would have clarified an unclear or confusing answer by Ms. Williams. Although the deposition began at 10:00 a.m., the majority counsel did not conclude her questioning until 8:10 p.m. (without even a lunch or dinner break). As a result, the minority counsel was effectively foreclosed from asking any substantive questions.

A final irony is that most of the 10 ½-hour deposition was entirely unnecessary because it duplicated the deposition of Ms. Williams conducted in the Senate. Moreover, the deposition was extremely intrusive, burdensome, and expensive to the witness. Ms. Williams says that in responding to the various investigations, she has incurred over a quarter of a million dollars in attorneys' fees.

B. Other Deposition Abuses

The problems encountered by Maggie Williams in her deposition are representative of problems in many other depositions. For example, virtually every deposition wastes enormous time on repetitive questioning.

Like Ms. Williams, most witnesses are also forced to respond to "fishing expedition" questions about events or persons to which they have never been publicly connected. A particularly egregious example is the deposition of Michael Schaufele, Webster Hubbell's accountant, who was called to be questioned about Mr. Hubbell. Without any predicate whatsoever, the majority counsel asked Mr. Schaufele a series of questions on political fundraising and national security, including whether he knows Roger Tamraz, Yogesh Gandhi, Pauline Kanchanalak, Eric Hotung, and John Huang. He never had met any of those individuals. No justification was given as to why a private citizen like Mr. Schaufele, who has no connection to campaign fundraising, should be subjected to extensive campaign fundraising questions for which there is no good-faith basis to believe he has any personal knowledge.

A representative example of the majority's efforts to "trap" or "rattle" witnesses is the deposition of Charles Duncan, a White House employee. In this deposition, the majority asked

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Mr. Duncan if he recalled an April 23, 1996, White House visit by Charlie Trie. Mr. Duncan stated that he did not. When he again was asked if he recalled setting up an appointment with Mr. Trie for April 23, 1996, Mr. Duncan asked the majority if it had a document that would inform him of the date the Bingaman Commission (which Mr. Trie served on) was announced. The majority said "we might" but refused to show him a document or provide any help.

Finally, as was the case for Ms. Williams, the deposition process has been redundant and personally burdensome for most witnesses. Most of the House depositions have overlapped significantly with the Senate. Of the 39 witnesses deposed by the House, 21 had previously been deposed by the Senate. As Doug Sosnik testified in his deposition, "I would say that the time I spent here and the questions that I was asked were very similar in subject matter and in documents to what I did in the Senate." Moreover, of the witnesses deposed by the House, 15 have also been investigated by Independent Counsel Kenneth Starr or the Department of Justice. Virtually the only witnesses deposed by the House who have not been previously deposed by the Senate or investigated by Mr. Starr are minor figures with little or no knowledge concerning the topics upon which they were questioned.

IV. Conclusion

In my view, the conduct described above is a very serious matter. The Committee has delegated extraordinary power to the staff but has neglected to exercise any supervision to ensure that staff acts responsibly and competently. The result is a process completely shielded from any public accountability. It raises fundamental questions about the wisdom of allowing the Chairman and his staff -- with virtually no member participation -- to continue to use depositions as part of the campaign finance investigation.

Sincerely,



Henry A. Waxman
Ranking Minority Member