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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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August 3, 1998

The Honorable Henry A. Waxman
U.S. House of Representatives
Washington, D.C. 20510

Dear Congressman Waxman:

I write in response to your purposefully inaccurate letter of July 31, 1998. In this letter you misrepresent statements made during the meeting we both attended with Attorney General Janet Reno and FBI Director Louis Freeh. Specifically, you suggest that I will seek to hold the Attorney General in contempt if she fails to appoint an Independent Counsel to investigate campaign finance matters. Nothing could be further from the truth, and I deeply resent your mischaracterization of what took place in the meeting.

In the course of our meeting, both Attorney General Reno and Director Freeh expressed their concerns about providing the Freeh and La Bella memoranda to Congress and Attorney General Reno indicated she would not comply with the Committee's subpoena for the records. I understand their concerns; nevertheless, in the context of the Department of Justice campaign finance investigation, I believe that the oversight interests of Congress are greater than the institutional policy concerns of the Department of Justice. In conjunction with a review by House Counsel and the Congressional Research Service, our analysis shows there is clearly precedent for obtaining records such as these. What is unprecedented, is for an Attorney General to fail to follow the law when her two key investigators have so strongly indicated she has no other choice.

In addition to making the fundamental point about her reluctance to turn the two memoranda over to Congress, the Attorney General also stated that she was three weeks away from completing her evaluation of the La Bella memorandum which she has already had for over two weeks. In the context of this discussion, you suggested that it would be better to wait for this three week period before making any decisions on pursuing the memos, how to pursue them, or

whether to hold the Attorney General in contempt for failing to provide them. I explained that I proposed to have a vote on contempt next week in Committee and that a vote on the House floor could not take place until September, due to our schedule.

Your observations and attacks do not square with what actually took place. In fact, the meeting was cordial with the Attorney General and FBI Director, I believe recognizing our institutional concerns, even if not agreeing with them. Mr. Freeh, in particular, stated that we had “exercised [our] oversight responsibilities very responsibly to date.”

My reluctance to wait for three weeks for the Attorney General’s additional review of the La Bella memoranda before taking further action comes from my serious reservation about any additional delay. Time and again, this Committee has been faced with obstruction and delaying tactics. The Attorney General seeks to keep from the American people the memos of her own designated investigators who believe she is not following the law. In addition, the Attorney General has failed to assert any relevant privilege to do so. There could not be a more compelling case for congressional oversight.

As you well know, my decision to begin contempt proceedings is tied to this Committee’s legitimate oversight interests in the Freeh and La Bella memoranda to determine if the Attorney General is following the law. I would certainly prefer to have the documents to review, rather than hold the Attorney General in contempt for refusing Congress’ legitimate oversight in these matters. Obviously a decision to appoint an Independent Counsel might make the oversight of the Justice Department’s investigation moot since a Justice Department investigation would no longer exist under Ms. Reno’s control if there were to be an independent counsel. (I use the word “might” because the inordinate delay, and the Attorney General’s highly questionable and unsupported interpretation of the Independent Counsel statute, will continue to cause concern even if an Independent Counsel is appointed. In the context of what has taken place over the past two years, it may be appropriate for Congress to continue its investigation of the Department of Justice decisionmaking process even if an Independent Counsel is appointed. You may recall this is exactly what was done in the Iran-Contra investigation when then-Attorney General Ed Meese took all of one month to appoint an independent counsel; yet Congress subsequently investigated and reviewed his investigative decisions.)

It is the failure of the Attorney General to turn over subpoenaed records which brings us to possible contempt action – records in which her own investigators indicate she should apply the independent counsel statute to the campaign finance investigation. Yesterday’s *Washington Post* indicates that Mr. La Bella’s memorandum advises the Attorney General that “she must seek an independent counsel if she herself is going to obey the law, according to officials familiar with the document...” *The Washington Post* story also indicates that there is concern that the Attorney General has not treated Mr. La Bella’s information as new information that needs to be put to the “specific and credible” test defined by the statute. This would require a review within 30 days – which is beyond the time the Attorney General has asked for her review.

Director Freeh and Mr. La Bella have indicated that this investigation reaches the highest levels of the White House and Democratic National Committee as well as close associates of the

President who appointed her. This is a very serious issue – is the Attorney General following or defying the law? And, furthermore, why is the news media being provided with more access to Mr. La Bella's memo than is Congress?

We are holding a hearing this week to address these matters. The Justice Department has already committed that the witnesses will appear without our committee having to issue subpoenas. I accepted this representation from the Deputy Attorney General. In our meeting on Friday, you encouraged the Attorney General to renege on this agreement and tell the witnesses not to appear. Your continued efforts to stymie review of important matters is regrettable, but certainly consistent.

Our hearings will however, proceed. The Attorney General's failure to turn over the memos will obviously hamper our ability to discuss the key issues. Director Freeh has written: "It is difficult to imagine a more compelling situation for appointing an independent counsel." Mr. La Bella reportedly has indicated that he believes the Attorney General has "no choice" but to appoint an independent counsel. Both have indicated that the statute is triggered under both the mandatory and discretionary sections of the law. It is for these reasons, that in the course of proper oversight we seek to review these memos which indicate the Attorney General is not following the law.

In conclusion, I deeply resent your mischaracterization of our meeting on Friday. We met to discuss whether the Department would provide the Committee with the Freeh and La Bella memoranda. The fact that the Department has indicated that it intends to ignore the legitimate oversight interests of Congress cannot be met with a lack of response from the appropriate oversight committee. While it might suit your partisan interests to support yet another lengthy delay and divert attention by continued attacks on me personally, I believe that your interests and those of the American people are not in accord.

Sincerely,

A handwritten signature in black ink that reads "Dan Burton". The signature is written in a cursive, somewhat stylized font. The first letter "D" is large and loops around the "an". The last name "Burton" is written in a similar cursive style.

Dan Burton
Chairman

cc: Attorney General Janet Reno
FBI Director Louis Freeh