

DAN BURTON, INDIANA  
CHAIRMAN

BENJAMIN A. GILMAN, NEW YORK  
J. DENNIS HASTERT, ILLINOIS  
CONSTANCE A. MORELLA, MARYLAND  
CHRISTOPHER SHAYS, CONNECTICUT  
STEVEN SCHIFF, NEW MEXICO  
CHRISTOPHER COX, CALIFORNIA  
ILEANA ROS-LEHTINEN, FLORIDA  
JOHN M. McHUGH, NEW YORK  
STEPHEN HORN, CALIFORNIA  
JOHN L. MICA, FLORIDA  
THOMAS M. DAVIS III, VIRGINIA  
DAVID M. McINTOSH, INDIANA  
MARK E. SOUDER, INDIANA  
JOE SCARBOROUGH, FLORIDA  
JOHN SHADEGG, ARIZONA  
STEVE C. LATOURETTE, OHIO  
MARSHALL "MARK" SANFORD, SOUTH CAROLINA  
JOHN E. SUNUNU, NEW HAMPSHIRE  
PETE SESSIONS, TEXAS  
MIKE PAPPAS, NEW JERSEY  
VINCE SNOWBARGER, KANSAS  
BOB BARR, GEORGIA  
ROB PORTMAN, OHIO

ONE HUNDRED FIFTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051  
TTY (202) 225-6852

HENRY A. WAXMAN, CALIFORNIA  
RANKING MINORITY MEMBER  
TOM LANTOS, CALIFORNIA  
BOB WISE, WEST VIRGINIA  
MAJOR R. OWENS, NEW YORK  
EDOLPHUS TOWNS, NEW YORK  
PAUL E. KANJORSKI, PENNSYLVANIA  
GARY A. CONDIT, CALIFORNIA  
CAROLYN B. MALONEY, NEW YORK  
THOMAS M. BARRETT, WISCONSIN  
ELEANOR HOLMES NORTON,  
DISTRICT OF COLUMBIA  
CHAKA FATTAH, PENNSYLVANIA  
ELIJAH E. CUMMINGS, MARYLAND  
DENNIS KUCINICH, OHIO  
ROD R. BLAGOJEVICH, ILLINOIS  
DANNY K. DAVIS, ILLINOIS  
JOHN F. TIERNEY, MASSACHUSETTS  
JIM TURNER, TEXAS  
THOMAS H. ALLEN, MAINE  
HAROLD E. FORD, JR., TENNESSEE

BERNARD SANDERS, VERMONT  
INDEPENDENT

March 2, 1998

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

Dear Chairman Burton:

Last week, during the meeting of the Committee's document protocol working group, I am sure you will remember that one of your staff members animatedly informed me that he had "forgotten more about criminal law" than I ever knew. Although I appreciate your staff's willingness to share his views of his abilities, I still want to express my concerns to you about the questionable legal advice your staff for the campaign finance investigation is providing to the Committee.

I believe the decision to release your staff's notes of their interview of Steven Clemons, who was scheduled to testify before the Committee last week, was reprehensible. By releasing the notes and simultaneously canceling the hearing, you released unverifiable information about two individuals, Charles Duncan and Phyllis Jones, and then denied Mr. Duncan and Ms. Jones an opportunity to respond to the allegations in a hearing. Furthermore, Mr. Clemons has disputed the accuracy of the notes and claims they do not reflect his views.

Your staff's justification for this act was that it is standard practice for federal prosecutors to leak confidential witness interviews to the media. If that is indeed the standard practice, and I strongly suspect it is not, then I suggest we commence an investigation into this abuse by federal prosecutors.

I am also concerned with the legal advice you have received with regard to the Fifth Amendment. I understand that the Committee attempted to compel testimony from Miami lawyer Charles Intriago even after his attorney, Robert Plotkin, informed the Committee that Mr. Intriago would be asserting his Fifth Amendment privilege. In a February 18, 1998, letter to your chief counsel Richard Bennett, Mr. Plotkin noted that Mr. Bennett had advised him that Mr. Intriago did not need to assert his Fifth Amendment privilege because the applicable statute of limitations had run. Mr. Bennett then informed Mr. Plotkin that the Committee would seek contempt if Mr. Intriago exercised his constitutional right.

The Honorable Dan Burton

March 2, 1998

Page 2

In a February 25, 1998, article in the *Hill* newspaper, your staff's views were described as "ludicrous at best" by Washington attorney Steve Ryan, an adjunct professor at Georgetown University Law Center who teaches a course on congressional investigations. Among the many defects in Mr. Bennett's legal reasoning are the fact that: (1) fixing precise dates to statutes of limitations is complicated; (2) Mr. Intriago could potentially be prosecuted for conspiracy or obstruction of justice even if the statute of limitations on possible illegal campaign contributions had run; and (3) Mr. Intriago is apparently the subject of an on-going criminal investigation by the Department of Justice. An even more basic question is why your counsel is providing legal advice to Mr. Intriago in the first place.

In addition, as I noted in a February 27, 1998, letter, I believe the legal reasoning behind your February 20, 1998, ruling regarding the subpoena issued to Donald Lam is unfounded. It is clear that as an accountant, Mr. Lam is subject to 26 U.S.C. §7216, which prohibits Mr. Lam from disclosing a client's tax returns. If the Committee were to follow your legal interpretation of this statute, and enforce the subpoena issued to Mr. Lam, the Committee would be compelling a witness to commit a crime. I do not believe this is an appropriate action for this Committee to undertake.

I am dismayed that our Committee would be receiving -- and apparently relying upon -- this kind of dubious advice from the attorneys conducting the campaign finance investigation.

Sincerely,



Henry A. Waxman

Ranking Minority Member

cc: Members of the Committee on Government Reform and Oversight