PROCEDURAL BACKGROUND AND OVERVIEW

Introduction

In the wake of numerous revelations in the news media of unusual, and possibly illegal, campaign contributions to the Democratic Party during the 1996 presidential campaign, the Senate Majority Leader announced during the first week of December 1996, that the Committee on Governmental Affairs would conduct an investigation on behalf of the Senate into fund-raising practices of the Democratic National Committee ("DNC") following the convocation of the 105th Congress in January 1997. The Majority Leader determined to centralize all aspects of the inquiry in the Governmental Affairs Committee (hereafter referred to simply as "the Committee"), which has the broadest oversight jurisdiction and most extensive subpoena authority of any committee of the Senate.

The investigation and its public hearings had three fundamental and interrelated purposes, consistent with the constitutional responsibilities of the Senate: informing the public, examining the operation of the law and of government officials, and developing a record to assist the Senate in considering legislation.

The first of these purposes was to create a record of what occurred during the 1996 election cycle to inform the American people. A knowledgeable electorate is the cornerstone of democracy, and the public has a right to know what went on during the 1996 campaign. The people need to be informed of the operations of their government and the effectiveness or ineffectiveness of the laws in order to make informed judgments at the polls. Because all else flows from the people in a democracy, this purpose of informing the people must be ranked as the primary purpose of the investigation. In this regard, the Committee carried on the official inquiry, while the media fulfill their similar, but unofficial role, of informing the people of the facts. The

Committee succeeded in laying before the American people a great deal of information that would never have become public in the absence of the Committee's investigation. It was not always the Committee itself that released the information, but it was the Committee that was responsible for the release. For example, the White House released a great deal of information to the media before producing it the Committee. None of that information would have been publicly disclosed without the Committee's demands for the information from the White House. Vindicating the public's right to know, more than drawing its own conclusions or achieving partisan political goals, was the paramount purpose of the special investigation, and the Committee succeeded in satisfying this first purpose.

A second purpose of the inquiry and hearings was to scrutinize the operation of the current legal and regulatory framework for federal elections. For Congress to legislate and govern effectively, it must conduct routine oversight to learn how the government is functioning. Congress also has a responsibility to examine the operation of current laws on the government and private parties. This Committee is particularly well-suited to conduct such a broad oversight inquiry into the multifarious elements of this scandal because it has the broadest oversight jurisdiction in the Senate: "to study or investigate the efficiency and economy of operations of all branches of the Government."[1]

The investigation reviewed the operations of a large number of disparate agencies. From the Commerce Department, which employed John Huang, to the Interior Department and the role of campaign contributions on the approval of off-reservation Indian casinos, to the Energy

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[1] S.Res. 54, Section 13(d)(1), 143 *Congressional Record* S1421 (daily ed. Feb. 13, 1997).

Department, senior officials of which were caught up in Roger Tamraz's effort to buy access and to secure a change in U.S. policy in return for political contributions to the Democratic Party, to the White House staff and its role in developing and implementing a scheme to evade the campaign expenditure limits during the President's re-election campaign, the Committee probed into the often-ignored corners of government operations to shine light on the impact political contributions may have on the formulation and substance of government policy. The hearings informed the Committee, the Senate, and the American people of these matters and enhanced our knowledge, not always in a way that made us proud, but hopefully in a way that will improve our government.

The third purpose of the hearings is the one on which the Senate's ability to conduct this type of investigation is founded, its constitutional role to legislate. The Senate cannot legislate without knowing what is happening. How do the laws the Congress passes work in the real world? What gaps exist in their coverage? What gaps exist in the government's enforcement capabilities? Are there situations where legal proscriptions do not work? These are the types of questions relevant to any congressional hearing, as they are central to the role of Congress in our constitutional republic. The Committee went forward always bearing in mind that its entire authority was premised on the underlying legislative responsibilities of Congress, even though the Committee itself lacked legislative jurisdiction over many of the items at issue in these hearings. For this reason, the Committee did not hold hearings on particular legislative proposals; it never examined what works and does not work with an eye towards developing and recommending a legislative solution, which is typically the responsibility of the legislative committee with legislative jurisdiction conferred by Rule XXV of the Standing Rules of the

Senate. The hearings did, however, develop a factual record on which other committees with such jurisdiction can rely in formulating legislative proposals. Thus, it is the expectation of the Committee that the facts developed by its investigation and revealed in its hearings will be of use to the Committee on Rules and Administration, when it considers legislation to reform campaign finance laws, and to the other members of the Senate. Other information developed by the Committee should be relevant to other committees in the exercise of their legislative and oversight responsibilities. Finally, some of the issues investigated by the Committee touched on matters within the legislative jurisdiction of the Committee, such as potential violations of the Hatch Act.

This report should be considered an interim report to the American people and the Senate on the results of the Committee's investigation. Because the time allotted to the Committee to conduct the inquiry was severely limited, the Committee was unable to complete the inquiry, leaving a number of questions unanswered. This report may serve as a starting point for other Senate committees, the House of Representatives, and the Department of Justice to continue the investigations into the multifaceted aspects of the issues broached by the Committee's investigation.

Procedural Chronology

When the 105th Congress convened in early January 1997, Senator Fred Thompson (R-TN) was confirmed as the chairman of the Committee. On January 7, 1997, Chairman Thompson named Hannah Sistare as staff director of the Committee and hired Michael J. Madigan, a partner in the Washington, D.C., law firm of Akin, Gump, Strauss, Hauer & Feld, to serve as chief counsel for the special investigation into campaign fundraising abuses in the 1996 elections. Senator John Glenn (D-OH) was selected as the ranking minority member of the

Committee, and he named former Senate Legal Counsel Michael Davidson to serve as minority chief counsel for the special investigation.

Within a week of hiring Madigan, the Committee hired three additional lawyers to serve as senior counsel to assist in the supervision of the special investigation: Harold Damelin, former chief counsel of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs; J. Mark Tipps, former chief of staff to Senator Bill Frist (R-TN); and Harry S. Mattice, a partner in the Chattanooga, TN, law firm of Miller & Martin. In the spring, after a resolution providing additional funds to the Committee for the purpose of conducting the special investigation had been approved, the majority also hired Donald T. Bucklin, a partner in the Washington, D.C. law firm of Squire, Sanders & Dempsey, as senior counsel and promoted Tipps from senior counsel to deputy chief counsel. While some additional staff were hired in January and February, the hiring of most of the legal, investigative, and support staff to conduct the special investigation awaited the adoption by the Senate of a funding resolution to provide the necessary resources.

On January 28, 1997, Chairman Thompson delivered his initial statement to the Senate explaining the purposes of the inquiry.[2] The Chairman explained that the Committee would not be engaged in "a criminal investigation," which is the constitutional responsibility of the executive. Chairman Thompson identified two central purposes appropriate for congressional committees, and these would set the parameters and tone for the investigation. First, the Committee would undertake an inquiry with a legislative purpose: to inquire into and lay out the facts to help inform

[2] See 143 *Congressional Record* S716-18 (daily ed. Jan. 28, 1997).

Congress of the operation of the law and to assist the Senate in determining whether relevant laws need to be changed or repealed or new laws adopted. Second, the Committee would attempt to fulfill what President Wilson called "the informing function of Congress," whereby the Committee would seek to find the facts and reveal them for the American people, so that they can make informed political choices.

The Chairman made it clear that the inquiry would not be a partisan affair directed at the activities of only one political party. As he informed the Senate, the Committee's "work will include any improper activities by Republicans, Democrats, or other political partisans." The goal was to ensure that the American people perceive the investigation and subsequent hearings "as being fair and evenhanded." The Chairman was clear, however, that a bipartisan investigation would not be governed by the need "to create some false balance" between the political parties. The investigation would examine "activities . . . not political parties" and the Chairman was prepared to let "the chips fall where they may."

As the Committee sought to initiate its inquiry, three central issues had to be resolved: what was the precise scope of the inquiry; what resources were to be available to the Committee; and what time period would be allotted to the Committee to conduct its inquiry. These three issues consumed a great deal of time, longer than was anticipated, and, in light of the time limit ultimately imposed on the inquiry, the delays in resolving these issues had a significant effect on the conduct of the inquiry and the hearings.

After consulting with his colleagues in the majority and reviewing the scope of similar inquiries, Chairman Thompson proposed an investigation that would examine illegal and improper campaign fund-raising and spending activities in the 1996 federal election cycle. Chairman

Thompson wanted to ensure that the investigation would not be tied up by partisan politics, as had occurred when the minority was able to tie up an extension in the authorization for the Senate Special Committee to Investigate Whitewater Development Corporation and Related Matters in the 104th Congress. He therefore sought a budget that would permit the Committee to conduct a thorough inquiry without requiring that the Committee seek additional funds from the Senate while pursuing the investigation. He also insisted that no deadline be imposed on the investigation, consistent with the recommendations of former Senators George Mitchell and Bill Cohen, which they developed in light of their experience with the Senate's 1987 investigation of the Iran-Contra affair.

On January 29, 1997, the Committee held its organizational meeting for the 105th Congress. In addition to its regular budget, Chairman Thompson proposed a budget of $6.5 million for the special investigation, which he proposed would look into illegal and improper activities during the 1996 elections. This budget was proposed after consulting on January 28 with the majority members of the Committee.[3] No deadline on the special investigation was proposed. While the minority supported a broad scope for the investigation, it insisted on a deadline and refused to support a budget that would allow the Committee to carry on its work

[3] The proposed $6.5 million budget was based on an evaluation of the scope of the investigation the Committee was to pursue as well as comparisons with other major Senate investigations. For example, a review of the most analogous investigations showed that the 1973 Watergate Committee spent $6.9 million in 1997 dollars; the 1987 Iran-Contra Committee (a joint Senate-House committee) spent a little over $5 million in 1997 dollars; the 1995-96 Whitewater Committee spent $1.8 million (not counting Banking Committee resources known to have been spent on that investigation). Other major congressional investigations consumed far more than $6.5 million sought by Chairman Thompson (the 1975 Church Committee on the activities of the intelligence community spent $8.66 million; the 1957 McClellan Committee on improper labor activities spent $11.46 million; and the 1977 House Select Committee on Assassinations spent $15.31 million (all figures are in 1997 dollars)).

without coming back to the Senate for additional funding. The minority countered with a proposal that included a time-limited investigation with a broad scope and a budget of $1.8 million, which it argued would be adequate for commencing the inquiry, but which would clearly be inadequate for completing the inquiry.

Due to the strong disagreement between the majority and minority on the Committee, the Committee vote on the funding resolution for the investigation was put over to January 30 to allow members to try to work out a compromise, which proved elusive. While the minority supported Chairman Thompson in seeking a broad scope to the inquiry to allow investigation of both illegal and improper activities, it was unwilling to pay for such an expansive inquiry or allow sufficient time to conduct one. The funding proposed by the minority was grossly inadequate to support a thorough inquiry of the facts covered by the broad scope the minority proposed.

When the Committee met on January 30, it unanimously approved a broad scope to allow the Committee to investigate illegal or improper activities in connection with 1996 federal election campaigns. By a 9-4 vote, the Committee then approved a proposed budget of $6.5 million for an investigation without a deadline.[4] The Committee voted to include within the broad scope of its investigation:

> Illegal or improper fund-raising and spending practices in the 1996 federal election campaigns, including but not limited to:
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> Foreign contributions and their effect on the American political system;

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[4] The three additional minority members of the Committee opposed the resolution by proxy, but proxy votes are not counted on a motion to report a measure to the Senate from the Committee. Rule 3C, Rules of the Committee on Governmental Affairs. *See* 143 *Congressional Record* S1195 (daily ed. Feb. 10, 1997) (reprinting the Committee Rules).

> Conflicts of interest involving federal officeholders and employees, as well as misuse of government offices;
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> Failure by federal government employees to maintain and observe legal barriers between fund-raising and official business;
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> The independence of the presidential campaigns from the political activities pursued for their benefit by outside individuals or groups;
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> The misuse of charitable and tax-exempt organizations in connection with political or fund-raising activities;
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> Unregulated ("soft") money and its effect on the American political system;
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> Promises and/or the granting of special access in return for political contributions or favors;
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> The effect of independent expenditures (whether by corporations, labor unions, or otherwise) upon our current campaign finance system, and the question as to whether such expenditures are truly independent;
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> Contributions to and expenditures by entities for the benefit or in the interest of public officials; and
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> To the extent they are similar or analogous, practices that occurred in previous federal election campaigns.[5]

As provided by the Standing Rules of the Senate, the proposed funding resolution was referred to the Committee on Rules and Administration. Due to controversy over the scope of the investigation, the amount of money being sought, and the lack of a deadline, the Rules Committee decided to consider the Committee's routine, recurring budget request with those of all other committees and then consider the budget request for the special investigation separately.

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[5] *See* S.Rep. 105-7, Report of the Committee on Governmental Affairs to Accompany S.Res. 39, p. 3.

On February 6, the Committee's recurring budget was to be considered by the Rules Committee, and the request for funding the special investigation was specifically put off and was not to be considered. On that date, Chairman Thompson testified in favor of the Committee's recurring budget request, but Senator Glenn opposed the request, arguing that the recurring budget for normal Committee activities not be approved until the disagreement over the funding for and scope of the special investigation was resolved. Nevertheless, the Rules Committee approved the Committee's recurring budget together with those of all other Senate committees. This recurring budget was adopted by the Senate in S.Res. 54.[6]

Major issues surrounding the investigation's scope, duration, and funding remained. While discussions among the various parties were underway to resolve these issues, the Committee initiated its investigation. In January, the small majority staff of the special investigation started to put together a list of the central figures in the scandal from news media accounts in preparation for the issuance of subpoenas. The minority was asked in January to develop its own list of potential recipients of subpoenas. On February 7, 1997, the majority staff provided copies of proposed subpoenas to the minority staff pursuant to Rule 5C of the Rules of Procedure of the Committee on Governmental Affairs.[7] Additional subpoenas were presented to the minority on February 10, 1997. That same day, a list of all subpoenas proposed by the majority was provided to all members of the Committee.

On February 13, 1997, the Committee held a business meeting to discuss the 54 proposed

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[6] S.Res. 54 was approved by the Senate by unanimous consent on February 13, 1997. 143 *Congressional Record* S 1418 (daily ed. Feb. 13, 1997).

[7] *See* 143 *Congressional Record* S1195 (daily ed. Feb. 10, 1997) (reprinting the Committee Rules).

subpoenas. At that meeting, the Committee approved the issuance of 44 subpoenas by unanimous consent. The remaining 10 subpoenas were authorized to be issued by a vote of the Committee, but their issuance was deferred until February 19.

Despite the fact that the minority had been asked in January to develop a list of individuals and groups it believed ought to be subpoenaed, no such minority list was ready by February 13. On that day, the minority directed its legal staff to start the task which the majority had proposed to the minority in January.

Additional subpoenas were proposed to the minority on February 24, 1997, and the Committee staff moved ahead and began interviewing relevant persons on February 25, 1997. The next day, Michael Davidson was replaced as minority chief counsel by Alan Baron, a partner in the Washington, D.C. law firm of Foley, Hoag & Eliot.

While these steps towards initiating the investigation were being taken, serious questions remained over whether the Senate would even conduct the inquiry, despite the serious allegations that had arisen in the media. On February 27, 1997, the Senate Minority Leader announced that the minority would filibuster the resolution to fund the special investigation unless agreement were reached on the amount of funding and a cut-off date for the probe and its scope. The Minority Leader also insisted on a firm date for Senate consideration of campaign finance reform legislation as a condition of allowing the special investigation to go forward.

In an effort to move forward, on March 4, 1997, Chairman Thompson reduced the budget request for the investigation to $5.7 million, but continued to oppose the imposition of a deadline on the investigation to avoid delaying tactics designed to stretch the investigation out to the cut-

off date.

The proposed funding resolution was to come before the Rules Committee on March 6, 1997. While the Minority continued to seek a cut-off date and limited funding to allow them to control the investigation, many Republicans were concerned about the broad scope of the inquiry, which allowed the investigation to look into improper as well as illegal activities. Many Republicans feared that if that broad scope approved by the Committee were adopted, the investigation would lose its focus on the more serious illegal activities during the 1996 federal elections, and thus be sidetracked into possible activities that were improper but not illegal. Thus, as the Rules Committee moved to consider the issue, the possibility was strong that no investigation would take place.

On March 5, 1997, the Majority Leader decided to strike what he thought would be an appropriate compromise. Under the Majority Leader's plan, the scope of the inquiry would be narrowed to encompass solely illegal activities. This change would meet Republican concerns. He also proposed a deadline of December 31, 1997, a change that would meet the Democrats' concerns. Finally, he proposed a budget of $4.35 million, an amount he thought adequate to conduct the investigation through the end of the year. Chairman John Warner (R-VA) of the Rules Committee agreed to offer the Majority Leader's proposal as a compromise.

On March 6, 1997, the Rules Committee heard testimony from Chairman Thompson and Senator Glenn on the funding resolution. Both Senators opposed the narrow scope of the proposed compromise, and Chairman Thompson argued against imposing a deadline on the inquiry. Nonetheless, Chairman Warner offered the compromise amendment developed by the Majority Leader to S.Res. 39, the funding resolution, which was approved by the Rules

Committee on a party-line 9-7 vote.

On March 10, 1997, the Committee filed its report, as required by Rule XXVI.9(a) of the Standing Rules of the Senate, justifying the Committee's request for non-recurring funding to support the special investigation.[8] The Senate took up the funding resolution that day, and debate continued into March 11. During the debate, Senators from both the majority and minority expressed concern over the narrowed scope of the inquiry. To meet these concerns, Chairman Warner and the Majority Leader offered an amendment that would have required the Committee to refer to the Rules Committee any evidence of improper activities in connection with the 1996 federal elections.[9]

Because the distinction between what was illegal and what was merely improper was vague at the time and has continued to befuddle many acute observers, including the Attorney General of the United States, some members of the Committee took the position that this proposed amendment was not a satisfactory resolution. The Majority Leader thus offered Amendment No. 23 for himself, Chairman Thompson, and Chairman Warner to amend S.Res. 39 as reported by the Rules Committee to broaden the scope of the investigation so that it would cover improper as well as illegal activities.[10] Amendment No. 23 was approved by a vote of 99-0 with one senator voting "present,"[11] and S.Res. 39 was also approved, as amended, by the

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[8] *See* S.Rep. 105-7, Report of the Committee on Governmental Affairs to Accompany S.Res. 39, Authorizing Expenditures by the Committee on Governmental Affairs.

[9] See Amendment No. 22, as modified. 143 *Congressional Record* S2097 (daily ed. March 11, 1997).

[10] *See* 143 *Congressional Record* S2109 (daily ed. March 11, 1997).

[11] *Id*. at S2114.

identical vote.[12]

Overview of the Investigation

With the approval of $4.35 million in funding for the special investigation, the Committee was finally able to hire staff to conduct the investigation. Only nine and a half months remained for the Committee's investigation, which would now cover a broad scope. Two months into the Congress, the real work of the Committee could finally commence.

Scores of allegations of wrongdoing, either illegal or improper activities, had been brought to the Committee's attention, primarily through the news media. The Committee staff had to analyze each of these allegations, prioritize them for the investigation, investigate them, prepare for hearings, and hold hearings all in the space of nine months.

The first task was to complete the hiring of necessary staff. The majority staff eventually grew to include 23 lawyers (including the chief counsel, deputy chief counsel, and three senior counsel), two investigators, and necessary support staff. In addition, the majority staff included an investigator detailed from the General Accounting Office. The minority staff included 14 lawyers (including the chief counsel and deputy chief counsels), and necessary support staff. Both the majority and minority were able to use jointly the resources of nine special agents of the Federal Bureau of Investigation, who were detailed to the Committee. The work of these agents proved of invaluable assistance to the Committee, which could not have undertaken the extensive investigation it was able to conduct without these professional investigators, many of whom spoke relevant foreign languages, notably Chinese.

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[12] *Id*. at S2125.

Between March and the end of the year, a period of only nine and a half months, after hiring staff, the Committee conducted as thorough and complete an investigation as time permitted. During that span, the Committee issued 427 subpoenas requested by both the majority and minority either for documents or for testimony. The Committee received in response to its subpoenas over 1,500,000 pages of documents, all of which had to be reviewed and the relevance of each assessed. Committee staff took 200 depositions and conducted over

200 witness interviews. The Committee held 32 days of hearings, taking testimony from 72 witnesses. Finally, the Committee undertook to prepare this report as directed by the Senate.

The Conduct of the Investigation

As the Committee started to hire staff, it also began in earnest to pursue the investigation into illegal and improper campaign fund-raising and spending activities during the 1996 election cycle. In addition to the first 54 subpoenas issued in February, the Committee issued nine subpoenas on March 26, 1997.

Two weeks later, on April 9, 1997, the Committee issued another 10 subpoenas, including the first six requested by the minority. In doing so, the Committee demonstrated its willingness to follow the Chairman's commitment to proceed in a bipartisan manner to investigate illegal and improper activities that may have been committed by supporters of either political party.

Also on April 9, the Committee sent its initial request for documents, video and audio tapes, e-mail, and other records to the White House. This request had been discussed in advance with the Counsel to the President and his staff to ensure prompt compliance. It contained the first 28 specific document requests the Committee would make of the White House. Unfortunately, it

also led the White House to begin in earnest its efforts to obstruct and delay the investigation so as to run the Committee up against the deadline imposed by the Senate. The White House's production of records was so poor from the earliest stages of the investigation that on May 13, about one month after the first request was sent, Chairman Thompson called Erskine Bowles, Chief of Staff to the President, to express his concern over the slow pace of White House document production. Although Bowles promised improved performance, the White House's responses to the Committee's document requests remained so poor as to force the Committee to issue a subpoena to the White House on July 31 by unanimous vote. Even after it received the Committee's subpoena, however, the White House's production remained untimely and laggard, culminating in the belated production in October of relevant videotapes responsive to the Committee's April document request. The White House's obstructionism in this investigation brought discredit on the President and his staff.

The Committee issued its first 17 subpoenas for bank records to seek to trace the source of political contributions on April 15 and April 17, 1997. On May 22, 1997, the Committee voted to issue 43 additional subpoenas, including one to the American Federation of Labor-Congress of Industrial Organizations ("AFL-CIO") and several to individuals associated with the National Policy Forum ("NPF"), a think-tank founded by the Republican National Committee ("RNC"). An additional 26 subpoenas, 23 of which were for bank records, were issued on June 3, 1997. The final subpoenas for documents and records issued by the Committee prior to the start of its public hearings were approved on June 12, when the Committee voted to issue 24 subpoenas.

The votes on May 22 to issue subpoenas marked the first participation in the investigation by Senator Bob Smith (R-NH) and Senator Robert Bennett (R-UT), who had been selected to

replace Senator Ted Stevens (R-AK) and Senator William Roth (R-DE) on the Committee for the duration of the investigation.[13]

At the Committee business meeting on June 22, Chairman Thompson announced that the public hearings would begin on July 8, despite the fact that the investigation had been ongoing in earnest only for a little over three months. Nonetheless, the existence of the December 31 deadline to complete the investigation demanded the start of hearings this early, particularly in the face of the upcoming August recess.

From the time the investigation was authorized, the Committee was issuing subpoenas and receiving a large number of documents from many parties. The Committee had also started interviewing and deposing witnesses during the spring. The investigation was proceeding with a broad focus because of the large number of disparate allegations that had been raised concerning possibly illegal or improper activities during the 1996 federal elections.

To conduct a thorough and comprehensive inquiry into both illegal and improper activities, including the role of non-profit groups in influencing federal elections, Chairman Thompson indicated during the spring that the Committee's inquiry would proceed in two phases. The first phase would focus on illegal activities engaged in by candidates and political parties. The emphasis of this first phase would be on trying to determine the amount of foreign money contributed to candidates and parties during the 1996 elections. An additional area of focus of the first phase of the inquiry would be the laundering of campaign contributions, as related to foreign contributions, which were often laundered through those who could lawfully contribute. Other areas of inquiry that would be covered by the first phase were the sale of access and policy

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[13] See S.Res. 89. 143 *Congressional Record* S4915 (daily ed. May 21, 1997).

decisions in return for political contributions. The second phase of the investigation would focus on the role of non-profit and issue advocacy groups and labor unions in the 1996 elections, particularly the issue of whether these groups illegally coordinated their expenditures with the White House, the parties, or particular candidates or otherwise engaged in improper activity.

As the investigation proceeded and the Committee sought to prepare for the start of public hearings, it encountered significant obstruction to its inquiry from several sources. Despite promises of cooperation, the White House continued to produce little information, slowly, and what the White House did produce to the Committee was often released first to the news media, especially if the information was deemed embarrassing to the President. The DNC, whose 1996 campaign fundraising and spending practices had led directly to the Senate authorizing the investigation, was similarly recalcitrant in producing relevant documents in a timely manner. Both the White House and the DNC, which acknowledged acting in concert in formulating a strategy to respond to the 1996 campaign fundraising improprieties,[14] appeared to have developed a shared strategy based on the Senate's decision to impose a deadline on the investigation: they would produce information slowly, make any conceivable objection to its production, and then produce only a portion of it after requiring great exertion by the Committee in an effort to delay the inquiry until it ran out of time.

Despite the delaying tactics of the White House and DNC, the Committee developed a great deal of information in a relatively short period of time. Large numbers of documents had

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[14] The DNC even attempted to protect information by asserting the attorney-client privilege both over document production and in depositions based on discussions between the DNC witnesses and White House officials, including White House lawyers. In a June 6, 1997 order, Chairman Thompson overruled the assertion of the attorney-client privilege as to discussions between DNC officials and White House lawyers.

been received from many sources, and depositions and interviews were being conducted. In addition, on June 6, 1997, three members of the majority staff, two detailed FBI agents, and one member of the minority staff undertook an investigative trip to Hong Kong, Taiwan, Macao, and Indonesia to collect information and interview witnesses.[15]

Of perhaps equal importance to the information the Committee was gathering, however, was the information the Committee was unable to obtain. Thirty-five witnesses with information relevant to the Committee's investigation asserted the Fifth Amendment right against self-incrimination and refused to testify and/or produce documents in response to a Committee subpoena. In late June, the Committee began considering whether to grant immunity to some of the witnesses who had invoked their Fifth Amendment right. On June 27, the Committee voted to confer immunity on four witnesses. On July 23, the Committee voted to immunize another five witnesses. Thus, the Committee voted to immunize nine witnesses, five of whom eventually testified in open session during the Committee's hearings. An additional ten potential witnesses fled the country and were beyond the Committee's ability to issue legal process. The Committee was unable to contact any of these individuals during the staff's foreign trip. While the Committee was able to interview a number of foreign witnesses during that trip, 12 potential foreign witnesses who were contacted refused requests for interviews, among whom were some of the most important, including James Riady and Ng Lap Seng.

In addition to Committee's struggle with the obstructionist tactics of the White House and the DNC, it encountered resistance from a number of non-profit organizations that received

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[15] The Committee sought permission to send staff to the People's Republic of China (PRC) to interview witnesses there, but the PRC refused to issue visas to Committee staff for the purpose of conducting fact-gathering within the PRC. Accordingly, no staff traveled to the PRC.

subpoenas in July, when the Committee started planning to conduct the second phase of its investigation. Many of the non-profit organizations that refused to comply had reportedly played significant roles in the 1996 elections. The Committee was interested particularly in seeking to determine whether these organizations, which had primarily engaged in making allegedly independent expenditures to broadcast so-called issue advocacy advertisements, had coordinated their activities with candidates or political parties in violation of the Federal Election Campaign Act. The Committee subpoenaed a total of 31 such organizations. Of these, a number refused to produce documents to the Committee, asserting a variety of constitutional objections, most of which were without any legal foundation.

The Impact of the Deadline

The inability of the Committee to procure large amounts of relevant information was largely attributed to the imposition by the Senate of the December 31, 1997, deadline. This deadline essentially invited witnesses and organizations to refuse to comply with subpoenas. The deadline also encouraged other witnesses and organizations, particularly the White House and the DNC, to produce documents and videotapes responsive to Committee subpoenas in a slow, drawn out manner in an effort to run the clock out on the Committee's investigation.

Shortly after the Committee issued its first set of document subpoenas, several recipients informed the Committee that they were invoking their Fifth Amendment right against self-incrimination and would therefore not produce responsive documents. The Fifth Amendment privilege does not, however, protect the contents of documents. It can protect the act of producing documents when that act is itself testimonial (*i.e.*, the act of production demonstrates the existence of a particular document). This "act of production" privilege under the Fifth

Amendment only applies to personal documents; it does not apply to the act of producing business records, for example, that happen to be in the possession of the person subpoenaed.

In the absence of the December 31 deadline, the Committee could have sought a judicial determination as to the appropriateness of various witnesses' efforts to assert broadly their Fifth Amendment privilege against self-incrimination with respect to all the documents in their possession. Due to the December 31 deadline, however, the Committee was essentially foreclosed at the outset from pursuing the routine course of seeking a judicial determination as to the appropriateness of the large number of Fifth Amendment claims. The deadline made it unlikely the Committee would have ever received the responsive documents in a timely manner. Had the Committee sought to enforce its subpoenas against Huang, Webster Hubbell, Yah Lin "Charlie" Trie, Mark Middleton, and the other central witnesses who refused even to produce documents, it is likely that the judicial subpoena enforcement actions would not have been completed in time to receive the documents had it prevailed in the enforcement actions. Even had the documents been received prior to the expiration of the deadline, they would have been received so late as to have been virtually useless.

Had the Committee filed enforcement actions in April, responsive pleadings would have been due in May. The district judge would then have had to review the relevant documents *in camera*, a time-consuming task. Even with an expedited decision, the Committee staff determined it was unlikely to receive a decision before July, and any decision rendered by a district judge would have been subject to an appeal, which almost certainly would have taken to close to the end of the year.

Because of this likely timeline, the Committee staff determined not to expend resources to

litigate enforcement actions that would not benefit the investigation. Had the Committee chosen to pursue enforcement actions, its staff would have been expending its limited time on enforcement rather than on the investigation itself. Such a diversion of resources was not an option given the limited amount of time in which the Committee had to conduct its investigation and hold hearings. In effect, the Committee had no choice but to proceed without all the documents or testimony relevant to the investigation, or else it might have run out of time and could have conducted no investigation at all.

The inability to pursue these initial enforcement actions was due directly and solely to the deadline imposed by the Senate on the duration of the investigation. Once the initial pattern had been set whereby the Committee did not seek to enforce its lawful process, others were encouraged to flout the Committee's subpoenas. Most troubling of all were the organizations which had played significant roles and spent large sums of money during the 1996 election cycle. As was already noted, the Committee issued a subpoena to the AFL-CIO on May 22, 1997 requiring it to produce responsive documents to the Committee by the middle of June. Over two months late, on August 20, 1997, the AFL-CIO finally informed the Committee that it would not produce any documents in response to the subpoena, other than a few pages of documents that were already in the public domain. Again, the deadline prevented the Committee from seeking to enforce the subpoena.

On July 31, 1997, before the AFL-CIO expressed its contempt for the lawful processes of the Senate, an additional 24 non-profit organizations active in the 1996 federal election campaigns were subpoenaed to permit the Committee to determine whether these organizations had acted legally by making independent expenditures or illegally by coordinating their activities with

candidates and political parties. With the example of the AFL-CIO and the Committee's powerlessness to proceed against the AFL-CIO set before them, a number of these 24 non-profit organizations informed the Committee in late August and early September that they would not comply with the subpoenas they had received. Among these organizations that refused to comply was the Teamsters union, whose documents were clearly relevant to the Committee's inquiry, as three of its officials have pleaded guilty to a participating in a broad criminal conspiracy that included contribution swaps between the union and the DNC.[16]

The deadline not only prevented the Committee from enforcing its subpoenas, but also encouraged other subpoena recipients to dribble documents out over months and months in an effort to run out the clock on the Committee. The parties that perfected this routine to a high art were the White House and the DNC. The particulars of the delays practiced by these entities are set out in detail in the body of the report. Suffice it to say here that the White House continued the pattern of delay, obstruction, and evasion that it had practiced in the House Travel Office and Senate Whitewater investigations. The DNC studied from the White House playbook and apparently learned its lessons well.

It was not only these political entities that failed to produce relevant information to the Committee in a timely manner. Even though the possibility that foreign governments may have

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[16] The investigation into the Teamsters has broadened and media reports indicate that the second-ranking figure of the AFL-CIO, Richard Trumka, has invoked his Fifth Amendment right against self-incrimination in response to the grand jury. Trumka simply ignored a Committee subpoena seeking his deposition testimony, and the reason for that is now obvious: he wanted to delay the embarrassment to organized labor of having one of its most senior officials assert his Fifth Amendment rights.

sought to influence U.S. elections was a central focus of the investigation, the FBI failed to find critical and relevant information in its own files until well after the hearings had started and, in one importance instance, not until after the hearings had ended.

The deadline had one further important effect on the investigation. Because the work of the Committee had to be completed by the end of the year, the Committee was unable to proceed in the most orderly fashion of conducting and completing its investigation and then holding hearings to lay the facts before the Senate and the American people. Instead, the Committee had to begin holding hearings while the investigation was still quite new and ongoing. Many of the basic facts of several aspects of the investigation had not yet been developed when the hearings commenced.

The Hearings

Although its investigation had then been underway in earnest -- with Senate-approved funding and an adequate staff -- only for three and a half months, the Committee started holding public hearings in July 1997. By the time public hearings had concluded at the end of October, the Committee had held 32 days of hearings at which 72 witnesses testified.[17]

With jurisdiction encompassing such a broad range of wrongdoing and with such little time available, the Committee's selection of witnesses and subject matter for its public hearings required making difficult choices. The choice of subject matter for individual days and segments of hearings at this early stage of the inquiry, as outlined by Chairman Thompson in his "two-phase" approach, was dictated both by a focus on campaign finance illegalities and by a process of

[17] The Committee heard from 70 different witnesses; two witnesses appeared twice.

issue triage, whereby the Committee restricted itself to the most serious matters it was capable of properly developing in the time available.

Because much of the Committee's initial inquiry focused on the most troubling issues of foreign contribution-laundering, the first month of hearings focused largely on these matters. Much information relevant to this aspect of the inquiry remained unknown because of the large number of potential witnesses who chose to flee the country or invoke their Fifth Amendment rights. Furthermore, because it implicated sensitive U.S. intelligence and counter-intelligence activities, much of the relevant information was classified by executive branch agencies and could not be disclosed in open session. While Committee members obtained a picture of the U.S. intelligence and law enforcement communities' understanding of such issues, it proved impossible for the Committee to convey more than the mere outlines of the situation to the American people. The Committee was able, however, to bring to light evidence that foreign-source contributions to the DNC were laundered through domestic "straw donors" during the 1996 election cycle.

In addition to illegal foreign contributions and the laundering of such funds, the hearings focused on campaign fundraising that took place on government property. The Committee heard evidence, for example, of widespread fundraising in the White House. It also heard testimony regarding fundraising solicitations from government offices using government telephones, in violation of 18 U.S.C. § 607. The hearings also inquired into whether the DNC, particularly its fundraising and advertising activities, were run out of the White House by federal employees.

The Committee uncovered a donation-laundering scheme involving a prominent Democratic fundraiser and the exploitation of a foreign religious institution that began at least as early as 1993 and continued through the 1996 election, the principal architects of which have

reportedly been linked to the intelligence service of a foreign government.

Having discovered that part of the scheme to raise large contributions for the DNC involved the sale of access to senior government officials -- thereby also offering major donors the concomitant opportunity to purchase policy concessions through an implicit *quid pro quo* arrangement, the Committee also turned its attention to these matters.

The Committee also held hearings to explore the legal context in which the abuses of the 1996 elections occurred. Although the Committee lacks legislative jurisdiction over campaign finance reform legislation, its hearings had established a record of the operation of current laws. The Committee sought to explicate the legal and institutional context in which the abuses and evasion of law which its investigatory hearings were highlighting occurred, and it heard from leading experts on campaign finance issues, who helped explain what had gone wrong in 1996.

On October 1, 1997, as these "policy" hearings came to a close, the Committee learned that the White House had only recently discovered a large number of video and audio tapes responsive to requests for information the Committee had made as early as April and called for in the July subpoena as well. The story of the White House video tapes, the contents thereof, and the White House's failure to produce them in a timely manner would become a focus of the remaining month of public hearings.

As the first phase of the Committee's hearings moved towards completion, the Committee had to determine whether to proceed with the second phase, in which it had intended to focus on the political activities of various non-profit groups. Because most of the significant non-profits groups had failed to comply with the Committee's subpoenas, however, the Committee had little information beyond that already in the public domain. By October 1997, moreover, because of

the deadline the Committee had neither the time nor the recourse to judicial proceedings that would have been necessary to acquire more information. As a result of the poor compliance or non-compliance from many of the non-profit groups it subpoenaed, the Chairman decided not to hold hearings on the role of non-profit groups, and it is accordingly inappropriate to reach conclusions about their activities in the 1996 election.[18] This phase of the investigation would surely have added significantly to the Senate's and the American public's understanding of campaign finance illegalities and improprieties. Because of the December 31 deadline forced on the Committee, however, it was unable to undertake this task.

The Committee closed its public hearings by examining one particular *quid pro quo*, the clearest instance yet uncovered, on which it could obtain witness testimony, of a change of government policy undertaken in return for campaign contributions: the denial of a license to three Indian tribes in Wisconsin for an off-reservation casino. Secretary of the Interior Bruce Babbitt was one of the witnesses who testified on this matter. As a direct result of his testimony before the Committee, at the time of this writing the Justice Department is considering whether an independent counsel should be appointed to investigate Secretary Babbitt's role in this matter.

After 32 days of hearings in July, September, and October, Chairman Thompson announced on October 31, 1997, that the Committee was suspending public hearings, although continuing its investigation through the end of the year. He determined that the most important information obtained by the Committee had already been the subject of public hearings, and that

[18] Although investigative hearings on the political activities of non-profit groups were not held, the activities of some of these groups were outlined during the Committee's policy hearings in September.

given existing time constraints and the Committee's lack of judicial recourse, the remaining material should not be pursued in public hearings. The Chairman left open the possibility that new hearings would be held if warranted by new information developed during the remaining two months of the investigation. Although certain investigative threads were followed during November and December and interviews and depositions were conducted, no additional public hearings were held. The Committee continued to receive documents and videotapes in December. The DNC's delivery of 15 boxes of documents on December 22, 1997, about one week before the expiration of the Committee's authority, marked the final production of information to the Committee as officially constituted. In January 1998, after its jurisdiction had expired, the White House produced documents on Johnny Chung, which were responsive to its April 1997 document request, to the Committee. Any relevant information developed after the public hearings were ended is included in this report.

The Report

S.Res. 39 required the Committee to complete its investigation by December 31, 1997, and to submit a report to the Senate by January 31, 1998. This report fulfills that command.

Among the subjects aired at the hearings and detailed within this report are the takeover of the DNC by the President and his staff at the White House, who operated the party apparatus as a slush-fund for the President's re-election campaign. Along with that takeover went the dismantling of any system of vetting contributions and contributors to the DNC to ensure compliance with the law. The theory was to take in as much money as possible to buy advertising and worry later about the Federal Election Commission (FEC), whose meager resources, in any event, were unequal to the task of policing wrongdoing on the massive scale engaged in by the

DNC during the 1996 election cycle. In effect, gripped by an overwhelming thirst for money driven by the fear that the Republican victories in the 1994 congressional elections presaged the defeat of President Clinton in 1996, the Democratic Party and the President stopped asking or caring about the sources of this money.

The Committee's investigation explored the DNC's and the President's enormous thirst for campaign contributions to support the President's re-election bid and outlined the abuses carried out in their pursuit, including selling access to the President and senior officials through "coffees" and White House "overnights," and blatantly trading access to senior officials in return for campaign contributions. New sources of money had to be found. In this climate, the door was opened in 1996 to contributions from unsavory figures, from foreign bank accounts, and possibly from foreign governments as well. The Committee's hearings exposed a number of these sources, particularly hitherto untapped foreign sources of money.

Summary of Hearings

by Witness and Topic

Date	Witness(es)	Subject
July 8	None	Members' opening statements
July 9	Richard Sullivan	DNC fund-raising
July 10	Richard Sullivan	DNC fund-raising
July 15	Juliana Utomo Thomas Hampson Harold Arthur	John Huang's activities at LippoBank
July 16	Gary Christopherson Paul Buskirk Jeffrey Garten Robert Gallagher John Dickerson William McNair	John Huang's activities at the Commerce Department
July 17	Paula Green John Cobb	John Huang's activities at the Commerce Department
July 23	Benton Becker Michael Baroody	National Policy Forum
July 24	Fred Volcansek Haley Barbour	National Policy Forum
July 25	Richard Richards Donald Stern	National Policy Forum & the laundered contributions of Simon Fireman
July 29	Jerome Campane Yue Chu Xi Ping Wang	Charlie Trie's contributions to the DNC
July 30	Michael Cardozo	Charlie Trie's contributions to the Presidential Legal Expense Trust (PLET)
July 31	Terry Lenzner Loren Berger Zhi Hua Dong	Charlie Trie's contributions to the PLET
September 4	Man Ho Yi Chu Man Ya Shih	The Hsi Lai Temple's donation-laundering and the April 29, 1996 Vice-Presidential fundraiser
September 5	David Strauss Michael Mitoma	The Temple fundraiser & John Lee's contribution the DNC
September 9	Donald Fowler	The DNC's relationship with the White House

Date	Witness(es)	Subject
September 10	Joseph Sandler	Legal issues related to DNC fund-raising & Vice President Gore's telephone solicitations from the White House
September 11	Samuel Berger	White House vetting of political donors' attendance at events with the President
September 16	Karl Jackson Clarke Wallace Beth Dozoretz Rawlein Soberano	Fund-raising in the White House & John Huang's proposal to launder DNC contributions
September 17	Sheila Heslin	Roger Tamraz's political contributions, and DNC, White House and Energy Department pressure upon the National Security Council
September 18	Roger Tamraz Kyle Simpson John Carter Jerome Campane	Roger Tamraz's contributions to the Democratic Party & fundraising in the White House
September 19	R. Warren Meddoff	Harold Ickes' solicitation of political contributions from Warren Meddoff
September 23	Thomas Mann Norman Ornstein	Campaign finance policy issues
September 24	Thomas Mann Norman Ornstein Ann McBride Donald Simon Douglas Berman Becky Cain Curtis Gans Ellen Miller Leo Troy	Campaign finance policy issues
September 25	Daniel Ortiz Anthony Corrado Trevor Potter Lawrence Noble Burt Neuborne Roger Pilon	Campaign finance policy issues
September 30	Walter Mondale Nancy Kassebaum Baker	Campaign finance policy issues
October 7	Harold Ickes	Harold Ickes' role in DNC operations
October 8	Harold Ickes	Harold Ickes' role in DNC operations

Date	Witness(es)	Subject
October 9	Mark Thomann Richard Sullivan	Proposed contribution "swap" between the DNC and the International Brotherhood of Teamsters
October 22	Steven Smith Charles McGrath	Belated White House production of videotapes
October 23	Steven Smith Charles McGrath Charles Campbell Lanny Breuer Michael Imbroscio	Belated White House production of videotapes
October 29	Richard Jenrette Lanny Breuer Michael Imbroscio Charles Ruff	President Clinton's telephone solicitations & untimely White House document productionS
October 30	Paul Eckstein Bruce Babbitt	Role of DNC campaign contributions in the denial of a license for the Hudson, Wisconsin, Indian casino