RECOMMENDATIONS

Based on its findings, the Committee makes the following recommendations to the Senate and the Executive Branch. Some of the recommendations are for legislative action; others could be implemented by government agencies without Congressional action.

1. In this report, the Committee sets forth new grounds which call for the appointment of an independent counsel with regard to the campaign finance scandal and urges the Attorney General to seek the appointment of an independent counsel. Consistent with this recommendation, the Committee urges the Department of Justice to aggressively pursue the many instances of apparently illegal activity as set forth in this report.

2. Throughout this report, the Committee highlights the testimony of different witnesses, given under oath, whose truthfulness or candor are called into question, as their testimony appears to have been contradicted by other witnesses and/or documentary evidence. The Committee recommends and expects that the Attorney General will review this report with care and make determinations as to whether or not such instances constitute perjury within the meaning of 18 U.S.C. § 1621 or obstruction of the Committee's investigation prohibited by 18 U.S.C. § 1505.

3. The Committee recommends that executive branch procedures for granting top secret security clearances be changed. Persons seeking security clearances who have lived in foreign countries should receive background checks on their activities while in those foreign countries. Access to classified materials should be strictly limited to what the official needs to know as part of his or her job responsibilities. Persons performing classified briefings must know the job responsibility of the persons to whom they show

classified materials. No one should be given access to classified material as a routine matter before a background check is conducted. Agencies should ensure that security clearances are terminated when employees leave the positions necessitating clearances.

These recommendations flow directly from acts to the contrary that took place with respect to John Huang during the 1990's. Huang was given top secret security clearance while working at the Commerce Department. Although Huang had lived for many years abroad, no background check was undertaken with respect to his work in those foreign countries. No follow up was done on the "hit" on the computer database that tracks convictions with regard to Huang's being detaining by the INS in the 1970's. Huang was not only shown top secret documents that he had no reason to see, but also, documents related to areas of responsibility he was specifically excluded from handling. Those materials were very relevant to the interests of his former employer. Insufficient steps were taken to make sure that only persons with a need to know were knowledge of the top secret material. This occurred because the briefers, including CIA personnel, did not know what Huang's job responsibilities were. The problem was compounded because of the indiscriminate manner in which security clearances were given to political appointees as soon as they began employment.

Even worse, Huang held on to his security clearance after the left the Commerce Department and worked for the DNC. There is no justification for this breach of security to occur, and it was inappropriate for any Commerce Department officials to suggest arrangements by which Huang could keep his security clearance after he left the government.

The Commerce Department has already changed some of its policies regarding security clearances, but there is a potential problem with any government department or agency. Whether

legislation is enacted or not, the Committee's investigation has demonstrated the inappropriate manner in which classified information was made available to Huang and, through him, possibly to others whose knowledge of such information was not in the interests of the United States.

4. The Committee recommends that Congress legislate guidelines for the operation of legal defense funds. Congress should also legislate guidelines for contacts between the funds and the beneficiary of the funds and the beneficiary's staff.

In recent years, members of Congress, and now the President, have established legal defense trusts to assist in paying of the principal's legal fees incurred in defending against civil cases, ethics complaints, and criminal charges. Although the Office of Government Ethics regulates certain executive branch legal defense trusts, legislation is needed to standardize the rules governing all such trusts. Persons interested in the operation of the government, limited in the amount of hard campaign contributions they could provide, might believe that they could obtain influence with powerful figures if they were to make large contributions to the legal defense fund established to benefit that individual. The more than $700,000 that Charlie Trie raised for the President's legal expense trust obviously was calculated to achieve that result.

In the absence of legislation, contributions to legal defense funds may achieve that effect. To discourage that result, Congress should pass uniform guidelines for the creation and operation of legal defense funds by executive branch and legislative branch officials. Such legislation should mandate accounting procedures, require that contributions be disclosed and limited, and that the sources of funds be according to federal election law, among other guidelines.

It is important also to establish the independence of these defense funds. In the case of the President's legal expense trust, meetings were held between the director of the trust and large

numbers of White House staff. Given the nature of the discussions held, these meetings raise serious questions about the independence of the trust from the person for whose benefit the trust was created. Congress should strictly limit contact between the trust and the beneficiary.

5. The Committee intends to revisit the Independent Counsel Act. In addition to all the specific concerns that have been raised about the statute's operation, the Committee believes it important that the Attorney General did not invoke the statute to investigate the subject of the Committee's investigation, when its operation was clearly called for, and whether legislation can remedy that situation in light of the discretion in seeking an appointment that the Attorney General must constitutionally possess. The Committee expects to revisit the statute in 1998 to determine whether it should be reauthorized and, if so, with what amendments.

The independent counsel statute was enacted to prevent the inherent conflict of interest that occurs when the Justice Department investigates the possibly criminal conduct of high-ranking government officials. The facts at issue in the Committee's investigation clearly warranted the appointment of an independent counsel. Yet, as of now, none has been appointed, except as to a matter arising from the course of the Committee's hearings themselves. The Attorney General enjoys absolute discretion under the statute to decide whether the standard of appointment has been triggered. This discretion is necessary to the statute's constitutionality.

Nonetheless, serious questions were raised, based on credible allegations, that the President and other covered officials may have violated federal law. These allegations should have triggered the seeking of the appointment of an independent counsel. It makes no difference that the facts were essentially established, but the issues of law were disputed. In determining

whether a crime "may have been committed" by a covered person, the conflict of interest is the same whether the Attorney General is called upon to determine the facts or the law. The statute was passed to avoid this conflict.

Apart from the theoretical reasons for the need to appoint an independent counsel, confidence of the American people in the conduct of the investigation mandates the appointment in these circumstances. The Department's investigation has not engendered public confidence. Documents have been left unexamined, including public record documents and classified materials of great relevance. Stones have been left unturned. Moreover, the legal positions taken by the Attorney General have been inconsistent in many cases with the sources she claims support her, as well as Supreme Court decisions in some instances.

In addition, the Attorney General seems to have set the bar higher to begin the investigation of a covered person than to investigate an ordinary citizen. Any information against an ordinary citizen can lead a prosecutor to begin an investigation. Under the Attorney General's interpretation of the current independent counsel statue, however, unless the evidence rises to a level sufficient to trigger the appointment of an independent counsel, no investigation of a covered person can occur. This turns the intent and language of the statute on its head. Under this interpretation, a covered person has more protection from investigation that he would enjoy in the absence of the statute.

This Committee is the committee of jurisdiction in the Senate for this statute. The Committee plans to hold hearings in 1998 on the operation of the statute and to propose legislation on how the statute should be altered, assuming it should be reauthorized beyond 1999.

6. The Committee recommends that time deadlines not be imposed on investigations authorized by the Senate. Such deadlines weaken the ability of the Senate to ensure compliance with its subpoenas, to ensure cooperation, and to gather the facts necessary to fulfill the charge to the Senate to conduct a complete investigation.

The Committee opposed imposing a deadline on its investigation. Deadlines have been deplored by Senators of both parties over the years because they impinge on the ability of an investigating committee to perform the tasks assigned to it. In the case of the Committee's investigation, such concerns were more than theoretical. They greatly affected the ability of the Committee to ensure compliance with its subpoenas, to receive timely information, and to gain cooperation and develop the necessary facts.

Because of the deadline, many potential witnesses and possessors of documents relevant to the investigation were unwilling to cooperate. Such noncooperation was likely to be successful because the deadline rendered enforcement of subpoenas problematic and contempt proceedings academic.

The Committee encountered stalling from the White House, from the DNC, and from a number of nonprofit entities, most notably the AFL-CIO. The deadline placed on the Committee emboldened noncooperation in light of the Committee's available procedures for enforcement of subpoenas. Under these procedures, months would be necessary to gain court enforcement. By the time the case would ever go to court, the Committee's deadline would have expired, and with that, the Committee's power to enforce.

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The remaining recommendations deal with the issue of campaign finance reform. Since the Committee does not have legislative jurisdiction over the subject, the options for reform presented to the Committee during its hearings are referred to the Committee on Rules and Administration for its consideration. Among the suggestions for reform made to the Committee were the following.

7. The Committee recommends that those ineligible to vote be precluded from making contributions to candidates for federal office.

Given the extensive evidence and testimony reviewed by the Committee's investigation related to federal candidate contributions originating from foreign sources, the current prohibition on foreign contributions needs to be strengthened. At the present time, some individuals who are not legally eligible to vote are allowed to contribute to political campaigns. There is also substantial evidence that minors are being used by their parents, or others, to circumvent the limits imposed on contributors. Candidate committees could confirm through a simple question in all solicitations, and disclose as part of the currently required contributor identification material filed with the FEC, that each contributor is an American citizen of voting age.

8. The Committee recommends that Congress enact protections for union workers so that their dues are not used for political purposes with which they disagree. No person should be compelled to contribute to a federal campaign without his or her consent.

9. The Committee recommends that publicly funded presidential candidates, on behalf of their authorized campaign committee, be required to certify to the Federal Election Commission, within a certain time frame, that they have not inappropriately coordinated their activity with outside entities to overcome contribution and expenditure

limits placed upon those activities by the Federal Election Campaign Act. Such certification would not be required for incidental contacts between candidates and outside entities, nor for attendance at widely attended fundraisers conducted by outside entities.

The Committee's investigation established that the Clinton/Gore '96 Campaign Committee not only coordinated its activities with the Democratic National Committee in order to circumvent the contribution and expenditure limits imposed upon presidential candidates accepting public funding, but that the Clinton/Gore Campaign actually directed and controlled the soft money fundraising, television advertisement development, and placement undertaken by the DNC. Furthermore, there is evidence to indicate that Presidential candidates have shared their plans, projects and strategies with outside third-party entities in order for those entities to make what constitute in-kind contributions on behalf of the candidates. Such third party expenditures make a mockery of the current campaign finance system.

10. The Committee recommends that legislation increase the penalties for knowingly and wilfully accepting illegal campaign contributions.

The Committee's investigation revealed that between 1994 and 1996 the DNC completely dismantled a previously established vetting procedure for large and questionable contributions. As a result, a variety of contributions were accepted in direct violation of the FECA. Penalties for accepting illegal contributions, which are criminal if the campaign entity knowingly accepted such contributions, should be increased. Since the Committee believes the goal should be to prevent acceptance of such contributions in the first place, evidence that a campaign entity established stringent vetting procedures should be admissible to establish a lack of the knowledge of illegality that could lead to the imposition of criminal sanctions.

11. The Committee recommends enactment of legislation mandating electronic filing with the Federal Election Commission for all federal candidates and political committees, and providing for appropriate verification procedures for electronic filing to avoid fraud.

Easier and more rapid access to campaign finance information requires that the campaign finance laws be modernized to account for advancements in computer technology. Currently, the FEC is not even allowed to accept facsimiles, or any form of electronic filings as official because these documents cannot reflect an original signature of the filer, as called for in the current law. Available computer technology now allows almost instantaneous disclosure of political contributions and expenditures. In computer format, such data is much easier to review, compare and contrast. A recent FEC survey revealed that 85 percent of all committees or campaign operations have access to computers, that three-fourths of the computerized committees have access to the modems, and two-thirds can reach the Internet. While the FEC currently provides for voluntary electronic filing, with hard copy backup, there is no incentive for reporting entities to participate. Exercising the option for electronic filing now imposes extra work on committees beyond the required hard copy filing. No entity wants to expose itself to speedier and more easily accessible computer disclosure if its opponents are not subjected to the same level of review. While smaller start-up participants in the federal election process may not have the resources to acquire computer technology, they could be exempted from the mandatory electronic filing legislation by providing for a relatively high financial activity threshold before such reporting would be necessary. To ensure accurate and secure reporting, legislation should also require the FEC to develop report filing verification procedures. To speed dissemination of campaign filings

it would be much easier to require the FEC to place electronically filed reports on the Internet. Such universal access could be provided at the current FEC website within 24 hours of receipt. To complement these advancements, legislation should mandate that the FEC compile, publish, regularly update and post on the Internet a complete and detailed index of enforcement actions and advisory opinions. Currently there is no one repository for such information that is easily and quickly available to the public.

12. The Committee recommends legislation to require expedited reporting of all contribution activity during the 90 days immediately before an election.

With the advancement of electronic filing and broadcast technology, the Committee discovered that campaign activity has become accelerated at the end of the election cycle. The current paper filing system allows for manipulation of the disclosure process because facilitating paper filings makes necessary a cut-off date prior to the election. That would no longer be the case under an electronic filing system. Last minute surprise infusions of cash or expenditures would be disclosed in advance of the election. This would allow interested parties to evaluate the nature of a candidate's or entity's support in making an informed decision when going to the polls.

13. The Committee recommends simultaneous filing with the FEC of any required state-level state and local committee filings.

At this time, no centralized electoral finance filing system exists, even for federal candidates. Because national party committee transfers to state party committees remain unlimited, there is no way to ensure such transfers are not in turn made to facilitate expenditures by the state party committees for the benefit of federal candidates. The same is true for

expenditures that might be coordinated as a result of transfers from national unions and non-profit organizations to local affiliated organizations. Federal election campaign expenditures are often intertwined with state and local election activity. The courts and the FEC have acknowledged this fact through promulgation of their allocation regulations. To understand the impact of these expenditures, and the allocations required by the FEC, a central repository of all available election materials is necessary.

14. The Committee recommends establishment of a "traffic ticket approach" of scheduled fines for minor FEC reporting violations.

The current structure of the FCA requires an elaborate due process mechanism for all alleged violations of the Act, regardless of severity. Thus, late, miscalculated and non-filed report violations are subjected to several votes of the Commission, and full briefing of the surrounding facts before the Commission can seek a civil penalty. This process takes time and resources away from more involved and egregious violations, a category including corporate reimbursement schemes and illegal coordinated soft money issue advertisement campaigns. The Committee recommends a bifurcated process under which clear filing violations are enforced via a pre-established system of non-negotiable civil penalties, while serious allegations of wrong-doing are processed with careful consideration of due process rights (S. 1516).

15. The Committee recommends legislation be enacted reforming the structure and enforcement procedures of the Federal Election Commission. Currently there are no limits on the number of times an FEC Commissioner may be reappointed, Commissioners whose terms expire hold over indefinitely, enforcement matters are not handled in a timely manner, and there is no mechanism for resolving 3-3 split Commission votes.