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Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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INDEPENDENT

March 27, 2000

The Honorable Janet Reno
Attorney General
U.S. Department of Justice
Tenth and Constitution Avenue, N.W.
Washington, DC 20530

Dear General Reno:

The Campaign Financing Task Force has announced an investigation of possible obstruction of justice involving documents not produced to this Committee, various Independent Counsels, and the Justice Department. In a Declaration to the United States District Court for the District of Columbia, filed on March 22, 2000, Robert J. Conrad, Jr., the Chief of the Justice Department Campaign Financing Task Force, stated that: "continued inquiry into this matter by the Civil Division . . . would interfere with and potentially compromise the Task Force's investigation of the pending allegations." Thus, the Task Force, which is supervised by you, has declared that the Civil Division, which is supervised by you, might "interfere with and potentially compromise" a major investigation. First, you rejected an Independent Counsel in favor of running your own investigation of the President, Vice President, and your political party. Now you have decided to use the same Campaign Financing Task Force, supervised by yourself, to investigate yourself and the Justice Department lawyers who helped keep the e-mails from being produced to Congress, Independent Counsels, and your own Campaign Financing Task Force.

Under normal circumstances, I would welcome a Justice Department investigation of possible criminal conduct. However, because you and your staff are in charge, the proposed investigation is fatally flawed. When Director Louis Freeh and then-Task Force Chief Charles La Bella recommended an Independent Counsel in 1998, the words they used effectively predicted the current e-mail scandal. They believed that an

investigation led by the Attorney General would not be able to take steps necessary to secure evidence, vigorously investigate Democrat political leaders and their party, and promote confidence in the rule of law. Now, two years later, the e-mail scandal has proven their point. This part of the campaign finance scandal, however, points directly at the Justice Department – for what the Justice Department did do (represent the White House in keeping the e-mails from investigators) and for what the Justice Department did not do (force production of the e-mails for its own investigation).

There is growing consensus that you were, and are, unable to supervise investigations involving the President, the Vice President, and your political party. For this reason, I call on you to appoint a Special Counsel to investigate the obstruction of justice charges against the White House. The individual chosen should be completely independent, should have no current ties to the Justice Department, and should be seen by the American people to be fair and impartial. With all due respect to Mr. Conrad, he is under your supervision, and he will be subject to the same constraints that have made your foreign money investigation a tragic misadventure. Simply put, you cannot be in charge of investigating yourself and the Civil Division, which is now headed by your former Chief of Staff.

I will address the following points in turn: (1) the perception that you are not able to do your job; (2) allegations that you are predisposed to provide unfair advantages to your political colleagues in matters involving the campaign finance scandal; and (3) the apparent conflict of interest within the Justice Department in the e-mail obstruction of justice matter.

I. The Perception that You Are Not Able to Do Your Job

I will refrain from using this letter as a vehicle for restating my views of your conduct in the campaign financing investigation. They are well known. Rather, I ask that you consider what the media is telling the citizens of this country. I realize that you believe that you should be free from the pressure of the media, and I share your view that an Attorney General should not be driven solely by the dictates of public opinion. Nevertheless, the perception that you have created is devastating to the cause of justice, harmful to the institution you preside over, and damaging to the thousands of good men and women who serve this country in the Justice Department and the Federal Bureau of Investigation. The following selection of assessments speak to your fitness to preside over the e-mail investigation and should give you a taste of what will be said if you elect to run this investigation:

> The general election campaign has gotten off to an unusually fast start, and it has done so under a cloud of suspicion created by **Attorney General Janet Reno's incompetent and politically biased response to the campaign finance abuses of the 1996 campaign.**[1]

[1] *Campaign Finance Battles*, THE NEW YORK TIMES, March 14, 2000, at A22.

The [release of the La Bella memorandum and other] documents are **further evidence of Ms. Reno's politicized handling of the campaign fund-raising issue and of her dedication to protecting Democratic Party interests from start to finish.**[2]

[O]ccasional glimpses the public has had of the Justice Department investigation have **inspired less than total confidence.**[3]

She [Attorney General Reno] **has sought to protect the White House at every turn**, especially after meeting with the President on her reappointment at the outset of his second term. She has named special counsels for trivial cases against Cabinet members, but refused them on serious charges against the President and Vice President despite the La Bella and Freeh recommendations.[4]

Today few doubt any longer that **Ms. Reno is an adjunct to the Clinton-Gore political operation.** . . . The Justice task force's investigation into the ties between China and the 1996 Clinton campaign contributions has been a catalog of lapses.[5]

The **inability of Attorney General Janet Reno and her politicized Justice Department to investigate the Clinton Administration** shows that the country needs to polish the independent counsel mechanism, not junk it.[6]

[I]n **an unforgivable dereliction of duty**, Attorney General Janet Reno failed to pursue the clear violation of the letter and spirit of the campaign laws.[7]

If Ms. Reno decides in the end to appoint an independent counsel, the [Government Reform] committee's contempt vote will be rendered meaningless. If, on the other hand, she refuses, she risks the unthinkable. At that point, **it would be better for her to resign than to continue to ignore a Congress that finds her unbelievable.**[8]

She comes not to expose political corruption, but to bury it.[9]

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[2] *The Justice Department Memos,* THE NEW YORK TIMES, March 11, 2000, at A14.
[3] *Dan Burton's Question,* THE WASHINGTON POST, December 19, 1999, at B6.
[4] *Reno's Most Wanted,* THE WALL STREET JOURNAL, September 7, 1999, at A24.
[5] *Watching the Watchdog,* THE WALL STREET JOURNAL, July 1, 1999, at A22.
[6] *More Bad Advice From Ken Starr,* THE NEW YORK TIMES, April 15, 1999, at A30.
[7] *A New Year for Campaign Reform,* THE NEW YORK TIMES, December 27, 1998, at §4, p.8.
[8] *Reno's Dilemma; Appoint an Independent Counsel or Resign,* THE DALLAS MORNING NEWS, August 7, 1998, at 36A.
[9] *Law School for Janet Reno,* THE NEW YORK TIMES, July 19, 1998, at §4, p.14.

> Every decision she has made and comment she has offered has minimized the offenses and excused the conduct of the White House and the Democratic Party. The person who is supposed to be the nation's chief prosecutor, ever alert for signs of infraction, **sounds instead like a technicality-hunting defense lawyer.**[10]
>
> **"Even if it looks like a duck," a Justice Department source said recently, explaining the task force approach, "we can't make it quack."**[11]

These are harsh, yet consistent, assessments of your role in the campaign finance investigation. In many respects, they are your legacy. It is important, however, that the institution you run not be further injured. Doubtless, at your next news conference you will tell us that you 'call them as you see them' and that you don't do 'what ifs.' But this is a serious matter, and it calls for a real investigation, not platitudes. You were in charge when the Justice Department's Civil Division began to help the White House craft its efforts to hide these e-mails. You were in charge when your lawyers went to bat for the White House instead of against it. The e-mail investigation is, in part, of you, and it would be absurd for you to cling to the fiction that you can investigate yourself.

Thus, I call upon you to appoint a Special Counsel.

II. The Perception that You Are Predisposed to Provide Unfair Advantages to Your Political Colleagues in Matters Involving the Campaign Finance Scandal

Charles La Bella, the former head of your campaign financing task force made the following observations to you:

> [The] Task Force has commenced criminal investigations of non-covered persons based only on a wisp of information.[12]
>
> If these allegations involved anyone other than [redacted], an appropriate investigation would have commenced months ago without hesitation.[13]
>
> The contortions that the Department has gone through to avoid investigating these allegations are apparent.[14]
>
> [There is] no acceptable explanation as to why one is the subject of a full criminal inquiry and the other is and remains in investigative limbo.[15]

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[10] *Meltdown at Justice,* THE NEW YORK TIMES, December 7, 1997, at §4, p.16.
[11] Susan Schmidt and Roberto Suro, *Troubled from the Start; Basic Conflict Impeded Justice Probe of Fund-Raising,* THE WASHINGTON POST, October 3, 1997, at A1.
[12] Charles La Bella, THE LA BELLA MEMORANDUM (unreleased).
[13] Charles La Bella, THE LA BELLA MEMORANDUM (unreleased).
[14] Charles La Bella, THE LA BELLA MEMORANDUM (unreleased).

> The Department's treatment of the Common Cause allegations has been marked by gamesmanship rather than an evenhanded analysis of the issues. That is to say, since a decision to investigate would inevitably lead to a triggering of the ICA [Independent Counsel Act], those who are hostile to the triggering of the Act had to find a theory upon which we could avoid conducting an investigation.[16]
>
> The Task Force never conducted an inquiry or investigation of the entire campaign finance landscape in order to determine if there exists specific information from a credible source that a covered person . . . has violated a federal criminal law.[17]

These observations go to a central theme: you have presided over an investigation that has given an unfair advantage to the President, the Vice President, high government officials, and members of the Democrat Party. How else can one explain the following:

- The Justice Department failed to ask the President a single question about foreign money or James Riady's promise of one million dollars.

- The Justice Department failed to ask the Vice President a single question about the Buddhist temple fund-raiser. Furthermore, one week before the 1996 election, the Justice Department pulled prosecutors off the Buddhist Temple fund-raiser case.

- The Justice Department failed to investigate, or delayed an investigation of, the subject of the above-mentioned quote ("if these allegations involved anyone other than [redacted], an appropriate investigation would have commenced months ago without hesitation"). My suspicion, from the context of the quote, is that the individual referred to is Harold Ickes, but the fact that you delayed the investigation is perhaps more important than the identity of the individual.

- The Justice Department failed to pursue evidence, ranging from search warrants related to Charlie Trie's documents to the White House e-mails that are the subject of the current controversy. Recently this Committee subpoenaed the actual document requests made to the White House by the Justice Department. I am concerned that we will soon learn that there are many other areas that the Justice Department neglected to pursue.

- When the Justice Department failed to recommend a fine for Charlie Trie, the judge in the case had to take it upon himself to reject the Department's recommendation and stiffen the penalty.

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[15] Charles La Bella, THE LA BELLA MEMORANDUM (unreleased).
[16] Charles La Bella, THE LA BELLA MEMORANDUM (unreleased).
[17] Charles La Bella, THE LA BELLA MEMORANDUM (unreleased).

These examples do not stand alone. There are many more.

One other matter cannot be ignored when discussing the predisposition to go easy on your political colleagues and the Democrat Party. When Mr. La Bella wrote his memorandum recommending the appointment of an Independent Counsel, he pointed out that you consistently used an erroneous interpretation of the Independent Counsel statute. He said: "[t]he reference to specific and credible evidence is just wrong."[18] He was referring to your many pronouncements that appointment of an Independent Counsel required specific and credible evidence, as opposed to the language of the statute, which actually required specific information from a credible source. La Bella pointed out that "the threshold has been raised from consideration of the specificity of the information and credibility of the source to a determination that there is specific and credible evidence of a federal violation. Evidence suggests something which furnishes proof, information need not be as directed. While the distinction may appear to be subtle, it is significant." Again, your misapplication of the statute is important when we consider Mr. Conrad's request to have you take charge of the e-mail investigation.

In the e-mail investigation, it would be inappropriate to allow lax enforcement or manipulation of the law in order to benefit political colleagues and a political party.

Thus, I call upon you to appoint a Special Counsel.

III. The Conflict of Interest Within the Justice Department in the E-mail Obstruction of Justice Matter

After all that has happened since you took control of the campaign finance investigation, I believe that you are not able to investigate the possibility of White House obstruction of justice. In fact, there are serious and legitimate concerns that your own lawyers may be part of possible obstruction of justice.

On Friday, March 24, 2000, I received an affidavit from Laura Callahan. She had testified at a hearing before my Committee on March 23, 2000, and, in an effort to correct her testimony from the previous day, she submitted an affidavit. In the affidavit, she stated "I wish to clarify that I did discuss email issues with Department of Justice attorneys in connection with currently pending civil litigation." Her contacts with the Justice Department took place in 1998 and resulted in the submission of an affidavit to the United States District Court for the District of Columbia in 1998.

One of the lawyers who assisted in the preparation of the 1998 affidavit was James Gilligan, who recently denigrated the existence and importance of the e-mails in a filing in District Court in the civil case *Cara Leslie Alexander v. Federal Bureau of Investigation,* No.96-2123/97-1288 (RCL).[19] Furthermore, Justice Department lawyers

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[18] Charles La Bella, THE LA BELLA MEMORANDUM (unreleased).

[19] The Department of Justice stated in a recent filing with the District Court: "As a threshold matter, defendant observes that plaintiffs' latest rhetorical outburst concerning e-mail can only be described as yet

assisted Daniel A. Barry in his submission of an affidavit to the same District Court on July 9, 1999. At that time, the problem was widely known within the White House, and Mr. Barry was clearly frustrated by his supervisors' failure to move towards a solution to the Mail2 e-mail problem. Notwithstanding his knowledge of the problem, Mr. Barry failed to refer to the matter in his affidavit.

Although we do not know what Mr. Gilligan knew regarding the extent of the problem, it seems unlikely that he was oblivious to the fact that there was a universe of information that had never been reviewed for responsiveness to subpoenas and document requests. In his zealous representation of your client, the White House, he contributed to the failure to produce information to your own Campaign Finance Task Force, to my Committee, and to various Independent Counsels. Although I risk stating the obvious, I do not see how you could represent both sides in the same case. It is well-nigh impossible to tell your client to produce information when you are counseling the same client how to avoid producing the same information. Indeed, Justice Department lawyer James Gilligan made representations in open court on March 24, 2000, that the Justice Department was "on the horns of a dilemma" and that the Department was faced with either impeding the criminal investigation, or failing to defend vigorously their client, the White House.

From my perspective, I do not see how you can tolerate the representation that the e-mails are not consequential, as indeed has been made by Mr. Gilligan. I can only imagine how you would react if, in a tax fraud case (or a criminal assault case, or a civil rights case, or a voting rights case, or any other type of legitimate federal investigation and prosecution), the individual under investigation took the position that production of a large quantity of documents freed him from complying with specific requests. This, in effect, is the position of the White House in the current controversy. The "I have complied with some of your request so please go away" theory of investigation may be the standard you have set for your campaign finance inquiries, but it is not acceptable to the Committee of which I am Chairman.

In the case of the White House electing not to inform this Committee that it was not going to undertake a search for documents responsive to subpoenas, an obstruction of justice investigation will ultimately have nothing to do with the content of the e-mails. The issue is relatively simple: either White House lawyers made a good faith attempt to do what they were required to do by law, or they did not. It is my belief that your Justice Department cannot be relied upon to get to the bottom of this matter because of the conflict within the Justice Department and because of your own demonstrated lack of enthusiasm when it comes to investigating the White House, the President, the Vice President, and your political party.

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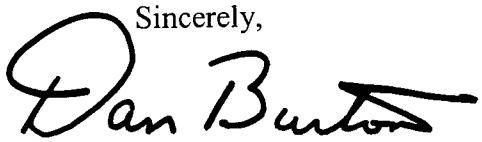
another 'distraction from the issues in this lawsuit.' The technical failure to which plaintiffs allude is a long-standing matter of public record that has been confirmed by the White House itself." Executive Order of the President's Memorandum in Opposition to Plaintiffs' Requests to Restrict Disclosure of the First and Second Supplements to Plaintiffs' Motion for Evidentiary Hearing, and in Support of Cross Motion for Expedited Consideration dated March 6, 2000 (quoting Memorandum and Order dated April 21, 1999). It is worth noting, for the record, that this Committee was not informed by the White House of the "technical failure."

For the reasons cited above, I request that you appoint a Special Counsel to determine whether either or both the White House and the Department of Justice conspired to obstruct justice by either failing to search for information responsive to this Committee's subpoenas, or by failing to represent that the White House had not searched for information responsive to this Committee's subpoenas. I also request that this Special Counsel investigate whether untruthful certifications were made to the Committee regarding productions of subpoenaed documents.

Sincerely,



Dan Burton
Chairman

cc: United States District Judge Royce C. Lamberth
Louis Freeh, Director of the Federal Bureau of Investigation
Independent Counsel Robert Ray
Independent Counsel Ralph Lancaster
Independent Counsel Donald Smaltz
Independent Counsel David Barrett
Independent Counsel Carol Elder Bruce
Independent Counsel Curtis Von Kann
Senator John Danforth
Honorable Henry A. Waxman, Ranking Minority Member, Committee on Government Reform
Members, Committee on Government Reform