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ONE HUNDRED SIXTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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INDEPENDENT

May 12, 2000

The Honorable Dan Burton
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Burton:

I have been a member of the institution of Congress for many years. I would like to believe that despite any differences in party affiliation, policy views, or personalities, all Members of Congress would agree that the ability to keep a promise is integral to performing the job we were elected to do. Congress simply could not function if members could not rely on each other's word.

For this reason, I was profoundly disappointed to receive your May 11, 2000, letter. On May 3, in a public hearing with the vast majority of Committee members present, you promised to issue a subpoena to Attorney General Janet Reno for copies of FBI interviews of witnesses with knowledge about potential campaign finance violations by Haley Barbour and Tom DeLay.

Yet despite giving me and other members your word, your May 11 letter states that you will not honor your commitment.

Your justification for refusing to issue the subpoena relating to Mr. DeLay is that my request was "part of a larger, coordinated effort driven by the DCCC to pursue politically motivated attacks." This is categorically untrue. Since August 1998, the Democrats on the Committee have repeatedly asked you in writing and at Committee hearings to investigate the DeLay allegations. You have repeatedly refused to respond to these requests. I raised the issue again at the May 3 hearing because it presented our first opportunity to seek a Committee vote -- not because of the DCCC actions. In fact, neither I nor anyone on my staff involved in making the request for the subpoena was aware of the DCCC lawsuit until after the hearing.

Regarding Haley Barbour, your new position flatly contradicts your commitment. On May 3, you promised to subpoena Democratic and Republican records "simultaneously." Yet now you are saying that you won't issue the Haley Barbour subpoena until <u>after</u> the Justice Department complies with your subpoenas for Democratic records. In effect, this means you will

never issue the Haley Barbour subpoena since, as you know, some of your subpoenas seek information about active criminal cases that the Justice Department has properly refused to supply at this time.

The following discussion responds in detail to your May 11 letter.

I. The May 3 Commitments

One of the witnesses at the May 3 hearing was Robert Raben, Assistant Attorney General at the Justice Department. You had requested that he appear before the Committee to discuss, among other items, our Committee's access to FBI interview summaries relating to campaign finance violations by Democrats. These interview summaries are known as "FBI 302s."

Before Mr. Raben made his opening statement at the hearing, my staff notified your staff of my intent to make a motion to request additional interview summaries from the Department of Justice. During my questions to Mr. Raben, I said that there were two sets of allegations involving Republican campaign finance violations that the Committee should investigate. The first set of allegations involved potentially illegal foreign contributions solicited by Haley Barbour when he was the head of the Republican National Committee. The second set of allegations involved a potentially illegal conduit contribution scheme involving Texas businessman Peter Cloeren and orchestrated by Rep. Tom DeLay.

I listed a number of individuals who purportedly have knowledge relevant to the Barbour and DeLay allegations and asked Mr. Raben if the Justice Department would provide the Committee with summaries of any interviews conducted with these individuals regarding the Barbour and DeLay allegations. He responded that the Justice Department's policy is to provide the Committee with interview summaries relating to closed investigations, if request comes from the Committee. I then asked you if you would join me in requesting that the Department of Justice provide the Committee with these interview summaries.

You proposed the following: "[W]hy don't we issue a subpoena ... for the 302s that you have requested and in that subpoena we will request or we will issue a subpoena that includes the documents that we have requested and the 302s that we have requested. That way, everything will be in one subpoena. That way, you'll get what you want, and we'll get what we want. Do you have any objection to that?"

I responded: "I think we have the makings of an agreement. I just want to clarify that what we want in the subpoena are the names that I read with regard to the Haley Barbour allegations and the Cloeren allegations, all of those, and you have the list we've given you, of those cases. ... If you want to add to that subpoena other documents, I have no problem with that."

You replied: "Well, what we want to do is make sure that all documents that we have previously subpoenaed, all 302s that we've requested and subpoenaed in addition to what you've requested here today, all be given to us in a timely fashion." You said that you "don't want the 302s for Republicans given to the Democrat minority before we get the documents that we've requested subpoenaed in the past. Simultaneously, that's fine. But we don't want this favoritism shown one way or the other."

I agreed to that.

You elaborated: "How about in the subpoena it be specified that all the documents be given jointly to both the majority and minority staff simultaneously?"

I agreed to that.

At this point, you stated that there was not a need for a motion on this matter and agreed to submit the list of names I had proposed for the subpoena into the record. You then stated: "The subpoena in detail will be issued and we will consult with both the majority and minority counsels to make sure that correspondence going along with the subpoena is detailed thoroughly so there's no misunderstanding about that."

Your made this promise not just to me but to virtually all of the Democrats on the Committee, who were present and prepared to debate and vote if no agreement was reached. In fact, the vast majority of all Committee members were present when your commitment was made, as were television and internet cameras that were broadcasting to the public across the nation. The only objection noted for the record was by Mr. Barr.

Mr. Ose subsequently asked whether the understanding with respect to Department of Justice production to the Committee was "we would not receive anything until we received everything?" You stated: "It was my understanding that there might be a rolling production of these things, but the minority and majority together would make sure that they were given in a timely fashion and in a fair and equitable way."

A copy of the relevant portion of the transcript from the May 3 hearing is attached as exhibit A.

II. The May 11 Letter

In your May 11 letter, you now say that you will not issue a subpoena for 302s relating to allegations involving Mr. DeLay. You further say that with respect to 302s regarding allegations concerning Mr. Barbour, you will not issue a subpoena until "the Attorney General has complied with all currently outstanding subpoenas from the Committee."

You offer several justifications for your decision to change your commitment. None of these withstands scrutiny.

A. <u>The DeLay-Related Records</u>

You state that you have concluded that my request for interview summaries relating to Mr. DeLay was not proper because at the time I was making the request, I "failed to disclose" that the Democratic Congressional Campaign Committee was filing a lawsuit against Mr. DeLay. You allege that the timing of this lawsuit and my request for interview summaries "suggests very strongly that your motion was part of a larger, coordinated effort driven by the DCCC to pursue politically motivated attacks against the Majority Whip."

Your contention is simply untrue. As I stated above, neither I nor anyone on my staff involved with the request for 302s had knowledge of the DCCC lawsuit until after the May 3 hearing.

The allegations involving Mr. DeLay first arose on August 5, 1998. On that date, *The Hill* reported that Republican donor Peter Cloeren had filed a complaint with the Federal Election Commission charging that, in 1996, Mr. Delay and then-Republican congressional candidate Brian Babin had participated in a scheme to funnel conduit contributions to Mr. Babin's campaign. Mr. Babin was then running against Jim Turner, who ultimately won the election.

Since then, I and other Democrats on the Committee have repeated urged you to investigate these allegations. For example:

- On August 6, 1998, every Democrat on the Committee except Mr. Turner wrote to you urging that the Committee schedule a hearing on these allegations when it returned from August recess.

- On October 8, 1998, at a Committee hearing, I released an affidavit my staff had obtained from Mr. Cloeren and reiterated my interest in having the Committee investigate his serious charges.

- On November 8, 1999, I wrote to you to request a vote on immunity for several witnesses relevant to the allegations involving Mr. DeLay.

- On November 10, 1999, at a Committee business meeting, I renewed my request that you investigate the allegations involving Mr. DeLay.

In addition, I wrote to the Justice Department on December 9, 1999, requesting that the Committee have access to the 302s relating to the allegations involving Mr. DeLay, and I notified

you of this request.

Despite these repeated requests, you have repeatedly refused to investigate any allegations involving Mr. DeLay. In fact, to this date, you have not even responded to the August 6, 1998, letter that all the Democratic members of the Committee except Mr. Turner sent you.

Against this backdrop, my reason for raising the DeLay allegations at the May 3 hearing should be obvious. The hearing provided my first opportunity to bring the issue before the Committee for a vote. Under the House rules and the Committee rules you adopted, a member may not make a subpoena request at a hearing unless the subpoena request is relevant to the subject matter of the hearing. At the May 3 hearing, the Department of Justice witness was called before the Committee specifically to discuss the production of interview summaries by the Department to the Committee, among other matters. The issue of obtaining additional 302s from the Department was therefore directly relevant to the matters before the Committee at the May 3 hearing.

In short, I raised the DeLay issue at the May 3 hearing because I and other Democrats had been repeatedly thwarted in our attempts to persuade you to investigate these serious allegations -- not because I was "coordinating" with a DCCC effort that neither you nor I knew anything about.

B. <u>The Barbour-Related Records</u>

In your letter, you claim that you are prepared to issue a subpoena for the records relating to Haley Barbour. With respect to interview summaries concerning Mr. Barbour, you state: "I am prepared to issue a subpoena for those 302s as soon as the Attorney General has complied with all currently outstanding subpoenas from the Committee."

In fact, as you well know, your new approach will result in no subpoena ever being issued. Your numerous requests to the Department of Justice include requests relating to open investigations. While the Department of Justice has produced many documents to the Committee and has stated that it will continue to produce documents in response to the Committee's pending requests, the Committee will not receive all of the documents relevant to the outstanding subpoenas until the investigations to which they pertain are closed.

The distinction between records relating to open versus closed investigations was made clear at the May 3 hearing. Mr. Raben reiterated the Department of Justice's position that "Our policy for the provision of 302s has been that the 302 should be a summary of a closed case." Similarly, I stated, "for the 302s on cases that are closed, the Repubicans ought to get what they've requested and we ought to get what we've requested."

Your letter blatantly mischaracterizes your May 3 commitment. Your letter states, "I agreed to issue a subpoena for the documents you requested, as long as other Justice Department materials already under subpoena by the Committee are first provided." In fact, this is not what you agreed. To the contrary, as the discussion in part I makes abundantly clear, you agreed to pursue both your subpoena requests and my subpoena requests "simultaneously."

C. Lack of Notice

You also inaccurately state that I made the request for the subpoena "with no advance notice to the Majority."

Under the House and Committee rules, there is no requirement that I provide any notice before making a motion for issuance of a subpoena under House rule 11 clause 2(k)(6). Despite the fact that I was not required to provide any notice, my staff in fact notified your staff of my intention to seek a subpoena at the end of the first panel of witnesses. This notice was provided before the Committee recessed for House votes that lasted approximately 45 minutes, before Mr. Raben gave his opening statement, and before your staff commenced staff questioning of Mr. Raben, which consumed another 30 minutes. At the time my staff provided this advance notice, my staff advised your staff of my staff's conversations with the House Parliamentarians about the motion and suggested that your staff contact the Parliamentarians independently to confirm the appropriateness of the motion. When your staff sought information about the individuals whose 302s I was seeking, this information was also provided to your staff.

In other words, this was not at all a situation like the one that occurred during the Committee's April 6 hearing on vaccines, where you called a witness out of the audience with no notice to the minority, despite a Committee rule requiring three days of notice to the minority regarding witnesses.

D. Partisanship

Your letter suggests that my request to subpoena additional interview summaries from the Justice Department sought to use the Committee for partisan purposes. In fact, my request reflected exactly the opposite intent.

This Committee has conducted the most partisan investigation in history. When the Committee has examined conduit contributions, you have focused exclusively on Democratic contributions. When the Committee has looked at foreign money, you have focused exclusively on Democratic contributions. When the Committee has examined Justice Department efforts to investigate campaign finance abuses, you have focused exclusively on investigations of Democratic allegations.

The statistics bear this out. For example, over 99% of the 914 subpoenas you have unilaterally issued in this investigation targeted Democrats. Of the 161 depositions taken by the Committee for this investigation, 159 targeted Democrats. That's why your investigation has been called "a sorry partisan spectacle,"[1] "a House investigation travesty,"[2] "a joke,"[3] "useless and unprofessional,"[4] "a permanent vendetta,"[5] "out of control,"[6] "inept,"[7] "embarrassing" and "debasing,"[8] and "a partisan witch hunt"[9] by independent editorial boards across the country.

What I was trying to do with my request was to bring some balance to the investigation. Your requests for 302s to the Justice Department involve hundreds of interview summaries relating to allegations of potential Democratic abuses. Yet the Department's campaign finance investigation has been investigating Republicans as well as Democrats. Before agreeing to my request on May 3, you were not conducting oversight of the Justice Department in a credible or nonpartisan manner. I viewed your May 3 commitment as the first significant act in your four-year investigation that was evenhanded and bipartisan.

Your May 11 letter demonstrates that you remain intent on conducting a relentlessly biased and partisan investigation -- even at the cost of your personal integrity.

III. Conclusion

You had several options in determining how to proceed.

First, you could -- and should -- have honored your commitment and issued the

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[1] *Reno Roast Embarrasses Nobody But Congress: Grilling Of Attorney General Is A Sorry Partisan Spectacle*, Los Angeles Times (Dec. 10, 1997).

[2] *A House Investigation Travesty*, New York Times (Apr. 12, 1997).

[3] *Mr. Burton Should Step Aside*, Washington Post (March 20, 1997).

[4] *A Disintegrating House Inquiry*, New York Times (July 12, 1997).

[5] *Burton's Vendetta*, Boston Globe (May 5, 1998).

[6] *Dan Burton Is A Loose Cannon*, Hartford Courant (May 5, 1998).

[7] *Clinton's Foes Bungle Again*, Atlanta Constitution (May 5, 1998).

[8] *Give Dan Burton the Gate,* Chicago Tribune (May 6, 1998).

[9] *Tale of the Tapes*, Pittsburgh Post-Gazette (May 8, 1998).

appropriate subpoena.

Second, if you were suspicious of whether there was a connection between the DCCC lawsuit and my request for 302s, you could have asked me personally whether I had been aware of the lawsuit when I made the request or was coordinating with the DCCC on this matter. Indeed, on May 4, the day after the May 3 hearing where we reached agreement on a subpoena to Mr. DeLay, you and I sat next to each other for much of the day at a full Committee hearing. The news of the lawsuit was in the morning papers that day. You could have asked me about this at numerous points during the hearing.

Another alternative would have been for you to ask your staff to contact my staff to investigate and discuss your concerns relating to issuing the subpoena. Your staff never talked to my staff about the subpoena after the May 3 hearing. In fact, between the time of our May 3 agreement on the subpoena and your May 11 letter, my staff tried to reach your staff four separate times, leaving messages each time explaining our interest in discussing the status of the subpoena. Your staff did not respond to any of these messages.

Alternatively, if you were intent on breaking your commitment regardless of the facts, you could have at least done so in a forthright manner, acknowledging that you had made an agreement you would no longer honor.

Instead, you chose the worst option possible. Without bothering to consult with me, your May 11 letter reneges on your commitment on the basis of untrue allegations that you did not investigate.

I intend to consult with my Democratic colleagues regarding how to proceed.

Sincerely,

Henry A. Waxman
Ranking Member

Enclosure

cc: Members of the Committee on Government Reform