

## White House Document Production

### Introduction

Beginning with the earliest meeting between Committee investigators and White House Counsel on February 11, 1997, the White House promised its cooperation with the Committee's investigation and committed to produce documents requested by the Committee on a timely basis. At that meeting, Counsel to the President Charles F.C. Ruff conveyed the President's wishes that Ruff's office cooperate with the Committee to the fullest extent possible.<sup>1</sup>

The Committee was, of course, well aware of the dilatory tactics confronted by prior Congressional investigations into Clinton Administration activities.<sup>2</sup> Ruff and the staff of lawyers he put together to handle the numerous investigations into White House wrongdoing, however, joined the White House Counsel's office only in early 1997.<sup>3</sup> The Committee therefore remained

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<sup>1</sup> See Memorandum from Paul L. Robinson to Michael J. Madigan, *et al.*, Feb. 17, 1997 (Ex. 1); see also Letter from Charles F.C. Ruff to Donald T. Bucklin noting continuing applicability of earlier pledge to "voluntarily provide all of the information that the Committee needed for its investigation," July 29, 1997 (Ex. 2).

<sup>2</sup> See 143 Cong. Rec. S716 (daily ed. Jan. 28, 1997) (statement of Sen. Thompson) ("If one looks solely to the past, there is little reason to be optimistic. We have seen what appears to be a grudging release of information . . . . We have seen all manner of delaying tactics which congressional oversight committees claimed were intended to avoid scrutiny by Congress . . . ."); Memorandum from Michael Madigan to Charles F.C. Ruff attaching "excerpts from the Whitewater investigation final report that illustrate the type of document production problems/miscommunications" faced by the Whitewater investigators, February 17, 1997 (Ex. 3). See also S.Rep. 104-280, Report of the Special Committee to Investigate Whitewater Development Corp. and Related Matters, pp. 151, 225-27, 237-39; H.Rep. 104-849, Report of the Committee on Government Reform and Oversight on the Investigation of the White House Travel Office Firings and Related Matters, pp.154-59.

<sup>3</sup> See Deposition of Charles F.C. Ruff, Oct. 27, 1997, pp. 4-5 ("Q: What is your current position? A: Counsel to the President. Q: How long have you held that position? A: Since February 10, 1997."); Deposition of Lanny A. Breuer, Oct. 17, 1997, p. 6 ("I joined

cautiously optimistic that Ruff's promises to cooperate were real, and that Ruff and his staff did not intend to adopt the blatantly obstructionist methods of his predecessors.<sup>4</sup> The Committee hoped that, in this instance, the Clinton White House would choose to emulate the responsiveness of the Reagan and Carter Administrations -- each of which voluntarily waived executive privileges applicable to documents requested by Congressional investigative bodies.<sup>5</sup> Instead, Ruff and the White House Counsel's office selected the Nixon White House as their model.

Eleven months' experience with White House document production practices unfortunately established that the Committee's initial optimism was undeserved, and that the White House never had any intention of cooperating beyond what its staff believed was absolutely necessary, when under extreme pressure. The Committee presented the White House with an immediate opportunity to prove its good intentions by initially agreeing to proceed with the production of documents from the White House without first issuing a subpoena. The White House, however, responded to the Committee's expression of goodwill by improperly delaying and manipulating its document production to take advantage of the Committee's December 31, 1997 expiration. The Committee's later attempt to jump start the White House's production

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the White House on -- I believe it is February 16, 1997."); Deposition of Michael X. Imbroscio, Oct. 17, 1997, p. 7 ("I began work in the White House on March 3, 1997.").

<sup>4</sup> See 143 Cong. Rec. S716 (daily ed. Jan. 28, 1997) (statement of Sen. Thompson) ("There is a new team in the White House, individuals who command respect. I am hoping that the new White House counsel will understand that his position is one of counsel to the office of the President. He is not the President's personal attorney.").

<sup>5</sup> See *id.* ("As instructive examples of the cooperation of . . . Presidents [Reagan and Carter], they both allowed congressional examination of all documents . . .").

through issuance of a formal -- although ultimately unenforceable<sup>6</sup> -- Committee subpoena was met with continued White House obstruction.

The following is a discussion of the most egregious examples of the White House's consistently uncooperative approach to its production of documents to the Committee. This discussion begins with a description of the White House's utter disregard for *any* reasonable document production schedule set by this Committee or promised by the White House itself. It then describes broken promises relating to particular documents withheld by the White House on spurious assertions of executive privilege. Finally, this section summarizes the manipulative manner in which the White House handled its production to the Committee of White House entrance records, White House videotapes and several other specific categories of documents and other materials.

In spite of the significant problems posed by the White House's efforts to obstruct and manipulate the Committee's investigation, the Committee remains satisfied that it met one of its primary goals of uncovering for the American people important information about their government. Whether disseminated through the Committee's hearings or through the

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<sup>6</sup> Senate committees are powerless to enforce subpoenas against executive branch employees acting in their official capacities. *See* 28 U.S.C. § 1365(a). That provision vests in the United States District Court for the District of Columbia original jurisdiction over actions brought by the Senate or its committees to enforce compliance with its subpoenas. Section 1365(a), however, also explicitly withholds district court jurisdiction over actions to enforce subpoenas issued "to an officer or employee of the executive branch of the Federal Government acting within his or her official capacity . . . ."

simultaneous production of documents by the White House to the Committee and to the press,<sup>7</sup> the American people now possess far more knowledge about the inner workings of the Clinton White House than they did prior to the commencement of the Committee's investigation.

### **Slow-Walking in the Production of Documents**

In response to the White House Counsel's pledges of cooperation and the Committee's optimism that the document production problems that burdened prior Congressional investigations into the Clinton Administration could be avoided, the Committee, at the request of the White House, elected to proceed with the production of White House documents without first issuing a subpoena to the White House. Instead, on April 9, 1997,<sup>8</sup> the Committee delivered a

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<sup>7</sup> The White House, on a number of occasions, attempted to manipulate the Committee's investigation by providing copies of significant documents to the press at the same time that it produced the documents to the Committee. For instance, the White House produced copies of the purportedly belatedly discovered White House videotapes to the Committee late in the evening of October 14, 1997, and made the video footage available to the press on the following day. *See* Susan Schmidt & Lena H. Sun, "On Tape, Clinton Links Lead in Polls, Issue Ads," *Washington Post*, Oct. 16, 1997, p. A1. Similarly, on December 8, 1997, the White House simultaneously produced to the Committee and to the press copies of a daily chronicle of Presidential activities. *See* Marc Lacey & Glenn F. Bunting, "White House Forwards More Donor Records," *Los Angeles Times*, Dec. 9, 1997, p. A1. The Committee notes, however, that the White House chose not to provide to the press copies of the thousands and thousands of pages of useless and irrelevant material it produced to the Committee, such as 40,000 printed pages of unintelligible information from the White House database. *See* Letter from Donald Bucklin to Charles F.C. Ruff, July 28, 1997 (Ex. 4).

<sup>8</sup> After the initial meeting on February 11, 1997, the Committee and White House spent "several weeks" negotiating the terms of a document protocol addressing the White House's confidentiality and privilege concerns. *See* Letter from Michael Madigan to Charles Ruff, April 23, 1997 (Ex. 5). The White House's document production could not proceed until the protocol was finalized in April. The protocol, when completed, outlined the procedures for Committee review, storage and use of documents designated "Confidential" or "Highly Confidential" by the White House. It also created a mechanism

request for production of documents in the form of a letter to the White House Counsel's office.<sup>9</sup> This document request constituted a "narrowly defined" subset of a larger document request that the Committee intended to make in the future.<sup>10</sup> The Committee understood that most of the documents had already been gathered by the White House Counsel's office in response to written directives sent by previous White House Counsel Jack Quinn to all White House personnel in December 1996 and January 1997.<sup>11</sup> By limiting the request to these documents, the Committee - - facing a December 31, 1997 deadline -- hoped to expedite the time frame within which it could expect a production from the White House. In fact, the Committee expressly requested "as many of these documents as possible within . . . ten days."<sup>12</sup>

On April 11, 1997, Committee counsel met with Lanny Breuer of the White House Counsel's office and discussed the April 9 letter request "line by line."<sup>13</sup> Breuer assured the

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for Committee review of documents withheld from production by the White House. *See* "Security Procedures and Other Protocols," April 1, 1997 (Ex. 6). Unresolved issues relating to the funding for and scope of the Committee's investigation also played a role in the early suspension of the progress of the investigation. These issues were settled by the Senate's adoption of the Committee's funding resolution on March 11, 1997. *See* Helen Dewar, "Senate GOP Widens Election Fund Probe; Legal but 'Improper' Practices Included," *Washington Post*, March 12, 1997, p. A1.

<sup>9</sup> Letter from J. Mark Tipps to Lanny Breuer, April 9, 1997 (Ex. 7).

<sup>10</sup> *Id.*

<sup>11</sup> *See* Ex. 5.

<sup>12</sup> Ex. 7.

<sup>13</sup> *See* Ex. 5.

Committee that the White House would produce the majority of the records responsive to the April 9, 1997 request on April 21.<sup>14</sup>

Late in the afternoon of April 21, however, the Committee received a single box of documents accompanied by a letter indicating that additional documents would be forthcoming the following week.<sup>15</sup> Chief Counsel Michael Madigan expressed the Committee's "shock[ ] that [only] a single box of documents was produced" and that the Committee would "not receive the balance of the requested documents until next week."<sup>16</sup>

Even the subsequent week's production, however, did not represent the balance of the documents responsive to the April 9 letter request. On May 13, 1997, Chairman Thompson called Erskine Bowles, White House Chief of Staff, to complain about the pace of the White House's production of documents.<sup>17</sup> Bowles then ordered Breuer and Michael Imbroscio of the White House Counsel's office to meet with Committee Senior Counsel Donald Bucklin to discuss the delinquent production.<sup>18</sup> After the meeting, Bucklin provided to the White House a detailed list of the "several categories" of documents requested by the Committee that the White House had not yet produced.<sup>19</sup>

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<sup>14</sup> *See id.*

<sup>15</sup> Letter from Charles F.C. Ruff to The Honorable Fred Thompson, April 21, 1997 (Ex. 8).

<sup>16</sup> *See* Ex. 5.

<sup>17</sup> *See* Bob Woodward, "Senator Criticizes White House Action in Fund-Raising Probe," *Washington Post*, May 16, 1997, p. A14.

<sup>18</sup> *See id.*; Memorandum from Donald T. Bucklin to Lanny A Breuer, May 15, 1997 (Ex. 9).

<sup>19</sup> *Id.*

On May 21, 1997, the Committee, as promised, issued a second, more comprehensive document request to the White House by letter from Bucklin to Breuer.<sup>20</sup> Although Senior Counsel Donald Bucklin indicated that the Committee “consider[ed] the items contained in the . . . request to be a priority,”<sup>21</sup> the White House responded with the same lack of urgency and timeliness as it did with the April 9 request. The White House delivered its documents to the Committee in small batches and on a schedule that bore no discernible relation to the Committee’s deadlines or expressions of urgency. In fact, almost four months after the Committee’s first document request, Ruff acknowledged in a July 25, 1997 letter to Madigan that not only was the White House’s production in response to several of the Committee’s April 9 requests still incomplete,<sup>22</sup> twenty-four of the forty-two “priority” items contained in the May 21 request had also not received a White House response.<sup>23</sup> In retrospect, it is apparent that the only Committee deadline of any interest to the White House was the Committee’s December 31, 1997 termination date.

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<sup>20</sup> Document Requests attached to Letter from Donald T. Bucklin to Lanny A Breuer, May 21, 1997 (Ex. 10).

<sup>21</sup> *Id.*

<sup>22</sup> Letter from Charles F.C. Ruff to Michael J. Madigan, July 25, 1997 (Ex. 11). Although Ruff stated in the text of his letter that “all of the [April 9] requests have been completed,” he nevertheless identified in an attachment to his letter four specific document requests for which production remained incomplete.

<sup>23</sup> *See id.* The Committee issued a specifically targeted “supplemental” document request on June 9, 1997. Letter from Donald T. Bucklin to Lanny A. Breuer, June 9, 1997 (Ex. 12). By July 28, 1997, the White House had completed its production in response to *none* of the four requests contained in the supplemental request. *See* Letter from Donald T. Bucklin to Charles F.C. Ruff, July 28, 1997 (Ex. 13).

In response to the White House's consistent failure to abide by any reasonable production schedule -- as well as its frequent production of documents either immediately before or even *after* deposition or hearing testimony relating to the author or subject of the documents (discussed in detail below) -- the Committee voted unanimously on July 31, 1997 to issue a subpoena to the White House bearing a return date of August 12, 1997.<sup>24</sup> Although Chairman Thompson himself communicated to Ruff the Committee's insistence on "strict and prompt compliance" with the subpoena,<sup>25</sup> the subpoena did not succeed in altering the lack of the responsiveness of the White House in any meaningful way. For instance, as discussed below, it was not until well after the August 12 return date on the subpoena that the White House produced videotapes of White House coffees. The White House also produced highly relevant documents even after the December 31, 1997 termination of the Committee's investigation. On January 16, 1998, the White House hand delivered to the Committee (and simultaneously produced to the press<sup>26</sup>) a package containing documents found in the files of a White House employee charged with evaluating facsimile technology services offered to the White House by Johnny Chung, a central

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<sup>24</sup> See Guy Gugliotta, "Panel Unanimously Issues Subpoena to White House; Committee Allows Sen. Thompson to 'Order' Compliance if Deadline is Not Met," *Washington Post*, Aug. 1, 1997, p. A16.

<sup>25</sup> Letter from Chairman Fred Thompson to Charles F.C. Ruff, Aug. 6, 1997 (Ex. 14).

<sup>26</sup> See "Party Donor Pitched Fax Business to White House," *Washington Post*, January 17, 1998, p. A12.

figure in the Committee's investigation.<sup>27</sup> The White House did not attempt to explain why this employee's files had not previously been searched for these unquestionably responsive documents.

### **Broken Promise to Assert the Executive Privilege in Only the Narrowest Circumstances**

The scope of executive privilege applicable to the documents sought by the Committee was the central focus of the February 11, 1997 meeting between the Committee and representatives of the White House Counsel's office, the first substantive discussion of document production issues.<sup>28</sup> At that meeting, Ruff stated that he anticipated that executive privilege would be *inapplicable* to most White House documents relating to campaign contributions.<sup>29</sup> While he added that the privilege would apply to documents relating to allegations that campaign contributions influenced a White House policy decision, Ruff also stated that the White House would accommodate the Committee by permitting review of the purportedly privileged

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<sup>27</sup> See Letter from Lanny A. Breuer to Michael Madigan, January 16, 1998 (Ex. 15). Among the significant documents produced by the White House on January 16 was a July 17, 1995 memorandum from Harold Ickes to a DNC employee "strongly urging" that the DNC obtain "broadcast fax capability" and suggesting Johnny Chung's company as a suitable outside contractor for such service. See Ex. 33 to the section of this report on Johnny Chung. The White House also belatedly produced in January 1998 a list identifying the dates on which certain large contributors to the DNC spent the night in the Lincoln Bedroom. "U.S. Senate Committee on Government Affairs Request -- Certain Overnight Guests Dates," Dec. 23, 1997 (Ex. 16). The Committee specifically requested this information from the White House in August and continued to actively pursue this request in the succeeding months. See Letter from Glynn Parde to Dimitri Nionakis, Oct. 31, 1997 (Ex. 17).

<sup>28</sup> See Ex. 1. In a floor speech on January 28, 1997, Chairman Thompson also expressed his opinions on the proper breadth of the executive privilege. See 143 Cong. Rec. S716 (daily ed. Jan. 28, 1997) (statement of Sen. Thompson).

<sup>29</sup> See Ex. 1.

documents.<sup>30</sup> Ruff's suggestion that the Committee have an opportunity to review documents withheld on executive privilege grounds was subsequently incorporated by the Committee on April 1, 1997 into its formal protocol governing White House document production issues.<sup>31</sup>

The actual breadth of executive privilege ultimately asserted by the White House -- as opposed to the theoretically narrow privilege suggested by Ruff on February 11, 1997 -- was revealed by documents withheld from the first White House production to the Committee on April 21, 1997. This production demonstrated vividly that the White House did not validate the Committee's initial optimism that the WH would adopt the narrow approach to executive privilege asserted by the Reagan and Carter Administrations. For example, request number 19 in the Committee's April 9 letter asked for the production of "[a]ll documents referring or relating to Charlie Trie's appointment to the Commission on US-Pacific Trade and Investment Policy, and all documents regarding Executive Order #12987 signed on January 31, 1996."<sup>32</sup> On April 21, 1997, the White House produced only a few documents in response to request number 19, but notified the Committee that a substantial number of additional responsive documents had been withheld on executive privilege grounds.<sup>33</sup>

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<sup>30</sup> *See id.*

<sup>31</sup> *See Ex. 6, p. 4.*

<sup>32</sup> *Ex. 7.*

<sup>33</sup> *Ex. 5.*

In accordance with the document production protocol, Committee counsel reviewed the two and one-half boxes of withheld documents at the White House.<sup>34</sup> After a four-hour review, Committee counsel concluded that most of “the documents withheld did not remotely resemble the type of sensitive information” that Ruff had suggested the White House would withhold.<sup>35</sup> The documents instead included a number of public speeches, manuals, background news articles, resumes and other similar public documents, and few documents that legitimately implicated deliberative process concerns.<sup>36</sup> Committee counsel segregated the most relevant documents from the two and one-half boxes, and Madigan thereupon insisted in his April 23, 1997 letter to Ruff that the segregated portion be produced to the Committee.<sup>37</sup> Although the White House produced these documents on May 7, 1997,<sup>38</sup> it both redacted the documents and also insisted that they be accorded “highly confidential” treatment under the protocol, and thereby made available only to specifically-designated Committee staff.<sup>39</sup> The White House’s spurious assertion of executive privilege succeeded in forcing the needless review by the Committee of wrongfully

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<sup>34</sup> See Ex. 6.

<sup>35</sup> See Ex. 5.

<sup>36</sup> See *id.*

<sup>37</sup> *Id.*

<sup>38</sup> Letter from Lanny Breuer to Don Bucklin, May 7, 1997 (Ex. 18).

<sup>39</sup> *Id.*; see also Ex. 6. The White House produced additional documents relating to Trie’s appointment to the Commission on U.S.-Pacific Trade and Investment Policy on July 24, 1997 and September 10, 1997. See Letter from Lanny A. Breuer to Donald T. Bucklin, July 24, 1997 (Ex. 19) and Letter from Dimitri J. Nionakis to Donald T. Bucklin, Sept. 10, 1997 (Ex. 20). The Committee’s public hearings on Trie’s illegal activities concluded on July 31, 1997.

withheld documents and delaying by several weeks the progress of central aspects of the Committee's investigation.

### **Production of Incomplete WAVES Records**

Another category of documents requested from the White House in the Committee's April 9 letter request were "Workers and Visitors Entrance System" ("WAVES") records identifying the dates and times of White House admission by John Huang and other central figures involved in the Committee's investigation.<sup>40</sup> Although the White House produced records in response to this request on April 21, 1997,<sup>41</sup> the Committee discovered during a meeting with representatives of the United States Secret Service on April 30, 1997 that the records produced by the White House left out critical categories of unquestionably relevant information.<sup>42</sup> The Secret Service explained to the Committee that complete WAVES records contain a comments section in which problems that surfaced during a particular individual's background check are noted, and an "XX" notation identifying those whose admission is questioned by the Secret Service.<sup>43</sup> Neither section was included in the WAVES records produced by the White House on April 21, 1997.

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<sup>40</sup> See, e.g., Document Request No. 1, attached to Ex. 7.

<sup>41</sup> See Ex. 2.

<sup>42</sup> See Memorandum from Margaret A. Hickey to Donald T. Bucklin, May 9, 1997 (Ex. 21). The Secret Service generates the WAVES records of all individuals entering the White House and turns over a computer tape of the records to the White House at the end of each month. *Id.*

<sup>43</sup> See *id.*

The White House, when confronted with these omissions, explained that it believed that this information had not been requested by the Committee.<sup>44</sup> As the Committee's April 9 letter request expressly asked for the production of "'WAVE[S]' records" -- and not exclusively the entrance and departure information contained in those records -- the Committee immediately demanded production of copies of these records in the form described by the Secret Service.<sup>45</sup> Incredibly, Karen Popp of the White House Counsel's office then informed the Committee during a telephone call that, in spite of the Secret Service's description of the records, the categories of information missing from the records already produced to the Committee by the White House simply did not exist. The White House withdrew this specious assertion and eventually produced complete copies of the WAVES records, but only after its position was specifically refuted during a meeting among representatives of the Committee, the Secret Service, and the White House.

**Production of Relevant Documents Either Immediately Before, or In Some Cases, Even After a Witness' Deposition or Hearing Testimony**

In spite of Ruff's assertion that "the timing of [the White House's document] production . . . had absolutely nothing to do with politics or tactics," and that the White House "produced . . . documents as soon as we found them,"<sup>46</sup> the pattern of White House production of documents either immediately before or even *after* the deposition or hearing appearance of the author or subject of those documents leads the Committee to the opposite conclusion. The repeated

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<sup>44</sup> See Letter from Donald T. Bucklin to Lanny A. Breuer, May 12, 1997 (Ex. 22).

<sup>45</sup> See *id.*

<sup>46</sup> "Statement of Charles F. C. Ruff," July 30, 1997 (Ex. 23).

instances of the production of significant documents relating to a particular witness whose testimony was immediately upcoming or just completed belies Ruff's suggestion that the timing of the production was merely coincidental.

The most egregious example of the White House's timing of the production of particular documents to coincide with the Committee's deposition or hearing schedule was its production of the WAVES records of Ng Lap Seng, the Macau-based businessman and financial supporter of Charlie Trie. On July 29, 1997, Jerry Campana, an FBI agent on detail to the Committee, testified before the Committee concerning the results of the Committee's investigation into the source of the funds used by Trie for his substantial contributions to the DNC. The Committee had found that Trie relied on over \$1 million wired by Ng Lap Seng from accounts he maintained at banks in Hong Kong and Macau to support his laundered political contributions.<sup>47</sup> Late in the afternoon of July 29, 1997, after the completion of Campana's testimony, the White House hand-delivered to the Committee a package of documents containing WAVES records revealing that Ng Lap Seng had visited the White House ten times between June 22, 1994 and October 21, 1996.<sup>48</sup>

Significantly, the July 29 delivery also included handwritten notes and other documents created by Lisa Berg, a White House employee who was deposed by the Committee on the same

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<sup>47</sup> See the section of this report on Charlie Trie's DNC contributions and fundraising.

<sup>48</sup> See Memorandum from Glynna Parde to Donald T. Bucklin attaching copies of Ng Lap Seng's WAVES records, July 30, 1997 (Ex. 24).

day that Campane testified.<sup>49</sup> Berg's deposition concluded approximately three hours before the production of these documents.<sup>50</sup>

Chairman Thompson publicly excoriated the White House on July 30, 1997 for its blatant efforts to manipulate the work of the Committee.<sup>51</sup> The Chairman added that the Committee would no longer tolerate such improprieties, and that a subpoena had been prepared for the overdue White House document production.<sup>52</sup> As discussed above, the Committee unanimously voted to issue the subpoena on July 31, 1997.

### **Late Production of White House Audio and Videotapes**

On October 1, 1997, Michael Imbroscio of the White House Counsel's office revealed to Committee Counsel Donald Bucklin that he had discovered the existence of videotapes of several coffees and other events attended by the President.<sup>53</sup> In the following weeks, the White House produced to the Committee one videotape containing footage of President Clinton's attendance at

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<sup>49</sup> *See id.*

<sup>50</sup> *See id.*

<sup>51</sup> Hearing Transcript, statement of Chairman Fred Thompson, July 30, 1997, pp. 121-22.

<sup>52</sup> *Id.*, pp. 122-23.

<sup>53</sup> *See* Memorandum from Donald T. Bucklin to Senator Fred Thompson, Oct. 6, 1997 (Ex. 25). Imbroscio testified that he informed Bucklin of the existence of the videotapes on the following day, on October 2, 1997. Testimony of Michael Imbroscio, Oct. 29, 1997, pp. 126-27. As discussed below, Imbroscio's recollection of the events leading to the discovery of the videotapes differs in several significant ways from the recollection of other individuals involved in the discovery and production of the videotapes.

forty-four White House coffees and sixty-six additional videotapes of hundreds of other fundraising events attended by President Clinton.<sup>54</sup>

These videotapes were responsive to the Committee's first document request to the White House -- the April 9 letter request -- which expressly requested the production of videotapes.<sup>55</sup> The Committee's May 21, 1997 document request and its July 31, 1997 subpoena also expressly included videotapes within their explanations of the types of materials sought by the Committee.<sup>56</sup> These specific requests for videotapes (as well as subsequent direct inquiries by Committee counsel), however, produced only assurances from the White House Counsel's office that no responsive videotapes existed.<sup>57</sup>

In spite of the Committee's repeated requests for the production of videotapes, the tapes were produced to the Committee only after the Committee was able to rebut the White House Counsel's initial insistence that none existed and direct the White House's own inquiry to locate

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<sup>54</sup> The White House, however, produced the videotape footage of the White House coffees to *Time* magazine prior to its Saturday, October 4, 1997 production to this Committee. *Time*'s article discussing the contents of the videotapes appeared on the newsstands on Monday, October 6. See Michael Duffy & Michael Weisskopf, "Let's Go to the Videotape," *Time*, Oct. 13, 1997, p. 30. This production to *Time* in advance of the Committee's receipt of the videotapes is one more example of the White House's cynical effort to manipulate the investigation.

<sup>55</sup> See Ex. 7 (defining "document" as "any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, . . . including, but not limited to, the following: . . . graphic or oral records or representations of any kind (including, without limitation, . . . videotape . . .)").

<sup>56</sup> See Ex. 10.

<sup>57</sup> See Ex. 25.

them. In an August 7, 1997 meeting with representatives of the White House Counsel's office, Bucklin -- acting on the basis of information provided by a third-party source -- requested that the White House "double-check" with an entity called the White House Communications Agency ("WHCA") for the existence of responsive videotapes.<sup>58</sup> After receiving no response, Bucklin subsequently reiterated this request in an August 19, 1997 letter to Breuer.<sup>59</sup> On August 29, 1997 (after the unexplained passage of an additional ten days), Imbroscio followed up on Bucklin's lead and met with Steven Smith, WHCA's Chief of Operations.

During his August 29, 1997 meeting with Smith, Imbroscio learned that WHCA videotaped fundraisers, political dinners and other events attended by the President.<sup>60</sup> Imbroscio testified that Smith also informed him that WHCA typically did not record "closed events" -- closed to the press as well as the public -- and that a WHCA cameraman would thus not have attended the White House coffees.<sup>61</sup> While Imbroscio reported this information to the Committee in a meeting on September 9, 1997,<sup>62</sup> it turned out to be both incorrect and inconsistent with the information that Smith recalled communicating to Imbroscio during their August 29, 1997 discussion. Smith testified that he told Imbroscio that WHCA videotaped closed events "all the

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<sup>58</sup> *See id.*

<sup>59</sup> Letter from Donald T. Bucklin to Lanny A. Breuer, Aug. 19, 1997 (Ex. 26).

<sup>60</sup> Deposition of Michael Imbroscio, Oct. 17, 1997, pp. 89-90.

<sup>61</sup> *Id.*, p. 91.

<sup>62</sup> *Id.*, p. 116.

time,”<sup>63</sup> but that Imbroscio never asked him specifically about the videotaping of coffees.<sup>64</sup> In fact, Smith testified that “[t]he word ‘coffee’ . . . was never used” during his meeting with Imbroscio.<sup>65</sup>

Imbroscio further misinformed the Committee during the September 9, 1997 meeting by stating that WHCA possessed a log of its videotapes that he would make available to the Committee.<sup>66</sup> Imbroscio, at the same time, failed to notify Committee counsel that Smith had informed him that WHCA instead possessed a searchable computer database of its videotapes through which WHCA could confirm the existence of videotapes of desired White House events.<sup>67</sup> The confusion created by Imbroscio’s misstatements led Bucklin to repeatedly urge Imbroscio to produce the log to the Committee instead of pushing for the ultimately more fruitful exercise of searching the database.<sup>68</sup> Imbroscio testified that he did not search WHCA’s database and uncover the existence of the responsive videotapes until October 1, 1997.<sup>69</sup>

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<sup>63</sup> Deposition of Steven Smith, Oct. 10, 1997, pp. 138-139; *see also* Testimony of Steven Smith, Oct. 23, 1997, pp. 52-53.

<sup>64</sup> Smith testimony, p. 53.

<sup>65</sup> *Id.*

<sup>66</sup> Imbroscio deposition, pp. 116-19.

<sup>67</sup> Smith deposition, pp. 146-47; *see also* Smith testimony, p. 52.

<sup>68</sup> Imbroscio deposition, pp. 120-22 (acknowledging Bucklin’s frequent requests to review a log of WHCA’s videotapes).

<sup>69</sup> *Id.*, pp. 152-53.

Imbroscio immediately shared his discovery with Ruff, who directed Imbroscio to pass his findings on to Bucklin.<sup>70</sup> When Ruff later met with Attorney General Janet Reno on October 2, 1997, however, he did not inform her of the discovery of the videotapes, even though he knew that Reno was preparing a letter to House Judiciary Committee Chairman Henry Hyde addressing Hyde's recommendation that several allegations of White House fundraising improprieties (to which the videotapes proved to be relevant) necessitated the appointment of an independent counsel.<sup>71</sup> Without the benefit of several illuminating portions of the White House videotapes, Reno concluded in her October 3, 1997 letter to Chairman Hyde that she found that the evidence against President Clinton did not call for any action under the Independent Counsel statute.<sup>72</sup> The Committee, however, believes that the evidence provided in the White House videotapes compels the opposite conclusion.

The failure of the White House Counsel's office to explicitly direct White House employees to turn over responsive "videotapes" was a primary factor in the failure of the White House to produce the videotapes in a timely fashion. On April 28, 1997, Ruff circulated to "[e]very employee" of the Executive Office of the President a memorandum (the "Ruff Directive") directing its recipients to "conduct a thorough and complete search of ALL of your records (whether in hard copy, computer, or other form)" for "[a]ny documents or materials"

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<sup>70</sup> *Id.*, pp. 172-74.

<sup>71</sup> *See* Roberto Suro, "Reno Explores Probe of Gore Phone Calls; Statement Cites 'Complexity' of Issues," *Washington Post*, Oct. 4, 1997, p. A1.

<sup>72</sup> *See id.*

relating to the subjects of the various ongoing campaign fundraising investigations (including this Committee's investigation).<sup>73</sup> Unlike the Committee's April 9, 1997 document request, which specifically defined the term "document" to include "videotape[s],"<sup>74</sup> the Ruff Directive neither defined the terms "document" or "material" nor otherwise expressly indicated the Committee's intention that responsive videotapes be produced.

Representatives of the White House Counsel's office defended the decision to replace the Committee's detailed definition of "document" (which included an express reference to "videotape") with the instruction to White House employees to search "ALL of your records." Breuer testified that he believed that the deletion of the Committee's detailed definition actually made it *more likely* that the video tapes would have been produced in the first instance.<sup>75</sup> Breuer claimed that busy White House employees, most of whom are not lawyers, would be less likely to

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<sup>73</sup> Memorandum from Charles F.C. Ruff to Executive Office of the President, April 28, 1997 (Ex. 27). White House Special Counsel Lanny Breuer explained that the Ruff Directive was not specifically tailored to collect documents responsive to the Committee's April 9 letter request. In addition to responding to this Committee's request, the Ruff Directive was designed to "collect the materials that were responsive to . . . the House request, the Justice Department request, and other subcommittees and other investigatory bodies that were interested in campaign finance investigations." Deposition of Lanny Breuer, Oct. 17, 1997, pp. 29-30. It did so, however, only by replacing the Committee's narrowly tailored requests with more generic alternatives. For example, the Committee's April 9 letter request sought "[a]ll documents referring or relating to the May 13, 1996 coffee." The Ruff Directive replaced this request with one for "[a]ny documents or materials . . . [r]eferring or relating to White House political coffees."

<sup>74</sup> Ex. 7; *see* footnote 55, *supra*.

<sup>75</sup> Testimony of Lanny Breuer, Oct. 29, 1997, p. 202.

carefully read and properly respond to a detail-laden document request than they would to the White House's simplified replacement.<sup>76</sup>

For two reasons, the Committee finds the White House Counsel's explanation to be untenable. First, Smith, WHCA's Chief of Operations, specifically rejected Breuer's suggestion. Smith stated that "if somebody wanted the White House Communications Agency to look for tapes, audiotapes, videotapes, . . . that's what they should ask for, you know, video or audiotapes."<sup>77</sup> The Committee also finds that the elimination from the Ruff Directive of the Committee's specific reference to videotapes substantially decreased the likelihood that individuals outside of WHCA who were familiar with WHCA's practice of videotaping events involving the President would have identified the need to produce the videotapes. Deputy Counsel to the President Cheryl Mills, who testified to the Committee that she "certainly" knew that one of WHCA's functions was to videotape the President,<sup>78</sup> and who frequently attended meetings of the White House lawyers working on the campaign finance investigation,<sup>79</sup> would have been a likely source of this information. However, as Mills also testified that "everybody .

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<sup>76</sup> Breuer deposition, pp. 37-38.

<sup>77</sup> Smith deposition, p. 166; *see also id.*, pp. 167-68.

<sup>78</sup> Deposition of Cheryl D. Mills, Oct. 18, 1997, p. 83. Mills, in fact, appears on the videotape of the President's March 11, 1995 radio address. *See id.*, pp. 59-60. Johnny Chung purchased admission for himself and a delegation of Chinese businessmen to the radio address attended by Mills with a \$50,000 check he hand delivered to the First Lady's Chief of Staff at the White House. *See* the section of this report on Johnny Chung.

<sup>79</sup> *See* Breuer deposition, p. 24.

. . . in the White House” knew that WHCA videotaped events,<sup>80</sup> others should have identified to the White House Counsel its oversight at an earlier time.

A contributing factor leading to the failure of WHCA personnel to turn over the videotapes immediately in response to the Ruff Directive was the mysterious failure of the White House Military Office -- WHCA’s parent entity -- to transmit a complete copy of the Ruff Directive to WHCA. Alan Sullivan, head of the White House Military Office, testified that he remembered receiving the Ruff Directive from the White House Counsel’s office, and directing that it be faxed to the Military Office’s “operating units.”<sup>81</sup> Although Col. Charles Campbell, Deputy Commander of WHCA, remembered receiving the fax from the White House Military Office, he testified that WHCA received an incomplete copy of the Ruff Directive.<sup>82</sup> Campbell testified that WHCA did not receive the page of the Ruff Directive that specifically directed its recipients to search their “files and records for . . . [a]ny documents or materials . . . [r]eferring or relating to White House political coffees.”<sup>83</sup> WHCA personnel testified to the Committee that

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<sup>80</sup> Deposition of Cheryl D. Mills, Oct. 18, 1997, p. 87; *see also* Deposition of Alan P. Sullivan, Oct. 16, 1997, pp. 80-81 (“[T]hese tapes were made by two guys lugging a commercial Beta camera around with a boom mike with a fuzzy grey ball, wandering around in front of large groups of people. Hardly what one would categorize as covert activities.”).

<sup>81</sup> Alan Sullivan deposition, pp. 52-56.

<sup>82</sup> Deposition of Charles Campbell, Oct. 21, 1997, p. 48.

<sup>83</sup> *Id.*, p. 53. The White House Military Office produced to the Committee copies of the faxes that it sent to four other units under its supervision, each of which contained a *complete* copy of the Ruff Directive. All four of the faxes are dated April 29, 1997 and all bear fax confirmation information indicating that they were sent within minutes of each other. *See* Ex. 28 - 31. Neither WHCA nor the White House Military Office was able to

they believed that if they had received a complete copy of the Ruff Directive, they would have searched WHCA's database and produced the videos of the White House coffees at that time.<sup>84</sup>

WHCA's purely speculative assessment of the impact of this mysterious and inadvertent transmission error, however, is a considerably less significant and blameworthy factor in the delinquent production of the videotapes than the absence from the Ruff Directive of a specific reference to videotapes. WHCA certainly cannot be held accountable for its failure to receive a complete copy of the Ruff Directive from the White House Military Office. The White House, on the other hand, made the intentional decision to infect the document production process with uncertainty and imprecision by eliminating the Committee's express reference to videotapes.

### **Delinquent Production of Presidential Diaries and Daily Chronicles**

A further category of information specifically requested by the Committee in its document requests and subpoena to the White House was "diaries."<sup>85</sup> Although Imbroscio acknowledged his awareness of the existence of a Presidential diarist "in the opening months that [he] was

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find the purportedly incomplete copy of the Ruff Directive that the Military Office faxed to WHCA. Campbell deposition, pp. 53-54.

<sup>84</sup> See, e.g., Testimony of Charles McGrath, Oct. 23, 1997, p. 92.

<sup>85</sup> See Document Request No. 9 attached to Ex. 10 ("All personal or business calendars, date books, personal notes, logs, phone logs, call sheets, journals or diaries maintained or used by President Clinton or Vice President Gore from 1993 to the present that refer or relate to any of the individuals or entities listed [above]."); see also, e.g., Document Requests attached to Ex. 7 (Defining "document" as "any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, . . . including, but not limited to, the following: . . . diaries . . .").

working at the White House,”<sup>86</sup> the White House concealed the existence of the detailed daily diaries of the activities of the President from the Committee until the deposition of the diarist, Ellen McCathran, on October 27, 1997.<sup>87</sup> McCathran testified in her deposition that she prepares and maintains a detailed chronological log of the President’s movements and activities that is based on a broad range of documentary material, including annotated presidential schedules, movement logs, and various phone logs.<sup>88</sup>

Instead of producing the complete diary, the White House turned over to the Committee approximately one thousand pages of the documentary material used by McCathran to prepare her diary.<sup>89</sup> These records, however, are merely the pieces of the jigsaw puzzle that the diarist had already completed. As McCathran herself indicated, the diary she prepares from the voluminous

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<sup>86</sup> Imbroscio deposition, p. 191. Imbroscio joined the White House Counsel’s office on March 7, 1997. *Id.*, p. 7.

<sup>87</sup> The discovery of the existence of the diaries was a serendipitous event and not the primary purpose for the deposition of the diarist. The Committee deposed the diarist after discovering that she was the custodian of presidential telephone logs originally created by WHCA. The Committee’s discovery of the continued existence of the telephone logs was itself contrary to earlier representations of Imbroscio, who reported to Committee counsel during a September 9, 1997 meeting that WHCA’s phone logs were destroyed after 60 days. Imbroscio deposition, pp. 238-40.

<sup>88</sup> Deposition of Ellen McCathran, Oct. 27, 1997, pp. 15, 19, 41-42.

<sup>89</sup> Testimony of Charles F.C. Ruff, Oct. 29, 1997, pp. 198-99. Imbroscio, in fact, sought to contradict in public hearings Chairman Thompson’s assertion that the White House concealed the existence of the diaries by simply referring to the quantity of documents produced from the files of the diarist. Imbroscio testimony, pp. 114-15. While the mass of background information gathered from the diarist’s files may indeed reveal to the Committee the existence of a diarist, it was patently disingenuous for Imbroscio to suggest that these background materials somehow revealed the existence of the diarist’s final work product.

documentary material represents the only *complete* source of information on the President's activities.<sup>90</sup> Despite the Committee's repeated requests, and Ruff's assurances that he "underst[oo]d the Chairman's concerns" about the White House's failure to produce the diaries,<sup>91</sup> the White House never produced them to the Committee.

The White House also failed until December 8, 1997 to disclose to the Committee the existence of a second diary-type document. On December 8, the White House simultaneously produced to the Committee and to the press hundreds of pages of a "chronicle" of the daily activities of the President prepared by Special Assistant to the President and Records Manager Janis Kearney.<sup>92</sup> Kearney reports to Nancy Hernreich, Deputy Assistant to the President and Director of Oval Office Operations.<sup>93</sup> Kearney testified that when she began work in the White House in December 1995, Hernreich directed her to "keep a daily chronicle of the Presidency" derived from her review of White House correspondence and attendance at various White House meetings.<sup>94</sup>

Hernreich certified in a memorandum to the White House Counsel's office on April 29, 1997 that she "directed all individuals in [her] office to search their files" in response to the April

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<sup>90</sup> See "Talking Points for Senate Deposition," prepared by Ellen McCathran, Oct. 27, 1997 (Ex. 32).

<sup>91</sup> Ruff testimony, p. 218.

<sup>92</sup> Marc Lacey and Glenn Bunting, "White House Forwards More Donor Records," *Los Angeles Times*, Dec. 9, 1997, at A1.

<sup>93</sup> Deposition of Janis Kearney, Dec. 23, 1997, p. 12.

<sup>94</sup> *Id.*, pp. 17-18, 21-22.

29, 1997 Ruff Directive, and that “all responsive documents ha[d] been provided.”<sup>95</sup> However, although Kearney’s “chronicles” were unquestionably responsive to the Committee’s document requests,<sup>96</sup> Kearney testified that Hernreich instructed her that “there was no need” for Kearney to respond to the White House Counsel’s requests.<sup>97</sup>

## **Conclusion**

Although the White House repeatedly pledged its cooperation with the Committee’s investigation, its actions spoke far more loudly than its words. The White House produced documents to the Committee pursuant to its own schedule and without regard to any deadlines other than the December 31, 1997 expiration of the Committee’s investigation. The White House, in fact, ignored even deadlines imposed by the scheduling of deposition or hearing testimony of the author or subject of particular documents, and instead often produced documents after the appearance of the witnesses to whom the documents related. It withheld documents under specious assertions of executive privilege. It concealed the existence of highly relevant

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<sup>95</sup> Memorandum from Nancy Hernreich to Dimitri Nionakis, April 29, 1997 (Ex. 33).

<sup>96</sup> For instance, the June 19, 1996 entry states that “[the President] hosted a coffee, that Nancy H[ernreich] described as a ‘political’ coffee that would probably last all morning. She explained the difference between ‘money’ coffees and the ‘political/issues’ coffees as how much [the President] interjected.” Diary entry of Janis Kearney, June 19, 1996 (Ex. 34). This entry falls squarely within May 21, 1997 Document Request No. 11 which sought “[a]ll documents referring or relating to any White House coffee . . . .” Ex. 10. The late production of this entry is also particularly significant, as it appears to contradict Nancy Hernreich’s affirmative response in her deposition to the suggestion that she could not “tell [the Committee] much about what happened at the coffees or after the coffees with regard to fund-raising.” Deposition of Nancy Hernreich, June 20, 1997, pp. 104-05.

<sup>97</sup> Kearney deposition, p. 60.

materials and unreasonably and improperly redacted significant information from many of the documents it chose to disclose. Finally, the White House's intentional omission from the document search directive disseminated among White House employees of any indication of the breadth of the materials sought by the Committee caused a six-month delay in the production of the critically important White House videotapes.

This is not the behavior of a White House seeking to cooperate with a Senate Committee's exercise of its important oversight authority. Rather, these actions vividly demonstrate the lengths to which this White House went in order to obstruct the work of a Committee seeking to reveal information that the White House hoped to keep secret. In spite of the White House's efforts, however, the Committee's efforts led to the exposure by the White House -- either through the Committee's hearings or through the White House's production of information directly to the press -- of much that would otherwise have remained undisclosed.

In light of the above, the Committee urges other lawful authorities who are investigating criminal conduct and who are subpoenaing White House records, to exercise extreme caution in assuming that any White House document production is either complete or accurate.