

***UNITED STATES  
SENATE  
COMMITTEE***

***1997 SPECIAL  
INVESTIGATION  
IN CONNECTION  
WITH 1996  
FEDERAL  
ELECTION  
CAMPAIGNS***

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**United States Senate Committee**

# **1997 Special Investigation in Connection with 1996 Federal Election Campaigns**

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# TABLE OF CONTENTS

[Procedural Background and Overview](#)

[Introduction](#)

[Procedural Chronology](#)

[Overview of the Investigation](#)

[The Conduct of the Investigation](#)

[The Impact of the Deadline](#)

[The Hearings](#)

[The Report](#)

[Summary of Hearings](#)

[The DNC Raised Millions of Dollars in Illegal Foreign Funds](#)

[John Huang](#)

[The Hsi Lai Temple fundraiser](#)

[Charlie Trie](#)

[The White House and the Presidency Itself Became Fundraising Tools](#)

[White House Coffees](#)

[Telephone Solicitations](#)

[The All-Consuming Fundraising Effort](#)

[Other Improper or Illegal Fundraising Activities](#)

[The Roger Tamraz Affair](#)

[The Indian Casino Decision](#)

[Foreign Efforts to Influence the U.S. Elections](#)

[PRC Efforts](#)

[John Huang](#)

[The Abuse of Soft Money](#)

[The Thirst For Money](#)

[The President's Precarious Political Position in Late 1994  
An Early Emphasis on Money to Stave off Primary  
Challengers](#)

[Dick Morris' Early Advertising Blitz -- The Need for More  
Money](#)

[Hatching a Scheme to Evade Federal Election Laws](#)

[The September 10, 1995 White House Meeting: Unveiling  
the Scheme](#)

[In His Own Words: The President's Knowing Subversion of  
Federal Election Law](#)

[The "Bottom Line": Pressure on the DNC to Satisfy the  
Campaign's Need for Money](#)

[Conclusion](#)

[Ickes Takes Charge of the DNC as the President's  
"Designee"](#)

[Coordination in the Retention and Payment of DNC and  
Clinton/ Gore '96 Media Consultants](#)

[The White House Weekly Strategy Meetings](#)

[White House Coordination in the Design and  
Implementation of Issue Advocacy Advertising](#)

[Coordination Between the DNC, Clinton/ Gore, the White  
House, and Union Organizations](#)

[Conclusion](#)

[Overview](#)

[The May 1, 1996 Coffee](#)

[Johnny Chung and the White House "Subway](#)

[Introduction](#)

[Johnny Chung's admiration for the First Lady](#)

[Visit by Haomen Group](#)

[The Radio Address](#)

[Gandhi's Statements to the Committee](#)

[What the Committee's Investigation Established](#)

[Analysis of Gandhi's Bank Records](#)

[The Delay in the DNC's Return of Gandhi's Contribution](#)

[Conclusion](#)

[Introduction](#)

[Initial Indications of Chinese Efforts to Influence the 1996 Campaigns](#)

[Campaign Contributors' PRC Connections](#)

[The Committee Learns of a "China Plan" and Other, Possibly Related Efforts](#)

[Summary](#)

[Background on Yah Lin "Charlie" Trie](#)

[Background on Ng Lap Seng](#)

[Trie's Political Contributions](#)

[The Source of Funds Used by Trie for His Contributions](#)

[Trie's Fundraising](#)

[Attempts to Convert Political Connections to Personal Gain](#)

[Need for an Independent Counsel](#)

[Conclusion](#)

# Procedural Background and Overview

[Table of Contents](#)

## Introduction

[Table of Contents](#)

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

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

The first of these purposes was to create a record of what occurred during the 1996 election cycle to inform the American people. A knowledgeable electorate is the cornerstone of democracy, and the public has a right to

know what went on during the 1996 campaign. The people need to be informed of the operations of their government and the effectiveness or ineffectiveness of the laws in order to make informed judgments at the polls. Because all else flows from the people in a democracy, this purpose of informing the people must be ranked as the primary purpose of the investigation. In this regard, the Committee carried on the official inquiry, while the media fulfill their similar, but unofficial role, of informing the people of the facts.

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

A second purpose of the inquiry and hearings was to scrutinize the operation of the current legal and regulatory framework for federal elections. For Congress to legislate and govern effectively, it must conduct routine oversight to learn how the government is functioning. Congress also has a responsibility to examine the operation of current laws on



the government and private parties. This Committee is particularly well-suited to conduct such a broad oversight inquiry into the multifarious elements of this scandal because it has the broadest oversight jurisdiction in the Senate: “to study or investigate the efficiency and economy of operations of all branches of the Government.”<sup>1</sup>

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

The third purpose of the hearings is the one on which the Senate’s ability to conduct this type of investigation is founded, its constitutional role to legislate. The Senate cannot legislate without knowing what is happening. How do the laws the Congress passes work in the real world? What

gaps exist in their coverage? What gaps exist in the government's enforcement capabilities? Are there situations where legal proscriptions do not work? These are the types of questions relevant to any congressional hearing, as they are central to the role of Congress in our constitutional republic. The Committee went forward always bearing in mind that its entire authority was premised on the underlying legislative responsibilities of Congress, even though the Committee itself lacked legislative jurisdiction over many of the items at issue in these hearings. For this reason, the Committee did not hold hearings on particular legislative proposals; it never examined what works and does not work with an eye towards developing and recommending a legislative solution, which is typically the responsibility of the legislative committee with legislative jurisdiction conferred by Rule XXV of the Standing Rules of the Senate. The hearings did, however, develop a factual record on which other committees with such jurisdiction can rely in formulating legislative proposals. Thus, it is the expectation of the Committee that the facts developed by its investigation and revealed in its hearings will be of use to the Committee on Rules and Administration, when it considers legislation to reform campaign finance laws, and to the other members of the Senate. Other information developed by the Committee should be relevant to other committees in the exercise of their legislative and oversight responsibilities. Finally, some of the issues investigated by the Committee touched on matters within the legislative jurisdiction of the Committee, such as potential violations of the Hatch Act.

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

## **Procedural Chronology**

### [Table of Contents](#)

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

Within a week of hiring Madigan, the Committee hired three additional lawyers to serve as senior counsel to assist in the supervision of the special investigation: Harold Damelin, former chief counsel of the Permanent Subcommittee on Investigations of the Committee on

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

On January 28, 1997, Chairman Thompson delivered his initial statement to the Senate explaining the purposes of the inquiry.<sup>2</sup> The Chairman explained that the Committee would not be engaged in “a criminal investigation,” which is the constitutional responsibility of the executive. Chairman Thompson identified two central purposes appropriate for congressional committees, and these would set the parameters and tone for the investigation. First, the Committee would undertake an inquiry with a legislative purpose: to inquire into and lay out the facts to help inform Congress of the operation of the law and to assist the Senate in determining whether relevant laws need to be changed or repealed or new laws adopted. Second, the Committee would attempt to fulfill what President Wilson called “the informing function of Congress,” whereby the Committee would seek to find the facts and reveal them for

the American people, so that they can make informed political choices.

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

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

After consulting with his colleagues in the majority and reviewing the scope of similar inquiries, Chairman Thompson proposed an investigation that would examine illegal and improper campaign fund-raising and spending activities in the 1996 federal election cycle. Chairman 3 The proposed \$6.5 million budget was based on an evaluation of

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

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

their experience with the Senate's 1987 investigation of the Iran-Contra affair.

On January 29, 1997, the Committee held its organizational meeting for the 105th Congress. In addition to its regular budget, Chairman Thompson proposed a budget of \$6.5 million for the special investigation, which he proposed would look into illegal and improper activities during the 1996 elections. This budget was proposed after consulting on January 28 with the majority members of the Committee. While the minority supported a broad scope for the investigation, it insisted on a deadline and refused to support a budget that would allow the Committee to carry on its work without coming back to the Senate for additional funding. The minority countered with a proposal that included a time-limited investigation with a broad scope and a budget of \$1.8 million, which it argued would be adequate for commencing the inquiry, but which would clearly be inadequate for completing the inquiry.

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

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

Illegal or improper fund-raising and spending practices in the 1996 federal election campaigns, including but not limited to:

Foreign contributions and their effect on the American political system;

Conflicts of interest involving federal officeholders and employees, as well as misuse of government offices;

Failure by federal government employees to maintain and observe legal barriers between fund-raising and official business;

The independence of the presidential campaigns from the political activities pursued for their benefit by outside individuals or groups;

The misuse of charitable and tax-exempt organizations in connection with political or fund-raising activities;

Unregulated (“soft”) money and its effect on the American political system;

Promises and/or the granting of special access in return for political contributions or favors;



The effect of independent expenditures (whether by corporations, labor unions, or otherwise) upon our current campaign finance system, and the question as to whether such expenditures are truly independent;

Contributions to and expenditures by entities for the benefit or in the interest of public officials;

and To the extent they are similar or analogous, practices that occurred in previous federal election campaigns.<sup>5</sup>

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

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

other Senate committees. This recurring budget was adopted by the Senate in S.Res. 54.6

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

On February 13, 1997, the Committee held a business meeting to discuss the 54 proposed 11 subpoenas. At that meeting, the Committee approved the issuance of 44 subpoenas by unanimous consent. The remaining 10 subpoenas were authorized to be issued by a vote of the Committee, but their issuance was deferred until February 19.

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

legal staff to start the task which the majority had proposed to the minority in January.

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

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

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

The proposed funding resolution was to come before the Rules Committee on March 6, 1997. While the Minority continued to seek a cut-off date and limited funding to allow them to control the investigation, many Republicans were concerned about the broad scope of the inquiry, which

allowed the investigation to look into improper as well as illegal activities. Many Republicans feared that if that broad scope approved by the Committee were adopted, the investigation would lose its focus on the more serious illegal activities during the 1996 federal elections, and thus be sidetracked into possible activities that were improper but not illegal. Thus, as the Rules Committee moved to consider the issue, the possibility was strong that no investigation would take place.

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

On March 6, 1997, the Rules Committee heard testimony from Chairman Thompson and Senator Glenn on the funding resolution. Both Senators opposed the narrow scope of the proposed compromise, and Chairman Thompson argued against imposing a deadline on the inquiry. Nonetheless, Chairman Warner offered the compromise amendment developed by the Majority Leader to S.Res. 39, the funding resolution, which was approved by the Rules Committee on a party-line 9-7 vote.

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

Because the distinction between what was illegal and what was merely improper was vague at the time and has continued to befuddle many acute observers, including the Attorney General of the United States, some members of the Committee took the position that this proposed amendment was not a satisfactory resolution. The Majority Leader thus offered Amendment No. 23 for himself, Chairman Thompson, and Chairman Warner to amend S.Res. 39 as reported by the Rules Committee to broaden the scope of the investigation so that it would cover improper as well as illegal activities.<sup>10</sup> Amendment No. 23 was approved by a vote of 99-0 with one senator voting "present,"<sup>11</sup> and S.Res. 39 was also approved, as amended, by the identical vote.<sup>12</sup>

## **Overview of the Investigation**

[Table of Contents](#)

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

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

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

Between March and the end of the year, a period of only nine and a half months, after hiring staff, the Committee conducted as thorough and complete an investigation as time permitted. During that span, the Committee issued 427 subpoenas requested by both the majority and minority either for documents or for testimony. The Committee received in response to its subpoenas over 1,500,000 pages of documents, all of which had to be reviewed and the relevance of each assessed. Committee staff took 200 depositions and conducted over 200 witness interviews. The Committee held 32 days of hearings, taking testimony from 72 witnesses. Finally, the Committee undertook to prepare this report as directed by the Senate.

## **The Conduct of the Investigation**

### [Table of Contents](#)

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

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

Also on April 9, the Committee sent its initial request for documents, video and audio tapes, e-mail, and other records to the White House. This request had been discussed in advance with the Counsel to the President and his staff to ensure prompt compliance. It contained the first 28 specific document requests the Committee would make of the White House. Unfortunately, it also led the White House to begin in earnest its efforts to obstruct and delay the investigation so as to run the Committee up against the deadline imposed by the Senate. The White House's production of records was so poor from the earliest stages of the investigation that on May 13, about one month after the first request was sent, Chairman Thompson called Erskine Bowles, Chief of Staff to the President, to express his concern over the slow pace of White House document production. Although Bowles promised improved performance, the White House's responses to the Committee's document requests remained so poor as to force the Committee to issue a subpoena to the White House on July 31 by unanimous vote. Even after it received the Committee's subpoena, however, the White House's production remained untimely and laggard, culminating in the belated production in October of relevant videotapes responsive to the Committee's April document request. The White House's obstructionism in this investigation brought discredit on the President and his staff.

The Committee issued its first 17 subpoenas for bank records to seek to trace the source of political contributions on April 15 and April 17, 1997. On May 22, 1997, the Committee voted to issue 43 additional subpoenas,



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

The votes on May 22 to issue subpoenas marked the first participation in the investigation by Senator Bob Smith (R-NH) and Senator Robert Bennett (R-UT), who had been selected to replace Senator Ted Stevens (R-AK) and Senator William Roth (R-DE) on the Committee for the duration of the investigation.<sup>13</sup>

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

From the time the investigation was authorized, the Committee was issuing subpoenas and receiving a large number of documents from many parties. The Committee had also started interviewing and deposing witnesses during the spring. The investigation was proceeding with a broad focus because of the large number of disparate allegations

that had been raised concerning possibly illegal or improper activities during the 1996 federal elections.

To conduct a thorough and comprehensive inquiry into both illegal and improper activities, including the role of non-profit groups in influencing federal elections, Chairman Thompson indicated during the spring that the Committee's inquiry would proceed in two phases. The first phase would focus on illegal activities engaged in by candidates and political parties. The emphasis of this first phase would be on trying to determine the amount of foreign money contributed to candidates and parties during the 1996 elections. An additional area of focus of the first phase of the inquiry would be the laundering of campaign contributions, as related to foreign contributions, which were often laundered through those who could lawfully contribute. Other areas of inquiry that would be covered by the first phase were the sale of access and policy decisions in return for political contributions. The second phase of the investigation would focus on the role of non-profit and issue advocacy groups and labor unions in the 1996 elections, particularly the issue of whether these groups illegally coordinated their expenditures with the White House, the parties, or particular candidates or otherwise engaged in improper activity.

As the investigation proceeded and the Committee sought to prepare for the start of public hearings, it encountered significant obstruction to its inquiry from several sources. Despite promises of cooperation, the White House continued to produce little information, slowly, and what the White House did produce to the Committee was

often released first to the news media, especially if the information was deemed embarrassing to the President. The DNC, whose 1996 campaign fundraising and spending practices had led directly to the Senate authorizing the investigation, was similarly recalcitrant in producing relevant documents in a timely manner. Both the White House and the DNC, which acknowledged acting in concert in formulating a strategy to respond to the 1996 campaign fundraising improprieties,<sup>14</sup> appeared to have developed a shared strategy based on the Senate's decision to impose a deadline on the investigation: they would produce information slowly, make any conceivable objection to its production, and then produce only a portion of it after requiring great exertion by the Committee in an effort to delay the inquiry until it ran out of time.

Despite the delaying tactics of the White House and DNC, the Committee developed a great deal of information in a relatively short period of time. Large numbers of documents had been received from many sources, and depositions and interviews were being conducted. In addition, on June 6, 1997, three members of the majority staff, two detailed FBI agents, and one member of the minority staff undertook an investigative trip to Hong Kong, Taiwan, Macao, and Indonesia to collect information and interview witnesses.<sup>15</sup>

Of perhaps equal importance to the information the Committee was gathering, however, was the information the Committee was unable to obtain. Thirty-five witnesses with information relevant to the Committee's investigation asserted the Fifth Amendment right against selfincrimination and refused to testify and/or produce documents in

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

In addition to Committee's struggle with the obstructionist tactics of the White House and the DNC, it encountered resistance from a number of non-profit organizations that received subpoenas in July, when the Committee started planning to conduct the second phase of its investigation. Many of the non-profit organizations that refused to comply had reportedly played significant roles in the 1996 elections. The Committee was interested particularly in seeking to determine whether these organizations, which had primarily engaged in making allegedly independent expenditures to broadcast so-called issue advocacy advertisements, had coordinated their activities with candidates or political parties in violation of

the Federal Election Campaign Act. The Committee subpoenaed a total of 31 such organizations. Of these, a number refused to produce documents to the Committee, asserting a variety of constitutional objections, most of which were without any legal foundation.

## **The Impact of the Deadline**

### [Table of Contents](#)

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

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

act of producing business records, for example, that happen to be in the possession of the person subpoenaed.

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

Had the Committee filed enforcement actions in April, responsive pleadings would have been due in May. The district judge would then have had to review the relevant documents in camera, a time-consuming task. Even with an expedited decision, the Committee staff determined it was unlikely to receive a decision before July, and any decision