

APPENDIX C

VIEWS OF REPRESENTATIVE LAURA RICHARDSON
REGARDING THE INVESTIGATIVE SUBCOMMITTEE'S FINAL DRAFT REPORT

I. INTRODUCTION

Representative Richardson herein submits her views on the Investigative Subcommittee's investigation, sanctions and report. In October 2010, the House Ethics Committee notified Rep. Richardson that the Committee had initiated a Rule 18 (a) inquiry and subsequently empanelled a Investigative Subcommittee in November 2011, to consider primarily whether Representative Richardson required official house staff to work on her campaign.

Representative Richardson fully recognizes the seriousness of the conduct described in the Statement of Alleged Violation. As she made clear to the Investigative Subcommittee, however, she did not intend that her staff feel compelled or coerced to work on her campaign. At the time of both the email from her chief of staff telling staff to attend the "Democratic Idol" fundraising event (September 2010 with Capitol staff) and the chief of staff's meeting with staff in the district to tell them they were expected to work on the campaign (April 2010 with District staff), Representative Richardson was not aware of the email, the contents in the email or words spoken in the meeting, nor was Representative Richardson told by the person who provided the directive or the staff who received and had concerns with the directive until *after* the Rule 18 (a) inquiry began.

Further, Representative Richardson has never taken or threatened any action against any staffer who did not volunteer to work on her campaign. And as these Views will make clear, she did not, through the conduct to which she has admitted, ever intend to obstruct the Committee's investigation in any way.

II. CONDUCT OF THE INVESTIGATION

During the course of the Committee's preliminary inquiry under Committee Rule 18(a), and during the investigation conducted by the Investigative Subcommittee, Rep. Richardson expressed serious concerns about the conduct of the investigation, in the following ways:

A. By the House Ethics Committee

The problems in the conduct of the investigation rendered it very difficult for Rep. Richardson to defend herself and, in particular, to make the Investigative Subcommittee aware of all of the relevant facts, and of the factual context, relating to many of the allegations against

her. She believes that these problems, as described below, fundamentally undermined the legitimacy of the Ethics Committee process in this case.

A. Prejudgment and Improper Influence of Witnesses by Ethics Committee Staff

During the Rule 18(a) inquiry at the outset of the Committee’s process, Committee counsel improperly influenced witnesses by telling them—a year before any such decision would be made by the Ethics Committee—that the Ethics Committee was likely to empanel an Investigative Subcommittee, thereby clearly signaling that the Ethics Committee staff, at least already believed that Rep. Richardson was guilty of misconduct.

For example, during the interview of Angel Macias, a key staff witness, Ethics Committee counsel told Ms. Macias, “It’s completely up to the [full Committee] on what they want to do...[T]hey make the final decision, which could be anything from dismiss the matter entirely to investigate it by empaneling an investigative subcommittee.” Counsel continued, “If that happens, you will be called, you will be placed under oath....So that is the process. ... Chances are they going to want to empanel.” (Macias 18(a) Tr. 34).

Committee counsel told former district director Eric Boyd during his first interview that, “the chances are very likely that you are going to be interviewed again... If you are interviewed again it will be under oath and it will be in front of members of the committee... My recommendations could be anywhere from dismiss the matter as being, you know, not a violation or impanel an investigative subcommittee. . . I think you probably know which way, at this point we are looking?” (Boyd 18(a) Tr. 83-84).

Committee counsel told district staffer Candace Yamagawa:

The Committee’s choices in this matter... are to dismiss the matter because the information received lacks merit or lacks sufficient information to believe a violation occurred; or we can recommend that investigative subcommittee be impaneled [sic]. . . .

You actually won’t hear back from us until such time we decide to interview you again, and the reason is that, as I said, everything is done confidentially... I expect that we would not be able to impanel [sic] an investigative subcommittee until the beginning of the 112th Congress, because there is insufficient time left this Congress to do so... So more than likely it would be in January, we would impanel and begin doing any additional work--....

(Yamagawa 18(a) Tr. 59-60).

Committee counsel told Kenneth Miller, during his first Rule 18(a) interview in November 2010 that, “when I present the findings to the Members, I will be giving them the full briefing on what I believe was violated, be it House rules, campaign law or Federal criminal statutes.” (Miller 18(a) Tr. 47).

Representative Richards was entitled to a fair and objective process free from bias and prejudgment. The clear indications to Rep. Richardson’s staff during the preliminary inquiry, that Ethics Committee staff already believed Rep. Richardson was guilty of some violation, deprived Representative Richardson of such a process.

2. Deprivation of Effective Assistance of Counsel

Committee counsel deprived Representative Richardson of fundamental due process and of the right to effective assistance of counsel, by directing and requesting witnesses not to speak to Rep. Richardson’s counsel. On October 19, 2010, days after the preliminary inquiry commenced pursuant to Committee Rule 18(a), the Congresswoman’s then legislative director sent an e-mail to her chief of staff, Shirley Cooks, stating that Ethics Committee counsel had called staff members to schedule interviews and that Committee staff had directed the legislative director to inform that Rep. Richardson’s staff that they were not to discuss any matter pertaining to the inquiry with anyone other than their personal counsel, and that Rep. Richardson’s staff was to be specifically directed *not to speak with her own counsel* in this matter. Ethics Committee counsel directed the legislative director to communicate this requirement to all members of the Office staff.

This direction was reiterated by Ethics Committee counsel repeatedly during interviews of Rep. Richardson’s staff during the Rule 18(a) inquiry and persisted despite objections by Rep. Richardson’s counsel. For example, during the interview of Ms. Cooks, the chief of staff, Committee counsel told her that, “We can’t tell [Rep. Richardson’s counsel] what he can or can’t do, but we do have the—we have the authority to request that you not speak with him.” (Cooks 18(a) Tr. 55).

During the interview of another staffer, Jeffrey Billington, Committee counsel told Mr. Billington, “we have requested that staff do not discuss this investigation with anyone. . . . [Rep Richardson’s counsel] does have right to try to talk to people and interview. . . . We cannot order you not to talk to him about your knowledge generally about this matter. We request that you don’t.” (Billington 18(a) Tr. 41).

In the interview with legislative director Gregory Berry, Committee counsel stated, “This is not a criminal case,” (Berry 18(a) Tr. 40) and then told Mr. Berry:

It is still entirely up to you whether or not you want to talk to [Rep. Richardson's counsel]. We are just asking you not to talk to anybody and that is all we can do is ask. And if you do, then we will just put that on the record, that you have spoken [to Rep. Richardson's counsel] [H]ere's what we think the law is and we believe it is. But this is similar to a grand jury, and the courts have stated that yes, the prosecutors and the grand jury can ask the witnesses not to discuss the matter with anybody but you can't compel them. . . . You can just ask that the witnesses not talk or not subject themselves to interview even by the parties' attorneys.

(Id. at 41-42).

In a fourth interview, Committee counsel told staffer Jeremy Marcus that he should refrain from speaking with Rep. Richardson's counsel to preserve the confidentiality of the investigation. (Marcus 18(a) Tr. 30). When Mr. Marcus said he was not worried about counsel "leaking this, given he is Ms. Richardson's counsel," Committee counsel responded: "Well, no, I mean, what we're saying is, we request you don't discuss it with him. That is a request, . . . Well that is just the committee's request. . . . We can ask you not to discuss it with him to maintain the integrity of the investigation." (Id. at 31). Similar "requests" were made of virtually every staffer interviewed during the preliminary (Rule 18(a)) inquiry.

As a result of these repeated admonitions, Rep. Richardson's counsel, after interviewing two staff members, refrained from requesting interviews with any additional staff witnesses. Largely for this reason, Rep. Richardson did not learn about most of the specific factual allegations in this matter until the final stages of the proceeding, when the Investigative Subcommittee provided her with a proposed Statement of Alleged Violation.

Committee counsel's representation to all the witnesses that the Committee "prosecutors" can always "request" a witness not to talk to respondent's counsel is misleading at best, and the requests that were made were clearly improper and deprived Rep. Richardson of her fundamental due process rights. Rule 3.4(f) of the District of Columbia Bar Rules of Professional Conduct states unequivocally that, "*A lawyer shall not: ... (f) Request a person other than a client to refrain from voluntarily giving relevant information to another party.*"

Indeed, it is well-established that "witnesses. . . are the property of neither the prosecution nor the defense. Both sides have an equal right and should have an equal opportunity to interview them." *United States v. Slough*, 669 F. Supp.2d 51, 55 (D.D.C. 2009)(quoting *Gregory v. United States*, 369 F.2d 185, 1888 (D.C. Cir. 1966). "[I]t is unprofessional conduct for the prosecutor to *advise a prospective witness to decline to give the defense information that person has a right to give.*" *United States v. Carrigan*, 804 F.2d 599, 603 (10th Cir. 1986)(emphasis added). "[S]ubstantial governmental interference with a defense witness'

choice to testify may violate the due process rights of the defendant.” *United States v. Bieganowski*, 313 F.3d 264, 291 (5th Cir. 2002)(quoting *United States v. Whittington*, 783 F.2d 1210, 1219 (5th Cir. 1986). “[W]e know of nothing in the law which gives the prosecutor the right to interfere with the preparation of the defense by effectively denying defense counsel access to the witnesses except in his presence.” *Banks v. Office of the Senate Sergeant at Arms*, 22 F.R.D. 1, 6 (2004)(quoting *Gregory v. United States*, 369 F.2d 185, 187-88 (D.C. Cir. 1966)).

There is no question in this case that the staff witnesses were frightened and intimidated by the mere process of being interviewed (and the explicit threat of being re-interviewed) by the Committee—and many so stated, on the record. The repeated “requests” by Committee counsel that staff witnesses not speak with Rep. Richardson’s counsel—in some cases accompanied by threats to “put it on the record” if they did so—amounted to, and had the effect of, intimidating staff witnesses to the point where it was impossible as a practical matter for Rep. Richardson’s counsel even to ask to speak to those staff witnesses.

The Committee’s substantial and continued interference with Rep.. Richardson’s ability, through her counsel, to obtain relevant information about the allegations against her seriously infringed her right to defend herself in this proceeding.

3. Repeated Violations by Ethics Committee Members and/or Staff of Rule 7 (Confidentiality)

Ethics Committee Rule 7(b) provides that, “No member of the staff or outside counsel may make public, unless approved by an affirmative vote of a majority of the members of the Committee, any information, document or other material that is confidential, derived from executive session, or classified and that is obtained during the course of employment with the Committee.” Rule 7(c) provides that, “Committee members and staff shall not disclose any evidence relating to an investigation to any person or organization outside the Committee unless authorized by the Committee.” Rule 7(d) provides that “Members and staff of the committee shall not disclose to any person or organization outside the committee, unless authorized by the Committee, any information regarding the Committee’s...proceedings, including but not limited to (i) the fact or nature of any complaints...or (iv) any other information or allegation respecting the conduct of a Member....”

The conduct of this investigation has been marked by repeated leaks of the existence, nature and details of the investigation, beginning almost immediately after the inquiry was initiated. Then, on October 25, 2011, before any action had been taken by the Committee, an article in *Politico* reported that “The House Ethics Committee is moving toward a full scale investigation of Rep. Laura Richardson (D-Calif.), who has been under scrutiny for months over allegations that her staffed engaged in banned political activities while on government time....” The article cited “sources close to the matter.” On November 3, 2011, the Ethics Committee

voted to establish an Investigative Subcommittee. The *Politico* piece thus clearly reflects knowledge of confidential information about Committee deliberations which could only have originated with Committee Members or staff—a clear violation of Rule 11, clause 3(b)(6) of the Rules of the House and of Rule 7 of the Committee’s Rules.

On November 4, 2011, within an hour or so of the Congresswoman’s receipt of a letter from the full Committee informing her that the committee had established an Investigative Subcommittee,, while the Congresswoman was still reviewing the Committee’s letter, Rep. Richardson’s office received a call from a DC-based reporter for the Los Angeles *Times*, asking for comment on the establishment of the Investigative Subcommittee. That article was posted online at about midnight Eastern time (<http://www.latimes.com/news/nationworld/nation/la-na-1104-richardson-ethics-20111104,0,7832011.story>) quotes a “source familiar with the preliminary inquiry” as stating that “[a]t least eight current and former Richardson staff members told investigators they felt compelled to work on her 2010 reelection campaign on their own time, the source said.” The article also referenced a confidential communication sent by Rep. Richardson Members of the full Committee on November 1, 2011—each letter marked “Personal and Confidential” to the Member’s attention—in which Rep. Richardson suggested a resolution of the matter similar to that reached in the case of another Member several years earlier. With respect to the resolution suggested by the Congresswoman in her confidential letter to the Committee of November 1,2012 the *Times* reported that “the source with knowledge of the allegations against Richardson said their scope was bigger than those against” the other Member.

The nature of the information provided by the source quoted in this article, combined with the fact that the reporter was aware of the Committee’s decision at about the same time as Rep. Richardson, strongly indicates, again, that one or more Members or staff of the Committee is providing to the press information about this matter in violation of Rule 7 of the Committee’s Rules and in violation of the oath taken by Members and employees of the Committee pursuant to Rule 7(a).

4. Issues With Implementation of Agreed Settlement

Rule 21(c) of the Committee’s rules provides that when an investigative subcommittee adopts a Statement of Alleged violation and the respondent admits to the violations and waives the right to an adjudicatory hearing, the ISC is to prepare a report, a final draft of which is to be provided to the respondent; and that the respondent may submit views in writing regarding the final draft to the ISC with seven calendar days. As part of the negotiated settlement of this matter, Rep. Richardson agreed to reduce that seven-day period to five days. The ISC then provided its draft report to Rep. Richardson at 6:00 p.m. on Friday afternoon, July 20, 2012, thereby effectively starting the five day period on a weekend and, as a practical matter,

cutting off two more of the normally allotted seven days or at a minimum significantly reducing the ability to use the five agreed days. As a result, Rep. Richardson will be offering additional information for the Report.

Committee staff insisted that the transmittal of the draft ISC report on Friday afternoon had been disclosed to Rep. Richardson during a recital of the terms of the agreed settlement, which was made by Committee counsel at the end of an executive session of the ISC, and transcribed by a court reporter. However, the ISC then refused to make the transcript of the recital of the terms of the settlement agreement available to Rep. Richardson, even though she and her counsel had listened to that recital and it had been transcribed for precisely the purpose of avoiding any misunderstanding about the terms of settlement.

5. Reliance on Attorney Proffers Not Provided to Rep. Richardson

Ethics Committee Rule 26(c) provides that:

Not less than 10 calendar days before a scheduled vote by an investigative subcommittee on a Statement of Alleged Violation, the subcommittee shall provide the respondent with a copy of the Statement of Alleged Violation it intends to adopt together with all evidence it intends to use to prove those charges which it intends to adopt, including documentary evidence, witness testimony, memoranda of witness interviews and physical evidence, unless the subcommittee by an affirmative vote of a majority of its members decides to withhold certain evidence in order to protect a witness, but if such evidence is withheld, the subcommittee shall inform the respondent that evidence is being withheld and of the count to which such evidence relates.

In this case, the Investigative Subcommittee (“ISC”) did provide Rep. Richardson with a copy of the Statement of Alleged Violation it intended to adopt, together with transcripts of interviews and exhibits.

However, the ISC failed to provide Rep. Richardson either the “Attorney Proffer on behalf of Shirley Cooks” or the “Attorney Proffer on behalf of Daysha Austin.” Committee staff informed Rep. Richardson’s counsel that these proffers were made after the ISC sent Rep. Richardson the Statement of Alleged Violation the Subcommittee intended to adopt and that the Subcommittee did not intend to rely on these proffers to prove any of the charges in the SAV.

Yet these proffers are cited no less than a dozen times in the Draft ISC Report as the basis for numerous factual allegations, some of them very critical—such as the allegation that

preceding a meeting not attended by Rep. Richardson, at which the chief of staff had told staff they were expected to volunteer for the campaign, Rep. Richardson had told the chief of staff “that she was to direct the staff to perform campaign work.” Report p. 4. & n. 4. The only support cited for this allegation is the Attorney Proffer of Shirley Cooks. Rep. Richardson had not ever heard of this allegation before receiving the Draft ISC Report at the close of business on Friday July 20, 2012. And to this day, Rep. Richardson has not been provided either of these critical attorney proffers.

To be sure, attorneys proffers do not in themselves constitute evidence. If that is the case, however, the ISC should not have included in its Report allegations that are supported *only* by these proffers—and, as indicated below, in critical instances are contradicted by the actual testimony of witnesses, which of course does constitute evidence.

B. Conduct of Representative Richardson’s Staff During the Investigation

Although Committee counsel advised Rep. Richardson’s staff, during the preliminary inquiry that they were not to talk to anyone—not to Rep. Richardson’s counsel, and not to each other—staff repeatedly talked with one another about the investigation, likely influencing one another. Indeed, *prior* to their *first* interviews with Committee staff conducted in the course of the Rule 18(a), key witnesses discussed their testimony with each other.

Lucinda Woodward stated that she discussed her testimony, before her interview, with Eric Boyd, the former district director who went to work for Rep. Richardson’s 2012 opponent (Rep. Janice Hahn (D-Cal)). and became an witness highly adverse to Rep. Richardson. (Woodward 18(a) Transcript (“Tr.”) 56); and also with Jeremy Marcus. (*Id.* at 58). Mr. Marcus confirmed in his own interview that “amongst the staff...there has been, you know, some interested chatter about, you know, what’s going on.” (Marcus 18(a) Tr. 29). Ken Miller discussed both his 18(a) interview and ISC testimony with Ms. Austin. .

And, although Respondent Shirley Cooks testified that she had not discussed her testimony before her interview with anyone else (Cooks 18(a) Tr. 54), Ms. Woodward stated during her own interview that Ms. Cooks had directed her to look through her e-mails for certain e-mails for the investigation. (Woodward 18(a) Tr. 37). Makeda Scott testified that the substance of the Committee investigation was widely discussed among the office staff and freely acknowledged having substantial discussions with other staff members about the merits of the allegations that had been raised in the Rule 18(a) interviews of those staff members. (Scott 18(a) Tr. at 10-12).

Mr. Boyd, immediately after appearing before the ISC, met with Respondent Daysha Austin, discussed his ISC appearance in detail, and told Ms. Austin that had had been careful not to say anything to “hurt or damage” Ms. Austin or Respondent Shirley Cooks, and had focused his testimony on damaging Rep. Richardson instead. (Ms. Austin described this conversation to Ms. Cooks, who relayed it to Rep. Richardson). Further, Mr. Boyd, while employed by Rep. Richardson’s opponent, told another senior staffer that he, Mr. Boyd, had actively assisted Brenda Cruz, a former fellow, in writing an inflammatory letter of resignation which was deliberately leaked to the media and interfered in Representative Richardson’s office with utilization of the Wounded Warrior program.

III. The District Office -- Allegations of Compulsory Campaign Work

Certain of the specific factual allegations supporting the finding of compulsory campaign work are misplaced, inaccurate or have been taken out of context. First, the Report correctly states that Ms. Cooks, Rep. Richardson’s chief of staff, held a meeting at the District Office in early 2010 at which Ms. Cooks told staff that they were expected to volunteer for the campaign. It is clear from the Report, and from the testimony of staff witnesses, that this meeting contributed significantly to the impression left on staff that they were being required or compelled to perform work for the campaign.

It is undisputed, however, that Rep. Richardson was *not* present at that meeting. The Report asserts that, prior to this meeting, Rep. Richardson “had several conversations with Representative Richardson in which Representative Richardson conveyed to Ms. Cooks that she was to direct the staff to perform campaign work.” The only evidentiary support for this statement is an “Attorney Proffer on Behalf of Shirley Cooks,” which Rep. Richardson has never seen. Rep. Richardson denies ever having “conveyed to Ms. Cooks” that Ms. Cooks was to “direct the staff to perform campaign work.”

Second, the Report states that at that meeting, Ms. Cooks told staffers that if they did not volunteer, they would “probably be out of a job.” The Report characterizes this statement made at a meeting at which Rep. Richardson was not present, as a “threat she delivered through Ms. Cooks to terminate any staffer who refused to work on the campaign.” No staff testified, however, that Ms. Cooks indicated at the meeting that she was speaking for or at the direction of the Congresswoman. Rather, the only supposed evidence for the proposition that Rep. Richardson told Ms. Cooks to make this statement—which she did not—is the Attorney Proffer of Ms. Cooks which Rep. Richardson has not seen to this day. Further, some of the staff testified that they understood Ms. Cooks’ statement to mean simply that if Rep. Richardson lost her election (in 2010), they would be out of a job. Henry Rogers from the district office testified that:

we were asked a number of times, any time you could give after work-- ,... would be greatly appreciated.” (Rogers18(a) Tr. at 8-9). He further testified:

Q. Did Ms. Richardson or Shirley Cooks—

A. Shirley, our chief of staff, yeah.

Q. --ever mention to the staff in your presence that they were expected to work on the campaign?

A. No, not in my presence.

(*Id.* at 11). With respect to the meeting convened by Ms. Cooks, this staffer indicated that he understood a reference by Ms. Cooks to the need to work on the campaign as suggesting simply that if the Congresswoman lost the election, the staff would be out of a job. (*Id.* at 11-13).

In addition, the Report makes much of Rep. Richardson allegedly requiring district staff to be at the campaign office during certain hours. The hours of 6:00 to 9:00 p.m. cited in the report were in fact the regular hours during which the campaign office was open in the evening to all volunteers, not specially for staff. Some staff testified that they understood the establishment of those hours to be a request, not a direction to show up promptly at 6:00 pm and/or to stay until the closing time. Mr. Rogers testified that he and other staffers would “usually head on over there, get there around either 6:30 or 7:00 ad either phone bank or walk for about an hour or so. And most of the time we would go after work.” (Rogers 18(a) Tr. 8). Rogers further testified::

Q. Was your work at the campaign office scheduled in any way?

A. No, not really. I mean, usually we kind of would go there after work.....

Q. Were you scheduled to be at the campaign office Monday through Friday except for Thursdays?

A. Uhm—

Q. When you mentioned scheduling—

A. No, not really.

(Rogers 18a) Tr. 8). Ms. Macias testified that she worked “a few times a week” at the campaign office, after 7:00 p.m., and that “I volunteered my personal time.” (Macias C 18(a) TR.8- 9). When re-interviewed by the ISC, Ms. Macias testified:

Q. ..And do you recall Daysha, or Mr. Richardson, telling you, ... do you recall either one of them telling you that staff were required to be at campaign headquarters at certain times?

A. No.

(Macias ISC Tr. 41-42).

Third, as the Report notes, Rep. Richardson testified that “no staff member has approached me stating that they did not want to do something or could not do something that then I required participation.” The Report acknowledges that other than one incident, “the ISC found no evidence of such a confrontation between Representative Richardson and herself and a member of her staff.” In fact, as former scheduler Jakki Dennis testified:

Q. Have you ever heard anybody refuse to work on a campaign event or any discussions about people refusing to work on a campaign event?

A. There were some people who said, I don’t want to go to this Idol thing.

Q. So some people said they did not want to go to the Idol.

A. Right.

Q. What was the reaction?

A. To who? They didn’t say it to her [Rep. Richardson].

Q. They said it just to each other?

A. Right, just to each other.

Q. Was there any feedback given to her that some people didn’t want to go?

A. Not to my knowledge.

(Dennis 18(a) Tr. 33). Similarly, Ms. Woodward, whom the Report states was directed to attend a fundraising breakfast regarding health care, testified that she could not recall actually expressing any concern about attending political events to anyone other than her spouse. (Woodward18(a) Tr. 41)..

Thus, it is clear that in a number of cases in which staff felt compelled and coerced to perform campaign work or attend campaign events, those concerns were simply not expressed directly to Rep. Richardson, or were withheld from her, so that she had no opportunity to address the perception that staff were being compelled to work on the campaign.

Fourth, the Report concedes that Representative Richards “never followed through on the threat” she supposedly delivered “through” Ms. Cooks “to terminate any staffer who refused to work on the campaign.” As noted, the reference to staff being “out of a job” if they did not work on the campaign was made by Ms. Cooks at a meeting at which Rep. Richardson was not present. Indeed, Ms. Dennis testified that:

Q. Was anybody threatened—has anybody been threatened, criticized, disciplined or some type of other negative action for not participating in campaign activity?

A. Not to my knowledge.

(Dennis 18(a) Tr. 34). Ms. Woodward testified that:

Q. Were you ever reimbursed for doing campaign work or buying anything for the campaign or anything like that?

A. No.

Q. Were you ever threatened if you chose not to participate?

A. No.

And Ms. Cooks testified that:

Q. Have you ever overheard or been aware of any type of financial or threats of discipline or—

A. No.

Q. —termination to staff who refused to work on campaign events?

A. I have no knowledge of that.

(Cooks 18(a) Tr. 48).

In this regard, the Report alleges that Rep. Richardson assigned Mr. Rogers to perform more official duties as retaliation or punishment for taking a trip during a weekend on which he was supposed to perform campaign work. In fact, the staffer had told his supervisor falsely that he had been sick on the preceding Friday; two other staffers covered up that lie; and Rep. Richardson had expected the staffer on that Friday, not to perform campaign work but to attend an official event within the staffer's area of responsibility. In fact, Mr. Rogers' testimony does not indicate that he was supposed to cover campaign events that weekend, but rather that Rep. Richardson was upset that she did not know where he was; and that she never threatened any retaliation or punishment. Mr. Rogers testified that he spoke to the district director who said "in his opinion or his observation that she wasn't happy. But he said it was just kind of left at that." (Rogers 18(a) Tr. 16). He testified that Rep. Richardson had not made any comments to him previously about taking personal time. (Id. at 17).

Similarly, former district director Boyd and district staffer Yamagawa testified that district staffer Timothy Lee had been demoted by Rep. Richardson for not volunteering for the campaign. Mr. Lee himself, however, testified that, "No, I really think the demotion was based on other things," (Lee 18(a) Tr. 22).

Fifth, the Report recounts that that a number of events that Rep. Richardson believed were official or officially-connected in nature, were actually events sponsored by partisan organizations and should have been considered political events. The Report states that, "It is

difficult for the ISC to credit Representative Richardson’s position that each and every one of these events was official and not political in nature where she was unable, when asked, to articulate a principled basis for distinguishing them. . . .”

In this regard, it is important to note that, in fact, the confusion about what events are political and official was shared not only by Rep. Richardson’s staff, but by the staff of the Ethics Committee itself. For example, the Report states that Rep. Richardson directed Makeda Scott to travel to Long Beach, CA for meetings which Ms. Scott believed to be official in nature but that Ms. Scott “discovered that at least some of the scheduled events were in fact campaign events.” In her testimony, however, Ms. Scott identified only one such event—a visit to a community teen center in Wilmington, California, outside the Congresswoman’s current district. Because the center was located outside the district, Ms. Scott assumed—and testified to the Investigative Subcommittee—that this was a campaign event. (Scott ISC Tr. 30-31). In fact, the teen center was run by a current constituent of Rep. Richardson who lives in Carson, CA—within the current district—and who was applying for a federal grant with which he had requested assistance from the Congresswoman’s office. It was indisputably a legitimate *official* event. Yet, Ethics Committee counsel essentially directed Ms. Scott to testify inaccurately about the nature of the event, asking her, “You did not know it was a campaign event, nor did you volunteer to go there. She said, I expect you to be there after your other work? A. Exactly.” (*Id.* at 32).

Similarly, the Report cites a radio show appearance by Rep. Richardson, at which she requested she be staffed by Ken Miller. Mr. Miller characterized the radio show as a campaign event because it is hosted by a “community activist in the Samoan community” and “[i]t was in her best interests to try to make sure that she secured the support of the Samoan community. . . .she is going on that radio show to..specifically speak to the constituents on why they should vote for her.” In fact, Rep. Richardson, on that show, limited her discussion to her official responsibilities, shared experiences of a recent trip to Samoa, and made no references whatsoever to the election or her candidacy. If the mere fact that a media appearance will reach a constituency important to a Member’s re-election transforms that appearance into a campaign event—as the ISC Report implies—then hundreds of Members would be using official resources improperly for political purposes every day.

Indeed, the Ethics Committee staff itself demonstrated confusion, in the course of the investigation, about distinguishing between an official and unofficial event. As the Report itself acknowledges, “on occasion this demarcation is not so simple—the itinerary of a public official will at times include engagements that simultaneously engage her public duties and benefit her political career.” Staff was repeatedly questioned, for example, about staff work for the Congresswoman on an issues forum held in connection with the Congressional Black Caucus’

Annual Legislative Conference. Ms. Macias was questioned about travel to Washington, D.C. to assist with the event:

Q. Did you take leave for Thursday and Friday?

A. No

Q. Oka. So you received your House salary for those 2 days?

A. I believe so.

Q. And you understand that that was a *nonofficial event*. Is that correct?

(Macias 18(a) Tr. 17)(emphasis added).

Mr. Rogers testified that Ms. Austin had traveled to Washington, D.C. for that event:

A. Yeah, one I believe was--the first one was CBC , the congressional—or ALC—excuse me—the CBC event every year.

Q. The CBC foundation's annual legislative conference?

A. Yes, There we go. I get confused with the acronyms.

Q. And that's not a *nonofficial event, right? That's a campaign kind of event?*

A. CBC—I don't know. I don't know. That's where I'm confused on the law. I don't know if the Congressional Black Caucus is associated with the House in any way or how they are.

Q. Sure, It is a caucus and they have—but the Foundation, that's the difference.

(Rogers 18(a) Tr. 39-40). And Mr. Billington confirmed that Ms. Austin had traveled to assist with the issues form in connection with the ALC:

Q. And what was the purpose for her [Ms Austin] coming in the past?

A. She has been here twice. Both times were during the Congressional Black Caucus' annual event that they do here in DC.

Q. And that is held by the foundation , CBC foundation?

A. Yes. Exactly.

Q. And so the only time she comes to D.C. is when it is tied to some *nonofficial* House-related event, is that correct?

Q. Yes, exactly.

(Billington 18(a) Tr. 20-21)(emphasis added)..

Later, however, during Ms. Macias' interview by the ISC, Ethics Committee counsel conceded that the issues forum for which Ms. Austin had traveled was "actually an issues forum the members that dealt with policy... And so we want to clear up with you that was not actually improper. If a Member of Congress under our rules is doing a policy speech, even if it is at a foundation or a private entity,....If it is congressionally, officially congressionally related policy issues, a forum for that purpose, it is not fund-raising there is no campaign or political events, then that would be proper." (Macias ISC Tr. 19). At that point, of course, Rep. Richardson's staff—and Ms. Macias in particular, prior to her letter of resignation-- had already been given the impression by Committee staff that Ms. Austin's travel to Washington, D.C. in connection with the issues forum was yet another improper use of official resources for political purposes.

IV. The Capitol Hill Office-- Democratic Idol Event

Several specific factual allegations made in the Report concerning the Democratic Idol event are misleading or incomplete. First, with respect to Rep. Richardson's request to Ms. Dennis to find suitable locations for the event, Ms. Dennis actually testified before the ISC that she had volunteered to find sites for the Democratic Idol event because she was an "events person" and enjoyed such work, and had definitely "volunteered" to do it. (Dennis ISC Tr. 21-22). She further testified that she was simultaneously research locations for a reception to honor an individual at a Congressional Black Caucus event that would not have been regarded as a campaign event. (*Id.* at 20-22).

Second, with regard to Ms. Austin's travel to Washington, D.C. during the time of the "Democratic Idol" event, Ms. Austin testified that, during her time in Washington she spent her time assisting and training a scheduler who had been hired some months earlier, and worked on the fundraising (Idol) event in the evenings:

[The scheduler] was a new hire. She had been on staff for just a couple of months, a few months. So when I was in the office, I was working with her to her like some scheduling items, review the Congresswoman's calendar, try and have her get to know and learn the Congresswoman's style. So I helped her with some scheduling activities during the day, and then in the evening is when we met to discuss the Idol event.

(Austin 18(a) Tr. 44-45).

The Report states that Ms. Austin "has since provided information to the committee suggesting that the official work on the schedule was a mere rationalization justifying the use of the MRA [Members' Representational Allowance], and true purpose of her trip was to

coordinate Democratic Idol at the behest of Rep. Richardson.” At the time, Ms. Austin confirmed to Rep. Richardson that she had conducted training of Ms. Dennis and even provided Rep. Richardson with documents that had been used in the course of that training. The only evidence cited for the assertion that the “true purpose” of her trip was to work on the fundraising event is an “Attorney proffer on behalf of Daysha Austin” which was never provided to Rep. Richardson and which Rep. Richardson has never seen.

Further, the Report quotes Ms. Austin as saying she only spent “a couple of hours” with the scheduler (Ms. Dennis) during her three day stay in Washington DC, whereas in fact Ms. Austin testified that she spent a couple of hours *every day* working with Ms. Dennis on the schedule:

Ms. Austin: So I helped her with some scheduling activities during the day, and then in the evening is when we met to discuss the Idol events.

Q. How many hours *during the day* do you believe you spent working with [Ms. Dennis] on the schedule?

A. I am not sure. It was a couple of hours. I am not sure because I would sit with her, talk to her and then leave, you know, her desk.

(Austin 18(a) Tr. 44-45)(emphasis added).

Third, the Report describes Ms. Cooks’ e-mail stating “All staff are required to attend...” the “Democratic Idol” event and concludes that the e-mail was sent at the direction of Rep. Richardson. The Report acknowledges that “[w]itnesses provided differing interpretations of Ms. Cooks’ email” and that “one staffer testified that they had already decided to voluntarily attend the event...” In fact, a number of staffers testified that their attendance at the event was in fact voluntary. For example, Ms. Dennis testified that:

Q. ...I think what I am specifically asking is when she says we will need everyone’s help, did you interpret that as a command for everybody to clear their schedule and be available on Wednesday [the night of the event] from 5 to 8?

A. No, because she had already said that if you don’t want to go, you don’t have to go.

Q. Tell me when she said that. Tell me a little bit more about that.

A. See, I can’t remember exactly when she said it, but at some point she brought everybody together and she said, you know, you are welcome to come if you want to. But I don’t remember her demanding you have to do that....But I think I remember her saying you guys are welcome to attend. But I never felt like I had to go. I always felt

like I wanted to go. I wanted to see what was going on. Because people I knew were going to be there so it was going to be fun.

(Dennis ISC Tr. 334-34).

Jeremy Marcus testified that he was never required or compelled to attend campaign events: “My understanding is always that I had the option to not attend. There were no repercussions given to me if I didn’t attend, but I was invited to attend.” (Marcus ISC Tr. 11). Mr. Berry testified:

Q. Did you volunteer to attend the [Democratic Idol] event or was it something you were expected to do?

A. I wouldn’t have been required to attend. I wasn’t required to attend. I wasn’t told I had to attend.

Q. Other than the e-mail saying all staff are required to be there, including interns?

A. Yeah. But I would have went for something like this. . . . I t sounded interesting and a fun thing. And, to me, it would be slightly different from what I normally went to,....

[Berry 18(a) Tr. 17).

The Report states that Mr. Billington, who said he would be unable to attend the event for personal reasons, was told by Ms. Cooks that Rep. Richardson had ordered him to come to the event anyway. Mr. Billington testified in his initial interview that Rep. Richardson had said to him before the “Democratic Idol” event that he had to attend that event (18(a) Interview Transcript at 17-18) and that he told Ms. Austin that he had expressed to the Congresswoman before the event his desire not to attend. (*Id.* at 19-20), In his ISC testimony, however, he admitted that he communicated with the Congresswoman only *after* the event had taken place (Billington ISC Tr. at 27).

V. Obstruction of Committee Investigation

A. Retroactive Adjustment of Austin Pay and of Calendar

The record in this investigation does not indicate that the conduct to which Rep. Richardson has admitted was ever intended by her to obstruct the Committee’s investigation.

First, the Report correctly states that after becoming aware of the Committee’s inquiry, on or about October 16, 2010, Rep. Richardson contacted her budget manager to inquire for the first time about adjusting Ms. Austin’s status to half-time retroactive—to reflect the amount of time she spent on the campaign during part of September and October. The budget manager informed Rep. Richardson that the change could be made retroactively to only to October 1, as September pay had already been distributed.

The ISC report then states, however, that the ISC “has learned that Ms. Austin had not heard of any plan to change her status until after mid-October, and to her knowledge this was never considered until that time.” The Report also states that the ISC “received information from Ms. Austin confirming that Ms. Austin had no recollection of any conversations regarding the change in her pay status until after the middle of October, and that such a change had not even been considered until that time.” Those assertions, however, are directly contradicted by Ms. Austin’s own testimony:

Q. Okay. So primarily, the last couple of weeks before the campaign, you were working on the campaign?

A. Yes.

Q. And that’s something you were directed to do by Ms. Richardson?

A. Yes.

Q. Ad you are aware that she was changing your employment status to half time?

A. Yes.

Q. For the month of October?

A. Yes.

Q. When did you first become aware that she was going to change your employment status?

A. Well, *we had conversation about me changing my employment status sometime in September*. I can’t tell you when you she and Michelle started the conversations about my employment status, but I did start getting – I received maybe two to three, probably e-mails toward the end of October that I was copied on with [the budget manager] and the Congresswoman.

Q. Now, what was—when you were discussing this in September, what was the purpose of changing your work status?

A. To support the Congresswoman more on her campaign.

.....

(Austin 18(a) Tr. 56-57)(emphasis added). Ms. Austin further testified:

Q. And when—did you have a discussion with Ms. Richardson when you were, you said you were instructed to tell people you were going to part time or whatever, and prior to her telling [the budget manager] to go ahead and change it, did you have any discussions with her?

A. With who?

Q. Ms. Richardson.

A. About?

Q. About, that we are actually going to put you in part-time status?

A. Yes, *in September, we discussed.*

(Id. at 58-59)(emphasis added). Thus, although Rep. Richardson did not contact the budget manager about effectuating a change in Ms. Austin's status until mid-October—after the Committee commenced its investigation—discussions with Ms. Austin about doing so had commenced in September, weeks *before* Rep. Richardson learned of any inquiry by the Ethics Committee.

Thus, the entries on Rep. Richardson's calendars were adjusted retroactively, but only to accurately reflect the history of time worked. Further, it was Rep. Richardson's understanding that the retroactive change in Ms. Austin's pay had been discussed in September but actually implemented in late October. Rep. Richardson did not herself physically make additions, deletions or adjustments to the calendar; Ms. Macias testified that Ms. Austin directed her to make such changes. (Rep. Richardson is prepared to provide additional citations to the record to support this).

Second, the evidence indicates that statements made by Rep. Richardson to her staff at a meeting held on Sunday, October 17, 2010, after she was notified of the Committee's inquiry, were not in any way deliberately intended to influence the staff's testimony or induce the staff to do anything but tell the truth to the Committee. The Report states that Rep. Richardson suggested to staff that the work staff had performed had been voluntary, and that staff members "felt that Representative Richardson was asking them to answer a certain way that would minimize her culpability whether or not those answers were true."

Rep. Richardson spoke to her staff only after being directed by the Committee to do so in its letter to her. That letter did not provide any guidance on what Rep. Richardson should say when she informed the staff of the inquiry. Rep. Richardson read directly from the Committee's letter. When she referenced staff volunteering, she was referring attendance at a local meeting of a political club.

Numerous members of the staff who were present at the meeting in person or by teleconference, testified that Rep. Richardson told them to cooperate with the Committee and tell the truth, and was not trying to influence their testimony. Ms. Dennis testified that Rep. Richardson told staff to cooperate with the Committee. Counsel then asked:

Q. So she never gave any type of instructions or advice on how to answer our questions?

A. No. Other than to make sure we were cooperative, that was it. I don't think she went into detail about any subjects.

(Dennis Rule 18(a) Tr. 36).

Mr. Berry, a member of the senior staff in the D.C. office, testified:

Q. Were you instructed as to what to say or how to respond to any of our questions?

A. No.

...Q. Now I understand that Ms. Richardson did talk to all of you recently after she got our letter to ask that you fully cooperate. Were there any other instructions that she gave you regarding your responses to the committee?

A. No. She didn't give us—she didn't give us any instructions.

(Berry 18(a) Tr. 38). And Mr. Marcus testified as follows:

Q. ...Now, when Ms. Richardson spoke to you all and told you what to do, did she give you any instructions about how to answer out questions today?

A. Truthfully, fully.

Q. Did she mention anything about making sure we understood that you were volunteering for any of these campaign events?

A. No.

Q. You are sure she never said anything like that, to emphasize to us that you volunteered to attend those events?

A. I don't remember—I don't remember what she said verbatim. I don't feel like I was ever told to give anything—

Q. Okay. Anybody else talk to you about your testimony here today, try to influence what you were going to say to us?

A. No one tried to influence what I would say.

(Marcus 18(a) Tr. 28- 29).

For these reasons, the record in this investigation does not indicate that the conduct to which Rep. Richardson has admitted was ever intended by her to obstruct the Committee's investigation.

VI. Conduct During 112th Congress

With respect to Rep. Richardson's conduct during the 112th Congress, the Report asserts that three individuals who joined the Congresswoman's staff after the 2010 elections "testified that the improper use of House resources and the expectations regarding campaign work by staff continued unabated." The first of these staffers, Ms. Scott, was directed to travel to Long Beach, CA for what she believed to be official events but supposedly "discovered that at least some of the events were in fact campaign events." As noted above, however, Ms. Scott identified only one event that she was asked to attend that she found questionable and that one event was in fact an *official* event.

The second staffer referred to in the report, Brenda Cruz, supposedly "testified that Representative Richardson's former district director... performed so much campaign work on official time that he was frequently absent from the official office." Ms. Cruz testified that she saw the former district director, whom she admittedly despised, making what she assumed were campaign calls, but did not identify the nature of those calls except in one or two cases. The ISC never called that former district director, Joey Hill, to be interviewed or testify. The SAV (para. 45) further asserts that Ms. Cruz was directed to perform campaign work on official time. In fact, she testified only that she worked on redistricting matters, for which House resources can be used in certain circumstances. *See* House Ethics Manual p. 132 (2008 ed.). Indeed, Ms. Cruz was not working in the office during the campaign.

The record does not support the allegation that any improper use of House resources or expectations regarding staff work on the campaign continued into the 112th Congress. To the contrary, as Rep. Richardson told the ISC, she has in fact taken significant steps since the 2010 election to address some of the management issues that gave rise to this investigation. These steps include:

- Keeping a campaign office open in the district on a year round basis to ensure that appropriate resources are available at all times for partisan activity;
- Instituting a new attendance a leave policy under which all staff must enter the times they come to and depart the office on a central calendar and must submit non-emergency leave requests on a quarterly basis. This new system ensure that policies concerning office hours and leave are applied on a consistent basis to all staff and that leave taken in excess of the permitted amounts is properly charged against pay.
- Putting into place a full time contract fundraiser in California obviating any need or incentive for district staff to volunteer to participate in fundraising activity.

VII. CONCLUSION

Representative Richardson was first elected to the House from the 37th District of California in 2007, in a special election following the death of then Rep. Juanita Millender-McDonald. She had to organize her office immediately, while assuming the duties of a sitting Member. Almost at the outset of her term, she was confronted with an Ethics Committee investigation relating to the financing of her residence, an investigation which consumed two and a half years, and significantly diverted time and attention from the organization and operation of her office. During the critical period at issue, Rep. Richardson's chief of staff was on jury duty and unavailable to supervise the operations of the office.

After another investigation again consuming nearly two years, Representative Richardson has agreed to a settlement of this matter, in which she has admitted to conduct violating a House Rule, the Code of Official Conduct and the Code of Ethics for Government Service; has agreed to accept a reprimand for this conduct; and has agreed to pay a fine. Again, Representative Richardson takes this matter with the utmost seriousness and takes responsibility for her actions. She has submitted these Views to provide context and a fuller picture of the conduct to which she has admitted. She believes that resolution of this matter on the basis of this settlement, without an adjudicatory hearing at which she would be able to present a full defense, but which would consume many more months and much more of her time and attention, is in the best interests of her constituents and of the House of Representatives.