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FURTHER QUESTIONS AND ANSWERS ON TRUTH IN TESTIMONY

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On January 7, 1997, the first day of the 105th Congress, the House of Representatives passed the widely heralded Truth in Testimony rule, proposed by Rep. John Doolittle (R-CA). The new House rule requires witnesses appearing before House committees to submit written statements detailing the federal grants and contracts they received in the current and past two fiscal years.

The goal of Truth in Testimony is to expose conflict of interest on the part of groups that receive funding from federal programs and then ask Congress to give more money to those same programs. At least 70 publications across the United States ran editorials in favor of Truth in Testimony, including the *Boston Herald, Chicago Tribune, Columbus Dispatch, Daily Oklahoman, Houston Chronicle, Indianapolis Star, Investor's Business Daily, Los Angeles Daily News, New York Post, Oakland* (MI) *Press, Sacramento Bee, Wall Street Journal,* and *Washington Times.*

But perhaps the *Cleveland Plain Dealer* best summarized the need for this new rule. Describing truth in testimony as "Caller ID for Congress," it asked

> Should the members of Congress (and their audience) hearing their testimony know when witnesses have a professional or personal stake in continued federal funding for the groups they represent? Sure, whether the witnesses are defense-industry honchos pitching megabuck missile systems or think-tank gurus pitching welfare reform or senior-citizen lobbyists excoriating Medicare premium hikes. But, sort of surprisingly, they aren't required to disclose their federal-funding status. And a passel of them don't, and don't want to.[1]

Now, an array of special interest groups has launched a full-fledged campaign designed to dilute the impact of the new disclosure requirement. Profiting from the uncertainty surrounding the implementation of any new rule, these groups are attacking the way the new rule will be enforced. These defenders of the status quo have an ally in Representative Bruce Vento (D-MN), the ranking minor-

1 "Caller ID for Congress," *Cleveland Plain Dealer*, January 7, 1997, p. 8B.

ity member of the House Banking Committee. Vento denounced the new rule as a "transparent attempt to intimidate witnesses."[2] In fact, the rule is a transparent attempt to indicate to taxpayers and to Congress the degree to which witnesses are dependent on federal money.

Truth in Testimony is beginning to have an impact. At least one major corporation, TRW, Inc., declined an invitation to testify at a hearing on H.R. 1, the Working Families Flexibility Act, before the Subcommittee on Workforce Protections of the House Education and Workforce Committee. The corporation cited concern about the disclosure required by the new rule.[3] Instead, subcommittee staff skirted the intent of the new rule by suggesting that an employee of TRW offer her testimony in a personal capacity.[4] (Although the corporation declined to comply with the new House rule, a casual visitor to its site on the World Wide Web could learn from TRW's annual report that it received federal contracts totaling $2.899 billion in 1995—28 percent of total corporate revenues.[5])

Several nonprofit groups were able to take advantage of the watered-down approach to Truth in Testimony to conceal their federal funding sources. Testifying at the same H.R. 1 hearing, Karen Nussbaum of the AFL-CIO hid the millions of dollars that the federation and its affiliates have received in federal grants over the past three years by claiming that these grants were not relevant to the subject matter of the hearing: the federal Fair Labor Standards Act. Between July 1993 and June 1994 alone, the AFL-CIO directly received grants totaling $10.7 million.

Allowing inside-the-Beltway special interest groups to evade disclosure requirements blatantly will undo a rule supported by 226 House Members. It is especially ironic that the AFL-CIO, which spent $35 million in the 1996 election campaign to restore liberal control of Congress, has been permitted to skirt a rule supported by its electoral opponents.

The desire of business and labor groups to avoid simple disclosure is confirmation of the need for strict enforcement of the new rule. Committee chairmen and staff can alleviate any legitimate concerns by providing adequate information about the rule to prospective witnesses and by implementing the rule in a sound, consistent fashion.

Below are several questions that have been raised by committee staff or potential witnesses, followed by answers and discussions of each. Additional information about the rule can be found in a Heritage *F.Y.I.*, No. 125, "Questions and Answers on Truth in Testimony."

Q. Which witnesses are affected by the new rule?

A. All witnesses appearing before House committees or subcommittees who do not work for the federal, state, or local governments. These include witnesses from advocacy groups, think tanks, lobbyists, labor unions, corporations, and trade and professional associations.

Q. What information must such witnesses provide?

A. All nongovernmental witnesses are required to provide a "disclosure of the amount and source (by agency and program) of *any* Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness."

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2 "Two House Panels Resist New 'Truth in Testimony' Rule," *Congress Daily*, February 5, 1997, p. 4.

3 Marcia Gelbart, "'Truth in Testimony' Rule Boomerangs against GOP Sponsors," *The Hill*, February 5, 1997, p. 1.

4 *Ibid.*

5 This information can be accessed at *http://www.trw.com/financial/95annual/10year.html*.

Q. How does one determine what organization a witness represents?

A. When issuing an invitation to a witness, the chairman of the committee or subcommittee has the responsibility to clarify the capacity under which a witness appears before his or her committee. It is not plausible that a witness who is a board member or senior official of an organization testifying on a topic of interest to that organization could be permitted to refuse to disclose grants and contracts by claiming to testify as a private, disinterested individual. Normally, the business address on the invitation letter to a witness would indicate what organization that witness is representing.

Q. What about witnesses who could claim to represent more than one organization?

A. With regard to their "representational capacity," potential witnesses with several affiliations may have an incentive to try to conceal federal funding sources. For instance, a prospective witness may be an officer of a nonprofit organization that has both a 501(c)(3) affiliate and a 501(c)(4) affiliate. This witness may seek to offer testimony under the guise of that organization's 501(c)(4), which is ineligible to receive federal grants, even though the organization does receive federal grants through its 501(c)(3). In such a case, it is relevant for the committee to obtain what is required of all other witnesses: a complete list of grants received by that 501(c)(3). It is difficult to argue that the 501(c)(4) is an "entity represented by the witness," while the affiliated 501(c)(3) is not. In other circumstances, the committee chairman should decide if it is relevant and practicable for a witness from an organization that does not receive grants or contracts, but does represent groups that may receive federal funds, to disclose such information.

Q. Can witnesses determine what grants are relevant to their testimony?

A. No. Witnesses may not determine which grants they disclose because the rule explicitly states that committees shall require witnesses to disclose *any* grants and contracts. In a non-binding "analysis issued in conjunction with the publication of the new House rules," the Rules Committee noted that disclosure is necessary "to the extent that such information is relevant to the subject matter of, and the witness' representational capacity at, that hearing." These relevance criteria are offered only as background information on the rationale for Truth in Testimony. Indeed, if witnesses were permitted to make their own judgments regarding compliance, House Members could not know or judge whether the undisclosed grants or contracts are relevant to the witness's testimony. Thus, even under a "relevance" standard, complete disclosure of all grants and contracts is required.

Q. How can the rule be enforced to the "greatest extent practicable"?

A. The language of the House rule specifies that information regarding grants and contracts be disclosed "to the greatest extent practicable." To ensure maximum compliance with and effectiveness of the rule, committee chairmen should treat corporations, nonprofit organizations, and all other witnesses equally. A rule that is enforced selectively for political purposes will be undermined quickly by objections from minority party committee members as well as the media, so few exceptions should be granted on the basis of this clause. This information is easily available in the public record through annual reports or in government publications. Witnesses also should be assured that they will not be subject to penalties if they have made a good faith disclosure of grants and contracts.

Q. Can committees voluntarily elect to ignore the new House rule?

A. House rules trump committee rules; hence, all staff and Members have an obligation to follow these rules. If a witness's statement does not include the required disclosure statement, any Member in that hearing can and should question a witness in greater detail about his organization's

federal funding. The goal of Truth in Testimony is to provide all committee members more information with which to evaluate hearing testimony, with the ultimate goal of producing better legislation. Presumably, because all Members on a committee share this goal, witnesses should be prepared to comply fully with the rule, even if a chairman does not enforce it.