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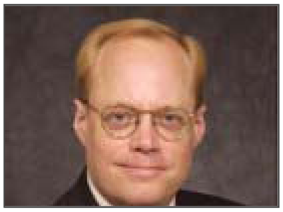

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Hillary's Top Aide Draws Fire, But Clinton Foundation Is Elephant In The Room

As Hillary Clinton aide Huma Abedin is accused of being overpaid, Mrs. Clinton may be mollified that the inquiry faults Ms. Abedin, not the Teflon candidate. Yet any payment question is bound to spill over. Fortunately, the news may be overshadowed by just how much money the Clintons have paid in taxes, which was release a few days ago. Besides, look at how much they have funneled to charity. *Billions* with a B.

Ms. Abedin has formally contested the finding, but as reported in the Washington Post, Sen. Charles E. Grassley (R-Iowa) sent letters to Secretary of State John F. Kerry and others seeking more information. The queries are over Ms. Abedin's pay, vacation, and possible conflicts of interest. Somehow it seems, she worked *simultaneously* for the State Department, the Clinton Foundation and a private firm with close ties to the Clintons. Being married to serial sexter Anthony Weiner might itself seem like a full time job. If nothing else, it sounds awfully Clintonesque.

The cash issues bring to mind the extra $26.4 million in previously unreported fees The Bill, Hillary, and Chelsea Clinton Foundation admitted receiving. These were fees from foreign governments and foreign and U.S. corporations for speeches. *Whose* money is a good question. The Clinton Foundation has reportedly raised $2 billion, and is lauded for good works around the world. Yet allegations of explicit or implicit quid pro quos are not new.

Not long ago, The New York Times reported intriguing trades by the Clinton Foundation. The Foundation's handling of speeches, politicking, country-hopping and tax return reporting omissions rekindles memories of Whitewater. The Times reports that Bill Clinton repeatedly turned down Czech model Petra Nemcova's Happy Hearts Fund event before (after prompting), she offered the foundation $500,000 for appearing. The cash intrigue has been called 'distasteful.'

A 2008 ethics agreement required the Foundation to disclose its funding sources. The Washington Post reported the long list of Clinton speeches with fees ranging from $10,000 to $1 million. Former President Clinton gave three that brought in anywhere from $500,000 to $1 million. Mr. Clinton spoke to Thailand's Ministry of Energy, China Real Estate Development Group, Ltd, and Qatar First Investment Bank. Mrs. Clinton spoke to Goldman Sachs, Citibank and JP Morgan Chase, to name just a few.

The Foundation admitted that much was not disclosed publicly because they were treated as revenue, not donations. The foundation later provided a list of speeches, pledging continued updates. The list shows the Clintons turning over $12 million to $26 million, but it is worth asking whether assigning fees to the Foundation works for tax purposes? Is there a contract that requires it? Do the Clintons pick and choose which fees they hand over and which they keep? There may be good answers to these questions, but they are not silly questions.

The assignment of income doctrine has been part of our tax law since the 1930s, if not before. Early taxpayer attempts to avoid income involved contracting away rights to receive it. For example, in *Lucas v. Earl*, 281 U.S. 111 (1930), a husband and wife contracted to share income, gains, gifts received during their marriage. The Supreme Court said this kind of contract might be valid under state law, but *not* for tax purposes. The husband was taxed, even if he 'assigned' half. In the last eight decades, many taxpayers have been caught by the IRS over such issues.

For the Clintons, there is no question that they would not want to receive the speaking fees *personally* and *then* hand them over to the Foundation. They would end up with a big tax bill, since charitable contributions are strictly limited. Since speech fees would normally be sourced to the place where they give the speeches, they could end up taxed in numerous places. What's more, they could end up with no deduction at all for the charitable contributions that would probably be sourced to their residences. There may well be a legitimate way to structure their fees as they do, but the details matter.

Indeed, given the Clintons' success, a fair number of wealthy people might be setting up their own foundations, picking which monies they want taxed to them, and which to 'assign' to their charities. Some might like the cushy private travel and other perks that go with it. The IRS calls it private inurement when private parties–especially founders–get big salaries or other outsize items that should be treated as income. As with that private email server, the line between personal benefit and the public is arguably Clintonesque here. Maybe there are some emails on a personal server somewhere that might explain it all.

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