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Bilirakis Left in Dark About Witness Problem Before Explosive Fetal Tissue Hearing, Staff Didn't Tell Subcommittee Chairman About Conflicting Statements

By Stacey Zolt

Several GOP Members on the Commerce subcommittee on health and environment are appalled at the committee majority staff's failure to share a vital affidavit with the subcommittee chairman prior to last week's hearing on illegal fetal tissue sales.

Health Chairman Mike Bilirakis (R-Fla.) went into the hearing completely blind to the fact that the statements key witness Dean Alberty made in a Life Dynamics video circulated among Members contradicted statements Alberty made under oath in a deposition and affidavit conducted by an outside group.

Commerce Committee staffers were unable to depose Alberty themselves because he was restricted by a gag order.

Bilirakis was not told about the contradiction, which wound up wreaking havoc on last Thursday's subcommittee hearing, even though GOP and Democratic sources say the full committee majority staff had the affidavit at least one week before the hearing.

"He was just as surprised as everyone at the subpoenaed witness' statements," said Todd Tuten, Bilirakis' chief of staff. "Those are documents that neither my boss or his personal staff had access to prior to the hearing so we were not aware of the controversies in Mr. Alberty's public and written statements."

Alberty was subpoenaed by the majority based on his videotaped statements to Life Dynamics, a pro-life group, of witnessing illegal fetal tissue sales.

But he said in the affidavit that he has "no personal knowledge of any instances in which an employer of mine charged any fees or received any compensation for retrieving fetal tissue in

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violation of any of these laws."

Steve Schmidt, spokesman for the full committee's majority staff, insisted that GOP aides for Commerce Chairman Tom Bliley (R-Va.) did not have the affidavit until the morning of the hearing when they exchanged documents with the minority side.

"We had not seen the affidavit until that time," said Schmidt. "We, again, were unable to depose this witness [or] talk to this witness because he was under a gag order."

Even if the committee staff did not receive the affidavit until majority and minority counsel exchanged documents at 9:30 a.m. Thursday, one Republican aide to a Commerce member said that was more than ample time to notify Bilirakis of the discrepancy before the afternoon hearing.

"Anybody with a third-grade education would have brought that affidavit directly to Chairman Bliley and Chairman Bilirakis," the aide said. "They never would have gone forward and made such a mockery out of such a highly respected committee."

Schmidt said the committee staff was just doing its job.

"As is custom here, we read documents before we would give them to the subcommittee chairman," Schmidt said. "We were in the process of doing that and Mr. Bilirakis is not usually responsive to receiving documents that have not already been gone through by committee staff."

But, Tuten noted, "I think a review of the affidavit would lead you to the conclusion that Mr. Alberty had contradicted himself at least to some extent. And it raised considerable concerns not just for Chairman Bilirakis, but also for Republican subcommittee members who questioned the credibility of Mr. Alberty."

Democrats dispute Schmidt's account, claiming that they received the affidavit from Republicans.

"We got the affidavit from [Republicans] at least one week before the hearing," said Dennis Fitzgibbons, Commerce Committee minority staff spokesman.

Now, GOP sources said, Republican Members are working privately to solve the affidavit mystery and decide whether personnel action is necessary for the committee staff responsible for failing to reveal the evidence to Bilirakis.

An aide to a GOP Member on the subcommittee said Members were not only "disappointed in how it was handled and shocked at the outcome," but also confused as to what would motivate the Republican staff to deliberately keep the Members in the dark.

"I would say that was almost committee staff malpractice," the GOP aide said. "Knowing that our full committee staff had the affidavit, one wonders why they brought him in front of the committee to contradict himself. Frankly, I'm baffled."

In addition to Bilirakis, Rep. Fred Upton (R-Mich.) also had no idea that Alberty was not credible, according to spokesman Mike Waldron.

"He was shocked when that affidavit was presented at the committee hearing. My boss was shocked that he didn't know it existed and wasn't told about it," Waldron said. "He's concerned that Members on the majority side did not have the information going into the hearing that had disclosed the whole picture."

At a GOP staff briefing the day before the hearing, one aide present said many staffers raised questions about Alberty's credibility. Even without access to the affidavit, they felt the Life Dynamics video was questionable because of its low production quality.

"They were very prickly about it," the aide said. "There were several staffers who smelled a rat, especially those who saw the video."

Schmidt said no one questioned Alberty's credibility at that time.

"No one expressed any reservations because at the time the only people in possession of any evidence or documents that would question his credibility were the Democrats who chose not to share that with the majority staff," he said.

Indeed, Democratic subcommittee members went into the hearing fully aware that Alberty was not credible and planned to prove the contradictions. The minority staff said it received Alberty's deposition from the Anatomical Gift Foundation and received the affidavit from the majority staff.

Rep. Henry Waxman (D-Calif.), for example, had enough information prior to the hearing to ask Alberty detailed questions on the discrepancies between the video and the affidavit, leading Alberty to admit he lied on the video.

"Republicans were just as much in the hot seat as Democrats," said a GOP aide familiar with the hearing. "If they read the affidavit, there was enough in that written document to convict the witness."

The way the committee staff handled the situation, the aide said, "didn't serve any member of the subcommittee well, including the chairman."