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March 31, 1994

MEMORANDUM FOR LLOYD N. CUTLER
COUNSEL TO THE PRESIDENT

JOEL I. KLEIN
DEPUTY COUNSEL TO THE PRESIDENT

FROM: BETH NOLAN
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: WHITE HOUSE PASSES AND SECURITY &
WHITE HOUSE NOMINATION CLEARANCE PROCESS

The Office of Counsel to the President oversees both the White House Pass and Security Clearance Process (the "White House Clearance Process") and the White House Nomination Clearance Process (the "Nomination Clearance Process"). At your request, and with the assistance of Clarissa Cerda, I have undertaken a review of the White House Clearance Process and the Nomination Clearance Process. This memorandum outlines my preliminary conclusions, identifies the steps already taken to facilitate speedy clearances, and identifies future steps to ensure that both processes function efficiently.

WHITE HOUSE CLEARANCE PROCESS

The Counsel's Office is responsible for ensuring that all White House employees: (1) have undergone a name check by the FBI; (2) have undergone a security interview by the White House Personnel Security Office; (3) have attended a security briefing; (4) have submitted a personal data statement ("PDS"), FBI Questionnaire for Sensitive Positions ("SF 86"), and authorization to release IRS information ("tax check waiver"); and (5) have submitted any required financial forms (SF 278 or 450). Senior appointees in the White House are also

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vetted by the Counsel's Office (when they are identified to Counsel's Office in time to do so).¹ The Counsel's Office reviews completed IRS tax checks and FBI background investigations ("Bis").² Bis that are favorably adjudicated by the Counsel's Office are submitted to the Secret Service for their review and adjudication. After favorable adjudication by the Secret Service, an employee is issued an appropriate permanent pass.³

The Counsel's Office is also responsible for overseeing the maintenance of four temporary access lists: (1) the awaiting pass list; (2) the WW & OEOB volunteer list; (3) the EW volunteer list; and (4) the intern list. The total number of individuals on these lists changes frequently. However, the number is likely to be more than 3000 individuals at any given moment.

Improving the Process

The White House Clearance process requires the coordination of more than 20 employees throughout the EOP. The White House Personnel Security Office, headed by Craig Livingstone, and under the supervision of the Counsel's Office, has the central role. That Office has operated with three employees in this Administration, but had five employees in the past Administration. It is understaffed. The consequences of understaffing are unacceptable. The best solution is to authorize at least one additional employee immediately. The second-best solution is to detail someone to assist. Given the sensitive nature of this operation and the importance of consistency, I have some doubts about the appropriateness of detailees in this area, particularly if they are authorized only for a short time. It is critical to get more assistance in this area, however, on whatever

¹ Vetting should occur every time for senior White House appointees, but currently the Counsel's Office may not learn of an appointment until after the appointee begins work. I will recommend changes to this process. Pre-appointment vetting is critical to protect against immediate problems, including conflicts of interest.

² The Office also reviews White House 278s and 450s. As Alternate Agency Ethics Official, I am responsible for certifying these forms. Certification is not a prerequisite to issuance of a pass.

³ The Office of Management & Administration authorizes employees to work in the EOP, and OA monitors the drug-testing program.

basis. We have requested authorization from David Watkins for an additional employee.

The person in my role also needs much better clerical and administrative support than has been available, in order to keep track of all the paperwork. Edgar Bueno, our paralegal, has too much to do by himself. I am changing some assignments to effect changes.

I have some long-term changes in mind, but my number one priority is to get all remaining White House employees through the clearance process as quickly as possible. Consistent with recent directions to White House staff, all employees who have been here more than 30 days have filed their paperwork⁴. Currently, 253 out of 424 White House employees (including detailees) have their permanent passes. White House Personnel Security is responsible for 559 personnel, of whom 339 have permanent passes.⁵ There are approximately 100 employees whose Bis have been completed, but who have not received their permanent pass. The majority of these cases are a result of the individual not yet attending the requisite security briefing or our not having received the results of the IRS tax check.

To facilitate clearances, Clarissa Cerda, Marvin Krislov, and I have focused first on senior staff. We identified all those who had not attended a security briefing, for example, and requested that they attend one today. Nearly all of them did so. White House Personnel Security sent notices to other staff, and we will follow up with any who have not attended this briefing. Of the approximately 100 who had not attending this briefing at the beginning of this week, about half have now done so. The Secret Service is prepared to adjudicate backgrounds quickly.

We will continue to push to ensure that this process is completed as quickly as possible consistent with our important security concerns. Craig Livingstone will provide updated status information every Tuesday so that we can monitor the process closely.

Recent changes to the process have also been made to restrict access to the complex, and to ensure efficient coordination among the various

⁴ Some detailees who have been here more than 30 days have not yet completed all paperwork, because they may not be required to do so for short-term details lasting less than 90 days.

⁵ These numbers are not the same as authorized staff numbers. They reflect, for example, OVP staff on the Senate payroll, and some others.

WHO and EOP agencies involved. A copy of these new guidelines is attached. Moreover, I have directed that all White House employees be interviewed by security personnel prior to or immediately upon appointment.

Access to Classified Information

An employee with a permanent pass is entitled to access to classified information (up to Top Secret) on a need-to-know basis. The vast majority of White House employees have no need to see classified information. Those employees whose background clearance is not yet completed may be granted access to classified information if access is requested by the head of the employee's department because necessary, and such access is authorized by the White House Personnel Security Office in conjunction with the Counsel's Office. This "interim access" is currently granted to only a few employees in the White House Office and should be provided only on an emergency basis.

Access to information above the Top Secret category requires special procedures, including authorization from the relevant agencies (e.g., DOD, CIA).

I have met with Alan Kreczko, Legal Adviser, NSC, and Jamie Baker, Deputy Legal Adviser, NSC, to discuss White House handling of classified materials. Next week, I will recommend, with their advice, how we should review our handling of this material over the past 14 months and develop proposals for any necessary changes.

We have also prepared draft responses to inquiries from members of Congress, which I can provide in a final proposed response tomorrow.

NOMINATION CLEARANCE PROCESS

The Counsel's Office has been responsible for ensuring that all potential nominees (including PASSs, Pas and senior SESs): (1) are authorized by the Office of Presidential Personnel; (2) have undergone an FBI name check; (3) have submitted a PDS, SF 86, and tax check waiver; (4) have undergone a public record vet; (5) have been interviewed by the White House Counsel's Office; and (6) have submitted any required financial forms. A candidate whose vet is clear can be identified as a selected nominee or appointee. Only after receipt and approval of the BI, and clearance by the agency and

the Office of Government Ethics on conflicts of interest, is the candidate nominated or appointed.⁶

This process has involved the coordination of more than 20 employees at any given time, including but not limited to the Deputy Chief of Staff, two Associate Counsels, three-five White House Vettors, three-five Financial Reviewers, two Researchers, three Presidential Personnel staff, three White House Security Office personnel, one Paralegal, three Volunteers, two Interns, and several secretaries, receptionists, and other support staff.

Improving the Process

In conducting this review, Clarissa Cerda interviewed personnel from all the appropriate offices and departments involved in the process. As a result, we have been able to identify potential problem areas in the process--areas where bottle necks are most likely to slow down the process.

Veronica Biggins and I have submitted a memorandum to Phil Lader recommending a limited clearance process for most members of Boards and Commissions that are not Senate confirmed, and moving the SES vetting process out of the White House to the agencies. A copy of that memorandum is attached. These recommendations will be implemented through (a) identifying appropriate agency ethics officials for Boards and Commissions, (b) determining which Boards and Commissions will continue to need vetting, and (c) training agency officials in SES vetting. The Counsel's Office will continue to require that it review certain issues raised in an appointee's agency vet or background investigation.

These recommendations reflect our attempt to balance the need to speed the clearance process with the need to protect the President in the appointment process.

I will add at least three more detailed personnel to the vetting office and two more financial reviewers in the immediate future to facilitate the speedy clearance of any nominees now pending. I have begun identifying appropriate persons for these jobs.

⁶ The Counsel's Office is also responsible for overseeing the release and review of FBI background investigations to the agencies' security officers in order to permit them to grant the appropriate security clearance to the President's nominees.

Last week, Assistant Counsel Kathleen Whalen assumed some of the supervision for the ethics/conflicts aspect of the financial review process, which had fallen to me before. In addition, Assistant Counsels Clarissa Cerda and Marvin Krislov will also assist in the clearance process. For example, they will perform initial reviews of name checks and Bis. In addition, Vicki Divoll of our office will assist in other areas of the clearance process.

CONCLUSION

I have reviewed both the White House Clearance Process and the Nomination Clearance Process. Upon review, we have spotted areas where potential problems could occur with the current structure. As a result, we have identified both short-term and long-term changes to the process. I intend to focus first on short-term solutions, to move as many clearances through as quickly as possible.

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April 6, 1994

INITIALS: VZ DATE: 4/23/95

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MEMORANDUM TO THE SPECIAL COUNSEL TO THE PRESIDENT

FROM: DAVID WATKINS
ASSISTANT TO THE PRESIDENT
FOR MANAGEMENT AND ADMINISTRATION

SUBJECT: POTENTIAL GAO AUDIT OF WHITE HOUSE SECURITY PROCEDURES

I. ACTION-FORCING EVENT: According to published reports, Representatives Frank Wolf and Bill Clinger have asked the GAO to conduct an investigation of White House security procedures. A GAO investigation would raise a number of significant legal, political and practical concerns. Formulating an appropriate response to the potential GAO audit is therefore a matter of some urgency.

II. BACKGROUND/CONCERNS

1. Legal. A GAO investigation would represent a potentially serious incursion into a core area of presidential authority. On that basis alone, the GAO's legal power to conduct an investigation is subject to serious question. In addition, the statutory basis for a GAO inquiry is doubtful. (The GAO's authority to "evaluate the results of a program or activity . . . carrie[d] out under existing law" should be construed to include only statutorily authorized programs and activities, not those carried out by the Executive Branch under its general constitutional powers.) Finally, the controlling statute provides that a "program-or-activity" evaluation can only be initiated in one of a limited number of ways, e.g., when requested by a committee of Congress with jurisdiction over that particular program. It is highly questionable that a unilateral request by Representatives Wolf and Clinger constitutes a legally sufficient basis for initiating a GAO evaluation of this nature.

2. Political. The political fallout associated with a decision to rebuff the proposed GAO investigation may be substantial. Whatever the legal merits of our position, critics on the Hill and many members of the press would view any failure to cooperate as "stonewalling." The Aldrich Ames affair, widespread media criticism of White House security procedures, and the recent letter to Director Woolsey have already created a highly charged environment. If the White House is viewed as being less than fully cooperative

with the GAO, critics undoubtedly would use this as a vehicle for turning up the decibel level still further.

3. Practical. An investigation of White House security practices necessarily implicates significant privacy concerns. Several critics (purportedly relying on an Administration source) contend, incorrectly, that the FBI has identified a very large number of White House employees with problematic backgrounds. To investigate the claim, the GAO (or any independent auditor) may seek to review individual files. While such a review would be both unprecedented and inappropriate, the issue is likely to come to a head if the GAO investigation proceeds.

III. OPTIONS/ANALYSIS

1. Cooperate with the proposed GAO investigation without qualification.

Analysis: Permitting a GAO evaluation to proceed in this sensitive area would be an unprecedented and legally questionable intrusion into presidential authority. The long-term consequences of allowing this precedent to be set are difficult to predict or control, but may well be substantial. Acquiescing to a GAO evaluation, however, would have the short-term political benefit of allowing the White House to appear fully cooperative. That benefit is at least partially offset by the potential fallout down the road when the GAO report, which may be used for highly partisan purposes, is issued.

2. Cooperate with the proposed GAO investigation, but attempt to negotiate its scope, e.g., by securing an agreement that review of individual files would be out of bounds.

Analysis: Self evidently, this approach has the advantage of protecting the considerable privacy interests at issue in this context. Otherwise, the advantages and disadvantages are essentially the same as in (1) above.

3. Attempt to persuade the GAO and/or Congress that the GAO lacks jurisdiction to conduct such an investigation, and, if persuasion fails, decline to cooperate on legal grounds.

Analysis: Drawing a clear line in the sand preserves the principle that the GAO does not have boundless jurisdiction to investigate certain presidential functions. As stated above, however, the political consequences of this approach may be significant.

4. Oppose the GAO investigation, but develop and implement an alternative form of critical evaluation, such as: (a) an internal review; (b) a review conducted by representatives of the FBI, Secret Service, and other relevant security agencies; (c) a review conducted by an outside expert or panel of experts, e.g. Jim Wolf (security consultant to the Senate Intelligence Committee) or "OPSEC," a division of the National Security Agency specializing in conducting security audits for other federal agencies.

Analysis: Under this approach, the White House would express concern about the appropriateness of a GAO evaluation, but acknowledge that some form of comprehensive review of security procedures may be fruitful. Optimally, the Members who initially requested the GAO investigation would accept this as a reasonable alternative. (Other members of the relevant Senate and House Committees might be willing to approach their colleagues with the suggestion that this is a sensible compromise.) But even if the requesting Members remain adamant, the existence of an alternative form of evaluation may alleviate some of the political fallout associated with a decision to resist the GAO. The more "independent" the evaluation, the greater the likelihood that it will be viewed as acceptable. In that regard, if this option is followed, serious consideration should be given to Senator DeConcini's offer to make Jim Wolf available to the White House. Preliminary inquiries suggest that OPSEC would not be the optimal candidate for this function.

IV. RECOMMENDATION

Option (4) would appear to strike the best balance between the competing political and legal concerns.

cc: Mack McLarty - copy 2 of 4 copies
Phil Lader - copy 3 of 4 copies

Chris -

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Could you put some-
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Draft Document: Subject to Attorney/Client Privilege

April 6, 1994

COPY
from ORM

MEMORANDUM FOR THE SPECIAL COUNSEL TO THE PRESIDENT

OA 6971

FROM: DAVID WATKINS
ASSISTANT TO THE PRESIDENT FOR MANAGEMENT
AND ADMINISTRATION

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4. Oppose the GAO investigation, but develop and implement an alternative form of critical evaluation, such as: (a) an internal review; (b) a review conducted by representatives of the FBI, Secret Service, and other relevant security agencies; (c) a review conducted by an outside expert or panel of experts, e.g. Jim Wolf (security consultant to the Senate Intelligence Committee) or "OPSEC," a division of the National Security Agency specializing in conducting security audits for other federal agencies.

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IV. RECOMMENDATION

Option Four would appear to strike the best balance between the competing political and legal concerns.

April 6, 1994

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046971

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