

THE WHITE HOUSE

WASHINGTON

October 18, 1994

MEMORANDUM FOR WHITE HOUSE STAFF
OFFICE OF THE VICE PRESIDENT STAFF
EXECUTIVE RESIDENCE STAFF
OFFICE OF POLICY DEVELOPMENT STAFF
NATIONAL SECURITY COUNSEL STAFF
COUNCIL OF ECONOMIC ADVISERS STAFF
OFFICE OF SCIENCE AND TECHNOLOGY POLICY STAFF
OFFICE OF NATIONAL DRUG CONTROL POLICY STAFF
PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD
STAFF

FROM: ABNER J. MIKVA *Cefm*
COUNSEL TO THE PRESIDENT

SUBJECT: Annual Ethics Training

Each Executive Office of the President employee is required by federal law to receive annual ethics training. To meet this training obligation, and to encourage knowledge of the ethics rules and ensure appropriate conduct, the Counsel's Office will conduct several training sessions this fall.

Briefings are scheduled for:

<u>Date</u>	<u>Time</u>	<u>Room</u>
Tuesday, October 25	2:30	450
Thursday, November 3	4:00	450
Wednesday, November 9	2:30	450
Thursday, November 17	10:30	450
Thursday, December 1	11:00	450
Tuesday, December 13	10:30	450

Regulations require that you attend one ethics briefing this year for the White House to meet its training obligation. We have an obligation to report compliance information, including attendance, to the Office of Government Ethics. Failure to attend a session will result in appropriate discipline.

If you have any questions, please call Kathi Whalen, Assistant Counsel to the President, at 6-7900.

FINNEY, KAREN E.
WHITE HOUSE OFFICE

FIRST LADY

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THE WHITE HOUSE

WASHINGTON

June 30, 1994

MEMORANDUM FOR EXECUTIVE OFFICE OF PRESIDENT STAFF

FROM: LLOYD N. CUTLER *LNC/lan*
SPECIAL COUNSEL TO THE PRESIDENT

SUBJECT: President's Legal Expense Trust

This memorandum is in response to inquiries from staff regarding the recent announcement by Reverend Theodore Hesburgh and Nicholas de B. Katzenbach of the establishment of the Presidential Legal Expense Trust. The Trust is not a White House enterprise, but rather is a non-federal entity co-chaired by Reverend Hesburgh and Mr. Katzenbach.

The Trust was created to raise and disburse funds to meet the personal legal expenses being incurred by President and Mrs. Clinton because of legal proceedings commenced after the President took office. As federal government employees, you are not eligible to make contributions to the Trust.

Many staff members have received calls from the public seeking information about the Trust. In response to an inquiry, staff should state:

Thank you for inquiring. The Presidential Legal Expense Trust is a separate entity from the White House; the White House does not accept contributions for the Trust. If you wish to contact the Trust for information, the phone number is (202) 429-1780; the address is Presidential Legal Expense Trust, Department 70, Washington, D.C. 20055-0070.

Staff are reminded, pursuant to the Standards of Conduct for Executive Branch Employees, that:

- o You may not, under any circumstances, solicit contributions to the Trust;
- o You should not provide any information about the Trust beyond the telephone number and address through which callers may obtain more information.

If you have any questions regarding the Trust and permissible activity by federal employees, please call Cheryl Mills in the Counsel's Office (456-7900).

THE WHITE HOUSE
WASHINGTON

January 30, 1995

MEMORANDUM FOR DISTRIBUTION

FROM: WENDY SMITH *W*
SPECIAL ASSISTANT TO THE PRESIDENT

RE: ADVANCE QUESTIONNAIRE/COMMENTS SHEET

To say that the response to the questionnaire/comments sheet have been overwhelming would be difficult. To date, we have received 30 completed sheets -- 5 anonymous and 25 signed. I have been guilt tripping as many people as I can by telling them that if they're not part of the solution, they're part of the problem -- it hasn't really worked. Anyway, the responses we have received have been appreciative of the solicitation and could be very helpful. Anyone who has responded has been mailed a letter from Billy Webster thanking for them input, we have been able to update their addresses/phone numbers and taken their recommendations for advance people.

Before too much time went by, I just wanted to supply a general synopsis on a question by question basis of the responses and an elaboration of the good/bad ideas and criticisms/praises. As we get more responses in, I will periodically do one of these memos.

I have set up this memo with the question appearing on the questionnaire as written and then put the *General Consensus* from the total responses, a few choice *Quotes*, and an *Ideas* section which means we should talk about either implementing the idea or at least addressing the concern.

All of these responses are in my office if anyone would like to peruse them for full content. Please feel free to respond to any and all of the following.

I have also attached a new Advance Evaluation form and the new Event Message Form for your perusal.

1) In general and specific terms, what do you feel is your greatest challenge or frustration when doing advance for the White House?

General Consensus: The three most common responses to this question was the general lack of respect, lack of time, and the lack of information. Lack of respect is felt in the authority to make decisions and the fact that they're not trusted when a decision is made. They feel like there is never enough time --

either adequate notice to go on a trip or adequate time to accomplish the goals of the trip. There is never enough information given certainly before the trip and sometimes during the trip regarding the "message and goals" of the trip. A few of the other things mentioned were frustration with the turnaround time on reimbursements, limited resources - understaffed and of money, and no opportunity for feedback.

Quotes: "Trips are often short staffed and bodies are just thrown at the different jobs. This hurts those advance people who know what they're doing...this practice gives the impression that the overall advance teams are inexperienced..."

"I believe there has been a general lack of respect professionally. Advance people are the connect between policy theory development and policy roll-out. We are charged with the execution of events that visually and physically explain new and developing policies."

"Without the proper explanation and understanding of the weight of an event, your advance staff risks making every event routine and uninspiring. In the end, ill-defined events that are missing a sense of purpose and are packed into an overly-ambitious schedule will produce a blur, and not the desired headline, picture, and lead for the day..."

Ideas: There weren't any real ideas per se but since the questionnaire was sent out we have tried to institute a few standard practices which may help. For instance, the message form and the pre-trip political and trip meeting with the leads before they're sent out. We haven't, however, addressed the feedback issue. Any input?

2) *How would you characterize your contacts with the advance office? In particular, were you given enough advance notice when asked to do a trip? was obtaining a visa/passport a simple and efficient process? And what would you do to improve communication with the advance office?*

General consensus: Many, many kudos were given to David Beaubaire and Catherine Cornelius for their prompt return of phone calls, their pleasant dispositions and their professionalism. No one ever seems to have a problem with obtaining a visa or a passport. They like the newsletter and wouldn't mind seeing it more often. The negativism came with the overwhelming frustration, as mentioned above, with the lack of adequate notice. A few people complained of favoritism on the "good trips". Everyone loved the party!

Ideas: Can people be assigned for certain weeks on the calendar? If a person knows their schedule will be light in their real job during x week, why can't they be assigned to a team and then if there's something, we have a person and if there isn't a trip or event, then they're off the hook? Additionally, if we know an event is scheduled three months down the road, why not go ahead and slate the team? Hold some sort of informal get-togethers

with advance people to encourage camaraderie.

3) *Would an "advance seminar/school" be helpful? And if so, what are your ideas on program, timing, and scope of such a seminar?*
General consensus: This will only be good for the inexperienced advance person. Need a manual.

Quote: "Skill, experience and maturity levels differ greatly among the advance staff. An annual gathering to share information, update procedures, and train new recruits would go far in making the advance operation better across the board. However, any advance school program must include a frank discussion of the personal and political consequences of stupid mistakes, bad attitudes, and the lack of discipline on the road."

Ideas: For the experienced advance person, conduct a "refresher" or "lessons learned" course. Make sure the school doesn't get bogged down with people telling war stories and that mock events are planned and executed. Regional workshops.

4) *Is the staffing of your teams adequate - does the number and level of staff fit with the events on the schedule? And please evaluate the current structure of the advance teams in general - does this structure work? are there clear lines of communications both on the team and in communicating with the White House?*
General consensus: Opinion on staffing needs/realities varies from adequate to poor. The staff structure generally works. There doesn't seem to be a problem with communication as long as there is a strong lead. Level of staff tends to be inferior. Seems to be a communications gap between the scheduling desk and the press desk which causes for confusion between the lead advance and the press lead.

Ideas: The entire advance team should listen in to the trip conference calls - not necessarily participate, but just listen in while the lead participates.

5) *How have you felt about the direction you have received from your leads? Can and how can this communication be improved?*
General consensus: Almost hands down everyone says that our leads are very good. What makes them good is the fact that they communicate well with the team and share information. This is crucial if there is to be any rapport with the other advance people -- this goes for sharing of good and bad or sensitive information. The leads need to remember that they are managers and instructors.

Quote: "...clear direction and unwavering support from all parts of the White House make it easier for the lead to perform his/her role and guide the team through the event."

6) Please give the names, addresses, and phone numbers of people whom you know are interested in doing advance for the White House, people either with or without previous advance experience. General consensus: The responses weren't tremendous on this question, but we got a few names. I forwarded all of the recommendations to David and Catherine who then included them in our "database".

7) Travel Office ratings?

General consensus: Everyone seems pretty pleased with the service but feel that the weekend attention could be greater.

8) Do you understand the process by which your per diem is calculated? Do you feel it is processed in an efficient and timely manner? How can you be better served in this process?

General consensus: Obviously very few people are happy about the per diem process, as you may have heard. People pretty much understand how it is calculated, etc.

Ideas: Is there a way to get 80% up front like the State Department does on our foreign trips? The question was raised as to why is the advance per diem lower than any other government employee per diem traveling to the same city? Would it be possible to establish a 10-day to two week turnaround policy?

9) Do you have difficulties finding funding for events and what in your opinion can be done to facilitate this process?

General consensus: This question did not apply to most of the responders since usually only the lead has to deal with funding. But the leads who did respond express some regret in having to do this.

Ideas: Have leads go in a day earlier to make sure all funding loose ends are tied up before the rest of the team gets there so they can deal with it. The White House should negotiate funding for the trips before the advance people arrive, say when an event is accepted.

10) Do you, in a timely manner, send thank you notes? Do you send a list to the advance office of those people who helped you on a trip so they may be thanked and added to a database? And do you feel this process is being used to its greatest benefit? If not, how can it be improved upon?

General consensus: Answers to this question varied greatly -- some people send their own personal thank yous and some send in the forms but don't ever know whether letters get sent out. But most people felt dissatisfied with the system and that we are definitely not getting the most bang for our bucks.

Ideas: Thank you lists should be submitted as part of the

reimbursement process -- don't send a list, don't get a check. Need better direction as to the process also with regard to Photo Office access -- can this be one person's responsibility? I don't think we handle the photo process very well at all - volunteers always gripe at us on the ground for never seeing these elusive photos. Is there always a thank you note form in every advance packet?

11) *What sort of political information, local or otherwise, do you need initially and during a trip? Are your questions prior to departure answered in an efficient and informative manner? What can be done to better assist you in making those contacts or retrieving the necessary information?*

General consensus: While some of this has been addressed in previous answers, almost universally the answer is "no" they are not given enough information. The message form and the pre-trip trip meeting/briefing should help.

Idea: Putting a whole packet together with a list of volunteers compiled from past trips, supporters list from wherever (Correspondence?), and local political information. This can be either given to the lead at the pre-trip meeting or sent in the packet, but that may be too late already. Also, any time there is a pre-advance team (usually international trips), have that team do a debriefing with the advance team as to any ideas or stumbling blocks that may occur.

12) *Do you feel that you receive overall support from the White House which you need to do your job?*

General consensus: Answers vary greatly here - from yes to no, never. The negatives are rooted in the fact that they feel hamstrung in decision making power by the desks and others and also the general lack of respect in their abilities.

Quote: "The support that advance people need most is that the White House trusts them on the ground...If a host sees that a team member can't make decisions on site, the cumulative effect is that the team loses some control as the trip nears event day."

13) *Do you feel when you are assigned to an event/s that you have all the "message" or "goal" information regarding that event/s? What specific assistance would be helpful?*

General consensus: Pretty much covered elsewhere. Frustration lies with the many changes with always occur with regard to message -- no coherency or agreement within the White House.

14) *Do you feel you have too much/the right amount/too little discretion in making decisions about events on the road? How would you change it?*

General consensus: Answers vary greatly. Amount of discretion has varied from desk to desk and event to event. No consensus

really. And the criticisms are the same as mentioned elsewhere.

Quote: "Too little. Trust your leads or don't send them out."

15) *Do you feel you have adequate opportunity to provide feedback after a trip? If not, what type of forum or avenue would you suggest to accomplish this?*

General consensus: Mostly they say no, but they also admit that they probably wouldn't have the energy to do a meeting. Some regret was expressed that the few times they did try to provide feedback, they were not listened to.

Quote: "We are rarely asked how trips went in a substantive way. While I have called to express concern about the way a particular situation developed, I get the implied message that criticism, even though it may be constructive and with the White House's best interests in mind, it is not wise for me to call."

Ideas: Kathy Roth said she did a form which she submitted to Catherine - maybe that could be used. An easy form seems to be the way to go interspersed with occasional meetings/debriefings after a few trips in a row. A thank you call to someone's boss every now and then for letting them go out would be helpful.

16) *Comments.*

General consensus: Like it was stated before, people were just happy to be given an opportunity to speak out. They were immensely appreciative of the Party. Most of them are thrilled with the opportunity every single time to go out and do advance for the President -- they all are devoted to him and love the job dearly. However, the lack of respect and gratitude seems to be wearing them down.

Ideas: Invite some advance people and their friends/families now and again to the radio address, helicopter departures/arrivals, state arrivals, put their names on issue briefing mailings, State of the Union mailings, etc. Need more women and minorities.

EVENT MESSAGE FORM

Event: _____

Date of Event: _____

Event Coordinator: _____

Lead Advance: _____

Deadline: _____

Mark Gearan's Initials: _____

Billy Webster's Initials: _____

DESIRED "HEADLINE":

MESSAGE THAT THE PRESIDENT WILL CONVEY:

DESIRED VISUAL FOR EVENT:

DESIRED AUDIENCE AT SITE:

CONCISE ANSWER TO THE QUESTION, "WHY ARE WE DOING THIS EVENT?"

Advance Evaluation

Thank you for taking the time to fill out this form to help us ensure successful future trips.

Trip Location:

Date/s:

Notes on your Advance Team

Lead Advance:

Comments:

Site Advance:

Comments:

Lead Press/Press Advance:

Comments:

Motorcade Advance:

Comments:

Hotel Advance:

Comments:

Other Advance Staff:

Comments:

- o What was the purpose of the trip?
- o Was this purpose achieved?
- o Please list volunteers and contacts who were helpful.
- o Please list vendors who were particularly good.
- o Is there annything about the local political climate that we should know for future visits? Is there any follow-up which should be done?

*Please
circulate
to other
staff members*

Karen Finney

THE WHITE HOUSE

WASHINGTON

July 12, 1993

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: BERNARD W. NUSSBAUM
COUNSEL TO THE PRESIDENT 

CHERYL MILLS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: POLITICAL ACTIVITY

This memorandum is to advise you of certain legal and policy limitations on your political activity as a member of the White House staff.

Generally, only those Executive Office of the President ("EOP") employees who are in the White House Office ("WHO") itself or the Office of the Vice President ("OVP") may engage in political activity. All others¹, except those appointed by the President by and with the advice and consent of the Senate, are subject to the provisions of the Hatch Act and may not engage in any partisan political activity. A discussion of the permissible and impermissible activities of "hatched" and non-"hatched" employees is set forth below.

It is important that you adhere strictly to these guidelines. Please check with your supervising officer and with Counsel's Office to ascertain whether you are paid from White House Office or the Office of the Vice President appropriations and are exempt from certain of the Hatch Act restraints; do not assume that because you have a White House pass you are not "hatched."²

¹ Employees of the following Executive Office of the President agencies, unless they are appointed with the advice and consent of the Senate, are subject to the Hatch Act: Office of Policy Development, Office of Management and Budget, Office of the United States Trade Representative, Office of Administration, Office of National Drug Control Policy, National Security Council, Council of Economic Advisers, National Space Council, and the Office of Science and Technology Policy.

² Detailees from other agencies maintain the status they enjoy at their home agency. Thus, if an employee is subject to the Hatch Act at their home agency -- which virtually all detailees are -- they remain subject to the Hatch Act

I. HATCH ACT

All Hatch Act prohibitions, discussed below and found at 5 U.S.C. §§ 7321-7327, cover all EOP employees, with exceptions principally for employees:

- (a) paid from the appropriations for the WHO, from the EOP appropriation item for Special Assistance to the President in Connection with Specially Assigned Functions (OVP appropriation), or from the Senate appropriation for the Office of the Vice President; or
- (b) appointed to their current positions by the President by and with the advice and consent of the Senate (provided that such officials have nationwide or foreign relations responsibilities, as all such officials within the EOP do); or
- (c) serving as head or assistant head of an executive or military department.

These exceptions have not been interpreted to extend to other EOP employees; such other employees including Office of Management and Budget (OMB) staff, Office of Policy Development (OPD) staff, and all Schedule Cs and detailees should abide by all Hatch Act prohibitions. The restrictions of the Hatch Act are applicable to full-time employees 24 hours a day, regardless of whether such employees are on annual or sick leave or leave without pay; as long as a covered individual is on the employment rolls of the Government, he or she is subject to the restrictions of the Hatch Act.

Employees fully covered by the Hatch Act may not:

- (1) take an active part in the management of a political campaign;
- (2) be a partisan candidate in an election for State or national office;
- (3) serve as an officer of a political party, a member of a national, State or local committee of a political party, or an officer or member of a committee of a partisan political club;
- (4) organize a political organization or club;
- (5) solicit, receive, handle, otherwise account for, or disburse political contributions;

restrictions while serving at the White House.

- (6) sell tickets to, organize, or actively participate in any political fundraising activity;
- (7) voluntary campaign work, such as addressing and stuffing envelopes;
- (8) solicit votes for or against a candidate;
- (9) serve as a party or candidate challenger or pollwatcher;
- (10) drive voters to the polls for a candidate or party;
- (11) endorse or oppose a candidate in a political advertisement, broadcast or campaign literature;
- (12) serve as a delegate or alternate to a political convention;
- (13) organize or actively participate in the activities of a political convention;
- (14) serve on a standing committee of a political convention;
- (15) circulate a candidate-nominating petition;
- (16) address a convention, rally, caucus or similar gathering of a political party in support of or in opposition to a partisan candidate for public office.

Employees covered by the Hatch Act may:

- (1) register and vote;
- (2) make financial contributions to a party or candidate, except that 18 U.S.C. § 603 precludes Federal employees from contributing to their employer or "employing authority" (5 U.S.C. § 7323 also imposes other restrictions on employees in Executive agencies, namely, that such employees cannot give a thing of value for political purposes to another employee, a member of Congress, or an officer in the uniformed service);
- (3) express their opinion on political subjects;
- (4) wear campaign buttons or display bumper stickers;
- (5) be a member (but not an officer or committee member) of a political party or organization, so long as they do not actively engage in campaign activities;

- (6) attend (but not as a delegate) a political convention, fundraising function or other political gathering, so long as they do not organize or participate in the program of such an activity; and
- (7) sign a nominating petition.

Because the limitations of the Hatch Act apply 24 hours a day, a "hatched" employee may not participate in political activity, either on or off the job. That means, for example, that a "hatched" employee may not draft a political speech. Although it is possible for a "hatched" employee to draft a speech concerning Administration issues that may be presented in a political setting, the "hatched" employee may not prepare any material containing statements of political advocacy, nor any materials that will be used exclusively for a political purpose.

Similarly, "hatched" employees may not type or transcribe political speeches; rather, the resources of a political organization should support political undertakings. Very limited ministerial activities, such as the typing of a brief political endorsement in a speech that otherwise deals with official matters or collating the brief political portion with the remainder of the speech are not objectionable under the Hatch Act.

Additionally, "hatched" employees may write briefing materials on official Administration activities for use by Administration officials, even when such materials will be included in partisan political statements. However, "hatched" employees may not write or prepare any materials that will be used solely for political purposes (e.g., materials for the platform of the Democratic Party), nor may they prepare any materials that contain statements of political advocacy.

Administration officials should be particularly sensitive to the limitations on "hatched" employees in instances of mixed political and official travel. Where a "hatched" employee accompanies an exempted official on a trip, it remains essential that no inappropriate political activities be performed by the employee.³ The "hatched" support staff of an exempted Administration official may perform their normal clerical and ministerial functions in connection with the political travel and appearances or activities of their principal, provided that the functions they perform are related to their official responsibilities. Such employees, however, may not perform tasks

³ Because the discharge of official duties is the only basis for a "hatched" employee to be accompanying his or her principal on a political trip, the travel expenses of such an employee must be paid from appropriated funds.

that are purely political in nature and which relate solely to their principal's political activities.

Logistical arrangements for an exempted official's purely political travel or appearances should be made where possible by the appropriate political organization, but a "hatched" employee customarily involved in such ministerial activities may make limited scheduling arrangements for his or her principal's political travel or appearances. Under no circumstances may a "hatched" employee engage in any of the "management" activities of a political event or convention (e.g., plan or sell tickets to a political event or work on the activities of a committee, such as the Platform or Rules Committees, of a political convention).

Again, if you have any questions with respect to the matters, please call the White House Counsel's Office before you act.

II. LIMITS ON POLITICAL ACTIVITIES OF EXEMPT PERSONNEL⁴

Even staff members who are exempted from the Hatch Act's prohibitions on partisan political activities are subject to certain restrictions. For example, the Hatch Act prohibits all Federal employees from using their official authority or influence for the purpose of interfering with, or affecting, the results of an election.

We have set forth below guidelines to help ensure that political activities undertaken by exempt personnel are within the limits prescribed by law and White House policy.

USE OF LEAVE

(1) Certain White House staff members are entitled to specific amounts of annual leave. As discussed below, such leave may be used for political purposes; however, one cannot take an "advance" on annual leave to engage in political activities. Those White House staff members not entitled to annual leave (e.g., commissioned officers) may use a ceiling of 15 days of compensatory leave (i.e., the equivalent of vacation time) for political purposes.

⁴ It is important to understand that for purposes of this section, the official responsibilities that customarily have been performed by the Political Affairs Office constitute "official" and not "political" activities, and the restraints cited here therefore do not in general affect activities and office maintenance or other costs undertaken or incurred in the discharge of such responsibilities.

(2) Non-"hatched" White House staff members must perform their official duties for a minimum of 40 hours per week or 80 hours per two-week pay period in order to receive their full Federal salary. If a staff member does not complete 40 hours of official duty in any week, the difference between the number of hours completed and 40 hours must be covered by annual leave, leave without pay, official holidays or made up in the second week of that pay period. The difference cannot be made up in a subsequent pay period.

(3) Those non-"hatched" White House staff members who complete a minimum of 40 hours of official duty during any full week (Monday-Sunday) may be absent from their official duty station for no more than one weekday (Monday-Friday) for the purpose of engaging in political activity without taking annual leave or leave without pay. If a staff member desires to be absent for political purposes for more than one weekday in any week, each additional weekday must be covered by annual leave or leave without pay, regardless of the number of official hours worked during that week. In other words, it is not permissible for a staff member to put in 40 hours of official duty in the first three days of the week and then take the remaining two weekdays off for campaigning without using annual leave or leave without pay.

(4) Sick leave cannot be used to cover an absence from official duty for the purpose of engaging in political activity.

(5) Any White House staff member not subject to the Hatch Act is permitted to take leave without pay to cover absences from official duties for the purposes of engaging in political activity.

(6) When annual leave, compensatory leave or leave without pay is used for political purposes:

(a) Staff members must submit a request for leave, in advance of the leave period, to their White House department supervisor. Following approval by the supervisor, the request should be forwarded to Counsel's Office.

(b) Supervisors must forward to the Counsel's Office, in advance of a leave period, a report of their intended use of leave for political purposes.

(7) Staff members may use only eight hours of compensatory leave for political activity during any 7-day period unless additional leave is approved by Counsel's Office.

USE OF VEHICLES AND MESSENGERS

White House vehicles may not be used for political purposes. This means that White House cars may not be used to transport staff members or materials to or from any political committee office or event. Nor may White House vehicles be used to transport staff members or political materials to airports or any other location if the purpose of the trip is primarily political.

Because of the special requirements surrounding departures and arrivals from Andrews Air Force Base, White House vehicles may be used to transport White House staff members to that facility when they are accompanying the President, Vice President, First Lady or Mrs. Gore on a political trip. Additionally, where the President is participating in a political event in the Washington, D.C. area or other location where White House cars are available for official purposes, White House cars may be used for the Presidential motorcade to the extent essential to the security and support of the President.

White House messenger should not be used to deliver or pick up materials from the DNC or any other political committee.

USE OF COMMUNICATIONS SYSTEMS AND COPYING MACHINES

(1) In those limited circumstances in which government communication systems -- telephone, e-mail (which automatically is backed up as a potential presidential record), telegraph, teletype, telecopy or radio -- are used for campaign-related purposes, appropriate reimbursement or payment at the "usual or normal charge," 15 C.F.R. § 100.7(a)(1)(B), must be made by a proper political campaign committee.

(2) Because of the need for liaison between limited numbers of White House staff members and a political committee, telephones may be used for local calls. However, White House telephones must not be used, even locally, for regular committee activities such as recruiting volunteers or fundraising.

(3) Government credit cards must not be used for campaign-related or other political calls, whether made from within or outside the White House.

(4) Government operators should not be used to place campaign-related or other political long distance calls.

(5) Campaign-related or political long distance telephone calls made from the White House may be made only if charged to a credit card issued by the proper campaign or political committee (or on telephones installed and maintained by such committee for exclusive use in dealing with campaign or political matters should such phones be installed).

(6) The incoming WATS System (800 #) should not be used to call into the White House on campaign or political matters.

(7) White House Communications Agency (WHCA) facilities provided outside the White House in connection with travel may continue to be used during mixed and wholly political trips. These facilities must be used exclusively for communications relating to trip planning and arrangements and not for direct political purposes such as campaign fundraising and crowd-building. The Government will be reimbursed for the use of these facilities.

(8) Except in limited instances approved by the White House Counsel's Office, Government copying machines may not be used to reproduce materials for transmittal to a campaign or political committee.

TRAVEL

Government funds must not be used for the political travel of staff members. Principles governing the allocation of travel expenses will be set forth elsewhere.

Any political or "mixed" official and political travel by White House staff must be approved in advance by the Counsel's Office. No reimbursements will be made for non-approved travel expenses.

MEETINGS IN GOVERNMENT BUILDINGS

(1) Government buildings, including White House offices and meeting rooms, should not be used for meetings or events organized by a campaign or political committee. Informal meetings involving small numbers of campaign or political officials and White House staff members may occasionally be held in a White House staff member's office or, if it is a luncheon or breakfast meeting, in the White House Mess, provided that such meetings do not interfere with the conduct of Government business.

(2) Campaign fundraising activities of any kind are prohibited in or from Government buildings.

(3) Campaign-sponsored or other political activities (receptions, dinners, meetings, but not fundraisers) may be held in the Executive Residence at the White House provided that either the President, Mrs. Clinton, or some other family member attends the event. Campaign or other political events (other than fundraisers) also may be held at the Vice President's Residence so long as the Vice President, Mrs. Gore, or some other family member attends the event. The cost of campaign or political events at either residence must be paid by the proper

campaign or political committee in accordance with the guidelines which have been established for the use of these residences for nonofficial purposes.

USE OF PHOTOGRAPHS

(1) White House photographers may continue to photograph all Presidential, First Lady, and Vice Presidential activities for the purpose of creating an archival record of this Administration. However, as a general rule, photographs taken by White House photographers at political events may not be used for distribution to individuals attending such events or for any other political or campaign purpose.

(2) Photographs taken at events in the Executive Residence (other than political-sponsored events), at West Wing and East Wing meetings, and at non-political events outside the White House may be distributed consistent with regular practices.

(3) A campaign or political committee will be expected to provide a photographer at all campaign and political events for which it desires to distribute photographs to the participants. White House photographers will not photograph receiving lines or greetings at campaign or political events, except to the extent necessary for archival purposes.

(4) A campaign or political committee may purchase, for its use, photographs taken by White House photographers in those limited circumstances where those photographs provide the only source for a particular picture. All photograph purchase requests from the campaign or political committee must be directed to the Director of White House Photo Office. A record of all campaign photo requests will be maintained by the Director of the White House Photo Office, who will be responsible for billing the campaign or political committee for all photo orders on a monthly basis at the normal rate and according to the procedures established by the Government for the purchase of such pictures.

CORRESPONDENCE

(1) Campaign and political correspondence must not be produced at the White House, nor can White House stationery, stamps or related supplies be used in the preparation of such correspondence at another location.

(2) Federal law prohibits the receipt of contributions in Federal buildings. Occasionally, contributions intended for a campaign committee may be addressed to the White House and delivered with other mail. Such contributions should be handled by returning the contributions to the sender with an explanation of the applicable Federal law and a statement of the appropriate

recipient's address. (Appropriate language may be obtained from the White House Counsel's Office.) There should be no acknowledgement of receipt of a contribution from the White House to the contributor. If the contribution is accompanied by a letter that deals primarily with governmental issues, a response dealing with those issues may be prepared and sent from the White House; however, there must be no reference to the contribution.

CRIMINAL STATUTES

A number of criminal statutes prohibit the use of Federal programs, property, or employment for political purposes. Violation of these criminal statutes is punishable by imprisonment and/or the payment of a substantial fine. Certain staff members may also be subject to investigation and possible prosecution by an Independent Counsel in connection with alleged violations of these statutes.

Solicitation of Campaign Contributions: Solicitation of campaign contributions from Federal employees (except those appointed by and with the advice of the Senate) is prohibited, as is the solicitation or receipt of contributions in Federal buildings or on Federal property. Moreover, solicitation of campaign contributions from a Member of Congress or an officer of a uniformed service also is prohibited. Unless specifically approved by the Counsel's Office and the Political Affairs Office, no White House staff member shall sign a fundraising letter on behalf of any Federal candidate.

Use of Official Authority: Criminal statutes prohibit any Federal employee, whether or not "hatched," from using his or her "official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate." While there is no definitive statement by a court or other body of what activities constitute such improper interference with election results, the following types of activities are clearly prohibited:

-- One Federal employee directly or indirectly soliciting money from another Federal employee for a campaign contribution, or making a contribution to the official responsible for his or her employment.

-- Soliciting or receiving campaign contributions on Federal property or in Federal buildings. This means that fundraising events may not be held in the White House; that no fundraising phone calls or mail may emanate from the White House or any other Federal buildings; and that no campaign contributions may be accepted at the White House or any other Federal building.

-- Soliciting or accepting a campaign contribution or campaign support in exchange for a promise to appoint someone to a Federal job.

-- Promising or withholding Federal benefits (jobs, grants, contracts, etc.) based on political support or nonsupport.

-- Favoring or penalizing employees or withholding employment in order to induce someone to make a political contribution or otherwise participate in political activity.

Violations of these statutes can, of course, have serious consequences and I urge you, if you have any questions about the legality or propriety of a proposed action, to consult the White House Counsel's Office.

THE WHITE HOUSE

WASHINGTON

April 6, 1994

MEMORANDUM FOR WHITE HOUSE STAFF

FROM: LLOYD CUTLER
SPECIAL COUNSEL TO THE PRESIDENT

CHERYL MILLS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: POLITICAL ACTIVITY

This memorandum is to advise you of recent changes in the law regarding limitations on your political activity as a member of the White House staff.

On October 6, 1993, President Clinton signed the Hatch Act Reform Amendments of 1993, which expanded the scope of permissible political activities of many Federal employees, including employees of the Executive Office of the President ("EOP"). Prior to the recent amendments, only those EOP employees who were in the White House Office ("WHO") itself or the Office of the Vice President ("OVP") could engage in political activity. All others, except those appointed by the President, by and with the consent of the Senate, were subject to the provisions of the Hatch Act that prohibited participation in any partisan political activity.

Under the recent amendments, most Federal employees may participate in political activities, subject to certain restrictions. However, some government employees are still prohibited from actively participating in political management and political campaigns.¹ Moreover, detailees from other agencies maintain the status they enjoy at their home agency, and thus might be subject to certain Hatch Act restrictions even while working at the White House. Accordingly, this memorandum sets forth a description of permissible and impermissible activities for all White House employees, including those who are prohibited from actively participating in political management and political campaigns.

It is important that you adhere strictly to these guidelines. Please check with your supervising officer and with the White House Counsel's Office if you have any questions regarding whether you are still covered by particular Hatch Act

¹ See discussion at pages 4-5.

ruling, license, permit or certificate pending before the staff member's office; or,

- (6) knowingly solicit or discourage the participation in any political activity of any person who is the subject of, or a participant in, an ongoing audit, investigation or enforcement action being carried out by the employee's office.

B. Permissible Activities

Staff members may:

- (1) register and vote;
- (2) make financial contributions to a party or candidate campaign committee;
- (3) express their opinion on political subjects;
- (4) wear campaign buttons (though not while on duty)⁴;
- (5) display bumper stickers on their personal vehicles;
- (6) sign a nominating petition;
- (7) take an active part as an independent candidate, or in support of an independent candidate;
- (8) be politically active in connection with a question that is not specifically identified with a political party, such as a constitutional amendment, a referendum, or a municipal ordinance;

This list of prohibited and permitted activities is not exhaustive. Staff members who have questions regarding any activity should direct inquiries to the Counsel's Office.

II. EMPLOYEES RESTRICTED FROM ACTIVE PARTICIPATION IN POLITICAL MANAGEMENT AND POLITICAL CAMPAIGNS

Active participation in political management and political campaigns is still prohibited for employees, unless appointed by the President, by and with the advice of the Senate, in the following agencies: the Federal Election Commission, Federal

⁴ Under the law as written, certain high level political appointees are allowed to engage in on-the-job political activity, but Congress has indicated that it would be highly inappropriate for these officials to wear political buttons or other political paraphernalia while on duty.

- (9) drive voters to the polls for a partisan candidate or political party;
- (10) endorse or oppose a partisan candidate in a political advertisement, broadcast or campaign literature;
- (11) serve as a delegate to, organize or actively participate in the activities of a political convention;
- (12) serve on a standing committee of a political convention;
- (13) address a convention, rally, caucus or similar gathering of a political party in support of or in opposition to a partisan candidate for public office;
- (14) intimidate, threaten, command, or coerce, any Federal employee to engage in, or not to engage in, any political activity -- including voting or refusing to vote for any candidate or measure, making or refusing to make a political contribution, or working or refusing to work on behalf of any candidate.

III. EMPLOYEES ALLOWED TO ENGAGE IN POLITICAL ACTIVITIES

Under the Hatch Act amendments, Federal employees, with the exception of those employed at the agencies discussed above, are now allowed to take an active part in political management and political campaigns. However, even staff members who are allowed to engage in partisan political activities are subject to certain restrictions. We have set forth below guidelines to help ensure that political activities undertaken by White House personnel are within the limits prescribed by law and White House policy.

A. GENERAL RESTRICTIONS

Generally, unless specifically permitted by statute, no federal employee may:

- 1) engage in political activity while the employee is on duty;
- 2) engage in political activity in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Federal government;
- 3) engage in any political activity while wearing a uniform or official insignia identifying the office or position of the employee; or

without pay, official holidays or made up in the second week of that pay period. The difference cannot be made up in a subsequent pay period.

(3) White House staff members who complete a minimum of 40 hours of official duty during any full week (Monday-Sunday) may be absent from their official duty station for no more than one weekday (Monday-Friday) for the purposes of engaging in political activity without taking annual leave or leave without pay. If a staff member desires to be absent for political purposes for more than one weekday in any week, each additional weekday must be covered by annual leave or leave without pay, regardless of the number of official hours worked during that week. In other words, it is not permissible for a staff member to put in 40 hours of official duty in the first three days of the week and then take the remaining two weekdays off for campaigning without using annual leave or leave without pay.

(4) Sick leave cannot be used to cover an absence from official duty for the purpose of engaging in political activity.

(5) White House staff members are permitted to take leave without pay to cover absences from official duties for the purposes of engaging in political activity.

(6) When annual leave, compensatory leave or leave without pay is used for political purposes:

(a) Staff members must submit a request for leave for political purposes in advance of the leave period to their White House department supervisor for approval.

(b) Following approval, the office supervisor should forward the request to the Counsel's Office in advance of the leave period.

(7) Staff members may use only eight hours of compensatory leave for political activity during any 7-day period unless additional leave is approved by Counsel's Office.

D. USE OF GOVERNMENT VEHICLES

Unless the costs associated with the use of a government vehicle are paid from a non-federal source, no government vehicles, including White House vehicles, may be used for political purposes. This means that White House cars may not be used to transport staff members or materials to or from any political committee office or event. Also, White House vehicles may not be used to transport staff members or political materials to airports or any other locations if the purpose of the trip is primarily political.

(2) Because of the need for liaison between limited numbers of White House staff members and a political committee, telephones may be used for local calls. However, White House telephones must not be used, even locally, for regular committee activities such as recruiting volunteers or fundraising.

(3) Government credit cards must not be used for campaign-related or other political calls, whether made from within or outside the White House.

(4) Government operators should not be used to place campaign-related or other political long distance calls.

(5) Campaign-related political long distance telephone calls made from the White House may be made only if charged to a credit card issued by the proper campaign or political committee (or on telephones installed and maintained by such committees for exclusive use in dealing with campaign or political matters, should such phones be installed).

(6) The incoming WATS System (800 #) should not be used to call into the White House about campaign or political matters.

(7) White House Communications Agency ("WHCA") facilities provided outside the White House in connection with travel may continue to be used during mixed and wholly political trips. The facilities must be used exclusively for communications relating to trip planning and arrangements and not for direct political purposes such as campaign fundraising and crowd-building. The Government will be reimbursed for the use of these facilities.

(8) Except in limited instances approved by the White House Counsel's Office, Government copying machines may not be used to reproduce materials for transmittal to a campaign or political committee.

G. TRAVEL

Government funds must not be used for the political travel of staff members.

Any political or "mixed" official and political travel by White House staff must be approved in advance by the Counsel's Office. No reimbursement will be made for non-approved travel expenses. Principles governing the allocation of travel expenses are set forth in a February 17, 1994 memorandum from this office.

H. USE OF PHOTOGRAPHS

(1) White House photographers may continue to photograph all Presidential, First Lady, and Vice Presidential activities for the purpose of creating an archival record of this

J. RECOMMENDATIONS

While encouraging political participation by Federal employees, the Hatch Act amendments are designed to shield employees from favoritism or retaliation based on their political affiliation.

A staff member may not solicit a recommendation from a member of Congress, any elected official of a state, any official of a political party, or any other organization or individual on the basis of the staff member's political affiliation. This prohibition applies to recommendations pertaining to any personnel matter, not just job applications. In addition to prohibiting employees from soliciting recommendations based on political affiliation, the law prohibits any of the sources listed above from supplying such recommendations.

The law provides that personnel actions with respect to a Federal employee or applicant for Federal employment shall be taken without regard to any recommendation or statement made by any of these prohibited sources. If an agency receives a prohibited recommendation, it must return it to its source, indicating that it is impermissible for the agency to consider it.

Recommendations from any of the prohibited sources may be accepted by an agency only if they consist solely of an evaluation of the employee's work performance, ability, aptitude, general qualifications, general character or residence. Also, if the law requires a recommendation from a prohibited source -- for instance, for the purpose of obtaining a security clearance -- an agency may accept such a recommendation.

K. CRIMINAL STATUTES

A number of criminal statutes prohibit the use of Federal programs, property, or employment for political purposes. Violation of these criminal statutes is punishable by imprisonment and/or the payment of a substantial fine. Certain staff members may also be subject to investigation and possible prosecution by an Independent Counsel in connection with alleged violations of these statutes. This section highlights those actions that may have criminal consequences.

(1) Solicitation of Campaign Contributions

Solicitation of campaign contributions from Federal employees (except for contributions to Federal employee PACs discussed in Part III(B), above) is prohibited, as is the solicitation or receipt of contributions in Federal buildings or on Federal property. Moreover, solicitation of campaign contributions from a Member of Congress or an officer of a

THE WHITE HOUSE
WASHINGTON

Kumiki Gibson
6-6606

May 23, 1994

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: LLOYD CUTLER *Lnc*
SPECIAL COUNSEL TO THE PRESIDENT

SUBJECT: PROHIBITED CONTACTS REGARDING
THE COMMUNITY EMPOWERMENT PROGRAM

As you may know, the community empowerment program authorizes the Secretaries of HUD and USDA to select certain localities as empowerment zones and enterprise communities, thus enabling them to receive certain grant funds and other benefits from the Federal Government. On September 9, 1993, the President, among other things, designated the Vice President to chair the Community Enterprise Board (comprised of 15 executive branch departments and agencies) to oversee the implementation of the program and directed the Secretaries of HUD and USDA to consult with the Board regarding the actual designations. We presently anticipate receiving close to 800 applications for the 104 slots; therefore, the application process will be extremely competitive.

Consistent with White House policy, referenced in prior memoranda from the Counsel's Office, and in order to ensure the fairness of this competitive grant process, the following procedures shall govern communications between White House staff and executive branch agencies regarding the community empowerment program:

1. All comments concerning particular applications should be directed to Kumiki Gibson, Associate Counsel to the Vice President. As appropriate, Kumiki will transmit the communication to the appropriate agency. With the exception of the staff of the White House offices represented on the Board, no other member of the White House staff should discuss a particular application (planned, proposed, or pending) with any agency.

2. Other communications regarding the selection process should be directed to one of the three White House offices that oversee the Board (i.e., the Office of the Vice President, the Domestic Policy Council, or the National Economic Council) -- specifically, Jack Quinn, Carol Rasco, or Bob Rubin.
3. Of course, members of the White House staff may communicate directly with executive branch agencies with respect to general policy matters or budgetary, administrative, or legislative issues.

* * *

Please cooperate in observing the guidelines discussed above. If you have any questions regarding these procedures, please feel free to contact Kumiki Gibson or me.

THE WHITE HOUSE
WASHINGTON
June 27, 1994

Reminder on
Political Activity -
Questions and
Answers on behavior
during campaigns

MEMORANDUM FOR EXECUTIVE OFFICE OF THE PRESIDENT STAFF

FROM: LLOYD N. CUTLER
SPECIAL COUNSEL TO THE PRESIDENT

CHERYL MILLS *CSM*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Reminder on Political Activity

This memorandum highlights guidance given to staff members in response to recent questions this office has received regarding permissible political activity by Federal employees and officers. In light of the upcoming mid-term elections, it is important for all staff to be aware of the rules governing political activity. For a complete discussion of the Hatch Act Reform Amendments and political activity, please review our memorandum, "Political Activity" (April 6, 1994) (copies are available from our office).

Different limitations on political activity may apply to you based on your employing office within the Executive Office of the President (EOP). For example, individuals paid by the National Security Council (NSC) are not permitted to engage in political activity at any time in any place. Staff of the White House Office (WHO), Office of Policy Development (OPD), and Office of the Vice President (OVP) may engage in political activity during duty hours and in a Federal building. However, persons, including detailees, paid from monies for an Executive Agency or Department may not engage in political activity during duty hours or while in a federal building (which generally includes the White House), unless they are Presidential appointees with Senate confirmation. Similarly, many staff members in the Office of Administration (OA), Office of Management and Budget (OMB) and the Office of the United States Trade Representative (USTR), also may not engage in political activity during duty hours or in a Federal building.

Thus, who pays your salary affects the type of political activity, if any, in which you may participate. Do not assume because someone next door to you may engage in political activity, that you may too. When in doubt, please consult your agency counsel or the Counsel's Office as appropriate.

Listed below in question and answer form are examples of frequently raised issues relating to political activity.

*Diane
circulate
to the
rest of staff
Mason*

To: Karen

Solicitation Questions

1. Q: May I solicit political contributions for a candidate, political committee or political organization?

A: No. Remember, contributions include cash and personal (paid or unpaid) services. The only exception is solicitation of another Federal employee who is your equivalent or above for contributions to a Federal labor or employee organization, provided you are both members.

2. Q: May I ask my friends to volunteer for a candidate's campaign?

A: No. See example above.

3. Q: May I give a contribution to a candidate's campaign committee or a political committee?

A: Yes.

Fundraisers

4. Q: May I attend a political fundraiser?

A: Yes. All staff, including NSC employees, may attend a political fundraiser.

5. Q: May I speak (as the keynote or guest speaker) at a fundraiser?

A: The answer varies according to your position and Federal employer.

- o Political appointees with Senate confirmation (PAS) may be the featured speaker at a fundraiser at any time during the day or evening.
- o Individuals below the PAS level at Agencies and Departments (including detailees to the White House) may speak at a fundraiser, **but only during non-duty hours (i.e., after or before normal agency work hours).**
- o WHO, OPD, and OVP staff, but not NSC staff, may speak at a fundraiser at any time during the day or evening.

6. Q: If I can be the featured speaker at a fundraiser, may my name be on a fundraising invitation?

A: Yes, provided that the invitation does not suggest or intimate that you are soliciting a donation on behalf of the political candidate, the host of the fundraiser, or a political committee or organization -- in other words, the invitation should say "special guest" or "guest speaker" and not list you as part of the host committee or the individuals giving the fundraiser who are seeking contributions through the invitation.

When in doubt as to whether the use of your name on an invitation may constitute solicitation, have the Counsel's Office review a draft of the invitation before it goes to print.

7. Q: May my name be listed with others as part of the host committee of a fundraising event?

A: No.

8. Q: May my title be used on an invitation?

A: No. However, you may use "The Honorable" if appropriate.

9. Q: May I host a fundraiser at my house?

A: No.

10. Q: May my spouse or significant other host a fundraiser?

A: Yes, provided your spouse or significant other truly is the host and is not merely a foil for you hosting the fundraiser. There are several steps you should take to reduce the appearance of being the de facto host: you should not be a speaker at a fundraiser hosted by your spouse; you should not participate in drafting the invitation list; and, you should not personally invite individuals to attend the fundraiser. You truly should merely function only as a spouse for the fundraiser (i.e., greet guests, help set up and clean up, etc.).

Volunteer Work on a Campaign

11. Q: May I volunteer to work on a campaign?

A: The answer varies according to your Federal employer -- always check with your agency counsel or this office before doing any volunteer work for a campaign.

- o NSC employees are not permitted to engage in any political activity -- even during off-duty hours;

therefore, they may not do volunteer work for a political campaign or political organization.

- o EOP staff in OVP, OPD, and the WHO may volunteer for a campaign.
- o EOP staff in OA, OMB, and USTR may volunteer for a campaign; however, depending on your position, you may be able to volunteer for a campaign only during non-duty hours.
- o PAS in the EOP an Agencies and Departments may volunteer for a campaign.

12. Q: May I use vacation time to volunteer for a campaign?

A: Yes, provided you not paid from appropriations for the NSC.

- o Vacation time is considered "off-duty" time; thus, all White House staff, with the exception of NSC employees, may engage in political activity on vacation days.

13. Q: May I take a leave of absence without pay and work on a campaign?

A: Yes, provided you are not employed by the NSC and your absence is approved by your supervisor and your agency counsel or this office, as appropriate.

14. Q: May I miss two days of work in one week without taking leave or using vacation time, assuming my supervisor permits me to be away, to work on a candidate's campaign?

A: No. White House policy provides that staff members may be away from their official duties for the purposes of engaging in political activity only for one day during any one work week. Furthermore, staff members still must complete 40 hours of work during any work week in which they are absent for one day to engage in political activity.

- o Absences to engage in political activity must be approved by your supervisor and your agency counsel prior to missing a work day. Such memoranda should be sent to your agency counsel's office (or the Counsel's Office for WHO and OPD staff) at least one week before a scheduled absence.

Compensation for Campaign Work

15. Q. May I get paid to work on a campaign if I take a leave of absence without pay?

A: The answer varies with your salary level and Federal employer:

- o WHO and OPD staff who are paid above \$27,789 are prohibited by Executive Order 12674 from earning any outside income.
- o PAS paid from appropriations for OMB, USTR, and every other Agency or Department are similarly prohibited from earning outside income.
- o Schedule C appointees employed at an Agency or Department or by OMB, USTR or OA who are paid in excess of \$92,900 also are prohibited from earning outside income.
- o Staff paid from appropriations for OVP do not appear to be subject to outside earned income limitations.

Remember, you must receive Counsel Office approval before you properly may accept payment from any outside source, including political entities.

Permissible Campaign Work

This section applies only to those persons who are permitted by law to engage in political activity.

16. Q: May I manage a campaign?

A: Yes. But see, Question 23. The campaign should designate a person who is not a federal employee to be the formal "acceptor" of all contributions -- cash and personal services (which includes unpaid volunteer services for the campaign).

17. Q: May I hold a position within a campaign (i.e., general counsel, deputy manager, press spokesperson)?

A: Generally, yes (but see below).

18. Q: May I be the campaign treasurer?

A: To avoid the appearance of soliciting, accepting or receiving political contributions -- which is expressly

prohibited by law -- you should not hold this or any related position in a campaign.

19. Q: May I be the Volunteer Outreach Coordinator?

A: No. This position likely would require you to solicit a political contribution -- namely, the services of volunteers.

Interaction between Government and Campaign

20. Q: May I work on the campaign from my Federal office?

A: No.

21. Q: May I use my Federal office phone, on days I am at my Federal job, to place local calls for campaign purposes -- i.e., strategizing, coordinating events, etc.?

A: No. Obviously, for local calls there is a de minimis level -- you may receive or place calls, for example, to schedule a meeting.

22. Q: May I disclose non-public information that I learned in my government job to the campaign, assuming there is no conflict of interest?

A: No, whether or not there is a potential conflict between the campaign's interest and the government's interest is not the issue -- you are prohibited from disclosing non-public information without express authorization.

23. Q: May I ask the President, Vice President or any of my associates at the White House to speak at a fundraiser for the candidate for whom I work.

A: No. As an employee -- assuming you take a leave of absence without pay or vacation time -- you may not represent the interests of another entity, including a campaign, before the Federal government (18 U.S.C. § 205). You also may not use your government position for the private gain of another -- including a political campaign.

24. Q: May I ask the President, Vice President or any of my associates at the White House to speak at a fundraiser for the candidate for whom I work if I am not a federal employee?

A: The answer varies with the level of your former position with the Federal government.

- o Assistants and many Deputy Assistants to the Presidents are prohibited for five years by the Ethics Pledges from making any communication to, or appearance before, an EOP official on behalf of another to seek official action (which includes speaking at a fundraiser).
- o Senior appointees (persons paid more than \$108,200) also are prohibited from seeking official action from any EOP employee or officer for one year. The same restriction applies to PAS with regard to their previous agency.

Political Travel

These questions assume that you may engage in political activity consistent with your Federal employment.

25. Q: May a political entity or a candidate campaign committee pay for my travel to come speak at a political event?

A: Yes, provided your travel is approved by the Counsel's Office (or your agency's counsel office). WHO and OPD staff must submit a political travel form and a travel voucher to the Counsel's Office and the Office of Political Affairs for approval at least 3 days before travelling.

25. Q: May a political entity or candidate campaign committee pay for my meals, lodging and ground transportation during the trip?

A: Yes, provided such accommodations are approved.

These questions are designed to highlight the "Political Activity" memorandum, not replace it. Each staff member is responsible for knowing the rules governing their ability to participate in political activity. Accordingly, White House staff members who potentially may engage in political activity should carefully review the "Political Activity" memorandum and direct any questions to our office.

THE WHITE HOUSE

WASHINGTON

September 19, 1994

MEMORANDUM FOR ALL EXECUTIVE OFFICE OF THE PRESIDENT STAFF

FROM:

JOEL I. KLEIN *Joel I. Klein*
DEPUTY COUNSEL TO THE PRESIDENT

RE:

GRAND JURY SUBPOENA FOR DOCUMENTS

The White House has received a grand jury subpoena requesting the production of documents. The subpoena requests "All documents and other recordings relating to Harry Thomason and Darnell Martens, excluding those documents relating solely to the Presidential inauguration." The subpoena further states that the request "includes all records of any type, written or electronic, and duplicate copies as well as originals."

The subpoena calls for the documents to be produced no later than 9:30 a.m. Friday, September 30, 1994. To respond to this deadline, absolutely all members of the EOP staff immediately must search their files and provide all applicable documents and records to Marvin Krislov in the Counsel's Office, Room 126, OEOB by Friday, September 23, 1994. This request applies even if a staff member has previously searched his or her files and provided any such documents to the Counsel's Office.

To coordinate compliance, we have designated a representative from all EOP offices or entities to be responsible for ensuring that all his or her employees have complied fully with the subpoena. These representatives should confirm that each staff member has searched his or her files and provided any responsive documents or records, and should notify Mr. Krislov or Chris Cerf at 52273 by Friday, September 23. A complete list of representatives is attached.

Each staff member must take personal responsibility for complying with this subpoena in full. If a staff member has questions about the scope of the request or any other matters, he or she should contact Mr. Krislov or Mr. Cerf.

White House Office

Cabinet Affairs
Chief of Staff
Communications
Counsel's Office
Domestic Policy
Envir. Policy
First Lady Off.
Intergov. Aff.
Legislative Aff.
Man. & Admin.
Nat. Econ. Pol.
Office of Pres.
Political Aff.
Pres. Personnel
Public Liaison
Scheduling/Adv.
Social Secretary
Staff Secretary

Office Representative

Steve Silverman
John Angell
Rahm Emanuel
Marvin Krislov
Carol Rasco
Cathy Zoi
Melanne Verveer
Marcia Hale
Pat Griffin
Jodie Torkelson
Sylvia Mathews
George Stephanopoulos
Joan Baggett
Veronica Biggins
Alexis Herman
Ricki Seidman
Ann Stock
John Podesta

EOP Entity

Office Representative

CEA

Tom O'Donnell

CEQ

Elizabeth Blaug

Exec. Residence

Gary Walters

NSC

Alan Kreczko

OA

Chris Cerf

OMB

Robert Damus

ONDCP

Ed Jurith

OSTP

Holly Gwin

OVP

Todd Campbell

PFIAB

Alan Kreczko

USTR

Ira Shapiro

VP Residence

Todd Campbell

WHCA

Col. Thomas Hawes

WHMO

Capt. Mark Rogers

THE WHITE HOUSE

WASHINGTON

April 27, 1995

MEMORANDUM FOR WHITE HOUSE OFFICE
OFFICE OF POLICY DEVELOPMENT AND
OFFICE OF THE VICE PRESIDENT STAFF

FROM: ABNER J. MIKVA *ajm*
COUNSEL TO THE PRESIDENT

CHERYL MILLS *cm*
ASSOCIATE COUNSEL TO PRESIDENT

SUBJECT: Presidential Campaign-Related Political Activity

This memorandum provides employees of the White House Office, the Office of Policy Development and the Office of Vice President with guidance regarding Presidential campaign-related political activity.¹ With the President's formal decision to seek re-election, we wanted to review the rules governing campaign activity by federal employees.

I. Governing Principle

Under the Hatch Act Reform Amendments of 1993 (the Act), most employees² paid from appropriations for the Executive Office of the President may engage in political activity: 1) while on duty, 2) while in a federal building, and 3) while using government vehicles, provided that "the costs associated with that activity are not paid for by money derived from the Treasury of the United States." 5 U.S.C. § 7324(b)(1). Activities which incur costs include: faxing, copying, use of computers, and

¹ General guidance regarding permissible political activity by federal employees under the Hatch Act Reform Amendments of 1993 is provided in an October 12, 1994, memorandum from this Office ("Political Activity Guidance"). Please consult the October 12, 1994, memorandum for a comprehensive discussion of the Act and implementing regulations governing political activity.

² Only those Executive Office of the President staff members whose duties continue outside normal duty hours and while away from post may engage in political activity while on duty; all other staff members only may engage in political activity during non-duty hours and while not in a federal building. 5 U.S.C. § 7324(b).

long-distance phone calls.³ It is important that staff members consider this principle in relation to their activities during the President's re-election campaign; it often will help avoid a problem before it arises.⁴

II. Distinguishing Political and Official Activity

Perhaps one of the more difficult aspects of evaluating on-duty conduct is discerning the difference between official and political activity. As a general matter, activity is political if its primary purpose involves the President's role as a candidate for office or as the leader of the Democratic Party (e.g., appearing at party functions, fundraising, campaigning for specific candidates). 6 O.L.C. 214, 217 (1982). Activity is official if it relates to the President's policies, programs or legislative agenda, even if it concerns matters on which opinion is politically divided. *Id.* Obviously, however, there are gray areas in between these two definitions; if you have questions regarding particular activities, do not hesitate to contact the Counsel's Office for guidance.

III. Prohibitions on Certain Political Activity

While White House staff may engage in political activity, there are still certain restrictions on such conduct. A number of criminal statutes prohibit the use of federal programs, property or employment for political purposes. Violation of these statutes is punishable by imprisonment and a substantial fine. It is therefore imperative that staff observe the prohibitions outlined below.

³ Certain costs are not considered to be borne by the Treasury because they are costs that the government already has incurred for official purposes in the absence of political activity, e.g., office space; employee salaries. 5 C.F.R. § 734.503. But see IV, Section D.

⁴ It is important to understand that for the purposes of this memorandum, the official responsibilities that customarily have been performed by the Political Affairs Office constitute "official" and not "political" activities. Therefore, the restraints cited herein do not in general affect the activities, office maintenance, or other costs undertaken or incurred in the discharge of such responsibilities.

Federal employees, including White House employees, may not:

- (1) use their official authority or influence for the purpose of interfering with or affecting the result of a nomination or an election of any candidate;
- (2) intimidate, threaten, command or coerce any federal employee to engage in or not to engage in any political activity;
- (3) **ever knowingly solicit, accept or receive a political contribution from any person, including a subordinate or other federal employee;**⁵
- (4) run for the nomination or as a candidate for election to a partisan political office;
- (6) knowingly solicit or discourage the participation in any political activity of any person who has an application for any compensation, grant, contract, ruling, license, permit or certificate pending before the staff member's office; or,
- (7) promise or withhold federal benefits (jobs, grants, contracts) based on political support or nonsupport -- including favoring or penalizing employees or withholding employment to induce someone to make a political contribution or otherwise participate in political activity; or,
- (8) knowingly solicit or discourage the participation in any political activity of any person who is the subject of, or a participant in, an ongoing investigation, audit, or enforcement action being carried out by the employee's office.

IV. Limitations on Campaign Activities By White House Staff

We have set forth below guidelines to ensure that political activity undertaken by White House staff is within the limits prescribed by law and White House policy. While these guidelines will cover many day-to-day situations that arise, the simplest rule to follow is the "common-sense" practice that anything obviously political that involves the use of resources should be done by the campaign, even if doing it here can be "legally" justified.

⁵ The sole exception to this prohibition is for federal labor or employee organizations. Please consult our Office before undertaking any action implicating this exception.

A. Campaign Meetings on Government Property

1. Small meetings involving campaign or political officials and White House staff members may be held in a White House staff member's office, the West Wing or the Old Executive Office Building, or, if it is a luncheon or breakfast meeting, in the White House Mess, provided that such meetings do not interfere with the conduct of Government business. Such gatherings must be organized by White House staff members who are permitted to engage in political activity in a federal building. Government buildings, including White House offices and meeting rooms, should not be used for meetings or events organized by a campaign or political committee.

2. Campaign fundraising activities of any kind are prohibited in or from government buildings. In addition, federal employees are prohibited from soliciting or accepting campaign contributions. This means that fundraising events may not be held in the White House; also, no fundraising phone calls or mail may emanate from the White House or any other federal building.

3. Campaign-sponsored or other political activities (receptions, dinners, meetings, but not fundraisers) may be held in the Executive Residence, provided that the President, First Lady or some other family member attends the event. Similarly, campaign or other political events (other than fundraisers) also may be held at the Vice President's Residence as long as the Vice President, Mrs. Gore, or some other family members attends the event. The costs of such events at either residence must be paid by the proper campaign or political committee.

B. Campaign Contributions by White House Employees

Under 18 U.S.C. § 603, it is a felony for any officer or employee of the government to give a political contribution to his or her "employer or employing authority." At the very least, this provision prohibits employees of the White House Office, the Office of Policy Development, and the Office of the Vice President (including his Senate staff), and quite probably all federal employees, from contributing to the authorized campaign committee of the President.

C. Receipt of Campaign Contributions at the White House

Federal law prohibits the receipt of campaign contributions in federal buildings. Occasionally, contributions intended for a campaign committee may be addressed to the White House and delivered with other mail. Such contributions should be taken to Jim Dorskind in the Correspondence Department in the Old Executive Office Building, Room 94.

There should be no acknowledgement of receipt of a contribution from the White House to the contributor. If a contribution is accompanied by a letter that primarily addresses governmental issues, a response to those issues may be prepared and sent from the White House; however, there should be no reference to the contribution.

D. Use of Leave

1. Some White House staff members, as leave-earning employees, are entitled to specific amounts of annual leave. As discussed below, such leave may be used for political purposes; however, one cannot take an "advance" on annual leave to engage in political activities. Those White House staff members who are not entitled to annual leave (e.g., commissioned officers) may use a ceiling of 15 days of compensatory leave (i.e., the equivalent of vacation time) for political purposes.

2. All White House staff members must perform their official duties for a minimum of 40 hours per week or 80 hours per two-week pay period in order to receive their full federal salary. If a staff member does not complete 40 hours of official duty in any week, the difference between the number of hours completed and 40 hours must be covered by annual leave, leave without pay, official holidays or made up in the second week of that pay period. The difference cannot be made up in a subsequent pay period.

3. White House staff members who complete a minimum of 40 hours of official duty during any full week (Monday-Sunday) may be absent from their official duty station for no more than one weekday (Monday-Friday) solely for the purposes of engaging in political activity without taking annual leave, compensatory leave, or leave without pay. If a staff member desires to be absent for political purposes for more than one weekday in any week, each additional weekday must be covered by annual leave or leave without pay, regardless of the number of official hours worked during that week. In other words, it is not permissible for a staff member to put in 40 hours of official duty in the first three days of the week and then take the remaining two weekdays off for campaigning without using annual leave, compensatory leave, or leave without pay.

4. Sick leave cannot be used to cover an absence from official duty for the purpose of engaging in political activity.

5. White House staff members are permitted to take leave without pay to cover absences from official duties for the purposes of engaging in political activity.

6. Staff members may use only eight hours of compensatory leave for political activity during any 7-day period unless additional leave is approved by Counsel's Office.

7. When annual leave, compensatory leave or leave without pay is used for political purposes:

(a) Staff members must submit a request for leave for political purposes in advance of the leave period to their White House department supervisor for approval.

b) Following approval, the office supervisor should forward the request to the Counsel's Office for approval prior to the leave period.

E. USE OF GOVERNMENT VEHICLES AND MESSENGERS

Generally, government vehicles -- including White House vehicles -- may not be used for political purposes. This means that White House cars may not be used to transport staff members or materials to or from any political committee office, including the President's campaign committee, or event. In addition, White House messengers may not be used to deliver or pick up materials from the DNC or the President's campaign committee. White House vehicles also may not be used to transport staff members or political materials to airports or any other locations if the purpose of the trip is political.

The only exception, excluding official use for compelling security considerations,⁶ is for travel to or from a political event in the following circumstances:

- (1) the White House staff member is the Chief of Staff or an EOP agency head; and,
- (2) the use of the vehicle will occur during the regular work week (Monday through Friday, excluding weekends and holidays); and,
- (3) the political or candidate campaign committee pays for the anticipated cost of the vehicle prior to the travel.

⁶ Compelling security considerations requiring use of a government vehicle include, for example, a recent threat to the life or safety of a staff member or overriding national security concerns. Specific approval must be requested from and provided by the Counsel's Office prior to the use of a government vehicle for compelling security considerations.

Because of the special requirements surrounding departures and arrivals from Andrews Air Force Base, White House vehicles may be used to transport White House staff members to that facility when they are accompanying the President, Vice President, or First Lady on a campaign or political trip. The campaign committee must reimburse the government for the costs of a large rental vehicle for the President or Vice President, as well as for the costs of any other vehicles that are not solely related to the security of the principal traveller (e.g., staff vans).

When the President or Vice President is participating in a campaign or political event in the Washington, D.C., area or other location where White House cars are available for official purposes, White House cars may be used for the Presidential motorcade, with appropriate reimbursement for all vehicles -- including the amount for a large rental vehicle for the President or Vice President -- except those vehicles essential to the security of the President (e.g., Secret Service vehicles).

F. USE OF COMMUNICATIONS SYSTEMS AND COPYING MACHINES

Generally, official White House resources should not be used for campaign purposes. In certain instances where official resources are used for purposes that may be considered campaign-related, there must be prompt reimbursement for the costs incurred by the government. To ensure that White House resources are not used to support campaign activity, White House staff should use only that equipment that has not been paid for from appropriated funds to political activity; if no such equipment is available, the campaign committee should undertake the activity in question.

1. In those limited circumstances in which government communications systems -- telephone, e-mail (which automatically is backed up as a potential presidential record), telegraph, teletype, telecopy or radio -- are used for campaign-related purposes, appropriate reimbursement or payment at the "usual or normal charge," 15 C.F.R. § 100.7(a)(1)(B), must be made by the proper political campaign committee.

2. Because of the need for liaison between limited numbers of White House staff members and various political committees, telephones may be used for local calls. However, White House telephones must not be used, even locally, for regular committee activities such as recruiting volunteers or fundraising.

3. Government credit cards must not be used for campaign-related or other political calls, whether made from inside or outside the White House.

4. Government operators should not be used by staff members to place campaign-related or other political long distance calls.

5. Campaign-related long distance telephone calls made from the White House may be made only if charged to a credit card issued by the proper campaign or political committee (or on telephones installed and maintained by such committees for exclusive use in dealing with campaign or political matters).

6. The incoming WATS System (800 #) should not be used to call into the White House on campaign or political matters.

7. White House Communications Agency (WHCA) facilities provided outside the White House in connection with travel may continue to be used during mixed and wholly political trips. The facilities must be used exclusively for communications relating to trip planning and arrangements and not for direct political purposes such as campaign fundraising and crowd-building.

8. Government copying machines also should not be used to reproduce materials for transmittal to a campaign or political committee.

G. USE OF PHOTOGRAPHS

1. White House photographers may continue to photograph all Presidential, First Lady, and Vice Presidential activities for the purpose of creating an archival record of this Administration. However, as a general rule, photographs taken by White House photographers at political events may not be used for distribution to individuals attending such events or for any other political or campaign purpose.

2. Photographs taken at events in the Executive Residence (other than politically-sponsored events), at West Wing and East Wing meetings, and at non-political events outside the White House may be distributed consistent with regular practices.

3. A campaign or political committee will be expected to provide a photographer at all campaign and political events for which it desires to distribute photographs to the participants. White House photographers will not photograph receiving lines or greetings at campaign or political events, except to the extent necessary for archival purposes.

4. A campaign or political committee may purchase, for its use, photographs taken by White House photographers in those limited circumstances where those photographs provide the only source for a particular picture. All photograph purchase requests from the campaign or political committee must be

directed to the Director of the White House Photo Office. A record of all campaign photo requests will be maintained by the Director of the White House Photo Office, who will be responsible for billing the campaign or political committee for all photo orders on a monthly basis at the normal rate and according to the procedures established by the Government for the purchase of such pictures.

H. CORRESPONDENCE

1. Campaign and political correspondence should not be produced at the White House using White House resources, nor can White House stationery, stamps or related supplies be used in the preparation of such correspondence at another location.

2. As stated earlier, federal law prohibits the receipt of contributions in Federal buildings. Occasionally, contributions intended for a campaign committee may be addressed to the White House and delivered with other mail. Such contributions should be taken to Jim Dorskind in the Correspondence Department in the Old Executive Office Building, Room 94. There should be no acknowledgement of receipt of a contribution from the White House to the contributor. If the contribution is accompanied by a letter that deals primarily with governmental issues, a response dealing with those issues may be prepared and sent from the White House; however, there must be no reference to the contribution.

VI. CONCLUSION

These guidelines are designed to address many of the issues that you may confront during the President's re-election campaign. Staff members are encouraged to contact our Office -- or the Vice President's Counsel for OVP staff -- for guidance if you have any questions about appropriate activity by White House employees.

THE WHITE HOUSE

WASHINGTON

April 27, 1995

MEMORANDUM FOR WHITE HOUSE OFFICE
OFFICE OF POLICY DEVELOPMENT AND
OFFICE OF THE VICE PRESIDENT STAFF

FROM: ABNER J. MIKVA *ajm*
COUNSEL TO THE PRESIDENT

CHERYL MILLS *cm*
ASSOCIATE COUNSEL TO PRESIDENT

SUBJECT: Presidential Campaign-Related Political Activity

This memorandum provides employees of the White House Office, the Office of Policy Development and the Office of Vice President with guidance regarding Presidential campaign-related political activity.¹ With the President's formal decision to seek re-election, we wanted to review the rules governing campaign activity by federal employees.

I. Governing Principle

Under the Hatch Act Reform Amendments of 1993 (the Act), most employees² paid from appropriations for the Executive Office of the President may engage in political activity: 1) while on duty, 2) while in a federal building, and 3) while using government vehicles, provided that "the costs associated with that activity are not paid for by money derived from the Treasury of the United States." 5 U.S.C. § 7324(b)(1). Activities which incur costs include: faxing, copying, use of computers, and

¹ General guidance regarding permissible political activity by federal employees under the Hatch Act Reform Amendments of 1993 is provided in an October 12, 1994, memorandum from this Office ("Political Activity Guidance"). Please consult the October 12, 1994, memorandum for a comprehensive discussion of the Act and implementing regulations governing political activity.

² Only those Executive Office of the President staff members whose duties continue outside normal duty hours and while away from post may engage in political activity while on duty; all other staff members only may engage in political activity during non-duty hours and while not in a federal building. 5 U.S.C. § 7324(b).

long-distance phone calls.³ It is important that staff members consider this principle in relation to their activities during the President's re-election campaign; it often will help avoid a problem before it arises.⁴

II. Distinguishing Political and Official Activity

Perhaps one of the more difficult aspects of evaluating on-duty conduct is discerning the difference between official and political activity. As a general matter, activity is political if its primary purpose involves the President's role as a candidate for office or as the leader of the Democratic Party (e.g., appearing at party functions, fundraising, campaigning for specific candidates). 6 O.L.C. 214, 217 (1982). Activity is official if it relates to the President's policies, programs or legislative agenda, even if it concerns matters on which opinion is politically divided. Id. Obviously, however, there are gray areas in between these two definitions; if you have questions regarding particular activities, do not hesitate to contact the Counsel's Office for guidance.

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The only exception, excluding official use for compelling security considerations,⁶ is for travel to or from a political event in the following circumstances:

- (1) the White House staff member is the Chief of Staff or an EOP agency head; and,
- (2) the use of the vehicle will occur during the regular work week (Monday through Friday, excluding weekends and holidays); and,
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When the President or Vice President is participating in a campaign or political event in the Washington, D.C., area or other location where White House cars are available for official purposes, White House cars may be used for the Presidential motorcade, with appropriate reimbursement for all vehicles -- including the amount for a large rental vehicle for the President or Vice President -- except those vehicles essential to the security of the President (e.g., Secret Service vehicles).

F. USE OF COMMUNICATIONS SYSTEMS AND COPYING MACHINES

Generally, official White House resources should not be used for campaign purposes. In certain instances where official resources are used for purposes that may be considered campaign-related, there must be prompt reimbursement for the costs incurred by the government. To ensure that White House resources are not used to support campaign activity, White House staff should use only that equipment that has not been paid for from appropriated funds to political activity; if no such equipment is available, the campaign committee should undertake the activity in question.

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H. CORRESPONDENCE

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VI. CONCLUSION

These guidelines are designed to address many of the issues that you may confront during the President's re-election campaign. Staff members are encouraged to contact our Office -- or the Vice President's Counsel for OVP staff -- for guidance if you have any questions about appropriate activity by White House employees.

THE WHITE HOUSE

WASHINGTON

May 2, 1995

MEMORANDUM FOR ALL EXECUTIVE OFFICE OF THE PRESIDENT STAFF

FROM: ABNER J. MIKVA *AM*
COUNSEL TO THE PRESIDENT

SUBJECT: Hatch Act Reform Amendment to 18 U.S.C. § 603

This Office recently issued guidance regarding political activity, including advice about contributions by civilian executive branch employees to the President's campaign committee. This memorandum revises the guidance provided in that memorandum about such contributions in light of the Department of Justice's recent interpretation of 18 U.S.C. § 603, as amended.

In 1993, Congress amended 18 U.S.C. § 603, the provision pertaining to political contributions by federal employees to their employer or employing authority. The original provision had been interpreted by the Department of Justice as potentially prohibiting all executive branch employees from making political contributions to the re-election campaign committee of an incumbent President. The effect of the Hatch Act Reform Amendments of 1993 on this provision, 18 U.S.C. § 603(c), is to provide that civilian executive branch employees are no longer prohibited from making a political contribution to the re-election campaign committee of an incumbent President.

While all civilian executive branch employees now are permitted to contribute voluntarily to the President's re-election campaign committee, their political activity, including the making of a contribution, continues to be governed by the limitations imposed in 5 U.S.C. §§ 7323 and 7324. Thus, for example, federal employees may not, in most circumstances, knowingly solicit, accept or receive a political contribution. In addition, civilian executive branch employees -- excluding most employees who are Senate confirmed or paid from appropriations for the Executive Office of the President -- may not engage in political activity while on duty or in a federal building.

If you have any questions regarding these matters, please contact Cheryl Mills at 6-7900.

THE WHITE HOUSE

WASHINGTON

April 27, 1995

MEMORANDUM FOR WHITE HOUSE OFFICE
OFFICE OF POLICY DEVELOPMENT AND
OFFICE OF THE VICE PRESIDENT STAFF

FROM: ABNER J. MIKVA *ajm*
COUNSEL TO THE PRESIDENT

CHERYL MILLS *cm*
ASSOCIATE COUNSEL TO PRESIDENT

SUBJECT: Presidential Campaign-Related Political Activity

This memorandum provides employees of the White House Office, the Office of Policy Development and the Office of Vice President with guidance regarding Presidential campaign-related political activity.¹ With the President's formal decision to seek re-election, we wanted to review the rules governing campaign activity by federal employees.

I. Governing Principle

Under the Hatch Act Reform Amendments of 1993 (the Act), most employees² paid from appropriations for the Executive Office of the President may engage in political activity: 1) while on duty, 2) while in a federal building, and 3) while using government vehicles, provided that "the costs associated with that activity are not paid for by money derived from the Treasury of the United States." 5 U.S.C. § 7324(b)(1). Activities which incur costs include: faxing, copying, use of computers, and

¹ General guidance regarding permissible political activity by federal employees under the Hatch Act Reform Amendments of 1993 is provided in an October 12, 1994, memorandum from this Office ("Political Activity Guidance"). Please consult the October 12, 1994, memorandum for a comprehensive discussion of the Act and implementing regulations governing political activity.

² Only those Executive Office of the President staff members whose duties continue outside normal duty hours and while away from post may engage in political activity while on duty; all other staff members only may engage in political activity during non-duty hours and while not in a federal building. 5 U.S.C. § 7324(b).

long-distance phone calls.³ It is important that staff members consider this principle in relation to their activities during the President's re-election campaign; it often will help avoid a problem before it arises.⁴

II. Distinguishing Political and Official Activity

Perhaps one of the more difficult aspects of evaluating on-duty conduct is discerning the difference between official and political activity. As a general matter, activity is political if its primary purpose involves the President's role as a candidate for office or as the leader of the Democratic Party (e.g., appearing at party functions, fundraising, campaigning for specific candidates). 6 O.L.C. 214, 217 (1982). Activity is official if it relates to the President's policies, programs or legislative agenda, even if it concerns matters on which opinion is politically divided. *Id.* Obviously, however, there are gray areas in between these two definitions; if you have questions regarding particular activities, do not hesitate to contact the Counsel's Office for guidance.

III. Prohibitions on Certain Political Activity

While White House staff may engage in political activity, there are still certain restrictions on such conduct. A number of criminal statutes prohibit the use of federal programs, property or employment for political purposes. Violation of these statutes is punishable by imprisonment and a substantial fine. It is therefore imperative that staff observe the prohibitions outlined below.

³ Certain costs are not considered to be borne by the Treasury because they are costs that the government already has incurred for official purposes in the absence of political activity, e.g., office space; employee salaries. 5 C.F.R. § 734.503. But see IV, Section D.

⁴ It is important to understand that for the purposes of this memorandum, the official responsibilities that customarily have been performed by the Political Affairs Office constitute "official" and not "political" activities. Therefore, the restraints cited herein do not in general affect the activities, office maintenance, or other costs undertaken or incurred in the discharge of such responsibilities.

Federal employees, including White House employees, may not:

- (1) use their official authority or influence for the purpose of interfering with or affecting the result of a nomination or an election of any candidate;
- (2) intimidate, threaten, command or coerce any federal employee to engage in or not to engage in any political activity;
- (3) **ever knowingly solicit, accept or receive a political contribution from any person, including a subordinate or other federal employee;**⁵
- (4) run for the nomination or as a candidate for election to a partisan political office;
- (6) knowingly solicit or discourage the participation in any political activity of any person who has an application for any compensation, grant, contract, ruling, license, permit or certificate pending before the staff member's office; or,
- (7) promise or withhold federal benefits (jobs, grants, contracts) based on political support or nonsupport -- including favoring or penalizing employees or withholding employment to induce someone to make a political contribution or otherwise participate in political activity; or,
- (8) knowingly solicit or discourage the participation in any political activity of any person who is the subject of, or a participant in, an ongoing investigation, audit, or enforcement action being carried out by the employee's office.

IV. Limitations on Campaign Activities By White House Staff

We have set forth below guidelines to ensure that political activity undertaken by White House staff is within the limits prescribed by law and White House policy. While these guidelines will cover many day-to-day situations that arise, the simplest rule to follow is the "common-sense" practice that anything obviously political that involves the use of resources should be done by the campaign, even if doing it here can be "legally" justified.

⁵ The sole exception to this prohibition is for federal labor or employee organizations. Please consult our Office before undertaking any action implicating this exception.

A. Campaign Meetings on Government Property

1. Small meetings involving campaign or political officials and White House staff members may be held in a White House staff member's office, the West Wing or the Old Executive Office Building, or, if it is a luncheon or breakfast meeting, in the White House Mess, provided that such meetings do not interfere with the conduct of Government business. Such gatherings must be organized by White House staff members who are permitted to engage in political activity in a federal building. Government buildings, including White House offices and meeting rooms, should not be used for meetings or events organized by a campaign or political committee.

2. Campaign fundraising activities of any kind are prohibited in or from government buildings. In addition, federal employees are prohibited from soliciting or accepting campaign contributions. This means that fundraising events may not be held in the White House; also, no fundraising phone calls or mail may emanate from the White House or any other federal building.

3. Campaign-sponsored or other political activities (receptions, dinners, meetings, but not fundraisers) may be held in the Executive Residence, provided that the President, First Lady or some other family member attends the event. Similarly, campaign or other political events (other than fundraisers) also may be held at the Vice President's Residence as long as the Vice President, Mrs. Gore, or some other family members attends the event. The costs of such events at either residence must be paid by the proper campaign or political committee.

B. Campaign Contributions by White House Employees

Under 18 U.S.C. § 603, it is a felony for any officer or employee of the government to give a political contribution to his or her "employer or employing authority." At the very least, this provision prohibits employees of the White House Office, the Office of Policy Development, and the Office of the Vice President (including his Senate staff), and quite probably all federal employees, from contributing to the authorized campaign committee of the President.

C. Receipt of Campaign Contributions at the White House

Federal law prohibits the receipt of campaign contributions in federal buildings. Occasionally, contributions intended for a campaign committee may be addressed to the White House and delivered with other mail. Such contributions should be taken to Jim Dorskind in the Correspondence Department in the Old Executive Office Building, Room 94.

There should be no acknowledgement of receipt of a contribution from the White House to the contributor. If a contribution is accompanied by a letter that primarily addresses governmental issues, a response to those issues may be prepared and sent from the White House; however, there should be no reference to the contribution.

D. Use of Leave

1. Some White House staff members, as leave-earning employees, are entitled to specific amounts of annual leave. As discussed below, such leave may be used for political purposes; however, one cannot take an "advance" on annual leave to engage in political activities. Those White House staff members who are not entitled to annual leave (e.g., commissioned officers) may use a ceiling of 15 days of compensatory leave (i.e., the equivalent of vacation time) for political purposes.

2. All White House staff members must perform their official duties for a minimum of 40 hours per week or 80 hours per two-week pay period in order to receive their full federal salary. If a staff member does not complete 40 hours of official duty in any week, the difference between the number of hours completed and 40 hours must be covered by annual leave, leave without pay, official holidays or made up in the second week of that pay period. The difference cannot be made up in a subsequent pay period.

3. White House staff members who complete a minimum of 40 hours of official duty during any full week (Monday-Sunday) may be absent from their official duty station for no more than one weekday (Monday-Friday) solely for the purposes of engaging in political activity without taking annual leave, compensatory leave, or leave without pay. If a staff member desires to be absent for political purposes for more than one weekday in any week, each additional weekday must be covered by annual leave or leave without pay, regardless of the number of official hours worked during that week. In other words, it is not permissible for a staff member to put in 40 hours of official duty in the first three days of the week and then take the remaining two weekdays off for campaigning without using annual leave, compensatory leave, or leave without pay.

4. Sick leave cannot be used to cover an absence from official duty for the purpose of engaging in political activity.

5. White House staff members are permitted to take leave without pay to cover absences from official duties for the purposes of engaging in political activity.

6. Staff members may use only eight hours of compensatory leave for political activity during any 7-day period unless additional leave is approved by Counsel's Office.

7. When annual leave, compensatory leave or leave without pay is used for political purposes:

(a) Staff members must submit a request for leave for political purposes in advance of the leave period to their White House department supervisor for approval.

b) Following approval, the office supervisor should forward the request to the Counsel's Office for approval prior to the leave period.

E. USE OF GOVERNMENT VEHICLES AND MESSENGERS

Generally, government vehicles -- including White House vehicles -- may not be used for political purposes. This means that White House cars may not be used to transport staff members or materials to or from any political committee office, including the President's campaign committee, or event. In addition, White House messengers may not be used to deliver or pick up materials from the DNC or the President's campaign committee. White House vehicles also may not be used to transport staff members or political materials to airports or any other locations if the purpose of the trip is political.

The only exception, excluding official use for compelling security considerations,⁶ is for travel to or from a political event in the following circumstances:

- (1) the White House staff member is the Chief of Staff or an EOP agency head; and,
- (2) the use of the vehicle will occur during the regular work week (Monday through Friday, excluding weekends and holidays); and,
- (3) the political or candidate campaign committee pays for the anticipated cost of the vehicle prior to the travel.

⁶ Compelling security considerations requiring use of a government vehicle include, for example, a recent threat to the life or safety of a staff member or overriding national security concerns. Specific approval must be requested from and provided by the Counsel's Office prior to the use of a government vehicle for compelling security considerations.

Because of the special requirements surrounding departures and arrivals from Andrews Air Force Base, White House vehicles may be used to transport White House staff members to that facility when they are accompanying the President, Vice President, or First Lady on a campaign or political trip. The campaign committee must reimburse the government for the costs of a large rental vehicle for the President or Vice President, as well as for the costs of any other vehicles that are not solely related to the security of the principal traveller (e.g., staff vans).

When the President or Vice President is participating in a campaign or political event in the Washington, D.C., area or other location where White House cars are available for official purposes, White House cars may be used for the Presidential motorcade, with appropriate reimbursement for all vehicles -- including the amount for a large rental vehicle for the President or Vice President -- except those vehicles essential to the security of the President (e.g., Secret Service vehicles).

F. USE OF COMMUNICATIONS SYSTEMS AND COPYING MACHINES

Generally, official White House resources should not be used for campaign purposes. In certain instances where official resources are used for purposes that may be considered campaign-related, there must be prompt reimbursement for the costs incurred by the government. To ensure that White House resources are not used to support campaign activity, White House staff should use only that equipment that has not been paid for from appropriated funds to political activity; if no such equipment is available, the campaign committee should undertake the activity in question.

1. In those limited circumstances in which government communications systems -- telephone, e-mail (which automatically is backed up as a potential presidential record), telegraph, teletype, telecopy or radio -- are used for campaign-related purposes, appropriate reimbursement or payment at the "usual or normal charge," 15 C.F.R. § 100.7(a)(1)(B), must be made by the proper political campaign committee.

2. Because of the need for liaison between limited numbers of White House staff members and various political committees, telephones may be used for local calls. However, White House telephones must not be used, even locally, for regular committee activities such as recruiting volunteers or fundraising.

3. Government credit cards must not be used for campaign-related or other political calls, whether made from inside or outside the White House.

4. Government operators should not be used by staff members to place campaign-related or other political long distance calls.

5. Campaign-related long distance telephone calls made from the White House may be made only if charged to a credit card issued by the proper campaign or political committee (or on telephones installed and maintained by such committees for exclusive use in dealing with campaign or political matters).

6. The incoming WATS System (800 #) should not be used to call into the White House on campaign or political matters.

7. White House Communications Agency (WHCA) facilities provided outside the White House in connection with travel may continue to be used during mixed and wholly political trips. The facilities must be used exclusively for communications relating to trip planning and arrangements and not for direct political purposes such as campaign fundraising and crowd-building.

8. Government copying machines also should not be used to reproduce materials for transmittal to a campaign or political committee.

G. USE OF PHOTOGRAPHS

1. White House photographers may continue to photograph all Presidential, First Lady, and Vice Presidential activities for the purpose of creating an archival record of this Administration. However, as a general rule, photographs taken by White House photographers at political events may not be used for distribution to individuals attending such events or for any other political or campaign purpose.

2. Photographs taken at events in the Executive Residence (other than politically-sponsored events), at West Wing and East Wing meetings, and at non-political events outside the White House may be distributed consistent with regular practices.

3. A campaign or political committee will be expected to provide a photographer at all campaign and political events for which it desires to distribute photographs to the participants. White House photographers will not photograph receiving lines or greetings at campaign or political events, except to the extent necessary for archival purposes.

4. A campaign or political committee may purchase, for its use, photographs taken by White House photographers in those limited circumstances where those photographs provide the only source for a particular picture. All photograph purchase requests from the campaign or political committee must be

directed to the Director of the White House Photo Office. A record of all campaign photo requests will be maintained by the Director of the White House Photo Office, who will be responsible for billing the campaign or political committee for all photo orders on a monthly basis at the normal rate and according to the procedures established by the Government for the purchase of such pictures.

H. CORRESPONDENCE

1. Campaign and political correspondence should not be produced at the White House using White House resources, nor can White House stationery, stamps or related supplies be used in the preparation of such correspondence at another location.

2. As stated earlier, federal law prohibits the receipt of contributions in Federal buildings. Occasionally, contributions intended for a campaign committee may be addressed to the White House and delivered with other mail. Such contributions should be taken to Jim Dorskind in the Correspondence Department in the Old Executive Office Building, Room 94. There should be no acknowledgement of receipt of a contribution from the White House to the contributor. If the contribution is accompanied by a letter that deals primarily with governmental issues, a response dealing with those issues may be prepared and sent from the White House; however, there must be no reference to the contribution.

VI. CONCLUSION

These guidelines are designed to address many of the issues that you may confront during the President's re-election campaign. Staff members are encouraged to contact our Office -- or the Vice President's Counsel for OVP staff -- for guidance if you have any questions about appropriate activity by White House employees.

THE WHITE HOUSE

WASHINGTON

May 12, 1994

MEMORANDUM FOR WHITE HOUSE OFFICE STAFF

FROM: JOEL I. KLEIN *JK*
DEPUTY COUNSEL TO THE PRESIDENT

W. NEIL EGGLESTON *WNE*
ASSOCIATE COUNSEL TO THE PRESIDENT

RE: COMPLIANCE WITH THE MAY 4, 1994 GRAND JURY
SUBPOENA

As was announced publicly last week, the White House has received a grand jury subpoena calling for certain records relating to Vincent W. Foster, Jr. In response to that subpoena, you are required to do the following:

I. DOCUMENTS THAT MUST BE PRODUCED

Each member of the staff of the White House Office must review any and all documents within that staff member's possession, custody, or control and produce responsive documents to the Counsel's Office. The documents that you must produce as of this time are:

1. All documents currently in your possession that were in the office of Vincent W. Foster, Jr. as of July 20, 1993.
2. Any indices, memoranda, notes or any other similar type of document listing, referring, or relating to documents and other items that were maintained by or within the office of Vincent W. Foster, Jr., while he was Deputy Counsel.
3. All documents written by, received from, or sent to Mr. Foster relating or referring to the Whitewater Development Company, Madison Guaranty Savings and Loan, or Capital Management Services, Inc.

Other documents in your possession, custody, or control relating or referring to Mr. Foster need not be produced at this time, but they must be maintained by you. (See III. below).

II. PROCEDURES FOR COMPLIANCE WITH THE SUBPOENA

The same general procedures employed by the White House to respond to the subpoena issued in March 1994 are to be followed in responding to this subpoena.

Please be reminded that the term "document" is defined quite broadly in the grand jury subpoena, and includes handwritten notes, electronic media, faxes and the like. In addition, the subpoena sets forth certain instructions for compliance, such as the necessity to produce originals and any copies of originals in your possession. We have attached the "Definitions and Instructions" section of the subpoena for ease of reference. Please read this section carefully to ensure that you are properly complying with the subpoena.

Attached to this Memorandum is a "Statement for All White House Staff Members," which requires a certification that the staff member has searched his or her documents for responsive materials. Please return this certification and any responsive documents to Marvin Krislov of the Counsel's Office (OEOP Room 128) by the close of business on Friday, May 13, 1994.

III. DUTY TO MAINTAIN DOCUMENTS RELATING OR REFERRING TO VINCENT W. FOSTER, JR.

On March 17, 1994, the Counsel's Office sent a memorandum directing staff members to retain all documents or computer files relating in any way to Vincent Foster. While we are not at this time requesting that all of these documents be provided to the Counsel's Office, you should be aware that the subpoena calls for "any and all documents and/or communications written by, sent to or referring or relating to Vincent W. Foster, Jr." As a result, all such documents must be maintained, and may not be destroyed.

IV. OTHER COMPLIANCE OBLIGATIONS

As before, we assume that this subpoena imposes a continuing obligation to provide responsive documents to the grand jury. Should you discover any possibly responsive documents at any time, you should notify Mr. Krislov immediately.

If you have any doubts whatsoever about the responsiveness of any document or record, it is your obligation to notify Mr. Krislov immediately. Any questions about this matter should be directed to Marvin Krislov at extension 6-7903 or Neil Eggleston at 6-7901.

#

Definitions and Instructions

1. Definitions

a. The term "document" or "documents" as used in this subpoena means all records of any nature whatsoever within your possession, custody or control, or the possession, custody or control of any agent, employee, representative, or other person acting or purporting to act for or on your behalf or in concert with you, including but not limited to memoranda, records, reports, notes, books, files, summaries or records of conversations, meetings or interviews, summaries or records of telephone conversations, diaries, calendars, datebooks, telegrams, facsimiles, telexes, telefaxes, electronic mail, computerized records stored in the form of magnetic or electronic coding on computer media or on media capable of being read by computer or with the aid of computer related equipment, including but not limited to floppy disks or diskettes, disks, diskettes, disk packs, fixed hard drives, removable hard disk cartridges, mainframe

computers, Bernoulli boxes, optical disks, WORM disks, magneto/optical disks, floptical disks, magnetic tape, tapes, laser disks, video cassettes, CD-ROMs and any other media capable of storing magnetic coding, microfilm, microfiche and other storage devices, voicemail recordings, and all other written, printed or recorded or photographic matter or sound reproductions, however produced or reproduced.

The term "document" or "documents" also includes any earlier, preliminary, preparatory or tentative version of all or part of a document, whether or not such draft was superseded by a later draft and whether or not the terms of the draft are the same as or different from the terms of the final document.

b. The term "communication" or "communications" is used herein in its broadest sense to encompass any transmission or exchange of information, ideas, facts, data, proposals, or any other matter, whether between individuals or between or among the members of a group, whether face-to-face, by telephone or by means of electronic or other medium.

c. "Possession, custody or control" means in your physical possession and/or if you have the right to secure or compel the production of the document or a copy from another person or entity having physical possession.

d. The term "referring or relating" to any given subject means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject including, but not limited to, documents concerning the preparation of other documents.

2. Instructions

a. If any original document cannot be produced in full, produce such document to the extent possible and indicate specifically the reason for your inability to produce the remainder.

b. Documents shall be produced as they are kept in the usual course of business, as organized in the files.

c. File folders, labels and indices identifying documents called for shall be produced intact with such documents. Documents attached to each other should not be separated.

d. The originals of all documents and communications must be produced, as well as copies within your possession, custody or control.

e. In reading this rider, the plural shall include the singular and the singular shall include the plural.

f. The words "and" and "or" shall be construed

conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The use of the word "including" shall be construed without limitation.

g. In the event that any document called for by this subpoena is withheld on the basis of any claim of privilege or similar claim, that document shall be identified in writing as follows: (a) author; (b) the position or title of the author; (c) addressee; (d) the position or title of the addressee; (e) any indicated or blind copies; (f) date; (g) a brief description of the subject matter of the document; (h) number of pages; (i) attachments or appendices; (j) all persons to whom the document, its contents, or any portion thereof, has been disclosed, distributed, shown or explained; and (k) present custodian. Each basis you contend justifies the withholding of the document shall also be specified. With respect to those documents or records as to which you may claim privilege, or attorneys' work product, set forth as to each such document the basis for such claim, the identity of each person who has been privy to such communication reflected in the document and whether you will submit the document to the Court for an in camera determination as to the validity of the claim.

i. In the event that any document called for by this subpoena has been lost, destroyed, deleted, altered, or otherwise disposed of, that document shall be identified in writing as follows: (a) author; (b) the position or title of the author; (c) addressee; (d) the position or title of the addressee; (e) indicated or blind copies; (f) date; (g) a brief description of the subject matter of the document; (h) number of pages; (i) attachments or appendices; (j) all persons to whom the document, its contents, or any portion thereof, had been disclosed, distributed, shown or explained; (k) the date of the loss, destruction, deletion, alteration or disposal and the circumstances thereof; (l) the reasons, if any, for the loss, destruction, deletion, alteration or disposal and the person or persons responsible.

j. If any information or data is withheld because such information or data is stored electronically, it is to be identified by the subject matter of the information or data and the place or places where such information is maintained.

Statement for All White House Office Staff Members

I hereby certify that, to the best of my knowledge and ability, I have provided all documents or communications responsive to the Memorandum for White House Office Staff of May 12, 1994 from Joel Klein and Neil Eggleston, "Compliance with May 4, 1994 Grand Jury Subpoena," within my possession, custody or control from my files and records (as set forth in the Definitions Section of the grand jury subpoena), including any from my electronic files.

I am not aware of the existence of any electronic mail communications or attachments that have not been produced or identified that are responsive to the May 12, 1994 Memorandum.

I am ✓ am not producing documents responsive to the May 12, Memorandum.

Name: Karen E. Finney
(Print)

Karen E. Finney
(Sign)

Office: First Lady's Dress Office

THE WHITE HOUSE

WASHINGTON

March 11, 1994

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: JACK QUINN
ASSISTANT TO THE PRESIDENT AND
CHIEF OF STAFF TO THE VICE PRESIDENT

JOEL I. KLEIN
DEPUTY COUNSEL TO THE PRESIDENT

RE: Prohibited Contacts on Rulemaking Matters

By memorandum dated May 4, 1993, we reiterated our policies governing communications by members of White House staff with independent agencies, executive branch agencies, and their components. We also noted that the President was considering certain changes to the regulatory review process and that further guidance regarding communications on regulatory and rulemaking matters would be forthcoming.

In the Fall, the President issued Executive Order No. 12866, "Regulatory Planning and Review." Consistent with the intent of that Order, White House staff members are directed to adhere to the following guidelines with respect to communications with executive branch agencies regarding rulemaking matters:

I. Contacts with Agencies

A. Members of the White House staff may contact executive branch agencies with respect to pending rulemaking matters if the purpose of the communication is not to influence the outcome of the pending proceeding (including, specifically, contacts regarding the status of the matter or general policy, budgetary, or administrative issues).

B. When the purpose of the contact is to influence the outcome of a pending rulemaking proceeding, the staff member should, prior to making the contact:

1. obtain approval from his or her principal or departmental supervisor; and

2. coordinate the contact with the Administrator of OIRA, who will advise the staff member on the appropriateness of the contact.

II. Contacts with Members of the Public

A. Members of the public (that is, persons not employed by the executive, legislative, or judicial branches of the federal government) often approach members of the White House staff and ask to have a position or information considered in a rulemaking proceeding at an executive branch agency. When this occurs, White House staff should inform the person that positions or information provided by members of the public must be submitted in writing if they are to be incorporated into the rulemaking process. All such written communications received from members of the public are to be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket.

Please be reminded that under Executive Order No. 12866, this provision applies to contacts with the public regarding pending rulemaking proceedings under review by the President, Vice President, or any regulatory policy advisor.

B. Consistent with the policies reflected in Executive Order No. 12866, White House staff members should not communicate non-written comments from members of the public on pending rulemaking matters to agencies, OIRA, or anyone else involved in the rulemaking or the review process.

* * *

Please cooperate in observing the guidelines discussed above and continue to refer to prior memoranda issued by the White House Counsel's Office on contacts regarding investigative and adjudicative matters and, more generally, contacts with independent agencies. If you have any questions regarding any of these procedures, please contact the White House Counsel's Office.

Thank you for your continuing assistance and cooperation in this area.

J.m.Q.
JIK

THE WHITE HOUSE
WASHINGTON

March 7, 1994

MEMORANDUM FOR ALL WHITE HOUSE OFFICE STAFF

FROM: Mack McLarty
Chief of Staff

Mack McLarty

SUBJECT: Compliance with Grand Jury Subpoena

Attached is a memorandum from Joel Klein, Deputy Counsel to the President, specifying procedures to be taken by all staff to comply with the grand jury subpoena for documents issued by the Office of the Special Counsel. **It is imperative that all staff read this memorandum thoroughly to understand the scope of the request.** Moreover, all staff must search their trash, burn bags, electronic files and other records and files immediately, so that we can provide the grand jury with all responsive documents by Thursday, March 10 at 10 a.m., as the subpoena requires. As you all are aware, the grand jury subpoena creates a legal obligation to produce any responsive documents.

To coordinate compliance, each designated department representative must collect signed statements of compliance and all possibly responsive documents from his or her staff members, and provide these to the designated liaison from the Counsel's Office no later than 8 p.m. today. Each staff member's documents should be submitted to the department representative in an envelope with the staff member's signature clearly visible. Should any staff member have any concerns or questions about the scope of the request or any other related matter, he or she should contact the appropriate liaison from the Counsel's Office. Attached to this memorandum is a list of all White House departments with designated representatives as well as liaisons from the Counsel's Office.

Counsel Liaison Telephone and Room Numbers:

Chris Cerf	6-7180	190	OEOB
Vicki Divoll	6-7181	190	OEOB
Marvin Krislov	6-7903	126	OEOB
Cheryl Mills	6-7900	128	OEOB

<u>Office</u>	<u>Office Representative</u>	<u>Counsel Liaison</u>
Cabinet Affairs	Christine Varney	Marvin Krislov
Chief of Staff	Thomas McLarty	Cheryl Mills
Communications	Rahm Emmanuel	Cheryl Mills
Counsel's Office	Kathleen Whalen	Marvin Krislov
Domestic Policy	Carol Rasco	Chris Cerf
Envir. Policy	Katie McGuinty	Chris Cerf
First Lady Off.	Melanne Verveer	Cheryl Mills
Intergov. Aff.	Marcia Hale	Vicki Divoll
Legislative Aff.	Pat Griffin	Vicki Divoll
Man. & Admin.	David Watkins	Chris Cerf
Nat. Econ. Pol.	Bob Rubin	Chris Cerf
Office of Pres.	George Stephanopolous	Cheryl Mills
Political Aff.	Joan Baggett	Vicki Divoll
Pres. Personnel	Veronica Biggins	Vicki Divoll
Public Liaison	Alexis Herman	Vicki Divoll
Scheduling/Adv.	Ricki Seidman	Chris Cerf
Social Secretary	Ann Stock	Marvin Krislov
Staff Secretary	John Podesta	Chris Cerf

THE WHITE HOUSE

WASHINGTON

March 7, 1994

MEMORANDUM FOR ALL WHITE HOUSE OFFICE STAFF

FROM: JOEL I. KLEIN
DEPUTY COUNSEL TO THE PRESIDENT

RE: GRAND JURY SUBPOENA FOR DOCUMENTS

As my memorandum of March 4 explained, the White House has received a grand jury subpoena requesting the production of documents. Attached please find a copy of that memorandum detailing the subpoena's requirements, which you should study carefully and refer to when reviewing all your documents and communications.

The subpoena calls for the documents to be produced no later than 10 a.m. Thursday, March 10, 1994. To respond to this deadline, absolutely all members of the White House Office staff immediately must search their files and all applicable documents and records (as defined in the subpoena and set forth in the March 4 memorandum at Paragraphs A and B and the accompanying Definitions section).

To coordinate compliance, we have designated a representative from all White House departments to be responsible for ensuring that all his or her employees have complied fully with the subpoena. These department representatives must collect a signed statement from each staff member certifying compliance with the subpoena, as well as provide any and all possibly responsive documents and communications from all staff members. Staff members should provide department representatives with all responsive documents in appropriate envelopes or folders with their signature clearly visible. These materials should be given by department representatives to the designated liaison from the Counsel's Office no later than 8 p.m. today. A complete list of White House department representatives, as well as a list of the liaisons from the Counsel's Office by White House department, is attached to the Chief of Staff's memorandum.

Each staff member must take personal responsibility for complying with this subpoena in full. If a staff member has questions about the scope of the request or any other matters, he or she should contact his or her liaison from the Counsel's Office.

I. PROCEDURES FOR REVIEWING FILES

In order to ensure that each staff member conducts a complete search of his or her files, the following procedures are established:

1. Trash Containers and Wastebaskets. Each staff member must search his or her office wastebasket or trash containers and retrieve any applicable documents, files or records no later than 2 p.m. today. Each agency or department representative must confirm that each staff member has searched his or her trash containers no later than 4 p.m. today. If a staff member is absent from the office today for any reason, the agency or department representative must confirm that the absent staff member's trash has been searched and any potentially responsive documents removed and preserved. The time found and the location, including room number, of any such documents should be noted and the documents should be provided to the appropriate liaison from the Counsel's Office no later than 8 p.m. today.

2. Burn Bags. All burn bags in White House offices must be searched no later than 2 p.m. today, and any potentially responsive documents must be removed and preserved. Each agency or department representative is responsible for ensuring that all burn bags in his or her department are searched and that all possibly responsive documents are removed and preserved. Any such responsive document(s) should be provided to the author and/or recipient, if apparent, who in turn should note the location of any such document(s) and provide them to the Counsel's Office as discussed below. If it is unclear as to the identity of the author and/or recipient, the staff member locating the document(s) should note the time found and location of any such documents. These documents should be provided to the appropriate liaison from the Counsel's Office no later than 8 p.m. today.

3. Electronic Mail. Each White House staff member should search his or her electronic mail files by 2:00 p.m. today to determine if there are any communications possibly responsive to the subpoena that were either received, sent by, or forwarded to the staff member. Any such communications, including any attachments, should be printed out immediately, and provided to the appropriate liaison from the Counsel's Office no later than 8 p.m. today.

4. Records and Files. Each White House staff member must ascertain whether his or her records and documents contain any possibly responsive documents (as defined in the subpoena and set forth in the March 4 memorandum at paragraphs A and B and in the Definitions section). Please consult the Definitions Section carefully. Note that the Definitions of documents includes, among other types of documents or communications, diaries,

calendars, notes, summaries or records of conversations, meetings, interviews or conversations, as well as documents that may refer only in part to the subjects set forth in Paragraphs A and B, or may refer to the preparation of other documents relevant to the subjects set forth in Paragraphs A and B. The definition of documents also includes earlier, preliminary drafts of documents. **Also note that any original documents in a staff member's file should be provided, as well as any copies.** Should a staff member wish to make an additional copy of a document for current use, he or she may do so but should notify the appropriate liaison from the Counsel's Office. See further instructions, below.

If, for any reason, you object to providing a possibly responsive document or communication, you must notify your liaison from the Counsel's Office of the type of document or communication no later than 8 p.m. today.

II. RESPONSIVE DOCUMENTS

If your search reveals possibly responsive documents or communications, please note that the subpoena specifies the following instructions:

1. If any original document cannot be produced in full, you must produce such document to the extent possible and indicate specifically the reason for your inability to produce the remainder.

2. Documents shall be produced as they are kept in the usual course of business, as organized in the files.

3. File folders, labels and indices identifying documents called for shall be produced intact with such documents. Documents attached to each other should not be separated.

4. The originals of all documents and communications must be produced, as well as copies within your possession, custody or control.

5. In the event that any document called for by this subpoena has been lost, destroyed, deleted, altered or otherwise disposed of, you should identify that document in writing as follows: a) author; b) position and title of the author; c) addressee; d) the position or title of the addressee; e) indicated or blind copies; f) date; g) brief description of the subject matter of the document; h) number of pages; i) attachments or appendices; j) all persons to whom the document, its contents, or any portion thereof, had been disclosed, distributed, shown or explained; k) the date of the loss, destruction, deletion, alteration or disposal and the circumstances thereof; l) the reasons, if any, for the loss,

destruction, deletion, alteration or disposal and the person or persons responsible.

6. If any information or data is withheld because such information or data is stored electronically, it is to be identified by the subject matter of the information or data and the place or places where such information is maintained.

III. COMPLIANCE RESPONSIBILITIES AND SIGNED STATEMENTS

If you have any doubts whatsoever about the responsiveness of any document or record, it is your obligation to notify your liaison from the Counsel's Office.

Each department representative must determine if any staff member's absence from the office will not enable that staff member to comply with these deadlines. In such instances, each department representative should notify your liaison from the Counsel's Office to discuss appropriate procedures.

In addition to providing the original(s) and any copies of any and all possibly responsive documents, each White House staff member must return to your designated agency or department representative a signed original of the statement found on the next page no later than 8 p.m. today. This signed statement should accompany any possibly responsive documents or communications that you have identified.

Additionally, those department representatives must also provide a signed statement certifying that they have canvassed their staff members and ensured compliance.

Please note that we assume that this subpoena imposes a continuing obligation to provide responsive documents to the grand jury. Should you create, receive, or discover any possibly responsive documents at any time in the future, you should notify your Counsel liaison immediately.

Statement for All White House Staff Members

I hereby certify that, to the best of my knowledge and ability, I have provided all responsive documents from the following sources within my possession, custody or control:

1. My trash container(s) or wastebasket(s) KF
2. My burn bag(s) KF
3. My electronic files KF
4. My files, records and other documents (as set forth in the Definitions Section of the grand jury subpoena) KF

I am not aware of the existence of any electronic mail communications or attachments that have not been produced or identified and are responsive to the grand jury subpoena. I further certify that I have provided all documents or communications responsive to the grand jury subpoena for White House documents (as set forth in Paragraphs A and B) for compliance as requested by the White House Counsel's Office.

Signed:

Karen Elizabeth Finney

Dated:

3/7/94

Statement for All White House Department Representatives

I hereby certify that I have canvassed all staff members in my agency/department (choose one) and have provided their signed statements as requested by the White House Counsel's Office.

I further certify that I have received and provided any possibly responsive documents and communications (as defined in Paragraphs A and B of the subpoena, and the accompanying Definitions Section), including, but not limited to, those documents found in trash bags, burn bags, electronic files, and staff files and records.

Signed:

Dated:

March 4, 1994

MEMORANDUM FOR THE WHITE HOUSE STAFF

FROM: JOEL I. KLEIN
DEPUTY COUNSEL TO THE PRESIDENT

RE: GRAND JURY SUBPOENA FOR DOCUMENTS

The White House has received a grand jury subpoena calling for the production of documents. The description of the documents called for reads as follows:

A. Any and all documents and/or communications referring or relating to any contacts, meetings or conversations about or regarding Madison Guaranty Savings & Loan, its subsidiaries or affiliates, held between or among (1) any member of the White House staff and (2) any official or employee of the Department of the Treasury or the Resolution Trust Corporation. This includes, but is not limited to any documents and/or communications:

1. referring or relating to the arrangement, existence, substance or circumstances of any such meetings or conversations;
2. discussed or referred to in any such meetings or conversations;
3. exchanged between any member of the White House staff and any official or employee of the Department of Treasury or the Resolution Trust Corporation at or in connection with any such meetings or conversations;
4. constituting notes taken at or referring to any such meetings or conversations;
5. summarizing, documenting or referring to all or any part of any such meetings or conversations.

B. Any and all documents and/or communications referring or relating to any criminal referrals made by the Resolution Trust Corporation about or regarding Madison Guaranty Savings & Loan, its subsidiaries or affiliates.

Definitions and Instructions

1. Definitions

a. The term "document" or "documents" as used in this subpoena means all records of any nature whatsoever within your possession, custody or control or the possession, custody or control of any agent, employee, representative, or other person acting or purporting to act for or on your behalf or in concert with you, including but not limited to memoranda, records, reports, notes, books, files, summaries or records of conversations, meetings or interviews, summaries or records of telephone conversations, diaries, calendars, datebooks, telegrams, facsimiles, telexes, telefaxes, electronic mail, computerized records stored in the form of magnetic or electronic coding on computer media or on media capable of being read by computer or with the aid of computer related equipment, including but not limited to floppy disks or diskettes, disks, diskettes, disk packs, fixed hard drives, removable hard disk cartridges, mainframe computers, Bernoulli boxes, optical disks, WORM disks, magneto/optical disks, floptical disks, magnetic tape, tapes, laser disks, video cassettes, CD-ROMs and any other media capable of storing magnetic coding, microfilm, microfiche and other storage devices, voicemail recordings, and all other written, printed or recorded or photographic matter or sound reproductions, however produced or reproduced.

The term "document" or "documents" also includes any earlier, preliminary, preparatory or tentative version of all or part of a document, whether or not such draft was superseded by a later draft and whether or not the terms of the draft are the same as or different from the terms of the final document.

b. The term "communication" or "communications" is used herein in its broadest sense to encompass any transmission or exchange of information, ideas, facts, data, proposals, or any other matter, whether between individuals or between or among the members of a group, whether face-to-face, by telephone or by means of electronic or other medium.

c. "Possession, custody or control" means in your physical possession and/or if you have the right to secure or compel the production of the document or a copy from another person or entity having physical possession.

d. The term "referring or relating" to any given subject means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject including, but not limited to, documents concerning the preparation of other documents.

Anyone who has any documents that fall within the foregoing description must retain those documents. You must also retrieve and retain any responsive documents in your wastepaper basket and your burn bag.

If you have any doubt about whether a particular document is called for by the above description, you must save it.

We will be back in touch with you next week to organize procedures for the collection of all relevant documents.

The destruction of documents after receipt of this subpoena may constitute obstruction of justice.

If you have any questions about this memorandum and what is expected of you, please contact Deputy Counsel to the President, Joel I. Klein (6-6611).

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

March 4, 1994

At approximately 7:00 p.m. today, the FBI on behalf of the Special Counsel served a grand jury subpoena on the White House for the production of documents concerning conversations between the White House and the Department of Treasury or Resolution Trust Corporation with regard to the Madison Guaranty matter. In addition, several individuals in the White House received subpoenas requiring testimony. The White House will comply fully and promptly with the subpoena. The Deputy Counsel has tonight issued a memorandum to all employees requiring the preservation of all documents. Because these subpoenas concern a pending investigation, the White House will have no further comment at this time.

THE WHITE HOUSE
WASHINGTON

March 7, 1994

MEMORANDUM FOR ALL WHITE HOUSE OFFICE AND
EXECUTIVE OFFICE OF THE PRESIDENT STAFF

FROM: JOEL I. KLEIN *JIK*
Deputy Counsel to the President

SUBJECT: Retention of Documents and Communications

Today we have requested that White House Office employees produce any documents or communications related to contacts between White House staff members and officials of the Department of the Treasury and the Resolution Trust Corporation.

We are aware that staff may have other documents or communications relating to Madison Guaranty, Whitewater Development Corporation, and any related matters. While any such documents or communications need not be produced at this time, staff members should take all necessary measures to preserve and maintain any such documents. Such documents should not, under any circumstances, be discarded, altered or destroyed. Additionally, all staff members should not remove or transport documents or communications related to any of these matters from their offices in the EOP or White House complex.

Should any staff member have questions about these procedures, please contact one of the following liaisons in the Office of White House Counsel:

Chris Cerf	6-7180	190	OEOB
Vicki Divoll	6-7181	190	OEOB
Marvin Krislov	6-7903	126	OEOB
Cheryl Mills	6-7900	128	OEOB

Statement for All White House Staff Members

I hereby certify that, to the best of my knowledge and ability, I have provided all responsive documents from the following sources within my possession, custody or control:

1. My trash container(s) or wastebasket(s) KF
2. My burn bag(s) KF
3. My electronic files KF
4. My files, records and other documents (as set forth in the Definitions Section of the grand jury subpoena) KF

I am not aware of the existence of any electronic mail communications or attachments that have not been produced or identified and are responsive to the grand jury subpoena. I further certify that I have provided all documents or communications responsive to the grand jury subpoena for White House documents (as set forth in Paragraphs A and B) for compliance as requested by the White House Counsel's Office.

Signed:

Karen Elizabeth Finney

Dated:

3/7/94

Statement for All White House Staff Members

I hereby certify that, to the best of my knowledge and ability, I have provided all responsive documents from the following sources within my possession, custody or control:

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Signed:

Karen Elizabeth Finney

Dated:

3/7/94

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Signed:

Karen Elizabeth Finney

Dated:

3/7/94

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Signed: *Karen Elizabeth Finney*

Dated: *3/7/94*

MEMORANDUM

TO: Cheryl Mills *KF*
FR: Karen Finney
RE: 3/4/94 Memorandum from Joel Klein
DT: 3/7/94

Attached are copies of news articles from the Press Office of the First Lady which mention the RTC/Briefings.

THE WHITE HOUSE

WASHINGTON

March 4, 1994

MEMORANDUM FOR THE WHITE HOUSE STAFF

FROM:

JOEL I. KLEIN

DEPUTY COUNSEL TO THE PRESIDENT

RE:

GRAND JURY SUBPOENA FOR DOCUMENTS

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1. referring or relating to the arrangement, existence, substance or circumstances of any such meetings or conversations;
2. discussed or referred to in any such meetings or conversations;
3. exchanged between any member of the White House staff and any official or employee of the Department of Treasury or the Resolution Trust Corporation at or in connection with any such meetings or conversations;
4. constituting notes taken at or referring to any such meetings or conversations;
5. summarizing, documenting or referring to all or any part of any such meetings or conversations.

B. Any and all documents and/or communications referring or relating to any criminal referrals made by the Resolution Trust Corporation about or regarding Madison Guaranty Savings & Loan, its subsidiaries or affiliates.

Definitions and Instructions

1. Definitions

a. The term "document" or "documents" as used in this subpoena means all records of any nature whatsoever within your possession, custody or control or the possession, custody or control of any agent, employee, representative, or other person acting or purporting to act for or on your behalf or in concert with you, including but not limited to memoranda, records, reports, notes, books, files, summaries or records of conversations, meetings or interviews, summaries or records of telephone conversations, diaries, calendars, datebooks, telegrams, facsimiles, telexes, telefaxes, electronic mail, computerized records stored in the form of magnetic or electronic coding on computer media or on media capable of being read by computer or with the aid of computer related equipment, including but not limited to floppy disks or diskettes, disks, diskettes, disk packs, fixed hard drives, removable hard disk cartridges, mainframe computers, Bernoulli boxes, optical disks, WORM disks, magneto/optical disks, floptical disks, magnetic tape, tapes, laser disks, video cassettes, CD-ROMs and any other media capable of storing magnetic coding, microfilm, microfiche and other storage devices, voicemail recordings, and all other written, printed or recorded or photographic matter or sound reproductions, however produced or reproduced.

The term "document" or "documents" also includes any earlier, preliminary, preparatory or tentative version of all or part of a document, whether or not such draft was superseded by a later draft and whether or not the terms of the draft are the same as or different from the terms of the final document.

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The destruction of documents after receipt of this subpoena may constitute obstruction of justice.

If you have any questions about this memorandum and what is expected of you, please contact Deputy Counsel to the President, Joel I. Klein (6-6611).