

6-6243 Julie Schrieger

White House policy prohibits contact with agencies
AUG 15 1996

THE WHITE HOUSE
WASHINGTON
August 13, 1996

Contacting agencies about specific grants

David Fein
Wendy White

Ginny Carter 6-6225
Tracy Schneider

MEMORANDUM FOR WHITE HOUSE STAFF

FROM:

JACK QUINN *JQ*
COUNSEL TO THE PRESIDENT

KATHLEEN WALLMAN *KW*
DEPUTY COUNSEL TO THE PRESIDENT

DAVID FEIN *DF*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT:

CONTACTS WITH AGENCIES

This memorandum reiterates White House policies on contacts between White House staff and federal agencies. It is very important that you review these policies and become familiar with them. They must be strictly enforced, and we need your cooperation in doing that. A "quick reference" guide summarizing this memorandum is attached for your convenience. You can call any one of us if you have any questions.

BASIC PRINCIPLES

Some contacts between White House staff and federal agencies are permitted, and some are prohibited. Unless you are certain that a particular contact is permissible, you should take care before making the contact to consult with the Counsel's Office. In general, the starting points for deciding whether a contact is appropriate will be:

- the type of agency involved (executive branch or independent), and
- the subject matter of the contact (policy or legislation, investigation or enforcement action, or rulemaking).

I. CONTACTS WITH EXECUTIVE BRANCH AGENCIES

Which agencies are covered by this section?

The principal Executive Branch agencies are the Cabinet Departments:

- the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs.

Executive Branch agencies also include the Environmental Protection Agency, the Small Business Administration, and the Equal Employment Opportunity Commission.

Boards and commissions are generally considered Executive Branch agencies if their members are appointed, and removable without cause, by the President.

As discussed in Section II of this memorandum, separate policies apply to contacts with so-called "independent" agencies, such as the FCC, the FTC and the SEC.

Policy, legislation and administrative matters

General Rules: White House staff may communicate with executive branch agencies about policy, legislation or administrative matters.

Special Rules for DOJ: Because policy, legislative and administrative issues within the Department of Justice's purview may touch upon law enforcement or other litigation-related matters pending at the Department, you should advise the Counsel's Office when you commence communications with DOJ on any subject, including policy matters. Once you have informed our office about your contact with DOJ on a particular subject, you need not later inform us of communications on the same matter.

Special Rules for the IRS: Because of the sensitive investigative and enforcement powers of the IRS, and the confidential personal information the IRS handles, it is White House policy that no member of the White House staff should have any communication of any type with the IRS without prior approval of the White House Counsel. Note that communication about tax policy or legislation normally can be directed to the Assistant Secretary of the Treasury for Tax Policy.

Investigations, enforcement actions and adjudications

White House staff should not contact Executive Branch agencies concerning investigations, enforcement actions, or adjudications. This prohibition means White House staff should not ask an agency even for a status report about a pending matter of this type, or ask an agency official to meet with a private party or Member of Congress to discuss such a pending matter.

- "Investigations" are matters related to investigating or reviewing potential or actual administrative, criminal, or civil charges for alleged violations of law or regulations by specific individuals or entities.
- "Enforcement actions" are matters related to pursuing administrative, criminal, or civil charges for alleged violations of law or regulations by specific individuals or entities.

- "Adjudications" are matters decided at an administrative or judicial hearing, or other proceeding, in which a department or agency determines the rights of particular individuals or entities.

While there may be rare, special circumstances when it is appropriate for the White House to communicate with an agency about a pending investigation, enforcement action, or adjudication, such communication should be undertaken only by the Counsel's Office. In the case of the Justice Department, any such communication must be initiated by either the White House Counsel or the Deputy Counsel.

Outside inquiries: If you receive a written or oral inquiry or request from an outside party — including a Member of Congress — concerning an investigation, enforcement action, or adjudication pending at an Executive Branch agency, you should contact the Counsel's Office for guidance on how to proceed. Normally, it will be appropriate to advise that outside party of the general White House policy against contacts on such matters, and to suggest that any inquiries concerning the pending matter be made directly to the relevant agency, if appropriate.

Contacts from agencies: By the same token, if anyone at any Executive Branch agency contacts you about any pending investigation, enforcement action, or adjudication, you should promptly advise the Counsel's Office, which will determine how to proceed and will report back to you as appropriate.

Rulemaking Matters

1. **Status checks are generally permitted:** White House staff may contact executive branch agencies regarding a pending rulemaking matter if the purpose of the communication is not to influence the outcome of a pending rulemaking proceeding (e.g., a status inquiry).
2. **Other contacts must be cleared in advance with your supervisors:** If the purpose of the contact is to influence the outcome of a pending rulemaking, White House staff should, prior to making the contact, (a) obtain approval from the Assistant or Deputy Assistant to the President who is their principal supervisor, and (b) coordinate the contact with the Administrator of OIRA, who will advise on the appropriateness of the contact.
3. **No "passing on" oral comments from outsiders:** Input from the public — that is, persons not employed by the Executive Branch, Congress or the federal judiciary — must be submitted in writing if it is to be incorporated into the rulemaking process. Thus, non-written comments from the public should not be communicated by the White House staff to agencies, OIRA or anyone else involved in the rulemaking process. However, non-written comments from Members of Congress or other federal employees should be forwarded to the Administrator of OIRA.

4. **Forward written comments from outsiders:** Any written communications from the public, or from Members of Congress or other federal employees, on pending rulemaking matters are to be forwarded by the recipient to the relevant department or agency for inclusion in the public docket. A copy of any such written communications should also be forwarded to the Administrator of OIRA.

II. CONTACTS WITH INDEPENDENT AGENCIES

Which agencies are covered by this section?

Congress has created a number of so-called independent agencies. These agencies are called "independent" because of the rulemaking and enforcement jurisdiction they have been delegated by Congress, and because the principal officials are removable by the President only for specified "cause."

The principal independent agencies are the Federal Communications Commission, the Federal Trade Commission, and the Securities and Exchange Commission.

Other independent agencies include:

- Commodity Futures Trading Commission
- Consumer Product Safety Commission
- Federal Deposit Insurance Corporation
- Federal Election Commission
- Federal Maritime Commission
- Federal Reserve Board
- Interstate Commerce Commission
- National Credit Union Administration
- National Labor Relations Board
- National Transportation Safety Board
- Nuclear Regulatory Commission
- Occupational Safety and Health Review Commission
- United States International Trade Commission

As discussed in Section I of this memorandum, separate policies apply to contacts with Executive Branch agencies, such as the Cabinet agencies.

Investigations, enforcement actions or adjudications

White House staff should not contact any independent agency concerning a pending investigation, enforcement action or adjudication. White House staff should assume that such communications are prohibited.

Any inquiries concerning an investigation, enforcement action or adjudication at an independent agency should be referred to the Counsel's Office for handling.

While there may be rare, special circumstances when it is appropriate to communicate with an independent agency about an investigation, enforcement action or adjudication, such communication should be undertaken only by the Counsel's Office.

Rulemaking proceedings

Congress has assigned certain rulemaking jurisdiction to independent agencies such as the FCC, the FTC and the SEC. White House staff **should not** communicate with independent agencies about rulemaking matters. White House staff should assume that such communications are prohibited.

Any inquiries concerning rulemaking by an independent agency should be referred to the Counsel's Office for handling.

While there may be rare, special circumstances when it is appropriate to communicate with an independent agency about a rulemaking matter, the White House Counsel's Office must approve any such communication in advance.

Policy, legislation and administrative matters

Any other communications with independent agencies, including discussions of policy or legislation, should be approved in advance by the Counsel's Office to ensure that the communication is appropriate and that no special rules apply. (Advance approval can be provided for categories of contacts.) The sole exception to this policy is communication on routine administrative matters (e.g., obtaining an address or phone number, or requesting publicly available documents).

WHITE HOUSE CONTACTS POLICY: A QUICK SUMMARY

CONTACTS WITH EXECUTIVE BRANCH AGENCIES

TYPE OF CONTACT	GENERALLY PERMITTED?	STEPS TO TAKE
Contact executive branch agency about policy, legislation or administrative matter	YES (except for IRS) – but advise Counsel's Office <u>before</u> contact with DOJ	No need to consult with Counsel's Office prior to contact (but advise Counsel's Office <u>before</u> contact with DOJ)
Contact executive branch agency about investigation, enforcement action or adjudication	NO	Seek guidance from the Counsel's Office. Refer written or oral inquiries about such matters to the Counsel's Office.
Contact executive branch agency about rulemaking matter for purpose of <u>influencing outcome</u> of a rulemaking proceeding	YES (except for IRS), IF prior approval of White House supervisor <u>and</u> the Administrator of OIRA BUT, do <u>not</u> "pass on" comments from outsiders, except when outsider comments are in writing AND advise Counsel's Office <u>before</u> contact with DOJ	Obtain prior approval of the Assistant or Deputy Assistant to the President who supervises you, <u>and</u> the Administrator of OIRA. NOTE: White House staff may not forward to agencies non-written comments from members of the public on rulemaking matters. Written comments should be forwarded to appropriate agency for inclusion in the public record, with copy to Administrator of OIRA.
Contact executive branch agency solely for <u>status report</u> on pending rulemaking proceeding	YES (except for IRS)	No need to consult with Counsel's Office prior to contact (but advise Counsel's Office <u>before</u> contact with DOJ)

CONTACTS WITH INDEPENDENT AGENCIES

TYPE OF CONTACT	GENERALLY PERMITTED?	STEPS TO TAKE
Contact independent agency about investigation, enforcement action or adjudication	NO	Refer any inquiries about such matters to the Counsel's Office.
Contact independent agency about rulemaking matter	NO	Refer any inquiries about such matters to the Counsel's Office.
Contact independent agency about policy, legislation or administrative matter	NO, unless approved in advance by White House Counsel's Office	Consult with White House Counsel's Office before any such contact. (Sole exception is routine administrative matters – e.g. obtaining publicly-available documents or phone numbers.)

Executive Branch Agencies

Department of Agriculture
 Department of Commerce
 Department of Defense
 Department of Education
 Department of Energy
 Department of Health and Human Services
 Department of Housing and Urban Development
 Department of Interior
 Department of Justice
 Department of Labor
 Department of State
 Department of Transportation
 Department of the Treasury
 Department of Veterans Affairs
 Environmental Protection Agency
 Small Business Administration
 Equal Employment Opportunity Commission

Independent Agencies

Federal Communications Commission
 Federal Trade Commission
 Securities and Exchange Commission
 Commodities Futures Trading Commission
 Consumer Products Safety Commission
 Federal Deposit Insurance Corporation
 Federal Election Commission
 Federal Maritime Commission
 Federal Reserve Board
 Interstate Commerce Commission
 National Credit Union Administration
 National Labor Relations Board
 National Transportation Safety Board
 Nuclear Regulatory Commission
 Occupational Safety and Health Review Commission
 United States International Trade Commission

NOTE: 1. DOCUMENT IS ONLY A SUMMARY. FOR MORE INFORMATION, CONSULT THE MEMORANDUM FOR ALL WHITE HOUSE STAFF, DATED AUGUST 13, 1996, ON CONTACTS WITH AGENCIES, OR CONTACT THE COUNSEL'S OFFICE.

DEMEO, JULIE E.
OFFICE OF POLICY DEVELOPMENT

DOMESTIC POLICY COUNCIL

WH

2FL/WW

Q's

6-6229

Ethics Briefing 2/11

Gifts - \$20 on one occasion or

\$50 in a year

but can't ~~send~~ accept single meal > \$25. -

- OK TO ACCEPT from sponsor of large event.
- OK can be written or oral from ethics officer
- but substantially affected by agency's work then must be in writing -

Gift form -

Travel form - to accept official travel reimbursement from outside groups.

Presidential Seal - reserved for use by POTUS -

All requests for use of seal made in writing to Counsel to POTUS

POTUS

Use of Words/Images to promote products or service prohibited
exceptions for educational/historical materials -
gov't activity; charity as approved by counsel's office

James
Conor

- Using public office for private gain

- title, authority otherwise - to benefit

- Can write letters of recommendation and

Use w/ State money

- Regulator. Advisors - diversified mutual fund holdings -
- market value < \$5000

Investigative contract, violations, specific ruling

Basic Post Employment Restrictions (All Federal Employees)

Certain statutory restrictions apply to all federal employees after they terminate employment with the federal government.

Permanent Restriction: All employees are prohibited for life from certain post-employment activities. After you leave the Government, you may never knowingly make, with the intent to influence, any communication to or appearance before the Government on behalf of any other person in connection with a particular matter involving specific parties, if that matter is one in which you participated personally and substantially while a Government employee, and is one in which the Government has a direct and substantial interest.

Two-year Restriction: For two years after you leave the Government you may not knowingly make, with the intent to influence, communications or appearances before the Government on behalf of another person in connection with a particular matter involving specific parties, if that matter is one that you reasonably should have known was actually pending under your official responsibility during your last year of Government service.

What is not prohibited:

- Accepting employment with any private or public employer after Government service.
- Communications with and appearances before Members of Congress.
- "Behind-the-scenes" assistance in connection with a particular covered matter, although other rules on the confidentiality of Government information may restrict behind-the-scenes assistance.
- Appearances or communications involving purely social contacts, requests for publicly available documents, or requests for purely factual information or the supplying of such information.

Financial disclosure obligation: Employees who file public financial disclosure reports (SF 278) are required to file a final SF 278 when you terminate your White House position, unless you are going to another position within the government that requires you to file an SF 278 (in which case, please notify our office and we will forward a copy of your SF 278 to your new agency).

If you have questions regarding the basic post employment restrictions, please call the Counsel's Office at 456-6229.

particular matter - specific matters; doesn't cover rulemaking - but covers grants.

Restrictions While Seeking Employment

Basic Rule: You may not participate in a matter in your official capacity if the matter will, or is likely to, have an effect on the financial interests of a person or organization with whom you are seeking employment or have any arrangement for prospective employment.

Specifics: You are seeking employment even when you make preliminary inquiries, such as submitting a resume to a company. You are also seeking employment if you receive an unsolicited inquiry by an employer interested in hiring you and you do not indicate to the source that you are not interested in pursuing the matter.

Disqualification from a matter that will affect an entity with which you are seeking employment must continue until you leave the Government or until either you or the prospective employer terminates the matter by notifying the other unequivocally of a lack of interest in pursuing employment, or two months pass without a response to an unsolicited employment contact.

If you use an intermediary to conduct a job search, you must disqualify yourself from matters affecting the potential employer if you have identified to the intermediary the companies or firms that should be contacted, or if the intermediary notifies you of the firms that have been contacted. Until either you or the intermediary identify specific prospective employers, however, you do not need to disqualify yourself from participating in a matter because of a job search. Depending on your arrangement with the intermediary, you may need to disqualify yourself from matters affecting the intermediary. Please call the Counsel's Office for advice regarding such arrangements.

Deputies and above are required to notify the Counsel to the President that they are seeking employment. You can obtain a sample notification letter from the Counsel's office by calling 456-6229.

If you have questions regarding seeking or negotiating for employment, please call the Counsel's Office at 456-6229.

INDIVIDUAL AND REGULATORY WAIVERS

Executive branch employees are prohibited by a federal criminal statute (18 U.S.C. § 208) from participating in an official capacity in particular matters in which they, or certain other persons with whom they have specified relationships (e.g., spouse, dependant child, general partner) have a financial interest. In certain instances, this prohibition may be waived so that the employee may participate in the matter. There are two types of waivers: individual and regulatory.

I. INDIVIDUAL WAIVERS

Individual waivers are granted when the Counsel to the President determines that your financial interest in a particular matter is not so substantial as to be deemed likely to affect the integrity of your government service. Once that determination is made, you will be permitted to participate in the particular matter to the extent determined by the waiver. You must request an individual waiver **BEFORE** you participate in a particular matter in which you have a financial interest. **Until you receive a waiver you MUST disqualify yourself from participating in a matter that is likely to have a direct and predictable effect on your financial interest.** The regulation concerning individual waivers is found at 5 C.F.R. § 2640.301.

II. REGULATORY WAIVERS

Regulatory waivers automatically apply to all executive branch employees. You do not need to request a regulatory waiver, but you do need to ensure that one of the waivers applies to your particular situation before you take official action on a matter in which you have a financial interest. There are several regulatory waivers, which are listed at 5 C.F.R. Part 2640. Some examples are:

- ◆ *Diversified Mutual Funds.* An employee may participate in any particular matter affecting one or more holdings of a diversified mutual fund where the disqualifying financial interest in the matter arises because of the ownership of an interest in the fund. A “diversified mutual fund” is one that not have a stated policy of concentrating its investments in any one industry, business, foreign country, or State.

Example: An employee owns shares worth \$50,000 in a diversified mutual fund, whose portfolio contains stock in a small computer company. The employee may participate in agency matters affecting the computer company.

- ◆ *Sector Mutual Funds.* An employee may participate in any particular matter affecting one or more holdings of a sector mutual fund where the affected holding is not invested in the sector in which the fund concentrates, and where the disqualifying financial interest in the matters arises because of ownership of an interest in the fund.

Example: An employee owns shares in a sector mutual fund that concentrates its holdings in the stock of utility companies. The fund also contains stock in certain regional banks whose financial interest would be affected by an investigation that the employee has been asked to perform. The employee is not disqualified from participating in the investigation because the banks that would be affected are not part of the sector in which the fund concentrates.

- ◆ *Employee Benefit Plans.* An employee may participate in any particular matter affecting

one or more holdings of an employee benefit plan, where the disqualifying financial interest in the matter arises from membership in: (1) the Federal Government's Thrift Savings Plan, (2) a State or municipal pension plan, or (3) a diversified employee benefit plan (including a pension plan) so long as the investments of the plan are administered by an independent trustee, the employee does not designate specific investments, and the plan is not a profit-sharing or stock bonus plan.

Example: An attorney leaves a private law firm to enter Government service. As a result of his service to the firm, the attorney has a 401(k) plan, the assets of which are invested in stocks that are chosen by an independent financial management firm. The employee may participate in matters affecting the holdings of his 401(k) plan so long as the management firm that selects the plan's investments has a written policy of diversifying the plan's assets.

- ◆ *Securities -- Matters Involving Specific Parties.* An employee may participate in **any particular matter involving specific parties** in which the disqualifying financial interest arises from securities (e.g., stock) issued by one or more entities affected by the matter if: (1) the securities are publicly traded or are long-term Federal Government, or municipal securities, and (2) the market value of the securities does not exceed **\$5,000**.

Example: An employee owns \$3,000 worth of stock in Company X. As part of her official duties, the employee is evaluating bids for computer maintenance work at her agency and discovers that Company X has submitted a bid. The employee may continue to evaluate bids, including Company X's bid.

- ◆ *Securities -- Matters of General Applicability.* An employee may participate in **any particular matter of general applicability** (e.g., rulemaking) in which the disqualifying financial interest arises from securities if: (1) the securities are publicly traded or are municipal securities, and (2) the market value of the securities does not exceed **\$25,000 in any one entity OR \$50,000 in all affected entities**. This exception also applies to long-term Federal Government securities with a market value of less than \$50,000.
- ◆ *Colleges and Universities.* An employee on leave from a college or university may participate in any particular matter of general applicability affecting the financial interests of the institution from which he/she is on leave, if the matter will not have a special or distinct effect on that institution other than as part of a class.
- ◆ *Hiring Decisions.* An employee may participate in a hiring decision involving an applicant who is currently employed by a corporation that issues publicly traded securities, if the disqualifying financial interest arises from: (1) ownership of publicly traded securities issued by the corporation, or (2) participation in a vested pension plan sponsored by the corporation.

If you have any questions about waivers, please contact the Counsel's Office at 456-6229.

THE WHITE HOUSE

WASHINGTON

October 11, 1996

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: JACK QUINN
COUNSEL TO THE PRESIDENT

SUBJECT: Revised Rules for Accepting Invitations to Widely
Attended Gatherings

As you know, regulations govern acceptance of gifts, including invitations to attend "widely attended events." Until recently, federal employees could accept an invitation to a "widely attended gathering" only when invited by the **sponsor** of the event and the agency determined that their attendance was in the interest of the agency. Additionally, the rules permitted an employee to accept free attendance only for the employee and his/her spouse. These rules were recently amended to permit acceptance in certain circumstances of unsolicited invitations offered by a **non-sponsor** to attend widely attended gatherings, and to permit employees to bring guests other than their spouses to these events.

The regulations continue to permit acceptance of invitations to widely attended gatherings from the **sponsor** of the event. And, as of September 19, 1996, employees may accept invitations from **someone other than the sponsor** of a widely attended gathering, provided that:

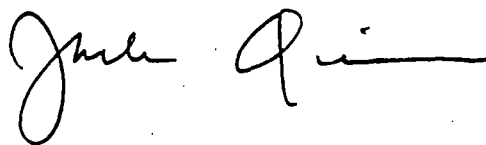
- 1) more than 100 people are expected to attend the event; and
- 2) the face value of the ticket(s) does not exceed \$250.

Regardless of whether the invitation was from a **sponsor** or **non-sponsor**, an employee's attendance still must be in the agency's interest and the event must be widely attended (i.e., there must be a large number of people invited, and many interests and viewpoints must be represented).

The new regulations also permit an employee, whether invited by a **sponsor** or a **non-sponsor**, to bring someone other than a spouse to the event, as long as the guest's ticket is provided by the same person providing the ticket for the employee. However, if the tickets are provided by a **non-sponsor**, the aggregate value of the two tickets cannot exceed \$250; if it does, under the regulations only one free ticket may be accepted. The full value of the second ticket must be paid for personally by the employee or the invitation for the second person must be declined. For

example, if you are offered two tickets valued at \$150 each, you may accept one ticket and either purchase the other ticket for \$150 or not take a guest. You may not pay \$50 to make up the difference in the cost of the two tickets and the \$250 limit.

If you have any questions regarding the changes to the rule or about a particular invitation, please call Dawn Chirwa, Cheryl Mills, or Kathi Whalen at 6-7900.

A handwritten signature in cursive script, appearing to read "Julie Quinn". The signature is written in dark ink on a white background.

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 who 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

February 7, 1996

MEMORANDUM FOR ALL EXECUTIVE OFFICE OF THE PRESIDENT STAFF

FROM: LEON E. PANETTA
CHIEF OF STAFF 

SUBJECT: Official and Clinton/ Gore '96 Travel

The U.S. Government may only pay for official travel; any travel during which you advocate the re-election of the President is not official travel and must be paid for by Clinton/ Gore '96 Re-elect campaign directly (or by reimbursement to the United States Treasury for travel on government aircraft). To ensure that staff are sensitive to these important distinctions in how travel costs must be paid, all travel by Executive Office of the President staff on behalf of Clinton/ Gore '96 must first be authorized in writing by Harold Ickes or Janice Enright.

As a reminder, all travel by federal employees, including official travel on commercial aircraft on Air Force One or other government aircraft and on trains, as well as travel on behalf of Clinton/ Gore '96, must be pre-authorized in writing on the appropriate government travel authorization forms. If you have any questions about the appropriate travel forms, please contact Kim Holmes in Room 1.

~~Personnel~~

Genetiz

Questions for Cheryl

- Press office materials for campaign events

- Getting info to DNC

- trip planning mags.

- phone calls to check out sites / people

- can you say why you're inquiring? — tell them about the event?

- working need with groups —

- after hours / outside of federal building —

- March 4 —

Travel DNC —

Chief-of-Staff Briefing 2/13/96

Cheryl Mills —

guideline (policy not req)

Travel

Principals travels w/in 4-6 weeks of primary —

Principals

into state w/10:

in that window
you're doing event

has should be an event where we're not

during the agenda ^(not a requirement) — no stops by at

Clinton-Gore events.

higher threshold for candidate.

1st states are where Pres is on ballot —

Florida he's not on.

DNC is diff from Clinton-Gore — can do as many DNC events
as your schedules hold.

Trip paid for by Clinton/Gore

V. clear

is it appropriate to prepare ^{non-partisan} materials for
even — program
— policies
— 108 agenda.

e.g. Goals 2000 — in NH

— how/who has the state benefited.

— Can't be done in a ~~non~~ partisan way —

h.p. discuss what other candidates state

what are do here w/your memo is political
activity — how

- can Agency person call and ask —
people how ^{they've been} affected, ~~not~~ yes.

But can't move to Clinton Co

⇒ Can ask about issues/problems — ~~comparing~~
people President will encounter — yes
if it's what

- Involvement in Clinton Gov event in diff.
city is never incidental — C/G must
pay for travel.

~~in ~~the~~ ~~area~~~~ - Can't make calls from 510's

Setting up an event —

detailed in this

— organizing or strategizing — should I ask
her participate in that

(8:30-5:30 restricted) (Place restriction at all times)

Can — meet after hours to talk about
can political strategy

~~Politically~~

DNC — Can't give them material prepared
for dinner official purpose

"Availability" — (Can't disclose info. beyond the gov't)
— press have it
— we're given to press to give out.
— we would get

DNC travel — Can't advocate for Pres'
election

THE WHITE HOUSE

WASHINGTON

July 10, 1996

MEMORANDUM FOR AGENCY CHIEFS OF STAFF

FROM: KATHRYN HIGGINS
ASSISTANT TO THE PRESIDENT AND CABINET SECRETARY

SUBJECT: Legal Guidance Regarding the Convention

In response to your inquiries, I am forwarding to you a copy of the Counsel's Office memorandum to the Cabinet and Agency Heads outlining the legal and policy restrictions on participation at the Convention. We suggest that you have your General Counsel review the memorandum in light of any particular statutes or policies that govern your department or agency. To that end, Cheryl Mills, Associate Counsel to the President (202)456-7900, is available to consult with staff from your General Counsel's Office.

As you make decisions regarding your agency head's calendar for the month of August, please keep in mind that Cabinet members will likely be invited to attend the Convention (August 24-30, 1996) by the Campaign Committee, the DNC Finance Committee or the Convention Committee. Each agency must, however, maintain appropriate management staff to ensure that the regular business of the government continues during the week of the Convention.

Please call me if you have any questions with which I may be of assistance.

THE WHITE HOUSE

WASHINGTON

July 10, 1996

MEMORANDUM FOR THE CABINET AND AGENCY HEADS

FROM:

JACK QUINN

COUNSEL TO THE PRESIDENT

SUBJECT:

CONVENTION-RELATED POLITICAL ACTIVITY

In response to questions we have received from some of you, this memorandum outlines pertinent guidelines governing Democratic Convention-related activity on the part of the Administration's political appointees.

As always, I urge you also to consult with your agency General Counsel regarding other, more specific rules, governing political activity that might apply. For example, certain law enforcement agency officials are prohibited from engaging in political activity, including the FBI, USSS, CIA, NSA, DIA, FEC and the Criminal Division of the Justice Department. Additionally, three Cabinet agencies have internal policies that otherwise restrict political appointees' involvement in political activity: the Departments of State, Justice and Defense.

I. General Political Activity Rules in Brief

In addition to their official duties, Senate-confirmed officials may engage in political activity during business hours and in a federal building, provided that the costs of such activity are not borne by the government. All other agency employees (non-career SES, Schedule C, and career) only may engage in political activity outside agency business hours and outside of federal buildings. Again, federal employees may not under any circumstances use government resources to support their political activity. (Under the Hatch Act regulations, costs associated with political activity are not considered to be borne by the government provided that the U.S. Treasury is reimbursed within a reasonable period of time. 5 C.F.R. § 734.503.)

There are several activities which are prohibited for all federal employees. Federal employees may not personally solicit, accept or receive a political contribution. (A very limited exception applies for certain federal multi-candidate political committees. All employees should consult their agency ethics official prior to any solicitation.) Federal employees also may not intimidate, threaten, command or coerce any employee to engage or not to engage in any political activity. Thus, a political appointee should not direct staff members or subordinates to attend the Convention in support of his or her attendance.

II. Vacation Time & Leaves of Absence

All political appointees who attend the Convention must do so on their own time. The only exception to this policy is that federal employees whose official duties require them to attend the Convention, e.g., Secret Service or security personnel, may attend the Convention on official time.

Federal employees, provided they are otherwise permitted to engage in political activity during their off-duty hours, may use vacation or compensatory time to engage in political activity, including attending the Convention. Using vacation time (annual leave) or compensatory time is considered being "off-duty."

Although the Hatch Act Reform Amendments permit federal employees to take a leave of absence without pay to engage in political activity, political appointees (Senate-confirmed, non-career SES, Schedule Cs, and other Presidential appointees) may not take a leave of absence without pay to engage in campaign activity during the Presidential election cycle. There are only two exceptions to this policy: 1) up to five days of leave without pay may be taken to participate in Convention-related activities, and 2) leaves without pay that were approved by agency officials prior to the date of this memorandum may be taken provided that such leaves are not related to the President's re-election effort.

As with all leave requests, agency officials should approve or disapprove leave based upon agency work-load. Thus, a political appointee's ability to take a leave of absence without pay for the week of the Convention is a matter of agency discretion. You must, of course, ensure that your agency has sufficient personnel to accomplish the work of the government during the week of the Convention.

III. Convention Attendance & Acceptance of Travel Expenses

Convention-related travel by appointees, except as described above, is political; therefore, appropriated funds may not be used to pay these costs. Political appointees who are permitted to engage in political activity may accept, consistent with the Standards of Ethical Conduct, gifts of meals, lodgings, transportation and other benefits -- including free attendance at events -- provided it is offered by a political organization in connection with active participation at the Convention or in related campaign activities. Thus, a political committee (e.g., the Convention, the Democratic National Committee, the Campaign) may pay, as appropriate, the Convention travel-related expenses of appointees who otherwise may participate in political activity under the law. Political appointees whose travel is paid for by a political committee other than the Campaign may not engage in any Campaign-related activity at the Convention.

Political appointees, like other federal employees, also may pay their own travel expenses to attend the Convention provided they are permitted by law to engage in political activity.

IV. Convention Positions

Under the law, federal employees who are permitted to engage in political activity may hold formal positions at the Convention. Thus, a political appointee may, for example, be a delegate, a Convention speaker or a member of any of the standing committees. As always, a political appointee may not use his or her government position or resources for activities related to his or her Convention duties.

V. Outside Earned Income from Convention Positions

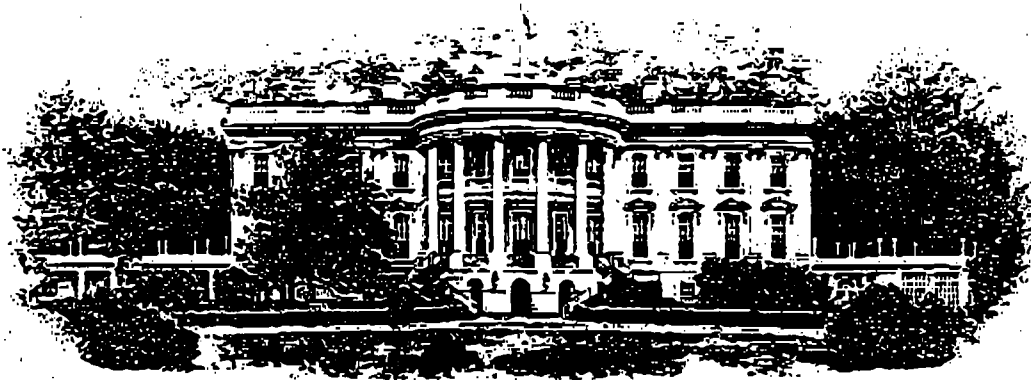
Full-time presidential appointees whose annual salary exceeds \$28,912 are prohibited from earning outside income. Thus, only full-time presidential appointees whose salaries are less than \$28,912 may be compensated for services they might render for the Convention. In addition to the ban on outside earned income for presidential appointees, certain non-career employees whose annual salaries exceed \$83,160 are also prohibited from earning outside income. Employees whose salaries do not exceed \$83,160 may earn up to \$20,040 in outside income annually. Political appointees are also permitted to volunteer their services at the Convention. An appointee should consult with his or her agency ethics official prior to earning any outside income.

VI. Official Events During the Convention

During the week of the Convention, local groups, community organizations and businesses may ask Cabinet and sub-Cabinet officials and other agency heads to engage in non-Convention activities in the Chicago area. While some of these activities might meet the standard for an official event, out of an abundance of caution, these events generally will be treated as political for the purpose of using appropriated funds. Therefore, agency staff should not fly to Chicago at government expense to facilitate the participation of a political appointee in these events; rather, persons already in the area should staff these events.

If, after consulting with your agency General Counsel, you have any questions regarding these guidelines, please call Cheryl Mills in my office at (202)456-7900.

cc: Agency General Counsels
Designated Agency Ethics Officials



THE WHITE HOUSE
OFFICE OF CABINET AFFAIRS

Room 160 OEOB
Washington, D.C. 20500
Telephone: (202) 456-2572
Facsimile: (202) 456-6704

FAX COVER SHEET

DATE:

11-13-96

TO:

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PHONE:

FAX:

FROM:

Kitty Higgins

NO. OF PAGES:

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(Including Cover Sheet)

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MESSAGE:

OFFICE OF THE LEGAL ADVISER

FAX TRANSMITTAL COVER SHEET

DATE:	
11/13/96	
TO:	FROM:
Kitty Higgins	Alan Kreczko
PHONE NO.:	PHONE NO.:
62572	202/456-9111
FAX NO.:	FAX NO.:
66704	202/456-9110
COMMENTS:	
NUMBER OF PAGES (including cover page):	
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THE WHITE HOUSE
WASHINGTON

September 28, 1994

MEMORANDUM FOR ALL EXECUTIVE DEPARTMENT AND AGENCY
GENERAL COUNSELS

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

SUBJECT: Congressional Requests to Departments and Agencies
for Documents Protected by Executive Privilege

The policy of this Administration is to comply with congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch. While this Administration, like its predecessors, has an obligation to protect the confidentiality of some communications, executive privilege will be asserted only after careful review demonstrates that assertion of the privilege is necessary to protect Executive Branch prerogatives.

The doctrine of executive privilege protects the confidentiality of deliberations within the White House, including its policy councils, as well as communications between the White House and executive departments and agencies. Executive privilege applies to written and oral communications between and among the White House, its policy councils and Executive Branch agencies, as well as to documents that describe or prepare for such communications (e.g., "talking points"). This has been the view expressed by all recent White House Counsels. In circumstances involving communications relating to investigations of personal wrongdoing by government officials, it is our practice not to assert executive privilege, either in judicial proceedings or in congressional investigations and hearings.

Executive privilege must always be weighed against other competing governmental interests, including the judicial need to obtain relevant evidence, especially in criminal proceedings, and the congressional need to make factual findings for legislative and oversight purposes.

In the last resort, this balancing is usually conducted by the courts. However, when executive privilege is asserted against a congressional request for documents, the courts usually decline to intervene until after the other two branches have exhausted the possibility of working out a satisfactory accommodation. It is our policy to work out such an accommodation whenever we can, without unduly interfering with the President's need to conduct frank exchange of views with his principal advisers.

Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege.

Executive privilege belongs to the President, not individual departments or agencies. It is essential that all requests to departments and agencies for information of the type described above be referred to the White House Counsel before any information is furnished. Departments and agencies receiving such requests should therefore follow the procedures set forth below, designed to ensure that this Administration acts responsibly and consistently with respect to executive privilege issues, with due regard for the responsibilities and prerogatives of Congress:

First, any document created in the White House, including a White House policy council, or in a department or agency, that contains the deliberations of, or advice to or from, the White House, should be presumptively treated as protected by executive privilege. This is so regardless of the document's location at the time of the request or whether it originated in the White House or in a department or agency.

Second, a department or agency receiving a request for any such document should promptly notify the White House Counsel's Office, and direct any inquiries regarding such a document to the White House Counsel's Office.

Third, the White House Counsel's Office, working together with the department or agency (and, where appropriate, the Department of Justice), will discuss the request with appropriate congressional representatives to determine whether a mutually satisfactory accommodation is available.

Fourth, if efforts to reach a mutually satisfactory accommodation are unsuccessful, and if release of the document would pose a substantial question of executive privilege, the Counsel to the President will consult with the Department of Justice and other affected agencies to determine whether to recommend that the President invoke the privilege.

We believe this policy will facilitate the resolution of issues relating to disclosures to Congress and maximize the opportunity for reaching mutually satisfactory accommodations with Congress. We will of course try to cooperate with reasonable Congressional requests for information in ways that preserve the President's ability to exchange frank advice with his immediate staff and the heads of the executive departments and agencies.

Please call my successor, Abner Mikva, or Joel Klein, Deputy Counsel to the President, to discuss any questions relating to this policy.

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.