Collection: Baker, James A.: Files
Folder Title: White House Staff Memoranda – Counsel's Office (3)
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WITHDRAWAL SHEET
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Collection: Baker, James: Files

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File Folder: W.H. Staff Memos - Counsel's Office [3 of 4] Box 4

Date: 11/24/98

ICS 10/5/00

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	Fielding to Meese, et. al. re: appointment (2 p)	9/27/83	~~P5, P6~~ P6
2. Memo	Fielding to Duberstein re: Japanese/Americans (2 p)	9/23/83	~~P5~~
3. Memo	Fielding to J. Baker, Rollins (3 p)	7/7/83	~~P6~~
4. Memo	Fielding to Meese, et al re: INS v Chada (1 p)	629/83	~~P5~~
5. Memo	Fielding to J. Baker, Rollins (4 p)	6/15/83	~~P6~~
6. Memo	Fielding to J. Baker (2 p)	4/26/83	~~P6~~
~~7. Memo~~	~~Fielding to Deaver (2 p)~~	~~4/23/83~~	~~P6~~ transferred

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]
- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]
- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statue [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
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- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

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BACK TO MDT

THE WHITE HOUSE

WASHINGTON

September 26, 1983

MEMORANDUM FOR EDWIN MEESE III
COUNSELLOR TO THE PRESIDENT

JAMES A. BAKER, III
CHIEF OF STAFF AND ASSISTANT TO THE PRESIDENT

MICHAEL K. DEAVER
DEPUTY CHIEF OF STAFF
AND ASSISTANT TO THE PRESIDENT

DANIEL J. MURPHY, JR.
CHIEF OF STAFF FOR THE VICE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Restrictions on Political Activities By White House Employees

At such date as an authorized political committee may be established in support of the President I plan to provide a memorandum to all members of the White House staff, the heads of other entities within the Executive Office of the President and all Cabinet members regarding the permissible political activities in which they may engage in support of the President's re-election. Prior to that time, however, I felt it would be useful to advise you of the restrictions that will exist on such activities by White House staff so that you could organize your staff and take whatever actions you deemed appropriate in preparation for the likely political campaign.

All White House employees 1/, except those who are paid from the appropriations of the White House Office, are subject to the restrictions of the Hatch Act, 5 U.S.C. §§ 7321 - 7327, which places specific restrictions on partisan political activities by Federal employees. This means that all employees of the Office of Policy Development (with the exception of Jack Svahn and Roger Porter), employees of the Office of the Vice President (except those who are paid from Senate appropriations), and all detailees to the units within the White House

---

1/ For purposes of this memorandum the term "White House" employees includes all Assistants to the President and their staffs (with the exception of Joe Wright of OMB) and all staff of the Office of the Vice President.

Office, e.g., detailees to the Office of Presidential Personnel or the Office of Public Liaison, are prohibited from engaging in any partisan political activities.

The restrictions of the Hatch Act, which are discussed in detail below, are applicable to covered 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 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;

6) sell tickets to, organize or actively participate in any political fundraising activity;

7) solicit votes for or against a candidate;

8) serve as a party or candidate challenger or pollwatcher;

9) drive voters to the polls for a candidate or party;

10) endorse or oppose a candidate in a political advertisement, broadcast or campaign literature;

11) serve as a delegate or alternate to a political convention;

12) organize or actively participate in the activities of a political convention;

13) serve on a standing committee of a political convention;

14) circulate a candidate nominating petition;

15) address a convention, rally, 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 may preclude employees of the White House Office and all Presidential appointees from contributing to the authorized campaign committee of the President (we will advise more specifically on that issue prior to the establishment of an authorized Presidential campaign committee);

3) express their opinion on political subjects;

4) wear campaign buttons or display bumperstickers;

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;

7) sign a nominating petition.

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 that are purely political in nature and which relate solely to their principal's political activities. Hence, a "hatched" employee may make the logistical arrangements for his or her principal's political travel or appearances and even accompany the principal on such travel 2/, but, such employee may not write a purely partisan speech for his or her principal or engage in any of the "management" activities of a political

---

2/ The travel expenses of a "hatched" employee accompanying his or her principal on political business must be paid from appropriated funds.

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.

The more difficult question arises, however, when a "hatched" employee's official work product is to be used by his or her principal for purely political or campaign-related activities. In past years the Office of Special Counsel of the Merit Systems Protection Board (the agency responsible for enforcing the Hatch Act) has generally been of the view that where the duties performed by "hatched" staff employees of an exempted agency head involve a combination of official agency functions and partisan political purposes, there is no violation of the Hatch Act that warrants prosecution of the covered employee.

Translated into practical enforcement of the Act, this seems to mean that "hatched" staff of an exempted Administration official may write the "official" text of speeches that such official intends to make, even if the speech will be at a political event; however, such employees may not write purely partisan speeches for that official. In 1980 the Carter Administration adopted the policy that "hatched" employees could provide substantive speech material relating to the work of their department or agency to the non-hatched officials of such department or agency, but they could not write the political advocacy portions of such speeches. To our knowledge, the only enforcement action taken by the Special Counsel of the MSPB in connection with such activities by the Carter Administration was against a "hatched" special assistant to a Cabinet head who wrote purely partisan speeches for his principal.

Accordingly, it is our opinion that "hatched" employees, such as the staff of the Office of Policy Development, may continue to write briefing materials on official Administration activities for use by Administration officials, even when such materials will be included in partisan political statements; however, such employees may not write or prepare any materials that will be used only for political purposes, e.g., materials for the platform of the Republican Party, nor may they prepare any materials containing statements of political advocacy.

Finally, you should be aware that the Hatch Act prohibits you from using your official authority to coerce political activities from your employees and states that employees are not obliged to contribute to political committees or render political services to anyone and may not be removed or otherwise prejudiced for refusal to do so. 5 U.S.C. § 7321.

cc: John F.W. Rogers

RONALD W. REAGAN LIBRARY

THIS FORM MARKS THE FILE LOCATION OF ITEM NUMBER _____ LISTED ON THE WITHDRAWAL SHEET AT THE FRONT OF THIS FOLDER.

THE WHITE HOUSE

WASHINGTON

September 23, 1983

MEMORANDUM FOR KENNETH M. DUBERSTEIN
ASSISTANT TO THE PRESIDENT
FOR LEGISLATIVE AFFAIRS

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: "Presidential Message" Delivered by Senator Slade Gorton to a Reunion of Japanese-American World War II Evacuees

Thank you for copying me on your memorandum for Jim Baker about the above-referenced matter. The following should help answer some of your questions:

Dodie Livingston's office often checks with us when there is a question whether a Presidential message would be appropriate. The most common problem is commercialism, but some requests involve controversial issues with legal implications.

In this case, Senator Gorton did not request a message to a Japanese-American "citizens group," but rather to a reunion of persons who were relocated and interned during World War II. This is a controversial issue, in which the President has not become involved. The Commission on Wartime Relocation and Internment of Civilians, created under Carter, sent a report to Congress in 1982 recommending reparations, on which Justice says we have taken no position. Justice officials also told us that efforts are being made to overturn the Supreme Court's war-era decision upholding the relocation program, and that it would be best for the President not to discuss the issue.

Based on this, we advised Livingston's office not to send a message -- since (a) no "apology" or other statement could be made on the issue of primary interest to the group; (b) a bland message studiously ignoring the very experience that defined the group might offend it; and (c) in general, it seemed prudent not to get the President involved in this area. Our staff did not contact Gorton's, but Livingston's office told the Senator's why the request could not be granted. [I understand that normally the Messages office responds directly to routine Congressional referrals, but will check back with your staff when a Congressman or Senator says a request is "important." It appears that Gorton never indicated to your staff that his letter (which was routinely acknowledged and referred to Livingston) was of special importance to him.]

As to Gorton's present request for an official, signed version of the "Presidential message" he delivered on his own "authority," I have the following comments:

Both the delivery of the "message" and the current request are so presumptuous that the incident borders on being humorous. Also, the actual "message" delivered is about as harmless as any message to this group could be. Further, I can appreciate both the desire not to offend Gorton, and the fact that the President and Jim Baker were in no position to make an issue over this when Gorton "discussed" it with them after the fact (though one doubts he "discussed" it in any detail).

Nonetheless, I don't think we should blithely comply with the Senator's request. While I don't want to overemphasize the importance of this incident, the White House is, as you know, very careful about authorized use of the President's signature and follows strict rules in this area -- for reasons that are obvious and important. In this case, for example, had Gorton felt so "strongly" that he included a "Presidential" apology to the group, it might have affected pending litigation or our position on the reparations recommendations before Congress. Even if the "message" did no more than inspire a press inquiry on a subject we would rather not address, a problem the White House had decided to avoid would have arisen because the Senator took it on himself to give a "Presidential message."

More generally, it would be unwise to set a precedent that would encourage Senators to think that they have any kind of "surrogate" signature authority for the President when they feel "strongly" about something. It would be especially bad to do so in a case where a request had been denied. I do not want to embarrass the Senator, and do not think we should "disavow" his "Presidential message." But other Republicans in Congress have generally been understanding when message requests have had to be denied; and it would be unfair to them to reward Gorton's presumption by giving him a signed version of his "message" on White House stationery.

Whether Gorton's instant request is granted or not, however, it really is imperative that he be told, politely but in no uncertain terms, that authorized use of the President's name or signature is a subject the White House takes seriously; that no one outside the White House, in the Senate or elsewhere, has any right to authorize Presidential messages; and that this kind of incident really must not recur.

cc: James A. Baker, III ←
Dodie Livingston

THE WHITE HOUSE

WASHINGTON

September 15, 1983

MEMORANDUM FOR: JIM BAKER

FROM: FRED FIELDING

The attached talking points regarding the timing of the creation of the re-election committee are forwarded for your information. It is of utmost importance that you review these in the event Senator Laxalt meets with the President this afternoon. If you have any questions regarding the legal issues, Sherrie Cooksey can address them.

Talking Points

As you know, we had agreed that on October 15 Ed Rollins would leave the White House and establish a political committee for your re-election. I will be the Chairman of that Committee and Bay Buchanan will be its Treasurer. We had agreed that this committee will be "authorized" by you.

Under Federal election laws, the day you authorize the creation of a political committee on your behalf and it spends more than $5000 or receives more than $5000 in contributions (which realistically is DAY 1), you are legally a candidate for re-election. However, under the election laws, you are not required to file a statement of candidacy with the FEC until 15 days after the creation of your authorized principal campaign committee.

As a result of those laws, you had agreed that on October 15 a re-election committee could be established and on November 1 you would file a statement of candidacy with the FEC.

In order for the re-election committee to begin functioning on Day 1 of its establishment, Bay Buchanan has estimated that we will need at least $250,000 for payment of lease and telephone deposits and the initiation of political and fundraising activities. To obtain those funds Bay Buchanan has been negotiating with representatives of the Riggs Bank to obtain a $500,000 loan on DAY 1 of the committee's establishment. That loan will be secured by a pledge of Treasury bills owned by your previous campaign committees.

Legally, the only source of funds for start up costs for the re-election committee (other than through contributions) is the funds of your old campaign committees; however, since those funds are now legally your property, the Riggs Bank must have some evidence of your authorization of the use of those funds as collateral for loans to your new authorized campaign committee.

Riggs Bank is prepared to approve that loan, but as a prerequisite to their approval, they have requested copies of the statements of authorization and candidacy that you must file under the Federal Election laws by DAY 15 of the re-election committee's existence. That means that you would have to sign your FEC statements and acknowledge that, legally, you are a candidate, on DAY 1 (October 15) and not, as we had originally agreed, on DAY 15 (November 1).

It is possible that the Riggs Bank will accept a letter from you to me authorizing the creation of a re-election committee, rather than insisting on copies of the actual papers that must be filed with the FEC, but in any event you would have to acknowledge in writing that for purposes of the Federal election laws you are a candidate for re-election on DAY 1 if we are to receive a loan that day from Riggs Bank.

We have reviewed this question and our lawyers have determined that it would be unwise and possibly illegal for the Riggs Bank to authorize a loan to the re-election committee without receipt of your authorization. This is because if some tragedy should befall you and preclude you from signing the required statement of candidacy and authorization papers in the 15 day period between the authorization of the loan and the day you must file your statement of candidacy with the FEC, the bank would have authorized a loan which could not be legally collateralized by the use of your old campaign funds.

Furthermore, since Bay and I will be signing with the bank for this loan, we could be held personally liable for any monies that had been spent by the Committee during that period.

The net result of this is that for the re-election committee to begin its operations with sufficient funds available to rent office space and install telephones, much less do any political activities, we need your signature on the statements of candidacy the day the committee is established.

Because of this bank loan problem and because politically and legally it is much cleaner for you to acknowledge that you are a candidate for purposes of FEC laws and you have authorized the formation of a re-election committee on the day the re-election committee is established, I urge you to agree to sign those papers and fully authorize the establishment of a re-election committee on October 15 of this year. In preparing such papers, we can, of course, make it clear that you have not made your final decision to be a candidate but have merely authorized the establishment of a re-election committee; but the fact remains that <u>legally</u> you will be a candidate for re-election.

September 15, 1983

MEMORANDUM TO SENATOR PAUL LAXALT

FROM: JOE RODGERS

We absolutely must mail our direct mail solicitation in November. We cannot do so unless we start on or about October 15 to prepare our materials. We cannot begin to prepare our materials until we have an authorized Committee to Re-Elect Ronald Reagan the President.

The reasons for our urgency are as follows:

1. We promised the RNC and the Senatorial and Congressional Committees that we would mail in November and be out of the mails by March 30, 1984. They have agreed to defer their membership renewal mailings until December. If they wait any longer, they will destroy their effectiveness in what has been traditionally their most productive fund-raising season. We need from November 1 to at least March 30 to raise the $16 million we are required to raise to take maximum advantage of federal matching funds.

2. Until we have our authorized re-election committee, we cannot take effective legal action to stop the outrageous fund-raising activities of such bogus groups as Citizens for Reagan and the Committee to Re-elect Reagan, which are using the President's name to milk money from loyal supporters of the President, which we will then be unable to tap. Moreover, the sponsors of these groups are not now in the direct mail field solely out of their affection for the President.

3. If we do not have an authorized re-election committee soon, we will lose very valuable (and anxious) people to other friendly groups, such as Citizens for America and Americans for the Reagan Agenda, which cannot legally have personnel who overlap with the re-election committee.

Republican
National
Committee

Roger Allan Moore
General Counsel

Reply to:
Room 2400
225 Franklin Street
Boston, Massacusetts 021?
(617) 423-6100

PRIVILEGED AND CONFIDENTIAL

September 14, 1983

MEMORANDUM FOR SENATOR LAXALT

We advised Bay Buchanan and, through her, you and Ed Rollins over the telephone Monday night that we strongly advise against any committee to Re-elect Ronald Reagan the President ("R3TP") from taking any action involving the receipt or expenditure of funds unless and until the President signs the Statement of Candidacy on Federal Election Commission Form 2 (the "Statement") whereby the President states, "I hereby designate the following named political committee as my Principal Campaign Committee for the 1984 elections." The only other information required on this form is the name of the committee, party affiliation, office sought, and addresses. (A copy of FEC Form 2 is attached as Exhibit 1.) It is also possible, at the time the Statement is signed, to file with the Federal Election Commission ("FEC") a letter addressed to you as chairman of the authorized committee indicating that the President is continuing to defer making a formal declaration of candidacy. (See sample letter addressed to you

attached as Exhibit 2, as well as a copy of a letter dated January 2, 1983, from Walter F. Mondale to Michael S. Berman, attached as Exhibit 3, which was dated the same day as, and submitted to the FEC, with Mondale's Statement.)

Our reasons for this advice are:

1. The current plan is to finance the first few days of operations of R3TP with a $500,000 loan from Riggs National Bank, which is to be fully collateralized by a pledge of $525,000 in treasury bills held by the 1979-1980 Reagan for President primary campaign committee. Such a pledge is legal only if these assets are pledged to a committee authorized by the President. Under no circumstances can R3TP do anything, by way of receiving or spending money, until it is authorized by the President, at least orally. While it is true that the candidate has 15 days after he orally authorized the commencement of operations to file the Statement (which may be by a letter mailed by registered mail within those 15 days), if the Statement is never filed, for whatever reason, the pledge would be illegal and those participating in it could be subject to civil and criminal sanctions, including personal liability for the funds spent. These persons include the trustees of those funds: Ed Meese, Lyn Nofziger, Bay Buchanan, Loren Smith, Curtis Mack, Scott Mackenzie, and Ron Robertson.

2. It has also been contemplated that, immediately upon its formation, R3TP would take out a line of credit from the same bank for $3,000,000, which would become available initially when R3TP qualifies for federal matching funds ($5,000 from each of 20

states in contributions of $250
the first 15 days after R3TP co
currently scheduled signing of t
Riggs Bank has flatly stated tha
credit, nor the fully collateral
above, without written evidence
R3TP as his principal campaign c

While it is conceivable, b
could be talked out of its posit
because:

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the President's intentions by w
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and us, as well as possibly Ji
officials.

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the legal exposure with refer
nificant. The legal exposur
be minimal since there is no
credit until the President s
effort as far as Riggs Bank
failure, would be regarded

2.3 A partn
for the Riggs Bank, is Gen

Committee, and it is almost certain that this effort to obtain a loan and a line of credit without written Presidential authorization would soon become publicly embarrassing knowledge.

There are other documents which the law requires the President to sign in the course of qualifying for federal matching funds, but these requirements are the same however we proceed.

In summary, within the context of the shorthand which we have been using, for the reasons stated, we are urging the elimination of the period between "Day 1," when R3TP commences orally-authorized operations and "Day 15," when the President confirms his previous oral authorization by signing the Statement. The risks of personal liability to those involved are too great, in our opinion, to justify receiving or expending any funds until the President has signed the Statement.

Whether the President signs the Statement and R3TP begins operations on October 17, or November 2, involves considerations upon which the President, you, and others are more qualified to express a judgment than we.

Roger Allan Moore

E. Mark Braden

Ronald E. Robertson

Enclosures

STATEMENT OF CANDIDACY

(see reverse side for instructions)

Name of Candidate (in Full)	2. Identification No.
	3. Party Affiliation
Address (Number and Street)	
	4. Office Sought
City, State and ZIP Code	
	5. District & State of Candidate

DESIGNATION OF PRINCIPAL CAMPAIGN COMMITTEE

Hereby designate the following named political committee as my Principal Campaign Committee for the _____ election(s).
(Year of Election)

NOTE: This designation must be filed with the appropriate office listed below.

(a) Name of Committee (in Full)

(b) Address (Number and Street)

(c) City, State and ZIP Code

DESIGNATION OF OTHER AUTHORIZED COMMITTEES

I hereby authorize the following named committee, which is NOT my principal campaign committee, to receive and expend funds on behalf of my candidacy.

NOTE: This designation should be filed with the principal campaign committee.

(a) Name of Committee (in Full)

(b) Address (Number and Street)

(c) City, State and ZIP Code

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

_____ (Signature of Candidate)

_____ (Date)

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

CANDIDATES FOR —

President mail to:
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

U.S. Senate mail to:
Secretary of the Senate
119 D Street, N.E.
Washington, D.C. 20510

U.S. House of Representatives mail to:
Clerk of the House
1036 Longworth Office Bldg.
Washington, D.C. 20515

For further information contact:
Federal Election Commission
Toll Free 800-424-9530
Local 202-523-4068

FEC FORM 2 (3/80)

EXHIBIT 2

DRAFT - 9/14/83

_____, 1983

The Honorable Paul Laxalt
United States Senate
Russell Senate Office Building
Washington, D. C. 20510

Dear Paul,

I am writing this letter in response to your decision to chair the Committee to Re-elect Ronald Reagan the President. I deeply appreciate your action. The work of your Committee will be of great help to me should I make a final decision to seek re-election.

Meanwhile, I recognize that due to the technical requirement of the law (including the requirement for the designation of a principal campaign committee), your Committee must file with the Federal Election Commission in view of the fact that you will be working on behalf of my candidacy. This letter will serve as my consent for the purpose of allowing you to form this Committee, and I request that Angela M. Buchanan serve as the Treasurer of this Committee.

Sincerely,

RONALD REAGAN

EXHIBIT 3

WALTER F. MONDALE

2550 M STREET, N.W., SUITE 500
WASHINGTON, D.C. 20037

83 JAN 3 A10:08

January 2, 1983

Michael S. Berman, Esquire
1900 M Street, N.W.
Washington, D.C. 20036

Dear Mike:

As you are aware, I have been actively considering becoming a candidate for President of the United States. To help resolve the very serious questions that bear on such a decision, an exploratory committee was formed last year. Since then, many people have offered me their counsel and support. This positive response has been most gratifying and encouraging.

Because many of the activities that need to be undertaken in the next few months would be facilitated by the formation of a campaign committee, this letter authorizes the redesignation of the exploratory committee as the Mondale for President Committee. This step will enable the committee to continue in full compliance, with the Federal Election Campaign Act of 1971 as amended. It is not, and does not imply, a formal declaration of my candidacy at this time.

Please convey my appreciation to the many people who have so generously offered their assistance in this complex and difficult effort to determine whether I should seek our nation's highest office.

Sincerely,

Walter F. Mondale

THE WHITE HOUSE
WASHINGTON

7/29/83

TO: EDWIN MEESE III
JAMES A. BAKER, III
MICHAEL K. DEAVER
RICHARD G. DARMAN
KENNETH M. DUBERSTEIN

FROM: FRED F. FIELDING

The attached is forwarded for your information.

House of Representatives

Committee on Post Office and Civil Service

Washington, D.C. 20515

TELEPHONE (202) 225-4054

July 27, 1983

Fred F. Fielding, Esq.
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Fielding:

The July 26, 1983, issue of the Washington Post indicates that you will be conducting a review of certain financial transactions involving United States Postal Service Governor John McKean and two members of the White House staff, Mr. Edwin Meese III and Mr. Michael Deaver.

The Committee on Post Office and Civil Service is vested by the rules of the House of Representatives with primary legislative and oversight jurisdiction over the operations of the United States Postal Service. Under the framework established by the Postal Reorganization Act of 1970, the nine Governors of the Postal Service are entrusted with virtually total policymaking control over this enormous public enterprise. We must be concerned by any allegations which suggest even the appearance of impropriety with regard to a Governor's nomination.

We, therefore, request that you provide us with the results of your review. We also are requesting the Comptroller General to conduct an independent review of the transactions, their timing in relation to Mr. McKean's nomination, and the comprehensiveness and timeliness of their reporting.

By making these requests, we are not implying that we believe any impropriety occurred. To the contrary, we wish only to build a complete public record which, we hope, will dispel any appearance of impropriety.

With kind regards,

Sincerely,

WILLIAM D. FORD
Chairman

ROBERT GARCIA
Chairman
Subcommittee on Postal
Operations and Services

MICKEY LELAND
Chairman
Subcommittee on Postal
Personnel and Modernization

ADMINISTRATIVELY SENSITIVE - not to be released
without authority of the Counsel to the President

THE WHITE HOUSE

WASHINGTON

July 7, 1983

MEMORANDUM FOR JAMES A. BAKER, III
CHIEF OF STAFF AND
ASSISTANT TO THE PRESIDENT

EDWARD J. ROLLINS
ASSISTANT TO THE PRESIDENT
FOR POLITICAL AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Establishment of a Presidential Re-Election Political Committee

This will respond to your request for our views as to when the President will be legally required to make a declaration or disavowal of his "candidacy" after Ed Rollins establishes a re-election committee for the President. 1/

The key issue with respect to how long the "Rollins committee" may operate before the President legally becomes a "candidate" is governed by whether the President "authorizes" its activities.

If the President authorizes establishment of the Rollins committee, he must register with the FEC as a "candidate" within 15 days after that committee receives contributions or makes expenditures aggregating in excess of $5000. Such registration may be accomplished either through the filing of a "Statement of Candidacy" with the FEC (FEC Form 2), or filing a letter with the FEC containing the same information as is required by that FEC form. 2 U.S.C. § 432(e) and 11 C.F.R. § 101.1(a).

1/ For comparison purposes, you had also asked for information on how the Carter re-election effort was established. According to FEC records, President Carter became a "candidate" under the Federal election laws on March 15, 1979, when he authorized Evan Dobelle to establish a committee to support his re-election and executed the required FEC "Statement of Candidacy" forms. Carter did not formally "announce" his candidacy for re-election, however, until many months later. In our situation, though, given the public interest in the President's decision about seeking re-election, I believe any filings he makes with the FEC will be considered newsworthy and would detract from the significance of any subsequent formal "announcement" of his decision to seek re-election.

The term "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office", but no longer includes pledges or promises to contribute. 2 U.S.C. § 431(8)(A). See also H.R. Rep. No. 422, 96th Cong. 2nd Sess. 7 (1979) (explaining reasons for deletion of "pledges" and "promises"). An "expenditure", however, includes "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office"; as well as any "written contract, promise, or agreement to make an expenditure." 2 U.S.C. § 431(9)(A). Assuming (as seems likely) that the Rollins committee would incur "expenditures" aggregating in excess of $5000 on the first day of its existence, the President would then have 15 days from the date of establishment of that committee to file a Statement of Candidacy with the FEC.

If the President does not initially authorize the establishment of the Rollins committee, however, he would have at least 30 days after the committee had registered as a "political committee" with the FEC to respond to any "disavowal requests" from the FEC with respect to such committee. The Rollins committee would be required to register as a "political committee" with the FEC within 10 days of receiving contributions or making expenditures aggregating in excess of $1000 in a calendar year. 2 U.S.C. § 431(4). Registering with the FEC involves filing a "Statement of Organization" (FEC Form 1) containing the name and address and type of committee that is being established, and a statement of whether the committee is authorized by a candidate. 2 U.S.C. §§ 433(a) and (b). Since the President will not have "authorized" the Rollins committee, Rollins should be able to state that his committee is "unauthorized" by any candidate. 2/

Upon receipt of this Statement of Organization, the FEC could, even though it will not have any facts before it that the Rollins committee has met the $5000 threshold mark, immediately send a disavowal of candidacy request to the President. Furthermore, it is possible, if not probable, that a complaint (accompanied by press releases to leading news outlets) alleging that the Rollins committee is "authorized", and that the President has failed to register as a "candidate" with the FEC as required by Federal law, could be filed with the FEC.

2/ The name of the Rollins committee, however, could include the President's name, even though Federal law precludes the use of a "candidate's" name in the name of an "unauthorized" committee, see, 2 U.S.C. § 432(e)(4), because the President will not yet be a "candidate".

In the case of an FEC "disavowal" request, the President would have 30 days to respond to the FEC. 11 C.F.R. § 100.3(a). In the case of a complaint, the President would have 15 days after receiving notice from the FEC of the complaint to demonstrate to the Commission that no action should be taken against him. 2 U.S.C. § 437g(a)(1).

RECOMMENDATION

We believe the more appropriate course is for the President to "authorize" the Rollins committee and be prepared to file a Statement of Candidacy with the FEC within 15 days of the establishment of that committee. 3/ To do otherwise may postpone the legal requirements for the President to file a "Statement of Candidacy" with the FEC, but could result in both the filing of a complaint with the FEC against the President and the public impression that the President is willing to engage in a legal subterfuge to manipulate the timing of any required statement of his candidacy for re-election.

3/ It should be noted that within 10 days of its establishment the Rollins committee will be required to register as a political committee with the FEC (assuming that it meets the $1000 threshold the day it is established); however, the President still has 15 days from the date that the Rollins committee meets the $5000 threshold to file a statement of candidacy with the FEC.

THE WHITE HOUSE
WASHINGTON

6/29/83

TO: JSB EH

FROM: *Richard A. Hauser*
Deputy Counsel to the President

FYI: ✓ thought you

COMMENT: should be aware

ACTION: of this.

For Rosenell Meeting

THE WHITE HOUSE

WASHINGTON

June 29, 1983

MEMORANDUM FOR JOHN S. HERRINGTON
ASSISTANT TO THE PRESIDENT
FOR PRESIDENTIAL PERSONNEL

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Under Secretary of Commerce
for Travel and Tourism

We have been advised that Donna Tuttle, wife of Bob Tuttle, is being considered for appointment to the above-referenced position. The process by which Mrs. Tuttle first came to be considered for this position raises concerns under the anti-nepotism statute, 5 U.S.C. § 3110. It is our understanding that Bob Tuttle made inquiries concerning the suitability of his wife for this position with Joe Ryan and yourself. The anti-nepotism statute prohibits a "public official" -- defined as an officer with authority "to recommend individuals for appointment, employment, promotion, or advancement" in an agency -- from advocating the appointment of a relative for a position in any agency "over which he exercises jurisdiction or control." 5 U.S.C. § 3110(b). Under 5 U.S.C. § 3110(c), an individual who benefits from a recommendation prohibited by § 3110(b) is not entitled to pay.

It is not clear whether a technical violation of the anti-nepotism statute occurred in this case. It is of course Mr. Tuttle's job to recommend individuals for Presidential appointment, and while his portfolio does not specifically include the Commerce Department, nor is that area strictly off limits. He may thus be considered to fit the definition of "public official" in the statute. The critical question so far as actual violation of the statute is concerned would thus appear to be whether Mr. Tuttle exercises jurisdiction or control over the Commerce Department. While he obviously does not with respect to the operations of the Department, the Office of Presidential Personnel does exercise jurisdiction with respect to Presidential appointments at Commerce, and such authority may be considered sufficient under the statute.

Quite apart from the question of compliance with the anti-nepotism statute -- on which no definitive answer is possible -- this appointment raises serious appearance problems. The media has focused considerable attention on similar appearance problems in the recent past, and can be expected to do so in this case. While we understand Mrs. Tuttle to be eminently qualified for the position in question, her qualifications are likely to be overlooked by those in the media and on the Hill who are interested in embarrassing the Administration with renewed charges of nepotism. All of the individuals involved have been forthright in raising this question with our office, and we do not mean to suggest the existence of any willful or actual "nepotism." Appearance problems do, however, exist, and at a minimum they should be raised with Messrs. Meese, Baker and Deaver.

bcc: James A. Baker, III✓

THE WHITE HOUSE

WASHINGTON

June 29, 1983

MEMORANDUM FOR EDWIN MEESE III
→JAMES A. BAKER III
KENNETH M. DUBERSTEIN

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Congressional Reaction to INS v. Chadha

As you know, at present, the Department of Justice has set up a working group to review the impact of the recent Chadha decision on legislative veto, to devise a recommendation for the Administration position.

In the interim it would seem to me that there is a very real danger that Congress may overreact to the Supreme Court's legislative veto decision and to take precipitous action to circumscribe executive power or take legal stands that will inevitably create confrontation with the Administration. It is my understanding that legislative proposals to curb executive and agency authority are already circulating, and various legislators have been issuing statements expressing their own views on the effect of the decision on particular statutes.

Therefore, at this point it would appear important for the Office of Legislative Affairs to meet with appropriate legislators and perform a calming function. It would be my recommendation that we adopt a position that, for the time being, we will comply with the "report" provisions of existing legislative veto statutes and that we will work closely with Congress to assess the effect of the Chadha decision. Establishment of such a low-key approach and cooperative tone will do much to dissipate Congressional fears and prevent Congressional overreaction.

It is important that the White House provide leadership in establishing this tone. The various departments and agencies have parochial interests at stake in any dealings with their respective committees, and are not in the best position, at least in the first instance, to conduct discussions at which broader principles of executive power are at stake.

THE WHITE HOUSE

WASHINGTON

R.F

June 27, 1983

MEMORANDUM FOR FREDERICK J. RYAN, JR.
SPECIAL ASSISTANT TO THE PRESIDENT
AND DIRECTOR OF SCHEDULING

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Honorary Life Membership for the President in National Rifle Ass'n

Thank you for forwarding for our review the letter from former Alaska GOP Congressman and current National Rifle Association President Howard Pollock offering the President "Honorary Life Membership" in the NRA, an honor Pollock states has been given to only 12 individuals in the 112-year history of the organization.

There is no legal prohibition on the President's acceptance of this honorary life membership. Generally, as you know, the President does not accept such offers; in this instance, however, he is already a member of the group in question (as noted in his recent speech to the NRA); and there is precedent for the President accepting "honorary life memberships" or the like in groups to which he already belongs.

In these circumstances, we have no objection to the President's acceptance of this membership. Consistent with standard policies on use of the President's name, however, the NRA should be politely but unequivocally advised, in the event the offer is in fact accepted, that the President's name (a) may not appear on any NRA letterhead, and (b) may not be used in connection with any NRA lobbying or fundraising efforts.

cc: Edwin Meese III
James A. Baker III
Michael K. Deaver
Faith Ryan Whittlesey

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without authority of the Counsel to the President

THE WHITE HOUSE

WASHINGTON

June 15, 1983

MEMORANDUM FOR JAMES A. BAKER, III
CHIEF OF STAFF AND
ASSISTANT TO THE PRESIDENT

EDWARD J. ROLLINS
ASSISTANT TO THE PRESIDENT
FOR POLITICAL AFFAIRS

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Permissible Activities of an "Exploratory Committee"

Ed Rollins has requested our views on those activities that may be undertaken by an "exploratory committee" without triggering a "disavowal of candidacy" request by the Federal Election Commission (FEC). An analysis of the permissible activities of an "exploratory committee" is set forth below.

The threshold issue for consideration here is what activities may individuals undertake on behalf of the President in preparation for the 1984 Presidential elections without requiring him to make a declaration or "disavowal" of his candidate status. As you know, a "candidate" is defined under the Federal Election Campaign Act (the Act) as "an individual who seeks nomination for election, or election, to Federal office" and who has either received "contributions" or "expenditures" aggregating in excess of $5000; authorized others to receive "contributions" or make "expenditures" on his behalf and those have aggregated in excess of $5000; or has failed to disavow the activities of individuals who have received "contributions" or made "expenditures" on his behalf in excess of $5000. 2 U.S.C. § 431(2) and 11 C.F.R. § 100.3. Hence, candidate status is determined by the amount of "contributions" or "expenditures" received or made on an individual's behalf; i.e., it is the raising or spending of money for the purpose of influencing any election for Federal office" that triggers Federal candidate status. 2 U.S.C. §§ 431(8)(A) and 431(9)(A).

The FEC, however, has stated that "funds received and payments made solely for the purpose of determining whether an individual should become a candidate are not" contributions or expenditures under the Act (emphasis added). 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1). Such funds received and payments made are typically called "testing the waters". Once an individual decides to become a candidate, the funds received and payments

made for "testing the waters" are retroactively designated as contributions and expenditures subject to the limitations, prohibitions and requirements of the Act (including the state by state expenditure limitations applicable to Presidential primary candidates accepting Federal matching funds). Id.

Hence, an "exploratory committee" may be established to raise and expend funds "for the sole purpose of determining whether [an] individual should become a candidate" without triggering an FEC "disavowal of candidacy request" to that individual. Such "exploratory committee", however, would not be required to register and report with the FEC because only those "political committees" that raise "contributions" or make "expenditures" aggregating in excess of $1000 must register and report with the FEC. See 2 U.S.C. §§ 431(4) and 433. (It should be noted that for publicity or other reasons, several "testing the waters" committees have registered with the FEC, e.g. the Cranston Presidential Advisory Committee.)

In interpreting the parameters of the "testing the waters" exemptions the FEC has attempted to distinguish between "activities directed to an evaluation of the feasibility of one's candidacy" and "conduct signifying that a private decision to become a candidate has been made." FEC Advisory Opinion 1981-32. Similarly, the FEC has stated that pursuing activities "as a means of seeking some affirmation or reinforcement of a private decision ... to be a candidate" would not be within the "testing the waters" exemptions of the Act. FEC Advisory Opinion 1982-3. In evaluating "testing the waters" activities, the Commission has consistently stated that the factual context of otherwise permissible activities could preclude those activities from falling within the exemption, i.e., where the facts indicated that an individual has moved beyond the deliberative process of deciding to become a candidate, and has in fact made the decision to seek nomination or election to Federal office. See FEC Advisory Opinions 1981-32, 1982-3 and 1982-19.

IMPERMISSIBLE TESTING THE WATERS ACTIVITIES:

1. The receipt of funds or the making of payments for general public advertising. 11 C.F.R. §§ 100.7(b)(1) & 100.8(b)(1).

2. The receipt of funds or payments made for activities designed to amass campaign funds that would be spent after the individual becomes a candidate. 11 C.F.R. §§100.7(b)(1) & 100.8(b)(1). The FEC has also stated that raising too much money for testing the waters purposes, i.e. more than is reasonably expected to be spent for such purposes, would likely result in those funds being viewed as contributions. As contributions they would count toward the $5000 threshold

for candidate status unless returned to the donors within 15 days of receipt. FEC Advisory Opinion 1981-32.

3. The establishment of a campaign organization. See FEC Advisory Opinions 1981-32 and 1982-19.

4. It should also be noted that while there is no set length of time for which "testing the waters" activities may last, the FEC has noted that "engaging in these activities over a protracted time period would appear to diminish their usefulness for testing the waters purposes and would conversely suggest that their effect as a means of building campaign support would be magnified." FEC Advisory Opinion 1981-32.

PERMISSIBLE TESTING THE WATERS ACTIVITIES:

1. Conducting a poll, telephone calls and travel to determine whether an individual should become a candidate. 11 C.F.R. §§ 100.7(b)(1) & 100.8(b)(1). This includes hiring independent contractors for polling, political opinions, communications or research and travel by a potential candidate and others for "testing the waters". FEC Advisory Opinion 1982-3.

2. Determining "political support" for potential candidacy. FEC Advisory Opinion 1981-32.

3. Organizing advisory groups on critical and substantive issues requiring expertise and knowledge, including those issues that would become campaign issues if the individual becomes a candidate. FEC Advisory Opinions 1982-3 & 1982-19.

4. Employing consultants to advise on the appropriate structure and procedures for a national campaign organization; but N.B. if the organization is established the activities would not be within the "testing the waters" exemption. FEC Advisory Opinion 1981-32.

5. Rental of office space and equipment for the purpose of compiling names and addresses of individuals who indicate an interest in organizing a campaign; but N.B. follow-up communications with such individuals could be outside the scope of the "testing the waters" exemptions. FEC Advisory Opinion 1981-32.

6. Forming and establishing a "testing the waters" committee so long as the name of such committee does not indicate candidacy, e.g. "Reagan in 1984" or "Reagan for President". Similarly, letterhead stationery may be used for such a committee so long as the information on such stationery does not contain connotations of candidacy, but is limited to connotations of "testing the waters". FEC Advisory Opinion 1981-32.

SUMMARY:

An "exploratory committee" may be established for the purpose of determining whether the President wishes to become a candidate for re-election; however, the activities and statements made by the President and his agents in connection with this exploratory committee must not indicate that a campaign organization is being set up or that a private decision by the President to seek re-election has, in fact, been made. Furthermore the monies received by such a committee should not exceed the amounts that are reasonably expected to be necessary for "testing the waters" rather than amassing campaign funds, and the longer that an "exploratory committee" is in existence, the more likely that it will be challenged as an authorized candidate committee rather than an exploratory committee.

At this juncture, we believe it is significant to point out that many of the activities that are within the bounds of "testing the waters" activities may be accomplished outside the umbrella of an "exploratory committee". For example, polls of relevant issues and the President's popularity can be paid for by the RNC; but if such polls are made under the "testing the waters" umbrella and the President becomes a candidate, the cost of those polls would be subject to the expenditure limitations applicable to Presidential primaries. Similarly, the RNC could maintain records of those individuals who have indicated a willingness to work in a national presidential campaign; but if the costs of maintaining those individual's names or compiling them were called "testing the waters" and the President became a candidate, the monies expended would be applied to the relevant state expenditure limitations. Furthermore, if we are actually planning to use "testing the waters" as a means for establishing a campaign organization, such activities would not fall within the FEC's interpretation of "testing the waters".

Please note that this memorandum does not address the details of the restrictions on fundraising of an "exploratory committee"; however, we will be happy to provide such guidance if you so request. If you have any questions regarding these issues please do not hesitate to call; if an exploratory committee is to be established we would be happy to work with the counsels for that committee to ensure that any activities undertaken by such committee will not require the President to disavow candidacy at any time.

[redacted]

THE WHITE HOUSE

WASHINGTON

ADMINISTRATIVELY SENSITIVE

April 26, 1983

MEMORANDUM FOR JAMES A. BAKER III
CHIEF OF STAFF AND
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Issues That Should Be Addressed
Prior to Any Announcement of Candidacy

Presupposing that the President may decide to seek re-election, summarized below are the major issues which should be addressed before the any announcement of candidacy is made. These issues are not urgent, but should be considered carefully as the question of any announcement is reviewed.

1. Acceptance of Federal matching funds.

Is there any real choice here

Do you intend to accept Federal matching funds for the primaries? If so, the timing of an announcement will obviously affect the length of time available for fundraising before the first primaries. If not, you should consider how this decision would affect the subsequent decision regarding acceptance of Federal funds in the general election. If the decision is to attempt to forego any federal funding, the question of how much time is necessary to raise the money anticipated as required for a successful non-federally funded campaign should be considered.

How in the general?

The obvious advantage of accepting Federal matching funds is that it frees the candidate from spending most of his time in fundraising activities. The disadvantages are that acceptance of Federal funds subjects the candidate to the state by state expenditure limitations and places enormous bookkeeping and accounting burdens on the campaign. From the strict perspective of legal compliance with the Federal election laws (and assuming you felt you could raise enough money to cover both the primaries and the general election), one would seek to avoid acceptance of Federal matching funds. However, in making such decision, one must consider the possibility of being accused of overspending in the election (if, in fact, we go over the applicable expenditure limitations), and the impact of such decision on the fundraising resources of other Republican candidates.

2. Selection of a Campaign Treasurer and General Counsel.

These individuals should be identified and selected, and be preparing for their tasks (at least informally), before the announcement. It probably takes at least 4 weeks to set up the accounting and legal controls necessary for FEC compliance. Also, the computer and software systems required for the campaign are virtually unique to Presidential political committees and as such are not instantly available. These accounting and legal controls must be considered, even if not in place, prior to announcement; otherwise, you could be flooded with contributions and have inadequate accounting controls to receive matching funds or maintain records for future fundraising efforts.

Other arrangements which should be made before an announcement and which should be made in consultation with the Treasurer and General Counsel include: selecting a comptroller and the necessary bookkeeping staff; identifying the bank which will serve as the principle campaign depository; setting up the necessary lock box operation with that bank; ascertaining the necessary arrangements for a national telephone agreement and system; obtaining an employer work identification number from the IRS; and deciding whether the campaign committee should be incorporated, and if so incorporating.

(Legal "candidate status" for the President could be avoided in all of the above either through considering any expenditures incurred as "testing the waters" expenses (under a broad interpretation of FEC rulings in this area); or by characterizing many of the expenditures incurred as exempt legal and accounting expenditures under the FECA.)

3. Rental space for the campaign committee.

Space needs will be determined in part by the decisions above. Although this decision and informal inquiries as to space availability need not be addressed until late summer (unlike the questions above); it should be resolved prior to any announcement.

I bring this question to your attention because the RNC may be looking for guidance from the White House as to whether the re-election committee would rent space from it before the RNC purchases a new building. The RNC's decisions about a new building should not be predicated on any assumption that a re-election committee would rent from them, as any rental agreement between the RNC and a re-election committee must be arms-length and at fair market value.

As discussed last Thurs.

THE WHITE HOUSE

WASHINGTON

June 15, 1983

MEMORANDUM FOR JAMES A. BAKER III
CHIEF OF STAFF AND
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: PATCO Clemency Suggestion

As you requested, I have reviewed the suggestion that the President grant clemency to a member of the Professional Air Traffic Controllers Union convicted as a result of participation in the illegal strike in August, 1981. For the reasons set forth below, I strongly recommend that such clemency not be granted.

The attached memorandum prepared by the Department of Justice summarizes the extent and present status of PATCO-related litigation. As is evident, that litigation has been extensive, and has proceeded on several fronts.

In addition to the initial civil contempt fines imposed on the union ($750,000) and the decertification order entered by the Federal Labor Relations Authority (confirmed by the Court of Appeals for the D.C. Circuit), 71 individuals were charged with violating 18 U.S.C. § 1918, the criminal anti-strike law. These cases yielded five convictions after trial, 45 pleas to criminal contempt and five convictions of criminal contempt. Also, 98 individuals were directly charged with criminal contempt, resulting in 60 findings of criminal contempt and 28 findings of civil contempt.

In addition, over 11,000 dismissed controllers filed appeals with the Merit Systems Protection Board. Initial decisions sustaining the discharges have been issued in over 10,500 cases, and review of thousands of discharge decisions is pending at various administrative and judicial levels, including 2,000 notices of appeal pending in the Court of Appeals for the Federal Circuit. The current rate of sustaining discharge decisions exceeds 90%. Finally, Justice reports that 13 cases involving some 700 former controllers, in which reinstatement or other relief against the FAA is being sought, are pending in Federal district and appellate courts. To date, no plaintiff has prevailed in these cases.

It is not clear precisely to whom the President would be granting clemency under the suggestion you asked me to review,

or the precise form that clemency would take. It is also not clear what "legal" impact, if any, a grant of clemency in one case would have on others. Since clemency is an act of grace in the President's discretion, theoretically he could act in some cases and not others. As a practical matter, however, clemency for one PATCO striker would presumably be extended to others similarly situated.

What is clear is that clemency would be out of sync with what has obviously been a broad, vigorous and consistent pattern of Federal enforcement of the anti-strike laws, which has included numerous criminal prosecutions. It is also clear that, from the outset, the President has taken a firm stand on the PATCO strike; equally as important, that stand has been widely supported by most citizens. Against this background, clemency would be perceived, and accurately so, as inconsistent with the stand the President has previously taken. At a minimum, questions would surely be raised about why the Government has devoted time and money to litigation and other enforcement efforts of the magnitude revealed by the Justice report if the President has now decided to grant clemency.

Simply from a public perception standpoint, any benefits that might accrue from acts of Presidential mercy -- which I think would be fairly minimal in any event -- would be more than outweighed by the apparent inconsistency with the President's previous insistence that the law be obeyed. Nor would clemency be likely to do much good in terms of relations with PATCO (now decertified) or other organized labor groups.

Were this a situation involving a single individual, the arguments for Presidential commutation or other clemency might be more compelling. Here, however, we are dealing with the results of a dramatic and highly publicized Presidential confrontation affecting thousands of former controllers, in which the President deliberately took a strong stand for full enforcement of the law. That stand was correct, and has had political benefits of the most legitimate kind -- namely, wideranging support among the populace for a position that it rightly viewed as forceful, courageous and right. The President should do nothing that undermines either the stand he has taken or public support for it; clemency, in my view, would do both.

Attachment

cc: James W. Cicconi

U.S. Department of Justice

Civil Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

MEMORANDUM

TO: Edward C. Schmults
Deputy Attorney General

FROM: J. Paul McGrath
Assistant Attorney General
Civil Division

SUBJECT: Status of Litigation Arising Out of the August 3, 1981 Strike by PATCO Against the Federal Aviation Administration

At your request, we have compiled statistics which reflect the United States' litigation efforts as a result of the August 3, 1981 strike by the Professional Air Traffic Controllers Organization ("PATCO").

The United States initiated 103 civil actions in district courts throughout the country to enjoin the strike. In the lead case, United States v. Professional Air Traffic Controllers Organization, et al., (D.D.C.), the United States obtained a nationwide temporary restraining order against the strike. After the order was violated by PATCO, other civil suits were commenced and adjudications of civil contempt were obtained against PATCO and its then-president, Robert E. Poli. On May 19, 1982, District Judge Gasch reduced to judgment in favor of the United States the civil contempt fines previously imposed against PATCO ($750,000) and Poli ($2,000). The Court held that enactment of Title VII of the Civil Service Reform Act of 1978 did not preclude the United States from seeking judicial relief to enjoin unlawful federal employee strikes. Judge Gasch also held that the fines were properly imposed against the two contemnors. By a separate order dated April 30, 1982, Judge Gasch denied an application for intervention by four working controllers, who had alleged that they and not the existing PATCO leadership represented PATCO and that PATCO could not be held in contempt for the strike.

The United States, having secured its judgments, has asserted a right of setoff in the Chapter XI Bankruptcy proceedings filed by debtor PATCO with respect to PATCO dues monies (totaling approximately $530,000) held by the FAA. United States Bankruptcy Judge Whalen granted summary judgment to the United States on this issue on July 9, 1982. PATCO's motion for reconsideration of this ruling was denied on September 29, 1982.

In Federal Labor Relations Authority v. PATCO, 685 F.2d 547 (D.C. Cir. 1982), the Court of Appeals affirmed the October 22, 1981 decision of the Federal Labor Relations Authority ("FLRA") revoking PATCO's status as exclusive bargaining agent for FAA controllers. It held that the FLRA acted within its discretion in imposing this remedy against PATCO, which had violated previous court orders enjoining unlawful strikes. The Court also affirmed the findings of a specially-appointed administrative law judge who, after a two-week evidentiary hearing, concluded that various ex parte communications with the members of the FLRA did not void their decision.

In seven of the civil actions instituted by the United States, adjudications of civil contempt were obtained. Approximately $5 million in fines were initially levied against PATCO locals, officers or individual strike participants. Because judicial challenges to the imposiiton of many of these fines are still pending and because the PATCO locals and officers have been judgment-proof, the amount of fines collected has been significantly less than this amount.

With respect to administrative proceedings, 11,015 individual controllers filed appeals of their discharges with the Merit Systems Protection Board ("MSPB"). Initial decisions sustaining the discharges were issued in 10,558 cases, while 351 initial decisions of discharge were reversed and approximatley 860 cases were withdrawn or dismissed for other reasons. Over 5,000 appeals are pending before the MSPB and it has sustained initial decisions in 164 cases. The FAA has filed petitions for review in 89 cases. The rate of sustaining the initial discharge decisions exceeds 90%. Over 2,000 notices of appeal from the MSPB proceedings are pending in the recently created Court of Appeals for the Federal Circuit.

The Criminal Division charged 71 individuals with violations of the criminal anti-strike provisions of 18 U.S.C. § 1918 and obtained five convictions after trial, 45 pleas to criminal contempt and five convictions of criminal contempt. Six cases were dismissed for alleged selective presecution and 10 cases were voluntarily dismissed. Criminal contempt charges were filed against 98 individuals; 60 findings of contempt were obtained, one finding of not guilty after trial and four criminal cases were dismissed. 28 individuals were held in civil contempt.

There are 13 cases pending in federal district or appellate courts involving approximately 700 former controllers, seeking reinstatement or various other forms of relief against the FAA. In none of these cases thus far, however, have there been verdicts or judgments in favor of plaintiffs.

THE WHITE HOUSE

WASHINGTON

May 3, 1983

MEMORANDUM FOR MARGARET D. TUTWILER
SPECIAL ASSISTANT TO THE PRESIDENT
AND EXECUTIVE ASSISTANT TO THE
CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Scheduled Visit by Franco Columbu

Thank you for your note alerting us to the scheduled visit on May 2 of Franco Columbu, body builder and chiropractor, to the Secret Service gym, as discussed in Dana Rohrabacher's April 28 memorandum. We contacted Dana regarding the event, and he advised that it had been cancelled due to Columbu's last-minute unavailability.

In any event, Dana advised that Columbu, currently Mr. Olympia, is an old friend of his from California who enjoys a high degree of name recognition among those interested in body building (i.e., several Secret Service agents, Ed Rollins, etc.). His trip to Washington was to have been at his own expense and, according to Dana, there was no quid pro quo for his visit and advice. He even declined Dana's offer to have a photograph taken of him giving training tips to Secret Service agents.

Columbu may try to reschedule a trip in a few weeks, but Dana is uncertain whether it will include a training session or whether they will just have lunch in the Mess. Dana agreed to notify us before rescheduling a training session.

Again, thank you for alerting us to this matter.

THE WHITE HOUSE

WASHINGTON

ADMINISTRATIVELY SENSITIVE

April 28, 1983

MEMORANDUM FOR HELENE VON DAMM
Assistant to the President
for Presidential Personnel

FROM: FRED F. FIELDING ORIGINAL SIGNED BY F.F.
Counsel to the President

SUBJECT: Part-Time Presidential Appointees
Registered as Agents of Foreign Principals

Following up on our conversation of this morning, set forth below is a list we have identified to date of current and prospective Presidential appointees to part-time positions who are registered as agents of foreign principals. Section 219 of Title 18, United States Code, prohibits a registered agent of a foreign principal from serving as a Special Government Employee (i.e., most appointees to part-time positions), unless the "head of the employing agency" certifies that the individual's service is "required in the national interest."

In accordance with the policy decision we discussed, each of these individuals should be notified immediately that his resignation is requested or that his appointment is not going forward, and replacements will have to be identified promptly.

I assume that your office will make these notifications unless I hear from you to the contrary.

Current Appointees

1. Roche, John P., Esquire — Agent For: National Energy Corp. (Trinidad & Tobago)

   Gov't Position: General Advisory Commission, Arms Control & Disarmament Agency. (PA/POP)

2. Manafort, Paul J., Jr. — Agent For: The Dominican Republic

   Gov't Position: Board of Directors, Overseas Private Investment Corp. (PAS/3 yr. term: appointed 9/28/81)

3. Anderson, Stanton D., Esquire — Agent For: Government of Haiti

Gov't Position: Advisory Committee on Trade Negotiations (PA/POP)*

4. Rossides, Eugene, Esquire — Agent For: Compagnie Financiere de Paris et des Pays Bas (France)

Gov't Position: Subcommittee of the Executive Committee of the President's Private Sector Survey (PA/POP)

5. Weidenfeld, Edward L., Esquire — Agent For: Consulate of San Marino; Supreme Advisory Council for Petroleum & Mineral Affairs (Saudi Arabia)

Gov't Position: Member, Administrative Conference of the U.S. (PA/ 3 yr. term: appointed 11/13/81)

6. Angel, Robert C. — Agent For: Japan

Gov't Position: National Advisory Council on Continuing Education (PA/3 yr. term: appointed 4/2/82)

7. Pfautch, Roy — Agent For: International Public Relations Co., Ltd. (Japan)

Gov't Position: National Voluntary Service Advisory Council (PA/POP)

Prospective Appointees

1. Allen, Richard V. — Agent For: Panama Canal Study Group (Japan) (previously registered as Financial & Business consultant; 9/4/73-1/3/75)

Gov't Position: Chairman, Presidential Commission for the German-American Tricentennial (PA/POP)

* It could be argued that, as a technical matter, he is not a Special Government Employee and, therefore, that 18 U.S.C. § 219 does not apply. However, in practical terms, the distinction between this Committee and those staffed by SGEs is not great.

2. McCloy, John J., Esquire

Agent For
Iceland
Japan
Brazil
Spain
England
France

Gov't Position: Presidential Commission for the German-American Tricentennial (PA/POP)

3. Garrett, Thaddeus, Jr.

Agent For
Taiwan Power Co. (Republic of China) (previously registered for Taiwan business in 1978)

Gov't Position: African Development Foundation (PAS)

4. Satterfield, David E., III, Esquire

Agent For
BAT Indus., Ltd. (Great Britain)
CSR, Ltd. (Australia)
Patson Pty, Ltd. (Australia)

Gov't Position: Board of Directors, Legal Service Corp. (PAS/3 yr. term)*

5. Best, Robert A.

Agent For
Panama Canal Study Group (Japan)
(previously registered for KBS Associates, Economist (Great Britain); 7/28/80-11/9/82)

Gov't Position: U.S. Advisory Commission on Public Diplomacy (PAS)

* It could be argued that, as a technical matter, he is not a Special Government Employee and, therefore, that 18 U.S.C. § 219 does not apply. However, in practical terms, the distinction between the Board of Directors and entities staffed by SGEs is not great.

cc: Edwin Meese III
James A. Baker, III ✓
William P. Clark, Jr.
Michael K. Deaver
John Herrington

THE WHITE HOUSE

WASHINGTON

4/25
Ed will tell RNC not to send this.

April 23, 1983

MEMORANDUM FOR MICHAEL K. DEAVER
ASSISTANT TO THE PRESIDENT
DEPUTY CHIEF OF STAFF

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: RNC Letter

We have reviewed the attached RNC letter and have serious concerns regarding it. The letter requests Members of Congress "to help convince Ronald Reagan to run for President again in 1984"; to sign a petition supporting the President for re-election in 1984; and to contribute to the RNC so that it can both convince the President to seek re-election and support the 1984 election campaigns of the President, Republican Members of Congress and state and local Republican candidates.

This letter, if sent out, could result in the FEC requesting the President to disavow "candidacy". Pursuant to FEC regulations, an individual becomes a candidate for Federal office if,

> . . . after written notification by the Commission that any other person has received contributions aggregating in excess of $5000 or made expenditures aggregating in excess of $5000 on the individual's behalf, the individual fails to disavow such activity by letter to the Commission within 30 days of receipt of the notification. [11 C.F.R. § 100.3(a)(3).]

Given the language of the RNC letter, the FEC could view any expenditures made in preparing and mailing it as expenditures on behalf of Ronald Reagan. If $5000 is spent on the letters, the FEC could request the President to disavow the activity. This is particularly likely in view of the fact that the RNC, even though it is a multi-candidate committee, could be designated as the authorized campaign committee of the President if he is a candidate for re-election.

More troubling, however, is the likelihood that the RNC will receive contributions in excess of $5000 as a result of this letter. Although it is clear that the RNC is soliciting contributions for more than the single purpose of supporting the re-election of the President, the fact remains that it

(1) is specifically soliciting funds and support for the re-election of an identified individual; and (2) could, as noted above, be the authorized campaign committee of the President.

Ed Rollins has previously advised that it is not desirable for the President to be placed in the position of having to "disavow candidacy." This policy seems particularly important with respect to activities conducted by the RNC.

In view of the foregoing, I strongly recommend that we neither authorize sending this letter in its present form, nor permit the RNC to send it without our "authorization." Before this letter is sent, if it is sent at all, certain changes must be made:

(1) all requests for support to convince the President to run again, including the request for signatures on a "President Reagan in 1984" petition should be eliminated;

(2) all statements that assume that the President will be a candidate [e.g., "several hard core liberals have announced they will run against President Reagan for President" (emphasis added); "no President in history has ever faced such a massive campaign to defeat him"; "without your help now President Reagan could lose"] should be eliminated.

cc: Edwin Meese III
James A. Baker, III ←
Edward J. Rollins

RNC LETTER

The attached letter for the Republican National Committee is not for the President's signature.

However, the RNC does request approval for the concept from the White House. As you can see, it is strongly supportive of the President's re-election.

April 6, 1983

Dear Mr. Foley:

Will you help convince Ronald Reagan to run for President again in 1984?

The President has been asked by many reporters if he will run for a second term. So far, the President says he has not made up his mind. He says he will know the answer "in time."

I believe the time is now. The answer must be yes.

And I am asking you, as a longtime supporter of President Reagan and the Republican National Committee, to help me make sure the President knows that each of his friends want him to run for a second term.

I also need your help to make sure the Republicans in Congress who support him (like you and I do) will have the funds they need to win in the 1984 elections.

Will you take just a few moments to read and sign the enclosed RNC "President Reagan in 1984" petition I have drawn up in your name, Mr. Foley?

It is important to me that you--one of the RNC's most dedicated supporters--are among the very first to convince President Reagan to run for office again in 1984.

So, please validate the enclosed official petition and be sure to mail it to me no later than April 17, 1983.

That is a very special date for President Reagan. It marks the third anniversary when he won enough delegates in primaries and caucuses to receive the Republican Presidential nomination in 1980.

We must show the president we support him. And we must show the anti-Reagan liberal forces on Capitol Hill we are ready to win again.

Already, several hard-core liberals have announced they will run against President Reagan for President. Jimmy Carter's Vice President, Walter Mondale, has already raised $ to defeat President Reagan. Ultra-liberal Senator Alan Cranston has raised $. And John Glenn, Gary Hart and a host of other left-wing Democrats (including George McGovern) are making plans to defeat President Reagan.

So are the big labor bosses. In fact, they plan to hold a big labor convention before the Democrat National Convention to hand-pick their nominee.

No President in history has ever faced such a massive, well-organized liberal Democrat campaign to defeat him.

That is why the President must know if you support him for a second term.

So, please sign the enclosed "President Reagan in 1984" petition and return it to me no later than April 17.

And when you do, will you please send another contribution to the Republican Committee?

Since President Reagan has not announced yet, he has no campaign committee. He has not raised one dollar for his re-election campaign so far.

That means the money the big liberals and left-wingers are raising now will be used for the next year to chip away and attack President Reagan 24 hours a day.

But they are not aiming at just President Reagan, either.

In fact, the biggest liberal of them all--Ted Kennedy--is campaigning and raising money for scores of ultra-liberal Senate and Congressional candidates right now.

Their targets are clear: First, the President. Second, all of the conservative Republican Senators and Congressmen who support him.

These are the very same men and women who the Republican National Committee helped elect in 1978, 1980 and 1982.

In the U.S. Senate alone, we face the burden of re-electing a total of 19 sitting Republican Senators. If we lose just four of these 19 seats, the liberal Democrats will take over the Senate once again.

In the House of Representatives, the Democrats hope to capitalize on their victories in 1982.

This time, however, they intend to elect a liberal veto-proff Congress. One which will fight President Reagan every inch of the way.

By sheer numbers alone, this is the most difficult challenge the Republican National Committee has ever faced.

Without your help now, President Reagan could lose. And we could lose the Republican controlled Senate and hand the liberals a veto-proof majority in the House.

That is why you, as a friend of President Reagan and a committed supporter of the Republican National Committee, must help lead the charge today.

Now, all the years of work, effort and prayers could be wasted if the well-financed Democrats win the Presidency and the Senate again in 1984.

It is because of this well-financed liberal campaign that we have been forced to increase the campaign budget of the Republican National Committee.to a full $.

Only by raising $600,000 in the next ten months can we be sure to hold onto the White House, the Senate and stop the drive for a veto-proof Congress.

To make sure we have the full $ to contribute to targeted conservative candidates, we must begin raising a bare-bones minimum of $600,000 no later than April 30.

Above all, we must convince President Reagan to lead the fight for re-election in 1984.

I believe President Reagan will run. I believe he will run because of the promises he has made to you to restore America's strength, reduce our taxes and balance our budgets in the years to come.

But the Presidency is a lonely job. And each day, when he picks up the newspaper, all he sees are the leftwing attacks against his plans and programs.

That is why your signed petition and contribution to the Republican National Committee is so critically important.

Your petition will let President Reagan know youa long supporter of the Republican National Committeestill believe in him and want him to serve a second term.

And your contribution to the RNC for as much as $ will mean we will have the funds we need to defeat the front of big-labor bosses, environmental extremists, anti-defense leftists and liberal Democrats.

Since the budget of the RNC has now been raised to $, I hope you will go so far as to consider an extra-large contribution, perhaps as much as $UPGRADE.

But whether you choose to send $MRC or (hopefully) $UPGRADE, I urge you to send it today along with your Republican National Committee "President Reagan in 1984" petition.

Your petition will be carefully assembled with the others we receive from each Republican National Committee supporter. Each one will be dated to let President Reagan know exactly when you decided to renew your commitment to him and the RNC for the coming campaign.

With your generous record of support for President Reagan, I am certain your name will be listed among the very first.

Like those defenders of Ameican freedom at Concord and Lexington, your support and petition now will show the big-government tyrants the conservative movement will not be defeated.

Again, I remind you--please be sure to mail your signed petition and contribution of $MRC or $UPG to the Republican National Committee as soon as you possibly can--and definitely before April 17.

Show President Reagan we need him!

Sincerely,

Frank Fahrenkopf
Chairman

P.S. Since mail can be delayed, please be sure to date your signature on the enclosed petition form so we can be sure to record when you signed it and sent your petition and check for $MRC and $UPGRADE to the Republican National Committee.

ADMINISTRATIVELY SENSITIVE - not to be released without authority of the Counsel to the President

JAB

THE WHITE HOUSE

WASHINGTON

April 11, 1983

Talk w/ EM; MS - Jus more on this.

MEMORANDUM FOR HELENE VON DAMM

FROM: FRED F. FIELDING

SUBJECT: Holdover Status of Federal Reserve Board Chairman

INTRODUCTION:

You have inquired of this office concerning the consequences of the expiration of the term of the Chairman of the Federal Reserve Board, and in particular whether the incumbent could hold over as Chairman until qualification of a successor. The pertinent statute provides that the Chairman of the Federal Reserve Board shall serve "for a term of four years." 12 U.S.C. § 242. Paul Volcker's term as Chairman expires August 5, 1983; his term as a member of the Board does not expire until January 31, 1992.

CONCLUSION:

In our opinion and that of the Department of Justice, the Chairman of the Federal Reserve Board cannot hold over; in the event of a vacancy, the President must designate an Acting Chairman. According to case law, such an acting official can only be appointed for a short period and in an "emergency" situation. The combined effect of these authorities is that, upon expiration of Chairman Volcker's term, the President may appoint any member of the Board Acting Chairman (including Volcker), but only if a nomination for Chairman is pending or soon to be submitted.

DISCUSSION:

In an opinion dated January 31, 1978, the Office of Legal Counsel of the Department of Justice considered the status of the Chairmanship of the Federal Reserve Board in the event the President's nominee was not confirmed by the time the incumbent's term expired. That opinion concluded that the statutory holdover provision applicable to members of the Board did not apply to the office of Chairman. The Chairman cannot hold over; his term expires when the statutory period has run. The opinion further concluded that the

Vice Chairman should not assume the responsibilities of the Chairman upon expiration of the Chairman's term. The statute provides that the Vice Chairman shall preside at Board meetings in the "absence" of the Chairman, 12 U.S.C. § 244, but the opinion concluded that the term "absence" referred to a temporary condition, not a vacancy.

The opinion determined that, when a vacancy arises in the office of Chairman while the President's nominee is awaiting Senate confirmation, the President should designate a member of the Board to serve as Acting Chairman. This was in fact done by President Carter on February 2, 1978, when he designated Arthur F. Burns, the previous Chairman, to serve as "Acting Chairman" until designation of a successor. Mr. Burns served as Acting Chairman until March 8, 1978, when G. William Miller was designated Chairman. (The need to have an Acting Chairman was occasioned by the fact that Mr. Miller was not confirmed as a member of the Board until March 3, 1978; at the time the office of Chairman did not require separate Senate confirmation, as it now does.)

The option of designating an Acting Chairman, however, would not seem to be available in the absence of a pending nomination or other circumstance indicating that the designation was only to cover a short-term, emergency situation. There is pertinent case law to the effect that the President cannot appoint "acting" officers in the face of statutes requiring Senate confirmation, in the absence of an emergency situation.

The leading case is Williams v. Phillips, 360 F. Supp. 1363 (D.D.C.), motion for stay pending appeal denied, 482 F. 2d 669 (D.C. Cir. 1973). President Nixon appointed Howard Phillips Acting Director of the Office of Economic Opportunity; the post of Director required Senate confirmation. The district court enjoined Phillips from taking any action as Acting Director of OEO, ruling that "in the absence of . . . legislation [providing for an acting director] or legislation vesting a temporary power of appointment in the President, the constitutional process of nomination and confirmation must be followed." 360 F. Supp., at 1371. The Court of Appeals noted that even if the power existed "to appoint an acting director for a reasonable period of time before submitting the nomination of a new director to the Senate," such a power would not justify the situation before it, in which Phillips had served as Acting Director for four months with no nomination having been submitted to the Senate. 482 F. 2d, at 670-671. The previously cited O.L.C. opinion specifically distinguished the Phillips case on the ground that in Phillips no name had been submitted to the Senate, while in the case considered in that opinion a nomination was pending.

cc: Edwin Meese III, James A. Baker, III, Michael K. Deaver

THE WHITE HOUSE

WASHINGTON

April 7, 1983

JAB R.F. P/S. 4/8 mdt

MEMORANDUM FOR JAMES A. BAKER, III
MICHAEL K. DEAVER

FROM: FRED F. FIELDING

SUBJECT: Retirement of James Coyne Campaign Debt

James Coyne has advised my office that he would like to hold a fundraiser to help retire the outstanding campaign debt owed to him by his campaign committee. We are prepared to give him appropriate guidance concerning conflict of interest and other matters in connection with such activity. Coyne is, however, presently paid as an SES employee of the Department of Commerce and accordingly is subject to the restrictions of the Hatch Act, 5 U.S.C. § 7324. That Act, and implementing regulations, 5 C.F.R. § 733.122(b), prohibit political fundraising activities on the part of covered federal employees. While Coyne's situation is unusual in that the contemplated fundraising is to retire a debt from a past campaign, neither the Act nor the regulations draw a temporal distinction, and I cannot confidently advise that Coyne would not run afoul of the Hatch Act's prohibitions.

The pertinent provisions of the Hatch Act do not apply to "an employee paid from the appropriation for the office of the President." 5 U.S.C. § 7324(d)(1). Accordingly, if Coyne were so paid, he could hold a fundraiser, subject to our standard advice on conflict of interest and related matters. To ensure that we encounter no Hatch Act problems, I recommend that Coyne's employment status be adjusted, if possible, so that he is "paid from the appropriation for the office of the President," at least until his fundraising activity is completed.

cc: John F.W. Rogers

THE WHITE HOUSE

WASHINGTON

March 30, 1983

MEMORANDUM FOR JAMES A. BAKER, III
CHIEF OF STAFF AND
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Summary of "Executive Privilege Related" Congressional Requests

For your information and reference, following is a brief summary of pending matters involving the Congress which are related to the issue of "Executive Privilege":

I. Requests for EPA "enforcement sensitive" documents

A. DINGELL request
STATUS: Memorandum of Understanding has been executed.
POSSIBLE FURTHER ACTION: An addendum to the Memorandum of Understanding may be necessary to ensure that further requests for new Superfund sites are treated consistently. One was received on March 24.

B. LEVITAS request
STATUS: Memorandum of Understanding has been executed. No further "executive privilege" problems anticipated.

C. SYNAR request
STATUS: Still being negotiated by EPA.

D. FLORIO request
STATUS: Still being negotiated by EPA.

E. SCHEUER request
STATUS: Still being negotiated by EPA.

F. STAFFORD request for documents for Superfund oversight
STATUS: Currently no "enforcement sensitive" documents have been requested; but such requests are anticipated by EPA.

II. Anticipated or Actual Requests for White House Testimony regarding EPA

A. DINGELL has indicated publicly that he intends to call Jim Medas to testify before his subcommittee on the question of political manipulation of the Superfund.

STATUS: To date, no official request has been made.

B. D'AMATO has been requested by members of his Subcommittee to request NSC Adviser Clark and Tom Reed to testify regarding Reed's appointment.

STATUS: To date, no official request has been made.

C. STAFFORD (at urging of MITCHELL) has indicated he will call or subpeona Jim Medas to testify about meeting(s) with Rita Lavelle.

STATUS: Meeting between White House Congressional Relations (and FFF?) and Stafford to be set up.

III. Requests to DOJ

A. RODINO request for all documents prepared by or in the possession of the Department relating to the President's exercise of executive privilege, the withholding of documents that Congressional committees have subpoenaed from the EPA, and the enforcement of contempt citations.

STATUS: DOJ responded byletter dated March 9, 1983, providing Rodino with all public documents relative to his request. Since then, Rodino has renewed his request for "access" to all internal DOJ memoranda on the subject of executive privilege and enforcement of Congressional subpoenas. DOJ is prepared to accede to Rodino's request.

B. FORD request for documents providing Departmental legal advice to the White House concerning the President's Private Sector Survey on Cost Control.

STATUS: DOJ and FFF discussed their concerns with Ford, information not protected by executive privilege was provided to Ford; no further requests from Ford have been made to date.

C. STAFFORD request for DOJ enforcement-related documents on a pending Superfund settlement in Alabama.

STATUS: DOJ is working with the Committee to respond to their request without providing "enforcement sensitive documents".

IV. Requests to the Department of Energy

A. DINGELL has requested documents from Ray Hanzlik, Director of the Economic Regulatory Administration, on the ERA oil pricing agreements; such request encompasses "enforcement sensitive" documents.

STATUS: Hanzlik has provided non-enforcement sensitive documents to Dingell; to date Dingell has not pressed for the enforcement sensitive documents.

V. Requests to the Department of Interior

A. Secretary Watt has advised that he anticipates a Congressional request for documents relative to his decision that Kuwait is a non-reciprocal territory under the Mineral Mines Leasing Act. Such a request would raise the same issues as those which were present in the President's first assertion of executive privilege.

VI. Requests to the Department of Commerce

A. GAO has requested from Commerce copies of documents relating to a Commerce § 232 report to the President on Ferroalloys. GAO has been advised that no Presidential decision has been made, and will not be until May; however, GAO is informally "requesting" access to these predecisional documents now.

B. SCHEUER request for decisional documents relative to the decision to sell weather satellites, and for Secretary Baldrige to testify.

STATUS: Commerce is preparing to comply.

VII. Requests to the Dpeartment of Labor (OSHA)

A. OBEY (House Labor Subcommittee) has requested OSHA Chief Auchter and aides to provide copies of appointment calendars to determine meetings with formaldehyde industry before a decision was made.

STATUS: Copies will be supplied; further charges and document requests are anticipated. Counsel's Office is trying to determine if problems exist.

VIII. Congressional Requests for FBI Background Investigation Materials

A. Requests for Testimony (partially identified above in part II)

1. D'AMATO (Chairman, Senate Subcommittee on Securities of the Senate Banking Committee) may feel compelled to acquiesce to the request of Senators Proxmire, Riegle, Sarbanes and Dodd, and call NSC Adviser William Clark, NSC Staff Member Richard Morris, and Tom Reed to testify regarding Reed's appointment to the NSC.

STATUS: To date, no request has been received.

2. DINGELL has requested the raw data of the FBI file on the Reed investigation, and any documents containing directions supplied by the White House, Justice Department or FBI officials. Dingell also wants to interview the FBI agents who conducted the investigation. (This will be the Hatch-Donovan-FBI type of inquiry again.)

STATUS: DOJ has yet to respond to the Dingell inquiry; however, since there is precedent for Congressional receipt of such information (i.e., the Hatch/Donovan inquiry) it is anticipated that Dingell will obtain access to this information and testimony from the FBI agents. The issue will then become whether Dingell will seek testimony from NSC staff, including Clark and Morris.

B. Requests for Documents

1. EXON request for the complete FBI file relative to Steven Bryen, Deputy Assistant Secretary of Defense. This request, as in the case of inquiries into the Tom Reed appointment, likely will result in the questioning of the justifications of the Department of Defense, (and possibly the White House) for granting a security clearance to Bryen, who was investigated by the FBI for possibly leaking classified information to Israel. NOTE: This is not an executive privilege issue per se, but is listed here because the issues raised are interrelated with the Reed inquiries. Last year FFF urged DOD to consider denying Bryen further access, and advised that we would not have "cleared" him. DOD disagreed, and declined to take action.

IX. Others (miscellaneous):

A. SEC: DINGELL has made broad requests for documents, including extremely sensitive open investigation files, Commission meeting records, etc. Thrust of inquiries center on (1) insider trading, (2) Tom Reed case, (3) SEC decision not to proceed against CITIBANK and MOBIL, (4) prior activities of John Fedders (enforcement chief), (5) lack of enforcement generally.

STATUS: SEC is apparently complying, with great concern over impact on pending cases.

B. OPM: DINGELL has made request for documents and information on the detailing and pay status of Tom Reed.

STATUS: OPM preparing to comply.

C. SCHEUER request of JAB III for Issue Alerts

STATUS: Provided; no further requests

D. LEAHY: Continuing inquiry into suitability of John B. Crowell (Assistant Secretary - USDA).

E. HATCH: Continued request for FFF testimony regarding Donovan clearance and background investigation, or letter from Justice stating FFF will not be produced.

STATUS: DOJ continues to negotiate with Hatch for alternatives.

F. DINGELL: Has called Anne Burford to testify in early April. Intuition is that this will become the committee forum to attack DOJ, using Burford's testimony.*

G. Several House committees have indicated they will call for hearings on U.S. Attorney Harris' failure to prosecute Burford for contempt; some have publicly stated a possibility of impeachment of Harris and the AG.