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DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. note	to Baker, 1p	1/31/--	~~P5, P6~~
2 memo	Fred Fielding to Robert Tuttle, re outreach program to key supporters, 4p	1/25/83	~~P5, P6~~
3 memo	Fielding to Baker, re activities triggering candidate status, 2p	12/9/82	~~P5, P6~~ CCB 10/15/00

RESTRICTIONS

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.

B-1 National security classified information [(b)(1) of the FOIA].
B-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
B-3 Release would violate a Federal statute [(b)(3) of the FOIA].
B-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

THE WHITE HOUSE

WASHINGTON

March 21, 1983

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

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: The Woodrow Wilson Award

Thank you for your inquiry as to the propriety of returning the $1,000 award you received as the recipient of The Woodrow Wilson Award.

I am advised that The Woodrow Wilson Award is presented annually by the President and Trustees of Princeton University to a Princeton alumnus "in recognition of distinguished achievement in the Nation's service." The Award includes a $1,000 check which was presented to you.

As such, this award is the type of monies received that is not considered to be an "honorarium"; nor is it a proscribed "supplementation of income" prohibited by 18 U.S.C. § 209. Rather, it falls into the exception within the law and the White House Staff Standards of Conduct which permit acceptance of such awards. Further, I do not see that acceptance creates an appearance of conflict of interest, as long as you do not deal with particular matters that affect Princeton University and the exception noted above is clearly established (e.g., Nobel Peace Prize, etc.).

I reviewed this matter with the Acting Director of the Office of Government Ethics on March 15, and he confirmed that there was no proscription to your acceptance of this award money. A quick check also reveals a 1974 and two 1977 opinions from the Office of Legal Counsel, Department of Justice, that support this decision.

At the time you must file your SF 278 reporting form for calendar year 1983, please consult with this office as to how to list and report this Award.

Again, thank you for seeking my advice on this matter.

THE WHITE HOUSE

WASHINGTON

February 25, 1983

MEMORANDUM FOR EDWIN MEESE III
Counsellor to the President

FROM: FRED F. FIELDING
Counsel to the President

SUBJECT: Decision in Law Suit Against the President's Private Sector Survey on Cost Control

On February 24, 1983 District of Columbia Federal Judge Gerhard Gesell granted the Government's motion for summary judgment and dismissed the complaint filed by the National Anti-Hunger Coalition against the PPSSCC, et al. In a fourteen page opinion (copy attached), the Judge made the following points:

1. While the Executive Committee of the PPSSCC is subject to the Federal Advisory Committee Act (FACA), it is abiding by the requirements of the Act and Plaintiffs' claim for access to the PPSSCC's decision making process will be satisfied by the open meetings to be held by the Subcommittee of the Executive Committee.

2. The PPSSCC task forces are "staff units" not subject to the open meeting and document disclosure requirements of FACA; in the words of the Act, the task forces were neither "established or utilized by" the President or any agency "in the interest of obtaining advice or recommendations."

3. Plaintiffs have no right to have their representatives (food stamp recipients) placed on the appropriate task forces; in view of the purpose of the PPSSCC ("to apply to federal programs the expertise of leaders in the private sector with 'special abilities to give detailed advice on the cost-effective management of large organizations'"), the committee is "balanced" ("the President of necessity gathered the Committee members not from the public at large, but from the private sector").

4. The Judge concluded with a two page statement on the shortcomings of FACA, describing the Act as "another example of unimpressive legislative drafting . . . obscure, imprecise, and open to interpretations so broad that in the present context . . . it would threaten to impinge unduly upon prerogatives preserved by the separation of powers doctrine." As Congressman Ford was one of the principal drafters of FACA, the impact of the opinion on his investigation into the PPSSCC should be watched.

cc: Craig Fuller (with attachment)
M.B. Oglesby (with attachment)
James A. Baker, III (with attachment)✓

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

NATIONAL ANTI-HUNGER COALITION, ET AL.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 82-3592
EXECUTIVE COMMITTEE OF THE PRESIDENT'S PRIVATE SECTOR SURVEY ON COST CONTROL, ET AL.,	)	
Defendants.	)	

MEMORANDUM

This case comes before the Court on cross-motions and requires the Court to interpret the application of the Federal Advisory Committee Act, 5 U.S.C. App. I, as it impinges on an advisory committee survey now being conducted for the President at his request.

On February 18, 1982, President Reagan announced his intention to establish a "Private Sector Survey on Cost Control in the Federal Government." Its purpose was to call on the expertise of "leaders from the business, labor, and academic communities" to obtain detailed management and cost control advice with a view towards reducing runaway costs in the federal sector.[1/]

By Executive Order No. 12369, 47 Fed. Reg. 28899 (July 2, 1982), the President established the Executive Committee of the Private Sector Survey. The Executive Committee was

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1/ July 15, 1982, White House Press Release at 2, attached to plaintiffs' motion for a preliminary injunction, filed December 22, 1982.

to be composed of no more than 150 citizens appointed by the President from the private sector.[2/] It was to conduct in-depth reviews of Executive branch operations and to advise the President, the Secretary of Commerce and the heads of other federal agencies.

The Executive Order also provided that "[t]he Committee is to be funded, staffed and equipped . . . by the private sector without cost to the Federal Government." Id. To implement this objective, the Foundation for the President's Private Sector Survey on Cost Control was established. The Foundation, a non-profit corporation of the District of Columbia, made an agreement with the Secretary of Commerce on July 7, 1982, under which it was to provide assistance to the Committee including facilities and staff support. The Foundation's Management Office has organized thirty-six "task forces," each co-chaired by two or more members of the Committee, to do the "preliminary work of the survey, including fact-gathering, statistical evaluations, and the formulation of preliminary reports."[3/] Twenty-two of the task forces are assigned to study particular agencies, and the remaining fourteen are studying cross-agency functions. Apart from the chairmen, none of the task force members are

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2/ The President increased the size of the Committee to not more than 170 members by Executive Order 12398, 48 Fed. Reg. 377 (January 5, 1983).

3/ Affidavit of Kenneth Millian at 6, 7, filed with defendants' motion to dismiss, January 20, 1983.

members of the Committee, nor do the task forces have any authority to make recommendations to agencies or to the President.

Plaintiffs are individual recipients of federal food assistance benefits and the National Anti-Hunger Coalition, a group whose primary objective is "alleviation of hunger and malnutrition in this country through the participation of poor persons in policy decisions which affect their lives." Plaintiffs' memorandum filed December 22, 1982, at 6. Because of their concern that the Survey's submissions to the Committee may affect benefits available under federal food assistance programs, plaintiffs first sought access under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. I, § 10, to all documents being generated by three task forces reviewing federal feeding programs. That access was denied and this suit followed.

Plaintiffs allege that the Survey is in violation of the FACA because the membership of the Executive Committee is not "balanced," as required by that Act, and because the task forces are "subcommittees" covered by the Act and consequently must give plaintiffs access to their documents and permit plaintiffs to participate in task force meetings and activities being conducted to develop initial proposals for the Survey. Plaintiffs seek a preliminary injunction granting full relief and defendants in turn have filed a motion to dismiss alleging that plaintiffs lack standing under the FACA and asserting that in any case neither the

Executive Committee nor the task forces are operating in violation of that Act. Depositions have been taken and affidavits and documents filed. The parties have agreed the motions should be treated as cross-motions for summary judgment and after full argument and briefs the matter is ripe for determination.

I. The Federal Advisory Committee Act

The FACA defines an "advisory committee" as follows:

> The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is--
>
> (A) established by statute or reorganization plan, or
> (B) established or utilized by the President, or
> (C) established or utilized by one or more agencies,
>
> in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, ...

5 U.S.C. App. I, § 3(2).

All advisory committees meeting this definition are subject to numerous requirements. Committee meetings must be open to the public, notice of meetings must be published in the Federal Register, and all records, reports, and other documents generated by the committee must be open to public inspection. 5 U.S.C. App. I, § 10. There is also a requirement that membership of the committee be "balanced in terms of the points of view represented." 5 U.S.C. App. I, § 5(b)(2).

II. Standing

Defendants at oral argument acknowledged that, under several recent cases in this Circuit, plaintiffs have standing to challenge violations of § 10 of the FACA, which outlines required advisory committee procedures such as open meetings, access to documents and records, and so forth. The requirement of "balanced" membership, however, occurs in § 5 of the Act. Because no court has actually granted standing under that section, defendants still argue that no judicial review is available as to that section. In Physician's Education Network, Inc. v. HEW, 653 F.2d 621, 622-23 (D.C. Cir. 1981), this Circuit dealt with a plaintiff alleging unbalanced membership under § 5 of the FACA. In dicta, the court noted that a plaintiff denied actual representation on an advisory committee would have standing under the FACA. The Court's discussion of standing made no distinction between requirements under § 5 and requirements under § 10 of the Act. Nor is any distinction readily apparent to this Court. Under the circumstances of this case plaintiffs will be granted standing to challenge committee membership as well as to question the committee's compliance with the procedural requirements of the Act.[4/]

4/ Plaintiffs have also alleged a cause of action against defendants under the Administrative Procedure Act (APA), 5 U.S.C. § 706, apparently to support their view that judicial review of defendant's actions is available. Plaintiffs' memorandum in opposition to defendants' motion to dismiss, filed February 4, 1983, at 12. In particular,
(footnote continued on p. 6)

III. The Executive Committee

As defendants concede, the Executive Committee is subject to the Act's requirements. Defendants allege, and plaintiffs do not dispute, that the Executive Committee has complied and will comply with the procedural requirements found in § 10 of the Act. The Executive Committee has already held an open, public meeting on February 4, 1983, in full accordance with FACA requirements. A subcommittee consisting of 30 committee members, also subject to FACA requirements, was created at that meeting to conduct a series of further public meetings commencing in March of 1983 at which the subcommittee will consider findings and recommendations drafted by task forces and cleared through the Management Office of the Foundation. Those findings and recommendations will be available to the public for written comments at least two weeks before they are considered at a meeting of the subcommittee. After reviewing the task forces' material and the public comments thereon the subcommittee will formulate recommendations to be sent to the President. The full Executive Committee will be reconvened, again in accord with the FACA, to formulate a

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(footnote continued from the preceding page)
plaintiffs allege that defendant Department of Commerce has acted arbitrarily and capriciously because the Committee and task forces do not have a "balanced" membership as required by the FACA and Commerce's implementing guidelines. Because the Court finds that plaintiffs have standing it is not necessary to address the issues of whether plaintiffs have a cause of action under the APA and whether the events complained of constitute "agency action" reviewable under its provisions.

summary recommendation which will also be sent to the President. There is no dispute that plaintiffs will be able to participate in the Executive Committee's and subcommittee's formulation of recommendations.

In addition to these procedural requirements, however, § 5 of the FACA also requires that "the membership of the advisory committee . . . be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee." 5 U.S.C. App. I, § 5(b)(2). Plaintiffs contend that the Executive Committee is not, in fact, "balanced." They note that virtually all of the Committee members are executives of major corporations; one is from the labor community, and two are academics. They urge a lack of balance because there are no public interest advocates and no beneficiaries of federal food assistance programs such as the individual plaintiffs among the Committee's membership.

Nowhere in the FACA is the meaning of the term "balanced" explained. Interpreted most broadly, it would take far more than a mere 150 individuals to ensure that every point of view concerned with the financial administration of federal programs be represented. Congress implicitly recognized the unworkability of such a requirement when it described "balanced" in terms of "the functions to be performed by the advisory committee."

In this case, the function to be performed by the Private Sector Survey is narrow and explicit. The

President's express intent in establishing the survey was to apply to federal programs the expertise of leaders in the private sector with "special abilities to give detailed advice on cost-effective management of large organizations." White House Press Release, supra, at 1. In order to accomplish this objective, the President of necessity gathered the Committee members not from the public at large, but from the private sector. He selected those who have experience in the fiscal management of large private organizations. Surely Congress did not intend to prohibit the President from seeking specialized advice and while one may speculate that different choices might have been made to accomplish the President's objective the simple gathering of a discrete group of experts in a particular narrow field is not in itself enough to render such an advisory committee unbalanced in the sense of the FACA.[5/]

5/ Plaintiffs have alleged that the Committee has departed from its narrow mandate and in fact is researching and considering substantive changes in federal programs. The sole support for this contention is the affidavit of Robert Greenstein, the director of a private consulting organization, who claims that some members of a task force met with him to discuss entitlement programs and "clearly indicated in the conversation that [they] were looking at basic policy changes involving benefit levels in programs such as food stamps, as well as management and administrative issues." Affidavit of Robert Greenstein at 2, attached to plaintiffs' motion for a preliminary injunction, filed December 22, 1982. The remarks and opinions of a task force member, speaking with a private consultant, are not enough to indicate that the task forces are in fact developing recommendations for substantive program changes. Deposition testimony taken by plaintiffs suggests that task force members in fact regard their role as one of administrative and management experts only. See Deposition of John Bode, filed February 10, 1983, transcript at 45 (Bode Tr.); Deposition of Mary Jarratt, filed February 10,

(footnote continued on p. 9)

The "imbalances" to which plaintiffs point are, in fact, simply irrelevant to the ability of the Executive Committee to perform its limited function fairly and impartially. To require the Committee to contain members of public interest groups or members of the public receiving federal benefits would operate not to "balance" viewpoints but to change the cost-control function of the "private sector" survey. Plaintiffs have failed to demonstrate any imbalance in the Executive Committee within the meaning of the FACA. Thus it is unnecessary to confront plaintiffs' far-reaching suggestion that Congress contemplated that the courts should be placed in the role of reviewing the President's choice of advisors.6/

IV. The Task Forces

Plaintiffs further allege that the task forces utilized by the Foundation, as described earlier, are "advisory committees" under the FACA and therefore also subject to the

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(footnote continued from preceding page)
1983, transcript at 5 (Jarratt tr.); and Deposition of Richard W. Strauss, filed February 10, 1983, transcript at 46 (Strauss tr.). More importantly, the task forces completely lack any authority to recommend substantive policy changes and there is no indication that either the President or any agency would solicit or accept the views of a task force member on any substantive issues.

6/ It is also unnecessary to reach defendant's argument that, because the requirement of balanced membership is described in the FACA as a "guideline" which "shall be followed by the President" to the extent it is "applicable," 5 U.S.C. App. I, § 5(c), it in fact imposes no requirement of compliance on the President and is merely hortatory.

same procedural requirements as the subcommittee and the Committee itself. The Court, however, agrees with defendants that the task forces are not subject to FACA requirements. They do not directly advise the President or any federal agency, but rather provide information and recommendations for consideration to the Committee. Consequently, they are not directly "established or utilized" by the President or any agency "in the interest of obtaining advice or recommendations." 5 U.S.C. App. I, § 3(2).

There is no question that the task forces are intimately involved in the gathering of information about federal programs and the formulation of possible recommendations for consideration of the Committee. That is not enough, however, to render them subject to the FACA. The Act itself applies only to committees "established or utilized by" the President or an agency "in the interest of obtaining advice or recommendations for the President or one or more agencies." 5 U.S.C. App. I, § 3(2) (emphasis added). The Act does not cover groups performing staff functions such as those performed by the so-called task forces.

The task forces at issue do not provide advice directly to the President or any agency, but rather are utilized by and provide advice to only the Executive Committee, which then provides advice to the President or agency. The

distinction is not just a semantic one.[7/] Before the Committee can produce final recommendations, it must gather information, explore options with agencies to get comments and reactions, and evaluate alternatives. Plaintiffs admit that, under their proposed interpretation of the Act, the procedural requirements of the FACA would apply to these preliminary actions. But surely Congress did not contemplate that interested parties like the plaintiffs should have access to every paper through which recommendations are evolved, have a hearing at every step of the information-gathering and preliminary decision-making process, and interject themselves into the necessary underlying staff work so essential to the formulation of ultimate policy recommendations. The language of the statute itself distinguishes between advisory committee members and advisory committee staff. Compare 5 U.S.C. App. I, § 5(b)(2) with § 5(b)(5). Staff would be expected to perform exactly the sort of functions performed by the task forces at issue -- gathering information, developing work plans, performing studies, drafting reports and even

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7/ See Lombard v. Handler, 397 F. Supp. 792 (D.D.C. 1975), aff'd without opinion, 546 F.2d 1043 (D.C. Cir. 1976), cert. denied, 431 U.S. 932 (1977) (the Environmental Protection Agency entered a contractual relation with the National Academy of Sciences under which the Academy conducted certain studies. The academy in turn relied on its Committee on Motor Vehicle Emissions (CMVE). The CMVE was held not to be a committee subject to FACA in part because "it appears that the E.P.A. is "utilizing" the Academy itself, and not the C.M.V.E." Id. at 800).

discussing preliminary findings with agency employees.

There is no reliable evidence that the task forces at issue have gone beyond such functions and have actually started advising agencies on policy recommendations. If the task forces were in fact providing advice directly to agencies, they might indeed be functioning as advisory committees within the meaning of the Act. However, not only do the task forces lack authority to do this but plaintiffs have wholly failed to demonstrate by deposition or otherwise that such is the case. Defendants, challenging plaintiffs' assertion, point to depositions taken during the course of plaintiffs' discovery which suggest that the task force members in fact were not advising agencies and were completely aware they lacked authority to do so. The depositions also suggest that the agency employees meeting with the task force members did not regard their discussions as advisory and had no intention of taking any action based on those discussions. Bode tr. at 26, 28, 53-57, 50; Jarratt tr. at 28, 34-36; Strauss tr. at 53-58. In sum, plaintiffs have completely failed to introduce any evidence suggesting that the task forces are in fact operating in an advisory capacity rather than simply providing information and draft proposals to the Executive Committee.

V. Conclusion

It is clear that Congress in passing the FACA wished to create some controls and standards governing the advisory committee process, to control the proliferation and expense

of such committees and to ensure that Congress and the public retain access to information regarding their number, membership and activities. 5 U.S.C. App. I, § 2. However, the statute that resulted is another example of unimpressive legislative drafting. It is obscure, imprecise, and open to interpretations so broad that in the present context at least it would threaten to impinge unduly upon prerogatives preserved by the separation of powers doctrine. Not surprisingly, litigants seize on such uncertainties and may try to press statutory claims beyond constitutional boundaries. The courts do not welcome their role in such disputes. Many with considerable merit on their side criticize the involvement of federal courts in matters of this kind although the fault lies primarily with congressional drafting. If more expertise were applied to such enactments to ensure that Congress states with more precision what it intends, the rules of the game would be more sharply drawn and court involvement could be less.

The present controversy is a good example of this phenomenon. The Act leaves a myriad of questions unanswered, especially concerning the extent to which Congress intended to interfere with the President's formulation of policy. A President constantly seeks, as he should, informed advice. His choice of advisors should be largely his personal concern under our tripartite form of government.

The Court's task in the absence of clear indications in the statute or its legislative history to the contrary must be to achieve a common-sense interpretation. Congressional concerns must be accommodated in a manner that produces a constitutional result, in this instance to leave the President with substantial freedom to formulate policy recommendations free from excessive intrusion. If the Act were interpreted as plaintiffs suggest the effort of the President to seek fiscal advice from the private sector would come to a total halt and the attempt to formulate efficient fiscal management of the government would bog down in a plethora of hearings, demands for document access and increasing time-consuming litigation. In the context of this case, the language of the statute reviewed in light of those concerns demands that this Court grant summary judgment for defendants and deny plaintiffs relief.

The Court holds that the Executive Committee is balanced within the meaning of the Act and the task forces are not subject to the Act's procedural requirements because the task forces are not utilized by the President or the agencies for advice or recommendations. Defendants' motion to dismiss is granted and the complaint is dismissed.

Gerhard A. Gesell
UNITED STATES DISTRICT JUDGE

February 24, 1983.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

NATIONAL ANTI-HUNGER COALITION, ET AL.,

Plaintiffs,

v.

EXECUTIVE COMMITTEE OF THE PRESIDENT'S PRIVATE SECTOR SURVEY ON COST CONTROL, ET AL.,

Defendants.

Civil Action No. 82-3592

ORDER

For the reasons stated in the Court's Memorandum filed herewith, it is

ORDERED that plaintiffs' motion for a preliminary injunction is denied, defendants' motion to dismiss is granted and the complaint is hereby dismissed.

Gerhard A. Gesell

UNITED STATES DISTRICT JUDGE

February 24, 1983.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Gesell, J.
FEB 16 1983

NATIONAL ANTI-HUNGER COALITION, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 82-3592
EXECUTIVE COMMITTEE OF THE PRESIDENT'S PRIVATE SECTOR SURVEY ON COST CONTROL, et al.,	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR
IN CAMERA SUBMISSION

Plaintiffs hereby move the Court to require defendants to submit for in camera inspection the most recent drafts of the reports being prepared by the three defendant Task Forces. Plaintiffs have requested that defendants voluntarily make these reports available to the Court for in camera inspection, but defendants have declined to do so.

These reports will aid the Court in achieving a final resolution of this case in two ways. First, the reports will clarify whether the recommendations being considered by the Task Forces relate to policy changes in domestic feeding programs for low-income persons as plaintiffs contend, or involve only issues of managerial officials, as defendants suggest. The answer to this question is germane to plaintiffs' balanced representation claim. Second, the reports will assist the

Gesell, J.
2/24

THE WHITE HOUSE
WASHINGTON

2/28/83

TO: [redacted]

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

FYI: ✓

COMMENT: _____

ACTION: _____

JAB
This is a copy of Rodino's letter to the AG. You may want to read.

JC 2/28

THE WHITE HOUSE
WASHINGTON

Date February 3, 1983

Suspense Date: _____

MEMORANDUM FOR: EDWIN MEESE III
JAMES A. BAKER, III

FROM: FRED F. FIELDING

ACTION

_____ Approved

_____ Please handle

_____ For your information

_____ For your recommendation

_____ For the files

_____ Please see me

_____ Please prepare response for my signature

_____ Please forward:

COMMENT

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

February 24, 1983

Honorable William French Smith
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

In the course of the various Congressional investigations into the ongoing controversy at the Environmental Protection Agency, serious questions have been raised by the several committees involved about the actions of the Department of Justice. Some of these questions have related to apparent conflicts of interest in the numerous roles the Department has played, and continues to play, in the controversy; other concerns have focused on the Department's unwillingness to enforce the Federal statute (2 U.S.C. Secs. 192-194) that provides criminal penalties for contempt of Congress. Additionally, questions persist about the role of the Department in the Executive Branch's withholding of information from Congress.

The Chairmen of the Committees whose panels are investigating the Environmental Protection Agency have urged the House Committee on the Judiciary to address these concerns. To meet this request and to properly discharge our legislative and oversight responsibilities, I ask that you respond to the following questions and requests as soon as possible, but not later than March 10, 1983.

1(a). Please supply a narrative description of the activities of each division, office or other unit of the Department in any way relating to the withholding of documents that Congressional committees have subpoenaed from the EPA. Please list all Department personnel involved in these events.

(b). Please supply all documents prepared by or in the possession of the Department in any way relating to the withholding of documents that Congressional committees have subpoenaed from the EPA.

2. Media accounts suggest that Department personnel may have counseled EPA Administrator Burford on withholding documents, advised the President and his staff, and negotiated with various Congressional committees on behalf of the Administration; in addition, Department personnel represented the Administration in its unsuccessful attempt

to seek declaratory relief against the House of Representatives. At the same time, the Department was responsible for prosecuting the criminal charges arising from the House's contempt citation and for investigating and prosecuting possible violations of the criminal law by Executive Branch personnel.

(a) How does the Department reconcile the appearance of a conflict of interest in simultaneously carrying out these various functions? Has the Department prepared any analysis of these conflicting functions or any guidelines as to how to deal with them? If so, please provide copies of any relevant documents.

(b) In the EPA case, what steps, if any, were taken to avoid any conflict of interest or the appearance of such a conflict? Do you have any proposals to guide the Department's actions in similar cases which may arise in the future?

(c) In this case, did the Department at any time consider either: (1) appointing a special counsel to present the contempt citation to a grand jury; or (2) authorizing the retention of outside counsel by Mrs. Burford to defend her in the criminal action? Why were these options not pursued?

3. After the House approved the contempt resolution regarding EPA Administrator Burford, the Department of Justice filed a civil complaint, subsequently dismissed by the U.S. District Court for the Distric of Columbia, against the House of Representatives. Although the Speaker of the House certified the facts of the case to the United States Attorne the matter was not presented to a grand jury, as the language of 2 U.S.C. Sec. 194 would seem to require.

(a) Does the Department consider the duty of the United States Attorney under Sec. 194 to be mandatory or discretionary? Please provide the legal justification for your response. If the statute is mandatory, must the U.S. Attorney present the matter to a grand jury within a certain period of time? If so, how is the time period determine

(b) If the Department considers the U.S. Attorney's duty to be discretionary, what steps could Congress take to assure that contumacious conduct by Executive Branch officials is promptly and vigorously prosecuted? For example, if you believe the statute is not mandatory, could it be made so?

(c) Is it the Department's position that Secs. 192-194 apply to contumacious conduct by Executive Branch officials?

(d) In this case, was the U.S. Attorney counseled or directed by officials of the Justice Department or the White House not to present the case to the grand jury? If so, please list and describe any relevant contacts.

(e) Please supply all documents in the Department's possession in any way relating to the enforcement of the Congressional contempt statute in this or any other case.

4(a). Under what circumstances, employing what criteria, and through what process, does the Department of Justice believe it appropriate for the Executive Branch to decline to comply with Congressional requests for documents, comments, interviews, or information?

(b) Please forward the Committee a copy of all Department regulations and policies that relate to Congressional requests for information documents, interviews, or comments.

Thank you for your cooperation on this matter. The Committee looks forward to your response.

With best regards,

Sincerely,

PETER W. RODINO, JR.
Chairman

PWR:apw

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

FEB 3 1983

JAMES F. DAVEY, Clerk

UNITED STATES OF AMERICA, and ANNE M. GORSUCH, Plaintiffs,	Civil Action No. 82-3583
v.	
THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES; THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION OF THE HOUSE OF REPRESENTATIVES; THE HONORABLE JAMES J. HOWARD, CHAIRMAN OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION OF THE HOUSE OF REPRESENTATIVES; THE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION OF THE HOUSE OF REPRESENTATIVES; THE HONORABLE ELLIOTT J. LEVITAS, CHAIRMAN OF THE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION OF THE HOUSE OF REPRESENTATIVES; THE HONORABLE THOMAS P. O'NEILL, SPEAKER OF THE HOUSE OF REPRESENTATIVES; EDMUND L. HENSHAW, JR., THE CLERK OF THE HOUSE OF REPRESENTATIVES; JACK RUSS, SERGEANT AT ARMS OF THE HOUSE OF REPRESENTATIVES; JAMES T. MOLLOY, THE DOORKEEPER OF THE HOUSE OF REPRESENTATIVES. Defendants.	

M E M O R A N D U M

The United States of America and Anne M. Gorsuch, in her official capacity as Administrator of the Environmental Protection Agency (EPA), bring this action under the Declaratory Judgment Act, 28 U.S.C. §2201. Plaintiffs ask the Court to declare that Administrator Gorsuch acted

lawfully in refusing to release certain documents to a congressional subcommittee. Defendants in the action are the House of Representatives of the United States; the Committee on Public Works and Transportation; The Honorable James J. Howard, Chairman of the Committee on Public Works and Transportation; The Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation; The Honorable Elliott J. Levitas, Chairman of the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation; The Honorable Thomas P. O'Neill, Speaker of the House of Representatives; Edmund L. Henshaw, Jr., Clerk of the House of Representatives; Jack Russ, Sergeant at Arms of the House of Representatives; and James T. Molloy, Doorkeeper of the House of Representatives. The individual defendants are sued only in their official capacities. The case is now before the Court on defendants' motion to dismiss.

The essential facts are undisputed. On November 22, 1982, a subpoena was served upon Anne Gorsuch by the Subcommittee on Investigations and Oversight (the Subcommittee) of the Committee on Public Works and Transportation (the Committee). The subpoena required Administrator Gorsuch to appear before the Subcommittee on December 2, 1982, and to produce at that time the following documents:

> all books, records, correspondence, memorandums, papers, notes and documents drawn or received by the Administrator and/or her representatives since December 11, 1980, including duplicates and excepting shipping papers and other commercial or business documents, contractor and/or other technical documents, for those sites listed as national priorities pursuant to Section 105(8)(B) of P.L. 96-510, the "Comprehensive Environmental Response, Compensation and Liability Act of 1980."

On November 30, 1982, President Reagan sent a Memorandum to

Administrator Gorsuch instructing her to withhold from the Subcommittee any documents from open law enforcement files assembled as part of the Executive Branch's efforts to enforce the Comprehensive Environmental Response, Compensation and Liability Act of 1980. On December 2, 1982, the return date of the subpoena, Administrator Gorsuch appeared before the Subcommittee. She advised the Subcommittee that the EPA had begun to gather for production all documents responsive to the subpoena, but ". . . sensitive documents found in open law enforcement files will not be made available to the Subcommittee." 149 Cong. Rec. H10037. The Committee passed a Resolution reporting the matter to the full House of Representatives on December 10, 1982. The full House cited Administrator Gorsuch for contempt of Congress on December 16, 1982. The initial complaint in this case was filed on the same day, one day before the contempt resolution was certified to the United States Attorney for the District of Columbia for presentment to the grand jury. To date, the United States Attorney has not presented the contempt citation to the grand jury for its consideration.

Section 192 of Title 2 of the United States Code provides that a subpoenaed witness who refuses "to produce papers upon any matter under inquiry before either House . . . or any committee of either House of Congress", shall be guilty of a misdemeanor "punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months." Once an individual has been found in contempt by either House of Congress, a contempt order is presented to the President of the Senate or the Speaker of the House of Representatives for

certification. 2 U.S.C. §194. The President or Speaker in turn delivers the contempt citation to the appropriate United States Attorney. The United States Attorney is then required to bring the matter before the grand jury. Id.

The Executive Branch, through the Justice Department, has chosen an alternate route, however, in bringing this civil action against the House of Representatives and individual members of the Legislative Branch. Plaintiffs ask the Court to resolve the controversy by deciding whether Administrator Gorsuch acted lawfully in withholding certain documents under a claim of executive privilege.

Defendants raise several challenges to the propriety of plaintiffs' cause of action. Included among defendants' grounds for dismissal are lack of subject matter jurisdiction, lack of standing, and the absence of a "case or controversy" as required by Article III, §2 of the United States Constitution. In addition, defendants claim that they are immune from suit under the Speech and Debate Clause, Article I, §6, cl. 1. Plaintiffs have addressed and opposed each of these threshold challenges.

The Legislative and Executive Branches of the United States Government are embroiled in a dispute concerning the scope of the congressional investigatory power. If these two co-equal branches maintain their present adversarial positions, the Judicial Branch will be required to resolve the dispute by determining the validity of the Administrator's claim of executive privilege. Plaintiffs request the Court to provide immediate answers, in this civil action, to the constitutional questions which fuel this controversy. Defendants, however, have indicated a

preference for established criminal procedures in their motion to dismiss this case. Assuming there are no jurisdictional bars to this suit, therefore, the Court must initially determine whether to resolve the constitutional controversy in the context of a civil action, or defer to established statutory procedures for deciding challenges to congressional contempt citations.

The statutory provisions concerning penalties for contempt of Congress, 2 U.S.C. §192 and §194, constitute "an orderly and often approved means of vindicating constitutional claims arising from a legislative investigation." Sanders v. McClellan, 463 F.2d 894, 899 (D.C. Cir. 1972). Under these provisions, constitutional claims and other objections to congressional investigatory procedures may be raised as defenses in a criminal prosecution. See Barenblatt v. United States, 360 U.S. 109 (1959); Ansara v. Eastland, 442 F.2d 751 (D.C. Cir. 1971); United States v. Tobin, 306 F.2d 270, 276 (D.C. Cir. 1962). Courts have been extremely reluctant to interfere with the statutory scheme by considering cases brought by recalcitrant witnesses seeking declaratory or injunctive relief. See, e.g., Eastland v. United States Servicemen's Fund, 421 U.S. 491 (1975); Ansara v. Eastland, 442 F.2d at 754. Although the Court of Appeals for this Circuit has entertained one civil action seeking to block compulsory legislative process, that action was brought by the Executive Branch to prevent a private party from complying with a congressional subpoena. See United States v. American Telephone and Telegraph Company, 551 F.2d 384 (D.C. Cir. 1976). Significantly, therefore, in that case the Executive Branch was not able to raise

its claim of executive privilege as a defense to criminal contempt proceedings.

Courts have a duty to avoid unnecessarily deciding constitutional issues. United States v. Rumely, 345 U.S. 41, 45-46 (1952). When constitutional disputes arise concerning the respective powers of the Legislative and Executive Branches, judicial intervention should be delayed until all possibilities for settlement have been exhausted. See United States v. American Telephone and Telegraph, 551 F.2d at 393-395. Judicial restraint is essential to maintain the delicate balance of powers among the branches established by the Constitution. See id. Since the controversy which has led to United States v. House of Representatives clearly raises difficult constitutional questions in the context of an intragovernmental dispute, the Court should not address these issues until circumstances indicate that judicial intervention is necessary.

The gravamen of plaintiffs' complaint is that executive privilege is a valid defense to congressional demands for sensitive law enforcement information from the EPA. Plaintiffs have, thus, raised this executive privilege defense as the basis for affirmative relief. Judicial resolution of this constitutional claim, however, will never become necessary unless Administrator Gorsuch becomes a defendant in either a criminal contempt proceeding or other legal action taken by Congress. See, e.g., Ansara v. Eastland, 441 F.2d at 753-754. The difficulties apparent in prosecuting Administrator Gorsuch for contempt of Congress should encourage the two branches to settle

their differences without further judicial involvement. Compromise and cooperation, rather than confrontation, should be the aim of the parties. The Court, therefore, finds that to entertain this declaratory judgment action would be an improper exercise of the discretion granted by the Declaratory Judgment Act, 28 U.S.C. §2201. See Hanes Corp. v. Millard, 531 F.2d 585, 591 (D.C. Cir. 1976). In light of this determination, the Court will not address the additional grounds for dismissal raised by defendants.

Accordingly, defendants' motion to dismiss is granted.

An appropriate Order follows.

United States District Judge

Dated: February 3, 1983

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

FEB 3 1983

JAMES F. DAVEY, Clerk

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, et al.,

Defendants.

Civil Action No. 82-3583

O R D E R

Upon consideration of defendants' motion to dismiss this action, plaintiffs' opposition, the memoranda filed by the parties, oral arguments of counsel and the entire record, it is by the Court this 3rd day of February, 1983

ORDERED that defendants' motion to dismiss is granted and this action is dismissed.

United States District Judge

THE WHITE HOUSE
WASHINGTON

TO: Mr Baker

FROM: MICHAEL K. DEAVER
Assistant to the President
Deputy Chief of Staff

☑ Information

☐ Action

JAB - READING File PS.
1/31
MDT

THE WHITE HOUSE

WASHINGTON

JAB
7/71

January 25, 1983

MEMORANDUM FOR: ROBERT TUTTLE
SPECIAL ASSISTANT TO THE PRESIDENT
FOR PRESIDENTIAL PERSONNEL

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

SUBJECT: Outreach Program to Key Supporters

This memorandum is in response to your request for advice with respect to any legal issues arising from the proposed "Outreach Program" to Key Supporters as described in your memorandum of January 13, 1983, to Michael K. Deaver.

The stated goal of the "Outreach Program" is "to inform on a consistent basis the President's Key Supporters of the goals and achievements of the Administration". "Key Supporters" are defined as: 1980 State Chairmen and Co-Chairmen, 1980 Regional Finance Directors, Members of the Reagan "10" Club, key Special Group Chairmen, and 1980 Regional Political Directors.

The immediate legal issue arising from this proposal is the question of whether expenditures in support of this program may be made from appropriated funds. When considering payment of expenses, if any, associated with this proposal, two major principles must be borne in mind. First, appropriated funds may be spent only for the purposes for which they have been appropriated, i.e., official purposes. 31 U.S.C. §628; 52 Comp. Gen. 504 (1972); 50 Comp. Gen. 534 (1971). Second, although appropriated funds should not be used for non-official purposes, it is equally true that outside sources of funds generally may not be used to pay for official activities. This latter principle, which prevents the unauthorized augmentation of appropriations, has been recognized by the Comptroller General on numerous occasions.

Activities undertaken by the President or the Vice President to present, explain and secure public support for the Administration's measures are an inherent part of the President's or Vice President's duties. The President and the Vice President have the right to explain the Administration's positions to the public. Activity which is designated to secure information, confer, give direction, present information, or explain and secure public support for Administration policies should be considered "official". However, an "official" speech, meeting or letter may become "political" depending on the circumstances.

With respect to the nature of the event giving rise to an expense, a Presidential and Vice Presidential event should, as a general rule, be considered "political" if its primary purpose involves their positions as leaders of their political party.

Appearing at party functions, fundraising, and campaigning for specific candidates are the principal examples of activity which should be considered political. On the other hand, costs incurred for inspections, meetings, non-partisan addresses, and the like ordinarily should not be considered "political," even though it may have partisan consequences, or concern questions on which opinion is politically divided. The President cannot perform his official duties effectively without the understanding, confidence, and support of the public.

If the President and Vice President are involved in activity in their roles as leaders of their political party or as candidates, e.g., appearances at party events or functions, or campaigning for specific candidates or addressing what otherwise might be defined as an "official" event but in a substantially partisan political manner, that activity will be considered political.

Although the activities proposed to be undertaken by the President and members of the Senior Staff in support of the "Outreach Program" may properly be characterized as "official" in nature, because the individuals to be reached through this program are easily characterized by the cynic as members of a "partisan" group, we recommend, in an abundance of caution, that all activities in support of the "Outreach Program" be treated as if they are "political".

Accordingly, (i) any work which you do on this program should be in addition to your official responsibilities and should not preclude you from working 40 hours a week in your official position 1/; (ii) any expenditures made in connection with the

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1/ We note that as a member of the White House staff you are exempt from the provision of the Hatch Act prohibiting federal employees from taking an active part in political management or in political campaigns; and thus, may engage in partisan political activity. However you should note that all persons detailed to the White House from other agencies remain subject to all provisions of the Hatch Act. This category may include your secretary and other members of your support staff or of the Office of Political Affairs. Only individuals paid out of the White House Office payroll should perform work in support of the" Outreach Program".

proposed midterm meetings or regional meetings with key supporters should be paid by the Republican National Committee; and (iii) all expenses incurred in connection with the "key supporter mailing program" should be paid by the Republican National Committee.2/

Another legal concern arising from this program is the possibility that the expenditures incurred may be characterized as triggering "candidate" status of the President under the Federal Election Campaign Act,("the Act") 2 U.S.C. §§ 431 et. seq. (See the attached memorandum.) Under the Act an individual shall be deemed to seek nomination for election or election to Federal office if, among other things, such individual has given consent to another person to receive contributions or make expenditures on his behalf and those contributions or expenditures have aggregated in excess of $5,000. 2 U.S.C. § 431(2), 11 C.F.R. § 100.8(b)(1). A contribution or expenditure for purposes of the Act is defined as one made "for the purpose of influencing any election for Federal office". 2 U.S.C. §§ 431 (8)(A),(9)(A).

Although the expenditures made in support of the "Outreach Program" may be characterized as "non-official" they are not ipso facto, for "the purpose of influencing a Federal election". The payment of such expenses by the RNC or any other political committee, could, however, become "expenditures" within the meaning of the Act and thus trigger candidate status of the President if any of the meetings, mailings or telephone conversations could reasonably be construed as expenses for the purpose of influencing the 1984 Presidential elections, (e. g., if the purpose of such expenses was to pay for strategy sessions for a re-election campaign, requests for support in a re-election campaign or authorizations of others to initiate activities in preparation for and support of a re-election campaign).3/

2/ Ronald Reagan personal stationery, not White House stationery, should be used for such letters and the RNC should pay for all costs related to the production and mailing of the letters.

3/ Payments for expenses made for purposes of "testing the water", i.e. determining whether one should become a candidate, are exempted from the definition of an "expenditure" under the Act; but once an individual becomes a candidate, monies expended for "testing the waters" become expenditures under the Act. 11 C.F.R. § 100.9(b)(1). However, we think it ill advised to allow the payments made by the RNC in support of the "Outreach Program" to be characterized as "testing the water" expenditures, as such characterization would only increase the pressure for the President to make an announcement of his intentions with regard to candidacy for re-election.

Accordingly, we recommend that no statements be made by the President, Vice President or anyone who may be deemed to be acting on behalf of the President which would suggest that the purpose of these meetings, mailings or conversations is to initiate support for a re-election campaign. Further we recommend that the text of any proposed mailing or telephone call and any proposed statements by the President with respect to Outreach endeavor meetings be submitted to this Office for advance review.

cc: James A. Baker, III
Michael K. Deaver
Edward J. Rollins
Helene von Damm

THE WHITE HOUSE

WASHINGTON

December 9, 1982

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

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

SUBJECT: Activities Triggering "Candidate" Status for Purposes of the Federal Election Campaign Laws

As the outside pressure intensifies for the President to declare himself a candidate for re-election, it may be useful to be aware of those activities which will trigger "candidate" status for purposes of the Federal Election Campaign Act, 2 U.S.C. § 431 et seq. ("the Act").

An individual shall be deemed to seek nomination for election or election to federal office if:

1. such individual has received contributions or made expenditures in excess of $5,000; or

2. such individual has given consent to another person to receive contributions or make expenditures on his behalf and those authorized contributions or expenditures have aggregated in excess of $5,000; or

3. such individual fails to disavow, within 30 days of notification by the Federal Election Commission, the activities of any other person who has received contributions or made expenditures aggregating in excess of $5,000 on the individual's behalf; or

4. the aggregate of the contributions received or expenditures made under any of the above facts in any combination exceeds $5,000.*

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* 2 U.S.C. § 431(2), 11 C.F.R. § 100.8(b)(1).

As you know, contributions and expenditures are defined terms under the Federal Election Campaign Act, 2 U.S.C. § 431 (8) and (9). Exempted from the definition of those terms are contributions received or expenditures made for purposes of "testing the water," i.e., determining whether one should become a candidate. Such expenditures include polling, telephone and travel expenses. 11 C.F.R. § 100.8 (b)(1). However, once an individual does become a candidate those monies received and expended for "testing the waters" are reportable contributions and expenditures subject to all the requirements of the Act.

In view of the current unauthorized activities being initiated on behalf of the President for a re-election campaign, the most important aspect of the above described requirements of the Federal election laws is that unauthorized committees may receive contributions and make expenditures up to $5000 before the FEC may send a "disavowal" letter to the President requesting that within 30 days he either authorize that committee (and thus declare his candidacy) or disavow its activities (and thus deny candidacy at that time).

Of course, the activities which have been publicized to date may not have triggered "political committee" status on their participants. Nevertheless, it will remain important to be aware of any significant expenditures of funds or receipt of contributions by such groups,* and to continue to characterize those activities as "unauthorized".

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* Once such groups raise or expend in excess of $1,000 for the purposes of influencing a Federal election, they must register with the FEC as a "political committee". See 2 U.S.C. §§ 431(4) and 433(a).

463-8774

ROBERT P. VISSER, ESQUIRE

One Lafayette Centre
1120 20th Street, N.W.
Suite 205 South
Washington, D.C. 20036

January 24, 1983

PERSONAL AND CONFIDENTIAL

The Honorable James A. Baker III
Chief of Staff and
Assistant to the President
The White House
Washington, D.C. 20501

RE: MUR 1365

Dear Jim:

I am pleased to enclose a proposed Conciliation Agreement which has been offered by the Federal Election Commission as a final resolution of the above referenced Matter Under Review. Following two years of negotiation, the final proposal is a standard form Conciliation Agreement which now includes language drafted by me (at Paragraph III.6) stating the position of the George Bush for President Committee with regard to the "inadvertent, unintentional violation of the reporting requirements of the Act". In addition, the Commission has reduced the proposed civil penalty from $5,000.00 to Two Hundred Dollars ($200.00).

As you know, I have refused to settle this matter in the past because of the Commission's insistence on a civil penalty in the amount of $5,000.00 to $10,000.00. I now believe that the nominal civil penalty requested by the Commission is reasonable in view of the fact that they have incorporated my exculpatory language. If this proposal is agreeable to you, I would very much appreciate it if you would please have Margaret contact my office so that I can make arrangements for execution of the Conciliation Agreement and the payment of the civil penalty. I am currently checking with the Commission to determine possible sources of funds to pay the civil penalty and shall advise you accordingly.

This constitutes the sole outstanding legal matter facing the George Bush for President Committee. I know of no other outstanding legal obligations, claims or pending or threatened litigation involving the Committee. It has been a pleasure working closely together with you on these matters and I look forward to our next campaign together.

With kind personal regards,

Very truly yours,

Robert P. Visser

RPV:ag

cc: W. Garrett Boyd
Thomas M. Roberts

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 7, 1983

Robert P. Visser, Esquire
One Lafayette Centre
1120 Twentieth Street, N.W.
Suite 205 South
Washington, D.C. 20036

RE: MUR 1365

Dear Mr. Visser:

The Commission has reviewed your recent counterproposal and has made the following changes. It has included your proposed language at paragraph III.6., with the deletion of the last sentence which began, "The Commission also recognizes...." In addition, it has reduced the civil penalty to Two Hundred Dollars ($200.00).

Enclosed herewith is a conciliation agreement incorporating these changes which we submit for your signature.

I am still hopeful that this matter can be settled through a conciliation agreement. Should you have any further questions, please call Conley Edwards, Jr., at (202) 523-4073. You should respond to the Commission within ten days of receipt of this notification.

Sincerely,

Charles N. Steele
General Counsel

Kenneth A. Gross - by LE

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1365
George Bush for President, et al.	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Reason to believe was found that George Bush for President (hereinafter "the Respondent") violated: 2 U.S.C. § 433(b)(6) by failing to file an amended Statement of Organization designating as campaign depositories thirty-seven state advance accounts utilized by the Respondent during its campaign; 11 C.F.R. §§ 104.14(b)(1) and 9033.1(a)(3) by failing to provide complete bank records for its state advance accounts; and 2 U.S.C. § 441a(f) by receiving and accepting contributions from individual contributors in excess of the contribution limitations as set forth in 2 U.S.C. § 441a(a)(1)(A).

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent, and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this Agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Respondent was the principal campaign committee of George Bush.

2. Respondent had established, maintained, and utilized thirty-seven (37) state advance accounts during its 1979-1980 presidential campaign.

3. Respondent required that the thirty-seven (37) state advance accounts be personal accounts opened in the names of individuals.

4. Respondent did not designate the thirty-seven (37) state advance accounts as campaign depositories.

5. Respondent violated 2 U.S.C. § 433(b)(6) by failing to designate its thirty-seven (37) state advance accounts as campaign depositories.

6. It is the position of the Respondent that they had no intent or purpose to violate the Act, and at all times acted in good faith in the belief that the Committee's State Advance -reimbursement procedure was in full compliance with the reporting and disclosure requirements of the Act. The procedures were developed for the purpose of ensuring centralized control and effective restraints on unauthorized expenditures within the State Committees. Nonetheless, the Respondent has agreed to file an amended Statement of Organization designating the accounts as campaign

depositories, and the Respondent admits to an inadvertent, unintentional violation of the reporting requirements of the Act.

7. Respondent failed to provide complete bank records for its thirty-seven (37) state advance accounts in a timely fashion.

8. Respondent has continued to fail to provide complete bank records for eight (8) of its thirty-seven (37) state advance accounts.

9. Respondent violated 11 C.F.R. §§ 104.14(b)(1) and 9033.1(a)(3) by failing to provide a complete set of its bank records for its thirty-seven (37) state advance accounts in a timely fashion.

10. Respondent received and accepted $20,195.00 in excessive contributions from eighty-one (81) individual contributors during its presidential campaign.

11. Respondent violated 2 U.S.C. § 441a(f) by receiving and accepting contributions from individual contributors in excess of the contribution limitations as set forth in 2 U.S.C. § 441a(a)(1)(A).

WHEREFORE, Respondent agrees:

V. Respondent failed to designate thirty-seven (37) state advance accounts as campaign depositories in violation of 2 U.S.C. § 433(b)(6).

VI. Respondent has filed an amended Statement of Organization designating as campaign depositories the aforesaid

thirty-seven (37) state advance accounts as campaign depositories as required by 2 U.S.C. § 433(b)(6).

VII. Respondent failed to provide a complete set of bank records for its thirty-seven (37) state advance accounts in a timely fashion, and has continued to fail to provide complete bank records for the remaining eight (8) of its thirty-seven (37) state advance accounts in violation of 11 C.F.R. §§ 104.14(b)(1) and 9033.1(a)(3).

VIII. Respondent will provide complete bank records for the remaining eight (8) state advance accounts.

IX. Respondent received and accepted $20,195.00 in excessive contributions from eighty-one (81) individual contributors in violation of 2 U.S.C. § 441a(f).

X. Respondent will refund all excessive contributions to the individuals to whom the excessive contribution was credited.

XI. Respondent will pay a civil penalty to the Treasurer of the United States in the amount of Two Hundred Dollars ($200), pursuant to 2 U.S.C. § 437g(a)(5)(A).

XII. Respondent agrees that it shall not undertake any activity which is in violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, et seq.

XIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this Agreement. If the Commission believes that this Agreement or any requirement thereof has been violated, it may institute a

civil action for relief in the United States District Court for the District of Columbia.

XIV. This Agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire Agreement.

XV. Respondent shall have no more than thirty (30) days from the date this Agreement becomes effective to comply with and implement the requirements contained in this Agreement and to so notify the Commission.

Charles N. Steele
General Counsel

_____ BY: _____
Date Kenneth A. Gross
Associate General Counsel

_____ _____
Date George Bush for President

BY: _____

ITS: _____

THE WHITE HOUSE

WASHINGTON

January 14, 1983

1/27
Asked Rollins to discuss w/ F. Fabrenkopf & report what if anything RNC was going to propose. Also anything we shld. propose?
JAB III

MEMORANDUM FOR: JAMES A. BAKER, III
ED ROLLINS
KEN DUBERSTEIN

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Senate Hearings on Amendments to the Federal Election Laws

We have been advised by Elaine Milliken, Counsel for Elections on the Senate Rules Committee, that Senator Mathias (Chairman of the Rules Committee) plans to hold hearings on amendments to the Federal election laws in late January. The Committee will not be working from a particular bill, although a bill introduced by Senator Dixon in the last Congress may serve as a reference point for discussion. (Dixon's bill was largely a public financing package for Congressional elections.) Other issues likely to be discussed are limitations on the amount of PAC contributions which may be accepted by a candidate committee and, possibly, raising the limitations on individual contributions to candidate committees. The Committee does not intend to consider any changes in the Presidential election campaign financing laws at this time, although, clearly, some of the changes presently being considered will affect Presidential candidates.

Milliken asked if the Administration would like an opportunity to testify on these issues and indicated that she was making the same inquiry (on behalf of the Senate Rules Committee) to the RNC.

Although it is unlikely, at this time, that the Senate will pass any Federal election law amendments in this session, the addition of Congressman Tony Coehlo (Chairman of the House Democratic Congressional Campaign Committee) and Congressman Dave Obey (an avid proponent of PAC reform and public financing of Congressional elections) to the House Administration Committee (which has jurisdiction over Federal election laws) strongly suggests that the House Democratic leadership does plan to move such legislation in this Congress.

RECOMMENDATION:

The appropriate member(s) of the White House Staff should discuss with the RNC any testimony the RNC may present to the Senate Rules Committee on any proposed Federal election law amendments and monitor any developments in the Congress on amendments to the Federal election laws.