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MARCH 6, 1981

- ✓ The Honorable Mark O. Hatfield, United States Senate
- ✓ The Honorable Ted Stevens, United States Senate
- ✓ The Honorable Charles McC. Mathias, Jr., United States Senate
- ✓ The Honorable Lowell P. Weicker, United States Senate
- ✓ The Honorable James A. McClure, United States Senate
- ✓ The Honorable Paul Laxalt, United States Senate
- ✓ The Honorable (Jake) Garn, United States Senate *Edwin*
- ✓ The Honorable Harrison H. Schmitt, United States Senate

Subject: [Review of White House and Executive Agency
 Expenditures for Selected Travel, Entertainment,
 and Personnel Costs] (AFMD-81-35)

On September 22, 1980, you asked us to review selected expenditures of the White House and various Federal agencies to determine if appropriated funds were used before the 1980 election to advance the political candidacy of the incumbent President. You also asked us to provide information on employees temporarily detailed to the White House from other agencies. In our October 20, 1980, interim report, we answered your question regarding funding used for certain entertainment expenses and provided partial responses to your other questions. This, our final report, addresses certain travel expenses of the President, Vice President, and other administration officials; the procedures used to prevent misuse of appropriations; and the White House use of other agencies' personnel.

The overriding question raised by your request was whether travel, speechmaking, and public appearances by senior-level officials (including the President and the Vice President), and other personnel actions that may take place during a Presidential campaign and may directly or indirectly benefit the campaign, constitute an improper use of appropriated funds. This question has been raised by members of both major political parties on various occasions incident to a Presidential campaign. The question poses the very difficult problem of distinguishing between permissible official activities for which appropriated funds are available and other activities that are similar in nature but are for purely political or partisan purposes. The problem becomes particularly troublesome when those activities tend to increase during the late stages of a campaign. As to official activities, we have long held that the President and his Cabinet and other subordinates have a duty to inform the public about Government policies, and

policymaking officials traditionally have utilized Government resources to disseminate information in explanation and defense of those policies.

As we have stated in the past, there should be a point beyond which it could be concluded that the bounds of propriety have been overstepped. But for us to be able to determine that point, and in any given situation to distinguish authoritatively between prohibited and allowable activities, we would need some guidelines by which to judge the activities in question. So far as we are aware, no guidelines of a legally binding nature have been established by legislation, judicial decision, or otherwise. Therefore, we have no basis to conclude as a matter of law that appropriated funds were improperly used.

In the absence of legislative criteria, the White House developed guidelines for administration officials to follow during the course of the former President's campaign. These guidelines, not having been promulgated as a formal rule, regulation, or Executive order, do not carry the force of law in determining whether or not appropriated funds were properly used. Instead, the guidelines were prepared by the Office of the Counsel to the President and the Office of the Counsel to the Vice President, and were distributed to the senior-level officials through administrative channels. The responsibility for following the guidelines was placed directly on the senior-level officials. Nevertheless, the guidelines' objective was not only to prevent the use of appropriated funds for political purposes during the former President's campaign, but to avoid any question that such funds were improperly used. We found that the White House and, with some exceptions, the five agencies we visited generally adhered to the guidelines. We discussed these issues with a member of Senator Laxalt's staff and agreed to provide this informational report on the matters we examined.

Objectives, scope, and methodology

Our primary objectives were to determine what controls the White House and selected agencies had developed to prevent the use of appropriations for political purposes, and whether the controls and related procedures had been followed. To respond to your questions about the White House use of other agency personnel prior to the election, we also wanted to determine the number of individuals used and identify the employing agencies.

We performed our work at the White House, the Office of Management and Budget, and the Departments of Education, Health and

Human Services, Labor, and State. Selection of those agencies was based on information provided by members of your staffs. At the White House, we reviewed the Presidential and Vice Presidential speeches that were considered official and the accounting records for the specific travel events that were questioned in material provided by your staffs, to determine whether the speeches were classified and the costs allocated to political sponsors and the Government in accordance with guidelines issued by the White House. To assess the five agencies' compliance with the guidelines, we reviewed the same type of information for selected domestic travel of the agency heads that occurred in 1980 prior to the general election. We could not verify that all financial transactions had been completed because at the time of our review some travelers had not filed vouchers for their travel expenses and some reimbursements due the Government from political sponsors had not been received. Finally, we discussed with White House officials the procedures used to obtain personnel on a temporary basis from other agencies and examined related personnel reports maintained at the White House. Since the detailees' personnel files usually showed only their employing agencies and the White House units to which they were assigned, we were unable to document the duties they performed. An alternative technique would have been to personally contact each detailee, but we considered that impractical because the majority of them were no longer at the White House.

Certain activities that occur during the course of a political campaign may involve violations of the Hatch Act which prohibits Federal employees from taking an active part in partisan political activity (5 U.S.C. 7324). Violations of criminal statutes, such as those prohibiting the use of one's official authority for the purpose of interfering with or affecting a political election, could also be involved. Because the enforcement of those laws is the exclusive responsibility of the Merit Systems Protection Board and the Justice Department, respectively, we did not address those issues in our review. Allegations of such violations had been referred to Justice and the Board by other parties.

POLITICAL AND OFFICIAL TRAVEL
BY THE PRESIDENT AND VICE PRESIDENT

You asked us to provide information on the procedures used for allocating the cost of political travel by the President and Vice President and specifically referred to allocation procedures set forth in a September 13, 1977, letter from Counsel to the President Robert J. Lipshutz to the Federal Election Commission. According to White House officials, the Commission did

not rule on the propriety of the procedures set forth in the letter, and the White House proceeded to develop a series of guidelines for all administration officials to follow in handling the costs of campaign-related or political travel. The guidelines provided specific cost allocation procedures and were discussed in detail in our interim report to you. The terms used in classifying events were defined as follows.

Political--political party events or those related to candidates other than the President and Vice President

Campaign--events related to the Presidential and Vice Presidential candidates

Mixed--events involving both political or campaign activity and official business

For purposes of this report, the term "political" is used to refer to both political and campaign matters as defined by the White House

A list furnished by members of your staffs of the selected Presidential and Vice Presidential trips is shown in enclosure I, along with the classification (political, official, or mixed) of each trip. White House officials said that the nature of each trip was reviewed by the President's and Vice President's counsels to determine the appropriate classification. Our review of the accounting records and related documents showed that the costs of the trips had been allocated and the correct amounts billed to political sponsors generally in accordance with the White House guidelines in effect at the time of the trip.

GUIDANCE PROVIDED TO FEDERAL AGENCIES

In your request you asked whether the executive agencies had adequate procedures to ensure that no political expenditures were paid with appropriated funds. As previously mentioned, the White House developed and issued a series of guidelines to department and agency heads covering that topic. The guidelines were presented in briefings to the agency officials on a number of occasions.

White House officials provided us with copies of the guidelines issued in April 1979 and in February, August, and September 1980. The guidelines dealt primarily with travel and related expenses of Cabinet members and other agency officials not subject to the Hatch Act's prohibition of political management and campaigning. Presidential appointees subject to Senate confirmation are exempt from that provision. The guidelines cautioned the agencies not to use appropriated funds or other Government resources

for political purposes, and formulas were provided for allocating the cost of trips combining both official and political activities between appropriated and campaign funds.

Each set of guidelines was generally more detailed and specific than the previous one. In addition to the cost allocation procedures, the main points in the April 1979 guidelines were:

- An executive branch employee permitted to engage in political activity had to do so on his or her own time. The obligation to perform 40 hours per week of official work had to be met.
- Political travel and other costs were to be paid by the traveler or political sponsor. Government Travel Requests were not to be used.
- Any question in allocating the cost of mixed trips was to be decided in favor of the Government. Officials were cautioned to avoid the situation in which the Government would pay a disproportionate share.

In addition to reiterating and expanding on earlier editions, the February 1980 guidelines contained a number of new provisions, including the following.

- Agency scheduling personnel were permitted to handle the logistics (such as airline tickets, local transportation, and itineraries) of their principal's participation in political events, but were instructed not to assist in organizing or setting up the event itself.
- Although it was discouraged, administration officials were permitted to be accompanied on wholly political trips by one agency employee subject to the Hatch Act, provided the employee's sole purpose on the trip was to provide liaison with the principal's office and to handle such matters of an official nature that arose during the trip. In addition, regular security personnel were allowed on the trip at Government expense.
- Officials were warned of the Hatch Act provisions and of various criminal statutes and penalties regarding the use of Federal programs, property, or employment for political purposes.

The August 1980 guidelines placed even greater restrictions on administration officials and for the first time provided some

criteria for distinguishing between official and political activities. "Campaign advocacy" was defined to include any public discussion of (1) the President's candidacy, (2) the general election campaign, (3) the party or platform of the President's opponents, (4) the President's opponents or their campaigns, and (5) requests for support or endorsement of the President. Officials were informed that during the general election campaign period, from the Democratic National Convention to the general election, only two types of events would be considered official: (1) those related to ongoing agency business and (2) appearances before nonpolitical organizations.

An amended set of guidelines issued in September 1980 stated that Cabinet officers were ultimately responsible for determining, on a case-by-case basis, whether their appearances or those of subordinates were official in nature. Factors to be considered were the nature of the remarks actually made, the nature of the audience, and the identity of the appearing official. The guidelines noted that speeches before organizations that had endorsed or were likely to endorse a candidate for President in fall 1980 were likely to be perceived as campaign-related. Although some restrictions on advocacy remained, administration officials were permitted to "discuss, defend, and explain administration programs and policies and rebut attacks on those programs and policies during official appearances."

Agency implementation of guidelines

White House officials emphasized that the guidelines were not mandatory and that it was up to the agency heads to take the steps needed to prevent misuse of appropriations. In general, the agencies we visited complied with the guidelines, with varying types of procedures being developed for that purpose. There were 64 domestic speeches/trips which were classified as political, campaign-related, or mixed, and the related costs were usually allocated to the appropriate sponsors in accordance with the White House procedures. Of the 63 trips classified as official, we found 11 cases in the 5 agencies we visited where it appeared that the guidelines had not been followed. Some speeches and remarks made in public appearances classified as official contained comments which appeared to us to meet the White House definition of advocacy. There were both direct and indirect references to the Republican party, the platform, and its Presidential candidate. It must be emphasized, however, that the guidelines do not have the force of Federal law or regulation. The fact that the guidelines may not have been strictly adhered to does not provide us with sufficient basis to conclude that appropriated funds were used for political purposes.

In situations where they maintained that the speeches we questioned were official, agency officials frequently explained that the statements

- were made in defense of administration programs and policies,
- did not constitute advocacy because there were no specific references to the opposition,
- were minor in relation to the overall context and volume of official material in the speech,
- did not violate the guidelines that were in effect at the time the speech was made,
- had been made in previous years and could not be considered political simply because it was an election year, and
- were merely recitations of fact.

In some cases, action was taken after our inquiries. A speech by the Secretary of Labor before the California Building and Trades Council in Los Angeles on July 31, 1980, was reclassified as campaign-related and the Carter-Mondale Reelection Committee was billed for the Secretary's applicable expenses. The speech mentioned the Republican Presidential candidate and was critical of "anti-union" and "anti-worker" Republicans.

At the Department of Health and Human Services (HHS) and the Office of Management and Budget (OMB), speeches were not reclassified but steps were taken to reimburse the Government for certain travel expenses. The HHS Secretary delivered two speeches which contained derogatory remarks about the Republican Party, its platform, and its Presidential candidate. The speeches were given in Dallas on August 5, 1980, before the Black Congress on Health and Law, and in Los Angeles on August 6, 1980, at a United Steelworkers of America convention. HHS officials said that the bulk of the speeches concerned official matters and were classified as such. One of the officials also stated that the August 1980 White House guidelines, which discouraged remarks about the opposition platform or candidate during official appearances, were not considered to be in effect until after the start of the general election period. In our view, the HHS speeches constituted the most significant deviations from the White House guidelines that we discovered.

During our review HHS received notification that the Carter-Mondale Reelection Committee would reimburse the Government for the Secretary's travel expenses related to both the Dallas and the Los Angeles appearances. The Committee agreed with the HHS Secretary that the appearances were official, but offered reimbursement to avoid any misunderstandings. The Committee stated its preference for being overly cautious in cases where there was any question concerning the correct classification of events.

A situation wherein reimbursement was sought for an appearance classified as official also developed at the Office of Management and Budget. The Director gave a speech in Detroit on September 5, 1980, before the National Business League, in which the Republican Presidential candidate was mentioned and his tax proposals were criticized and compared to the administration's proposals. An OMB official said the speech was carefully reviewed in advance and was considered official by OMB's General Counsel because of the Director's responsibilities for examining and discussing economic policies under consideration by Congress and proposed at the national level. After we completed our review, OMB informed us that, because of their desire to resolve all questions concerning the appropriateness of the expenditure of Government funds, a request would be made for reimbursement of the Director's travel expenses. OMB also provided a letter from the Carter-Mondale Committee which said that a check would be forwarded to the Treasury for that purpose.

We found a few other situations where the White House guidelines had not been followed. More than one employee subject to the Hatch Act accompanied agency heads on two trips classified as political, and a Government Travel Request was used for a wholly political trip. The latter was corrected and the Government reimbursed. As for more than one person going along on political trips, agency officials said that it was necessary for training purposes or because the individuals in question were working on official business.

USE OF DETAILEES AT THE WHITE HOUSE

You asked us to provide information on the use of individuals detailed from Federal agencies to the White House. The records maintained by the White House on the detailees did not indicate why the personnel had been detailed and what functions they performed. We discussed the matter with a member of Senator Laxalt's staff, and we agreed to provide information on the detailing authority and summary statistics on the detailees used during fiscal 1980.

The head of any executive agency or department is authorized by law (3 U.S.C. 112) to detail employees to five units within the Executive Office of the President: the White House Office, the Office of Administration, the Domestic Policy Staff, the Office of the Vice President, and the Executive Residence at the White House. If an employee is detailed more than 180 days in a given fiscal year, the White House must begin reimbursing the agencies for the detailee's salary costs. The White House defined detailee to mean any individual working at the White House, on White House matters, and being supervised by regular White House personnel. Sixty days after the close of each fiscal year, the President must report to Congress the number of individuals detailed for more than 30 days, the number of days in excess of 30 each individual was detailed, and the aggregate amount of reimbursement made to the agencies for the detailees (3 U.S.C. 113). The fiscal 1980 list has been submitted to Congress.

We were provided lists of the detailees which generally showed their employing agency, the White House staff member to whom they were assigned, and the duration of their detail. From those lists we determined that over 300 different individuals were detailed to the White House in fiscal 1980. The detailees were obtained from 56 different governmental units, with the largest numbers coming from the Departments of Commerce; Health, Education, and Welfare (now HHS); Transportation; Labor; Interior; Education; and Housing and Urban Development. The Domestic Policy Staff's detailee records did not appear to be as complete as the other units. As a result, we could not be certain that all of the detailees were counted.

White House officials said that a variety of new White House operations and circumstances required the use of many detailees. For example:

- The Iranian hostage crisis resulted in thousands of letters each day that had to be answered.
- The White House opened a speakers' bureau for handling requests for speaking engagements for administration officials.
- An "outreach" program was established to promote the President's energy conservation program.
- Efforts were made to explain and promote the strategic arms limitation agreement.

--Additional support was needed to handle the Cuban refugee matter.

As we said, there was no assurance that the Domestic Policy Staff's records on detailees that we reviewed were complete. We were shown lists of the 24 detailees by name, but records were not available to show which agencies they came from and how long they were employed. The latter was also true for the one employee detailed to the Office of the Vice President. Most of the detailees were employed by the White House Office (232) and the Office of Administration (85). The table below shows the monthly number of detailees used by those two units during fiscal 1980.

<u>Month</u>	<u>White House Office</u>	<u>Office of Administration</u>	<u>Total</u>
CY 1979:			
October	36	30	66
November	37	35	72
December	54	31	85
CY 1980:			
January	70	33	103
February	77	35	112
March	89	30	119
April	95	34	129
May	104	29	133
June	116	23	139
July	120	23	143
August	117	24	141
September	109	16	125

A White House Office official said that most of the detailees served in secretarial or clerical jobs and did not fill vacancies left by regular White House staff who had left to work on the reelection campaign. About 60 percent of the detailees for which records were available were listed at the GS-10 level or below.

We did not obtain official written agency comments on this report. We did, however, discuss the report with former senior White House officials. Similar reports are being sent to the Chairman, House Government Operations Committee; the Chairman, House Appropriations Committee, Subcommittee on Treasury-Postal Service-General Government; and Representatives Silvio O. Conte, Robert H. Michel, and Clarence E. Miller, at their request. Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its date. At that time we will send

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copies to the agencies discussed in the report and make copies available to others who request them.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas A. A. A. A.", written in a cursive style.

Comptroller General
of the United States

Enclosure

CLASSIFICATION OF SELECTEDPRESIDENTIAL AND VICE PRESIDENTIAL TRAVELPresidential Trips

<u>Date</u>	<u>Location</u>	<u>Classification</u> (P-political) (O-official) (M-mixed)
May 29, 1980	Columbus, Ohio	P
	Parma, Ohio	P
	Cleveland, Ohio	P
June 1, 1980	Fort Wayne, Indiana	O
June 5, 1980	Baltimore, Maryland	O
June 9, 1980	Miami, Florida	O
	Miami Beach, Florida	O
June 10, 1980	Grand Island, Nebraska	O
	Seattle, Washington	O
July 3, 1980	Los Angeles, California	M
	Oakland, California	O
	Portola Valley, California	P
July 4, 1980	Merced, California	O
	Modesto, California	P
	Miami, Florida	O
July 8, 1980	Detroit, Michigan	O
July 17, 1980	Jacksonville, Florida	M
	Hollywood, Florida	M
July 21, 1980	Robards, Kentucky	P
	Justin, Texas	O
	Dallas, Texas	P
August 6, 1980	New York, New York	O
August 21, 1980	Boston, Massachusetts	P
September 1, 1980	Tuscumbia, Alabama	P
September 2, 1980	Independence, Missouri	P
September 3, 1980	Philadelphia, Pennsylvania	P
September 9, 1980	Perth Amboy, New Jersey	P

Vice Presidential Trips

August 25, 1980	Monticello, New York	P
September 1, 1980	Cleveland, Ohio	P
September 3, 1980	Des Moines, Iowa	P
September 6, 1980	San Francisco, California	P