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Vice President -
Rob

January 13, 1975

MEMORANDUM FOR: Peter Wallison

FROM: Phil Buchen

Here is the material from Bill Casselman's files when he was Counsel to Vice President Ford.

It may be useful to you.

Attachment

PWBuchen:ed

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Department of Justice
Washington, D.C. 20530

JUL 29 1974

MEMORANDUM FOR THE HONORABLE WILLIAM E. CASSELMAN, II
Legal Counsel to the Vice-President

Re: The employment of advancemen by the Vice-President

This is in response to your memorandum dated July 15, 1974, in which you ask for our advice on four questions relating to the utilization as volunteers of advancemen from the private sector for occasional duty at political and official events at which the Vice President makes an appearance. These persons are not officially employed by the Office of the Vice President, nor do they receive salary or per diem from public funds. Their expenses are reimbursed by the Republican National Committee.

The four questions you pose are:

1. Are these persons considered to be "special government employees" within the meaning of 18 U.S.C. 202(a) and 3 CFR 100.735-2(d), and are they required by 3 CFR 100.735-25 to submit a statement of employment and financial interests?

2. While assisting in the preparation of a political appearance by the Vice President on behalf of a candidate for an elective Federal office, and to the extent the advanceman while on leave status continues to receive health insurance and similar benefits from his employer, are these contributions to a Federal election campaign within the meaning of 2 U.S.C. 431(e)?

3. If so, would the provision of such benefits by a corporate employer constitute corporate campaign contributions which are proscribed by 18 U.S.C. 610?

4. In the case of non-corporate employees could this amount to a contribution that is otherwise proscribed by 18 U.S.C. 611?

When the Vice President's appearances relate solely to political, as distinguished from official, matters, we find no legal barrier to the utilization of advancemen on leave from the private sector. In our view, the retention of employee benefits by the advancemen, while they are on annual leave or leave without pay and performing political functions, does not constitute a prohibited campaign contribution.

On the other hand, when the Vice President travels in his official capacity, the advance handling of arrangements becomes a governmental function and persons who perform these duties could be viewed as government employees, whether or not they receive compensation. Accordingly, it would be advisable to treat advancemen on official trips as special government employees as defined in 18 U.S.C. 202, or utilize full-time government employees for this work. Our reasons for reaching these conclusions follow.

A. Political Activities

1. The advancemen employed on political trips are not special government employees within the meaning set forth in 18 U.S.C. § 202(a).

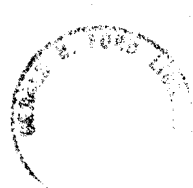
Section 202(a) of Title 18 defines a special Government employee (SGE) for the purpose of succeeding Sections 203, 205, 207, 208 and 209 as

> "an officer or employee of the executive or legislative branch . . . who is . . . employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties on a full-time or intermittent basis . . . " 18 U.S.C. § 202(a).

In the context in which the definition appears, it is clear that the "temporary duties" referred to are duties of a governmental nature.

An advanceman for purely political trips of the Vice President is performing political, not governmental, duties. We assume the duties he would undertake are similar to those which have been performed in the past by State or local Republican committeemen or other party functionaries. The fact that the Republican National Committee, rather than the Government, underwrites expenses underscores the political nature of the duties performed.

Since the duties involved are not governmental, it seems clear that the person voluntarily undertaking those duties is not in any sense a government employee. The fact that the Vice-President benefits from the services of these advancemen does not alter this conclusion since he benefits in his political, not his official, capacity. Neither 18 U.S.C. 202(a) nor 3 CFR 100.732-2(d), which implements the statute, is applicable here.



2. Benefits received by an advanceman from an employer while on annual leave or leave without pay are not generally contributions to a Federal election campaign as defined by 2 U.S.C. § 431(e).

Of the several provisions of 2 U.S.C. § 431(e) defining "contribution", the two which might be applicable here are:

> "(1) a gift . . . or anything of value, made for the purpose of influencing the nomination for election, or election of any person to Federal office . . ." 2 U.S.C. § 431(e)(1).
>
> * * *
>
> "(4) the payment by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee without charge for any such purpose." 2 U.S.C. § 431(e)(4).

However, 2 U.S.C. 431(e)(5) specifically excludes from the meaning of "contribution" "services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee."

The statute thus distinguishes between the services of individual volunteers and the payment of the salary of an employee of a candidate or party. The former is not viewed as a contribution; the latter is. If corporations or other employers were furnishing the services of advancemen on the employer's time, this would constitute a contribution under 2 U.S.C. 431(e). As explained in your memorandum, however, the services being rendered are performed by individuals volunteering their own time - either annual leave or leave without pay - and thus fall within the exception provided in 2 U.S.C. 431(e)(5).

The retention of benefits incidental to employment, such as group insurance or pension rights, would not alter the situation provided the individuals serving as advancemen receive no special treatment. If all employees of the same employer continue their benefit coverage while on vacation, other leave status, or leave without pay, then no political contribution is involved in treating the advancemen in the same manner. If, on the other hand, only those employees who take leave to perform political work are favored with such benefits, then the political activity incentive offered by the employer might be viewed as a contribution.

3. The provision of such benefits by a corporate employer would not amount to a corporate campaign contribution proscribed by 18 U.S.C. § 610.

Corporate contributions or expenditures in connection with any general or primary election in which Federal offices are at stake are prohibited by 18 U.S.C. § 610.

The definition of "contribution" in 18 U.S.C. 591(e), which applies to 18 U.S.C. 610, is identical to the definition in 2 U.S.C. 431(e) discussed above. While 18 U.S.C. 610 further defines "contribution" by reference to direct or indirect gifts of money or services as well as other items, we find nothing in the statute or its legislative history that suggests an intent to include as a "contribution" the volunteer services of individuals. Indeed, 18 U.S.C. 591(e)(5) expressly excludes such services from the definition of "contribution."

As the preceding discussion in Part A. 2. points out, volunteer service by an employee on leave who is given no special benefits because of his political activity is not a contribution by the employer. Accordingly, 18 U.S.C. 610 does not bar volunteer services for political activities by corporate employees when the employees are on leave.

4. With respect to non-corporate employees, such benefits would not be contributions proscribed by 18 U.S.C. § 611.

Section 611 of Title 18 deals with political contributions by persons, including individuals, partnerships, associations, or "any other . . . group of persons," who are either negotiating for or have contracted to render services, furnish supplies or equipment, or sell land or buildings to the Government. Since "contribution" for the purposes of Section 611 is also defined by Section 591(e), volunteer services are excluded and the services of advancemen would not be prohibited.

B. Official Activities

Persons serving as advancemen for official trips may be considered "special government employees" under 18 U.S.C. 202(a).

Your memorandum suggests that the services of volunteer advancemen may also be utilized when the Vice-President is travelling in his official capacity. In these circumstances, the advancemen could be considered special government employees within the meaning of 18 U.S.C. 202(a) and 3 CFR 100.735-25.

As indicated in Part A.1., the test of whether an individual is a special government employee is whether he is performing governmental duties. Compensation is irrelevant

since the statute refers to employment "with or without compensation." In our view making arrangements for the official travel of a government officer and facilitating that travel is a governmental function. If such work is being done by persons who are not in the full-time employ of the Federal Government, those persons should be viewed as special government employees and should comply with the applicable laws.

In this connection, 18 U.S.C. 209 does not prohibit the payment from other sources of the compensation of a special government employee. However, we question the propriety of the Republican National Committee paying the travel expenses of special government employees performing governmental, as distinguished from political, duties. If the advancemen are requested by the Vice President to perform these duties in connection with official trips, then they should travel under government travel authorization and be reimbursed from government funds.

Robert G. Dixon, Jr.
Assistant Attorney General
Office of Legal Counsel

For the purpose of applying the restrictions of the Hatch Act to advancemen, Presidential trips can be placed in three categories. These are:

1. Purely official and related solely to the President's official duties as Chief Executive.
2. Purely political where the trip on its face can clearly be said to be a political-party mission by the President in his capacity as head of his political party.
3. Mixed trips, where the President performs duties incident to category 1 and 2 above.

No comments are in order for category 1, as it is assumed that no political business will be conducted.

As to category 2, advancemen subject to the Hatch Act should not be used under any circumstances.

In category 3, all duties incident to the President's official duties as Chief Executive are permissible. With respect to the President's activities incident to the political-party mission, i.e., fund-raising and meetings with local party leaders, a distinction can be made between those advanceman duties that pertain to a ministerial function incident to the safety, comfort, and convenience of the President, and those duties that take on a character of political management and campaigning that can be reasonably construed to further the aims and success of a political party or candidate.

The following activities can be said to be incident to the safety, comfort, and convenience of the President, and therefore permissible:

-- Inspect sites for political rallys for the purpose of determining which would be most accessible to Presidential helicopters, etc.

-- Determine the suitability of a designated airport for Presidential arrival.

— Determine the best parking places for airplanes, helicopters and motorcades.

— Check local traffic rush hours to be avoided.

— Arranging for hotel accommodations for the President and his party.

-- Checking out every microphone and chair that the President will use to insure that they are the right height.

-- Ascertaining the location of available restrooms.

— Coordinating teams of experts—secret service, communications, military, press-to assist with the facts in any situation.

— Consideration of logistical problems associated with streets and building entrances--all access routes.

— Checking on all sound equipment.

— Ascertaining the availability of lighting need in buildings—on airstrips.

-- Screening crowds for "type." Stationing marshals throughout crowd with an eye for troublemakers.

-- Ascertaining the safety and desirable "color" involved in all travel routes.

-- Arranging for telephone switchboard service and making telephone calls incident to the normal housekeeping chores not related to any political party duties or political fund raising events. This would include calls for the purpose of securing accommodations for the President and his party, making travel arrangements, arranging for the press and any official meetings unconnected with political party business, and other similar day-to-day business calls incident to the official duties of the President as Chief Executive.

The following activities take on a character of political management and campaigning and are not permissible:

-- Meetings or discussions with the candidate's campaign manager in order to assess the general political climate for the purpose of planning party campaign strategy, tactics, or organization.

-- Organizing or conducting a political meeting in support of a political party by inviting individuals or candidates to attend.

-- Inviting persons by mail or phone to a political meeting held for the purpose of organizing a political club or unit and discussing possible candidates for political office.

-- Making telephone calls and performing other duties that are in connection with any political fund-raising functions

related to Presidential visits. For example, placing calls for the purpose of insuring a good turn-out, inviting and soliciting persons to attend, and the like would be prohibited since they are directly related and incident to the fund-raising.

— Preparing or arranging for seating at a head table at a political fund-raising affair.

— Acting as master of ceremonies or introducing speakers at a political fund-raising affair.

— Making political speeches at a political fund-raising dinner, gala, rally, or other affair held for the purpose of raising campaign funds.

— Soliciting ads or contributions for a political party campaign book, program, or brochure, and performing any other duties connected with the printing, layout, or preparation of such materials.

-- Supervising, directing, or participating in the mailing of any political campaign literature. This would include the typing or preparation of mailing lists, preparation of envelopes for mailings, delivery to the post office and/or any other means of delivery.

-- Preparing or supervising the preparation of acknowledgment or "thank you" letters in connection with a political fund-raising affair.

— Enlisting the support of local volunteers for a campaign through local political contacts.

-- Aiding and advising a candidate in the management of his campaign and soliciting support for the candidate either directly or indirectly through introducing him at social gatherings held to further his candidacy or campaign.

— Organizing or assembling people to handle decorations, posters, handbills, publicity, entertainment, transportation, and "Candidate Girls," for fund-raising or campaign functions held in behalf of the candidate or the party.

— Organizing a rally for the support of the candidate or the party.

FEB 2 1971

MEMORANDUM FOR HONORABLE JOHN W. DEAN III
Counsel to the President

Re: Proposed advance corps for the President

This is in response to your telephone request for our views as to the legal implications involved in establishing a system of "advance men" for the President whose function would be, if we comprehend it correctly, to make a variety of support arrangements for the President in connection with his trips throughout the country to mobilize public opinion for his legislative program. As we understand the proposed system it would include: persons in the private sector who remain on private payrolls but receive briefings from White House staff and travel expenses from the Republican National Committee; persons on the federal payroll whose travel might be paid for by the Republican National Committee; and combinations of both groups. Without specific details as to the exact operations of these advance men, we feel that we can venture only general observations.

1. We are not aware of any federal statutory provisions which would prohibit using persons in the private sector in the manner contemplated so long as no appropriated funds are involved. Apparently political committeemen and others have performed such functions in the past with no questions being raised. The mere fact that White House staff members would brief these advance men does not, in our opinion, create legal obstacles. However, no appropriated funds should be used to pay any expenses of these advance men. */

*/ We do not address ourselves to the question of whether under general corporate law it would be permissible for a corporation to use its funds to pay the expenses of advance men who are corporate employees. This is a matter for the corporations which might be involved. Also to the extent that the activities of such advance men could properly be considered as being in connection with a Presidential election a question might arise under 18 U.S.C. 610 prohibiting corporations and labor organizations from making expenditures for such an election.

2. The use of federal personnel as advance men involves quite different considerations. The first is the Hatch Act (5 U.S.C. 7324) which prohibits all federal personnel from using their official position to influence or interfere with an election and prohibits all except certain limited categories (notably those appointed with the advice and consent of the Senate and those paid from appropriations for the office of the President) from engaging in political campaigns. The second is the criminal provision (18 U.S.C. 1913) which prohibits the use of appropriated funds for lobbying and the specific appropriation restrictions which reinforce it. The applicability of either of these statutes to the use of federal personnel as advance men will depend largely upon the circumstances in which they operate.

The prohibition in the Hatch Act against improper use of office to influence elections applies to all federal personnel including Cabinet officers. However, it is aimed at such things as coercive tactics, e.g., withholding welfare payments to influence a vote, and is unlikely to be involved in the advance system contemplated. The prohibition on staff level personnel engaging in political campaigns is directed at a broader class of activity. It does not prevent federal officials from addressing citizen groups on the past accomplishments of their agencies or explaining current proposals relating to their agency. It does prohibit calling for the defeat of a particular Congressman who opposes an agency proposal. Between these two poles are a wide variety of circumstances which give greater or lesser political character to the activities of federal officials.

The express language of the Hatch Act prohibits taking an "active part in political management or in political campaigns." These terms are not specifically defined and consequently it is sometimes difficult to determine whether particular conduct falls within the prohibition. However, aside

from the literal application of the statute, consideration must always be given to the question whether certain conduct will be viewed as a violation of the intent or spirit of the Act.

In a general sense, the President's trips could be viewed by some as the beginnings of a Presidential campaign. If there are too many political overtones to the trips the chances of their being viewed in this light are increased. In our view, payment of travel expenses for federal staff officials by a political party would give a distinct political coloration to their activities as advance men. If the President's trips involve general communication with the public, then federal officials travelling as advance men would be performing functions properly connected with their official duties and the travel expenses should normally be paid for from appropriated funds. If travel expenses are paid by a political party, then it could be contended that the purpose of the trips is political, not official, and that the federal officials, acting as advance men, are taking part in "political management" or a "political campaign." For those subject to the Hatch Act, such activities might then be viewed as a violation of the Act.

Other factors affecting the political coloration of the advance man program would be work they are called upon to perform, the sources for arranging their schedule, etc. For example, if the advance man's job is to contact and brief only Republican precinct chairmen, the participation by a federal staff official would be questionable. Similarly, if the advance man's schedules and appointments are arranged exclusively by the local Republican Committeeman, it would be questionable. If the Presidential appearances themselves involve political speeches or are limited to obviously partisan audiences, then the involvement of a federal official as advance man might also be questioned. As is evident, the propriety of using federal staff personnel is largely dependent on the circumstances in which they are used, but clear political implications should be avoided.

3. The other major consideration involved in using federal personnel, whether Cabinet level or otherwise, is the anti-lobbying provision. Specifically, 18 U.S.C. 1913 provides:

> "No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation, but this shall not prevent officers or employees of the United States or its departments or agencies from communicating to Members of Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business."

The penalty for violation is removal from office and one year's imprisonment, a fine of $500, or both.

For some years this provision has been further reinforced by specific language in individual appropriations Acts. For example, section 504 of the current Independent Offices Appropriation Act (P.L. 91-556) provides:

> "No part of any appropriation contained in this Act, or the funds available for expenditure by any corporation or agency included in this Act, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the Congress."

Similar although not identical language is found in section 701 of the State, Justice, Commerce Appropriation Act (P.L. 91-472).

These provisions evince a congressional recognition of the legislative role of the Executive Branch coupled with a concern about using federal funds to influence Congress. The line between what is and what is not permissible is difficult to draw, as was recognized by a House Select Committee on lobbying activities which investigated the problem in 1950. See H. Rept. 3138, 81st Cong., 2d sess. pp. 51-62 (1950); H. Rept. 3239, 81st Cong., 2d sess. part 2--Minority Views (1951). That investigation focused to some degree on official speeches designed to mold public opinion behind Administration programs but, after investigation by the GAO, found nothing improper. The Republican minority questioned this conclusion.

This Office had occasion to review a similar question in 1961 when President Kennedy announced a series of regional conferences in different parts of the country to talk "about some of the domestic programs we have worked on and could work on in the future." Public Papers of the Presidents, John F. Kennedy--1961 pp. 660, 700. It was noted that the line between informing the public and "propaganda designed to influence legislation" is difficult to draw. The suggestion was made that if the content of those meetings stressed the informational aspect and scrupulously avoided any idea that Members of Congress be pressured to support legislation, the law would not be violated. */ One substantial difference between those Conferences and the advance program contemplated here, however, was that the Congress was not then in session in 1961.

While Congress is now in session, we do not believe this factor alone would bar the advance man system. However, it does make it all the more important to avoid any conduct which can be construed as soliciting pressure on Members of Congress to secure the passage of particular legislative programs. Under no circumstances should federal personnel exhort or participate in the exhortation of citizens to write or otherwise apply pressure on Members of Congress.

*/ We are attaching a copy of the 1961 memorandum (undated) which was transmitted to Frederick G. Dutton, Special Assistant to the President, on November 30, 1961 by Nicholas de B. Katzenbach, Assistant Attorney General, [illegible]

There are no legal barriers to using a combined system of both private and federal advance men. However, the restrictions both with respect to political activity and lobbying which apply to federal personnel apply whether they are used alone or in conjunction with others.

If specific questions arise, in light of these general guidelines, we will, of course, be happy to consider them further.

William H. Rehnquist
Assistant Attorney General
Office of Legal Counsel

Attachment

NdeBK:HFR:sgc:bh

MEMORANDUM FOR THE HONORABLE FREDERICK G. DUTTON
Special Assistant to the President

Re: White House Regional Conferences.

This is in response to your memorandum of October 13 inquiring as to the legal problems, if any, which might be encountered in connection with the proposed White House conferences to be held in various cities during the month of November.

I understand that these conferences will include as participants members of the Cabinet and other senior federal officials whose expenses will be paid from appropriated funds, including some who are not exempt from any of the provisions of the Hatch Act; that they will appear and address civic groups, upon the invitation of public officials in those cities who will sponsor the conferences; that state and municipal officials, special civic groups and interested citizens will be invited to attend; and that the purpose of the conferences is "to inform citizens of recent legislative and administrative developments and accomplishments, with particular emphasis upon the impact of legislation upon the region in which the conference is held." 1/ In addition, I understand that "the views of citizens and groups will be solicited and a report made to President John F. Kennedy on these views." 2/

For the purposes of this memorandum I am further assuming that these conferences may have indirect political effect in that (1) they may increase public support of the President's program in the next Congress which may be manifested in a variety of ways, and (2) what is said at these conferences may be used in campaign material in the 1962 elections for Members of Congress. I am, however, also assuming that participants in the conferences will refrain from directly soliciting public support

1/ White House Press Release October 11, 1961.
2/ White House Press Release October 11, 1961.

Draft dated 11/30/61 (Mike Manatos)

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through urging pressures upon Members of Congress with respect to any particular legislation and will not urge the election or defeat of any particular Senator or Member of the House of Representatives. These qualifications have, as this memorandum indicates, considerable relevance.

There are three statutes which have potential relevance to the conduct of these conferences. The first of these, the Hatch Act, contains two types of prohibitions. The first sentence of Section 9 (5 U.S.C. 1181) makes it unlawful for "any person" employed in the executive branch of the government "to use his official authority or influence for the purpose of interfering with an election or affecting the results thereof." The prohibition is applicable without exception to "any employee" of the executive branch including even Cabinet officers. Although Section 9 merely provides for the removal of a person violating its provisions, 18 U.S.C. 595 makes acts which violate the first sentence of Section 9 criminal offenses. The second prohibition in the Hatch Act is contained in the second sentence of section 9 and, with designated exceptions, prohibits employees of executive agencies and departments from taking "any active part in political management or in political campaigns." Generally speaking any official appointed subject to Senatorial confirmation is exempted from this prohibition.

The first prohibition seems to be clearly inapplicable to participation in the conferences. Although there are no reported cases, it has been administratively construed by the Civil Service Commission to be applicable only to obviously improper uses of official position, such as the use of government property for campaign purposes, the improper influencing of subordinates to vote for a particular party and the like. The validity of this view is demonstrated by the fact that a person exempt from the second prohibition may engage in political management and political campaigns without necessarily violating the first sentence. And the first prohibition imposes no greater limitations upon officials who may not engage in political management and political campaigns than it does upon officials who may. However, neither could use a government car to transport voters. Finally, even if it should be contended that the use of government funds for transportation and similar expenses constituted a use of "official authority or influence" the remote relationship to an "election" would make the first prohibition inapplicable.

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The second sentence of section 9(a) prohibits civil servants, other than those exempted, from taking an active part in "political management or in political campaigns." These words are clearly related by their content to the solicitation of votes for a candidate or party seeking office in an election; that is, the normal and everyday meaning of the words "political management" and "political campaigns." This is the view which the Civil Service has consistently taken with respect to the Act and I see no reason to differ with their construction. The Commission would regard a program of appearances by civil servants merely to laud the efficiency of the administration in power as a violation of at least the spirit of the Hatch Act. However, nothing in the Hatch Act would prohibit such an employee from appearing before a nonpartisan group to describe, explain and promote the activities of his agency, including its legislative program, even though the latter may contain politically controversial items. This view is substantiated by the legislative history of the Act, particularly the message of President Roosevelt when he approved it. At this time he said:

> "The same definition of fair and proper administration of the bill applies to the right of any Government employee, from the highest to the lowest, to give to the public factual information relating to the conduct of Government affairs. To rule otherwise would make it impossible for the people of the United States to learn from those who serve the Government vital, necessary, and interesting facts relating to the manifold activities of the Federal Government."

I am satisfied that there is nothing in the proposed White House conferences which approaches a violation of these provisions in either their letter or spirit. I think that partisanship would have to be carried very far, in view of the absence of any current election, before even the spirit of the statute would be violated. It should, however, be unnecessary to add that the more partisan the speeches, the setting, the invited participants, and such factors, the more one approaches the sort of impropriety which the Act was aimed at even if its letter is not violated.

The second two statutes present a more difficult problem. These deal with the use of appropriated funds for "lobbying" activities by government officials. The older of the two statutes,

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18 U.S.C. § 1913 is a criminal statute first enacted in 1919, which reads as follows:

"§ 1913. Lobbying with appropriated moneys.

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; . . . ."

Since this section is aimed at influencing in specified ways a particular Member of Congress, its violation by the proposed conferences is unlikely. However, a similar prohibition, without criminal penalties, has been annually enacted in the appropriation acts since 1951 and now appears as Section 509 of the General Government Matters, Department of Commerce and Related Agencies Appropriation Act, 1962 (P.L. 87-125). It provides:

"No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any individual, corporation, or agency included in this or any other Act, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress."

A strict reading of this latter Act might preclude spending government appropriations for the purposes of these conferences, if their purpose can accurately be characterized

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as "publicity or propaganda . . . designed to support or defeat legislation pending before Congress." I doubt that the proposed activities can accurately be so described, and in any event, I do not believe that an interpretation of the Act extending to informational activities would be a correct one. The legislative history in the case of both Acts, as well as common sense and past precedent, makes it moderately clear that both Acts were aimed at specific evils related to using federal funds to generate public pressure on the Congress through the kind of acts set forth in Section 1913. This is more clear in the case of Section 1913 than Section 509, but I think acts this closely related should be similarly read as reflecting a consistent Congressional view.

The intent of Congress was, I believe, to attempt to distinguish "publicity or propaganda purposes" which were directly designed to put pressure upon the Congress through arousing public opinion, and activities which were educational or informational and designed to explain and elaborate and defend past or future Executive or Legislative action. Admittedly the line is not always an easy one to draw. But the fact that most departments of the Government maintain information offices and that Congress appropriates funds to maintain and support these offices indicates that it was not the congressional intent to preclude a wide category of publicity activities, even though these activities might well result in publicity which would influence pending legislation. What they did clearly wish to prevent was the use of appropriated funds by the Executive to create artificial pressures on Congress during its legislative considerations.

The legislative history of the Appropriation Act provision is not extensive. It was added by means of a floor amendment in the House in 1952. The sponsor of the amendment, Congressman Smith of Wisconsin, was critical of the number of public relations personnel in the Government agencies and of

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the great volume of government publications. He recommended his amendment and it was adopted in the context of stemming the flow of such publications. Although there was no discussion of this amendment in the Senate Committee Report and no mention of it in debate on the Senate floor, Senate discussion of the same amendment in the Independent Offices Appropriations Act disclosed a concern only with the expenditure of government funds for personal services and publications intended to affect the course of legislation by molding public opinion. The enactment of this provision in the years since 1951 have been routine and without significant congressional comment.

There is no question that Congress is sensitive to the use of appropriated funds to pay for alleged lobbying activities by government officials. This sensitivity is evidenced not only by these statutes but also by congressional investigations which have occurred from time to time. Perhaps the most important was the 1949 investigation by a House Select Committee on Lobbying Activities which examined, among other things, "all activities of agencies of the Federal Government intended to influence, encourage, promote or retard legislation." (H. Res. 298, 81st Cong., 1st Sess.) Among the matters considered by the Select Committee were charges that Secretary of Agriculture Brannan had violated 18 U.S.C. § 1913 by making a speech on agricultural policy before a large gathering of Production and Marketing Administration Committeemen brought together at government expense in St. Paul, Minnesota, for the purpose of receiving instruction and information regarding their functions. The General Accounting Office, after an investigation, concluded that Mr. Brannan had not violated § 1913 but the Assistant to the Comptroller General, in testifying before the Select Committee, stated that:

> " * * * an . . . evil in public expenditures for lobbying consists . . . in the campaigns put on throughout the country at large for the purpose of inducing the electorate to put pressure on Congressmen and Senators. The expenditures may take the

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form of distributing printed material of some kind, the purchase of time on radio programs, or travel and pay-roll expense for attendance at meetings." (Hearings before the Select Committee, 81st Cong., pt. 10, pp. 34-35)

In its own reports, however, the Select Committee took cognizance of the fact that the President has responsibilities in the legislative arena and noted, without disapproval, various activities before Congress and before the public which he and his subordinates carry on in order to influence the course of legislation. (S. Rept. 3138, 81st Cong., 2d sess., pp. 52-62 and H. Rept. 3239, 81st Cong., 2d sess., pp. 35-36) In substance the Committee took the position voiced by the chairman at the beginning of its hearings on the phase of its assignment concerned with the conduct of federal officials:

"What I am trying to make abundantly clear here at the start is that the executive agencies have the right and responsibility to seek to 'influence, encourage, promote or retard legislation' in many clear and proper -- and often extremely effective -- respects and definite machinery is provided by law and by established custom for the exercise of these rights but that under certain conditions federal funds cannot be spent to influence Congress." (Hearings, supra, p. 2).

It is important in interpreting the foregoing anti-lobbying provisions to recognize, as has Congress, the Hoover Commission, and the leading scholars on the Presidency, that the President has constitutional duties in the legislative arena. He has a duty to report to the Congress from time to time, to recommend legislation, and actively to seek its enactment. It must be conceded that the President, and subordinate officers of the executive branch acting on his behalf to influence legislation, can, as in other areas of constitutional authority, be subjected to a measure of

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control by limitations imposed by Congress upon the use of appropriated funds. Congress "may grant or withhold appropriations as it chooses, and when making an appropriation may direct the purposes to which the appropriation shall be devoted. It may also impose conditions with respect to the use of the appropriation, provided always that the conditions do not require operation of the Government in a way forbidden by the Constitution." 41 Op. A.G. No. 32 (July 13, 1955, p. 4, emphasis supplied); see also United States v. Butler, 297 U.S. 1, 73-74. I would therefore consider it most doubtful whether Congress could impose limitations upon the use of appropriated funds which go so far as to render it altogether impractical or impossible for the President, and those acting pursuant to his direction, to carry out a basic Constitutional function.

While not strictly relevant to the interpretation of the Appropriation Act, the same point was made by Senator Hatch in discussing the Hatch Act prohibitions. He said:

> ". . . As I have often said, when policy-making officials of the Government such as the President and members of the Cabinet inaugurate and carry on great policies of government, they must necessarily frequently go before the country and the people and explain their policies, and often it is true that they must defend them when they are assailed. It is but right and proper that they should have the full privilege of doing so, and the bill now so provides." (94 Cong. Rec. 9572).

I would not be prepared to interpret the limitation contained in the Appropriation Act on the use of appropriated funds for publicity or propaganda campaigns as over-reaching constitutional prohibitions. I think that Congress may properly limit such activities, but I do not believe that it may constitutionally, or that this legislation intends to preclude

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the President from explaining his program and legislative proposals to the general public by any appropriate means. In the total context of such legislation I think that "information and explanation" turn into "publicity and propaganda" at the point where an honest evaluation of the activities in question would characterize them as primarily intended to put the heat on Congress with respect to specific legislation under consideration in the Senate and the House. As I have said, this is not an easy line to draw, but if the format described in the White House press release of October 11 is scrupulously adhered to, then I do not believe these conferences overstep the line. If the primary emphasis of the conferences is to be on proposed legislation, if this legislation is not merely explained but vigorously promoted and if the audience is encouraged, through exhortation and through the distribution of large quantities of printed matter, to appeal to their Senators or Representatives for the enactment of the program--then I believe the prohibition contained in the General Appropriation Act may well be applicable. Unavoidably, we are dealing with a question of degree: I cannot read education, information, and the solicitation of the views of participants and the general public for the President as being "publicity or propaganda"; on the other hand, too active and too enthusiastic promotion of specific legislative proposals might accurately be so characterized. The circumstances and subject matter of the conferences must suggest the line to be adhered to.

I think there are several factors which support my conclusion that the conferences do not violate legislative proscription against lobbying. Probably the most important of these is the fact that the conferences are not taking place during a session of Congress, and as a result do not fit into the sort of activities which Congress has indicated most clearly its desire to proscribe. For this reason, it seems to me that the pressures to enact the President's program which may be generated are sufficiently indirect to avoid running afoul of these provisions.

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CONCLUSION

It is my opinion that the conferences as described in the President's press conferences are not in violation of any existing statutes. I feel confident that these are well removed from the Hatch Act proscriptions, even though civil servants are employed, in view of the fact that their relation to any "campaign" or "election" is temporally removed by approximately a year. They would approach these proscriptions only if the participants were to address their remarks directly to the support or defeat of Members of Congress. The more this is done, the more the spirit of the Hatch Act would be violated. I would not, however, be concerned if persons attending the conference were to be indirectly influenced by measuring the voting records of Members of Congress against their impressions of the Administration's program.

As I have noted, the Appropriation Act provision gives considerable more difficulty. While I conclude that it does not prohibit the use of appropriated funds for the purposes of the conferences, I am assuming that they will be conducted in a manner consistent with the purposes outlined by the President in his press releases and that, therefore, they will not be primarily aimed at directly exhorting participants to influence Members of Congress with respect to particular bills or programs. If it is felt that this is likely to occur, it might be wiser not to use appropriated funds in support of the conferences. But if funds are to be drawn from other sources--for example, from the Democratic National Committee--then I believe it would be necessary, although perhaps not strictly required by law, to avoid the use of civil servants in the seminars. I feel some impropriety in asking regular members of the Civil Service to participate in programs which, by virtue of the source of their funds, would obviously be characterized as "political."

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I feel sure that the proposed conferences will be criticized on the grounds that tax money is being used for political purposes, and a colorable argument can be made that this is in violation of section 509 of the Appropriation Act. How much substance there is to this criticism will depend upon what is done at the conferences and the public acceptance or rejection of these acts as "political" in a partisan meaning. If to preclude this criticism nonappropriated funds are used, then we are caught on the other horn of the dilemma since, by implication, the point that these conferences are "political" is conceded and the possible impropriety of the use of civil servants is emphasized.

Nicholas deB. Katzenbach
Assistant Attorney General
Office of Legal Counsel

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Orig sent to Bill Casselman

Vice Pres.

OFFICE OF THE VICE PRESIDENT

WASHINGTON

January 21, 1975

Mr. Philip W. Buchen
Counsel to the President
Second Floor West Wing
The White House

Dear Phil:

Thanks very much for sending over Bill Casselman's materials on advancemen. A lot of questions were put to rest.

Sincerely,

Peter J. Wallison
Counsel to the
Vice President

Vice President

OFFICE OF THE VICE PRESIDENT

WASHINGTON

January 21, 1975

MEMORANDUM TO THE VICE PRESIDENT

FROM: James Cannon

SUBJECT: 25th Amendment

Jack Marsh and I discussed the invitation from Senator Bayh to comment on the 25th Amendment.

I see nothing to be gained, and two good reasons not to do it:

1. It would tend to set a precedent against executive privilege.

2. It would be inappropriate for you to criticize, even by intimation, the process by which you became Vice President.

JMC:kr
cc: Phil Buchen
Jack Marsh
Peter Wallison

V.P.

THE WHITE HOUSE

WASHINGTON

February 12, 1975

Dear Mr. Wilson:

Your letter of February 7 has been noted. I can assure you that Vice President Rockefeller and I have the finest of relationships, and I am sure that all of your fears are ill-founded.

Sincerely,

Philip W. Buchen
Counsel to the President

Mr. Charles J. Wilson
Aromas,
California 95004

Aromas, Calif., 95004,
7 February, 1975

The Honorable Philip Buchen,
General Counsel,
% The White House,
Washington, D.C. 20500

Dear Counselor:-

It is quite apparent that your position in the White House is in jeopardy.

Vice-President Nelson A. Rockefeller who is power mad is determined to place his own men in the White House.

Vice-President Nelson A. Rockefeller has been unmasked as a long time active COMMUNIST.

His staff members undoubtedly follow the same ideological lines... Once established in the White House you can bet your bottom dollar that you will be on the way out of a job.

Good luck!

Respectfully,

Charles J. Wilson,
a Patriotic American.

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C.J. WILSON,
Aromas, Ca. 95004

U.S. POSTAL SERVICE CA
PM
7 FEB
1975
95023

AIR MAIL

The Honorable Philip Buchen, General Counsel,
% The White House,
1600 Pennsylvania Avenue, N.W.,
Washington,
D.C. 20500

PERSONAL
PLEASE

THE WHITE HOUSE

WASHINGTON

February 12, 1975

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Counsel to the President

Mr. Charles J. Wilson
Aromas,
California 95004

PHOTO COPY
FROM
GERALD R. FORD LIBRARY

Aromas, Calif., 95004,
7 February, 1975

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Good luck!

Respectfully,

Charles J. Wilson,
a Patriotic American.

PHOTO COPY
FROM
GERALD R. FORD LIBRARY

12:40 p.m. Friday, March 21

Listed below are the names and titles of the people Captain Howe (VP staff) promised you.

Murphy Commission, working on:

Dr. Francis Wilcox
Executive Director;
Commission on Organization of the Government
for the Conduct of Foreign Policy
254-9850

Fisher Howe
Deputy Executive Director
254-9850

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V.P. CC. PHIL BUCHEN

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OFFICE OF THE VICE PRESIDENT

WASHINGTON

April 28, 1975

MEMORANDUM FOR THE VICE PRESIDENT

FROM: Peter J. Wallison

SUBJECT: The Capitol Hill Club

As far as I have been able to determine at the present time, this is the situation:

1. Travelers Insurance Company, the holder of the only existing mortgage on the premises occupied by the Republican National Committee and the Capitol Hill Club is about to foreclose its mortgage.

2. Foreclosure is imminent because the Club has not been meeting its rental payments to Capitol Hill Associates, the owner of the property, and Capitol Hill Associates ("Associates") in turn has not been able to make timely mortgage payments.

3. The Club needs approximately $700,000 to clear up its debts (mostly to the Marriott Corporation) and to pay its rent through 1976; Associates needs approximately $400,000 to clear up its own outstanding obligations.

4. Advances to Associates could be secured by a second mortgage (after Travelers) on the premises occupied by both the Club and RNC, but advances to the Club would be unsecured, and there can be no assurance that it would ever be recovered unless the Club became a going concern. The following questions arise at this point:

(a) Is your interest here in preserving the Club or just the Republican National Committee lease?

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Because the leases of both the Club and the Committee have been assigned to Travelers as security for the mortgage, if Travelers forecloses it would be in a position to evict the Republican National Committee as well as the Club. Thus, it could be argued that the only way to protect the tenure of the RNC is to finance the operation of the Club.

This argument, however, does not work. Travelers would not want to evict the RNC, because the zoning for the property permits occupancy only by the Republican National Committee, and Travelers would have great difficulty getting a variance. Instead, Travelers will probably sell the property to Congress, which has a right of first refusal on both properties and wants to use at least the Club building for office space. John Rhodes has said that if the property is sold to Congress, he can arrange to have the RNC property leased back to RNC again.

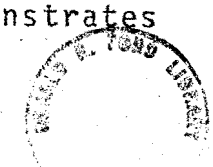
In this transaction, the Club would fold and the losers would be Marriott Corporation ($270,000) and certain other creditors of the Club. Associates would come out with a profit of approximately $300,000, since the pre-agreed price for the property to Congress exceeds by that amount the total principal sum of the mortgage and other obligations of Associates.

(b) If your purpose, on the other hand, is to save the Club as well as the RNC, things are a good deal more complicated.

As noted above, any advance to the Club would be unsecured, and might be lost entirely if it does not become a viable organization.* This risk could be reduced by inducing the RNC to pick up a larger portion of the rent paid by the two entities to Associates, releasing a larger proportion of the Club's income for repayment of the loan made by the group you would assemble. Naturally, however, this is no guarantee that your investors would get their money back in two years, or ever.

---

* It should be noted that the officers of Associates who I have spoken to seem to believe that the Club would be viable under new management and that a report on the Club by Restaurant Associates of New York demonstrates this.



The reasons for your entering this transaction anyway are unclear to me. Apparently, there is a feeling that it would be a great political issue for the Democrats if a Republican organization went into bankruptcy. However, it would also be a nice issue, and would cause you personally many difficulties, when it became known that you had assisted the RNC and the Capitol Hill Club by advancing a substantial amount of money with no real hope of return.

However, I have tentatively set up a meeting for Wednesday afternoon with the officers and attorneys for Associates, and I will, of course, go forward with this transaction unless you indicate otherwise.

OFFICE OF THE VICE PRESIDENT

WASHINGTON

May 8, 1975

MEMORANDUM FOR PHILIP W. BUCHEN

FROM: Peter J. Wallison

I attach a copy of a memorandum from the Vice President to the President which describes in some detail the cordial meeting which took place yesterday with Senators Tower and Church.

The Vice President took this memo with him when he saw the President today, but I don't know whether he delivered it.

Attachment

OFFICE OF THE VICE PRESIDENT

WASHINGTON

May 8, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: The Vice President

SUBJECT: Conference with Senators Church and Tower

I met on Wednesday, May 7, 1975, with Senators Church and Tower, and key members of their Senate Select Committee staff.

Senator Church stated that his Committee wanted to cooperate with the Commission, and had helped get some information out of the Senate Rules Committee which the Commission needed for its inquiry. (This was material on Watergate, and took approximately five weeks for us to secure.)

He noted that his Committee had a much broader mandate than the Commission, including all the intelligence agencies and surveillance by other Federal agencies such as IRS, and hoped to get their work done by the end of the year without an extension of time and added expense.

Senator Church then said he needed help from the Commission, including the furnishing of all the Commission's "documents" and "transcripts", so that his Committee would not have to duplicate the efforts of the Commission.

I responded that both the Commission and the Senate Select Committee have "the same interests but different responsibilities." I noted that the Commission was a creature of the President and that I had supposed that all its materials would go to the President at the end of its study. However, I said I would take up the Senator's request with the Commission.

GERALD R. FORD

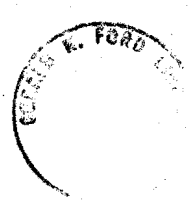
Senator Tower asked whether the ultimate decision would rest with the President, and I confirmed that in my view the Commission had been created by the President and was reporting to him.

I noted also that there has been an adverse effect on morale of CIA employees because of all the charges and investigations, and that this has adversely affected the intelligence capabilities of the country.

Both Senators responded that this was why the Senate Committee wanted to get its investigation over with as quickly as possible.

Senator Church commented that responses to the Committee from the CIA were routed through the White House, but that thus far the Committee has received almost everything it has requested. However, the responses have not been quite as fast as he had hoped.

I asked whether there would be any impropriety in the Commission's commenting upon the relationship between the CIA and Congress, and both Senators said that they had no objection at all to recommendations along these lines.



EYES ONLY
ADMINISTRATIVELY CONFIDENTIAL

Rockefeller
Vice Pres

THE WHITE HOUSE

WASHINGTON

July 24, 1975

MEMORANDUM FOR: DON RUMSFELD

FROM: PHILIP BUCHEN P.W.B.

SUBJECT: HOLDING DUAL POSITIONS

No provisions appear in the Constitution or the Federal Statutes which prevent a person from holding more than one office in the Federal Government except when he is a member of either the Senate or House of Representatives. There are statutory limitations on receiving dual pay for holding more than one position (U.S.C.A. Title 5, Sec. 5533) which makes it evident that a person in the Executive Branch may hold two positions at the same time even though he cannot double up on his pay.

The Constitution (Art. 1, Sec. 6, Cl.2) provides that:

> "...no person holding any office under the United States shall be a member of either House during his continuance in office."

For this purpose I do not believe that the Vice President is a Member of the Senate even though he is the presiding Officer of the Senate. Otherwise, he could hold no other Executive Branch position, and there is much precedent for his holding such positions as member of various Executive Branch boards, commissions, and councils. Although the Vice President is included in the definition of "Member of Congress" under one statute (U.S.C.A., Title 5, Sec 2106), that is solely for particular administrative purposes related to his functioning as President of the Senate. It has no bearing on the meaning of the Constitutional provisions as to who is a "member of either House."

I have also examined the provisions concerning appointments of heads of the respective Executive departments and none

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of these provisions provide that the head of a Cabinet department cannot hold another position in the Executive Branch.

If the question you raised is to be pursued further, I would like to approach on a confidential basis a Constitutional scholar who could provide us with information about possible commentaries or public debate on the legality and merits of appointing the Vice President to head an Executive department or, what is more likely, of naming one person to head two or more Executive departments.

THE WHITE HOUSE

WASHINGTON

July 24, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: DON RUMSFELD

Thanks for your memo of July 24.
Go no further.

Thank you.

Vice President

THE WHITE HOUSE

WASHINGTON

December 20, 1975

MEMORANDUM FOR: JACK MARSH

FROM: PHIL BUCHEN

Peter Wallison of the Vice President's office advised me that the Vice President has been approached by the Senate Government Operations Committee to testify about his views on Congressional oversight of CIA, particularly in reference to the Rockefeller Commission recommendation that there be a Joint Special Congressional Committee for this purpose. Peter Wallison has initiated discussions with the staff to see what alternatives to a formal appearance by the Vice President would be feasible, such as an informal meeting by him with members of the Committee.

I told Peter that I was worried about having the Vice President become even informally involved on this subject with the Government Operations Committee when the Senate Select Committee presumably will claim jurisdiction over the matter.

You may want to raise this point at an early meeting of the intelligence group in the White House.

cc: Mike Duval

THE WHITE HOUSE

WASHINGTON

February 6, 1976

MEMORANDUM FOR: PETER WALLISON

FROM: PHIL BUCHEN P.

In response to your inquiry, I see no problem in considering the negatives of the official photographs taken by the staff photographer of the Vice President as part of his official papers. Of course, until the Congress has considered the recommendations from the National Study Commission on the Records and Documents of Public Officials, it is not possible to advise on how such materials are to be treated once the Vice President leaves office.

Please don't hesitate to contact me if you have additional questions in this regard.

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Copy to Barry.

OFFICE OF THE VICE PRESIDENT

WASHINGTON

January 29, 1976

MEMORANDUM TO: Philip W. Buchen

FROM : Peter J. Wallison Pete

In our telephone conversation this morning I mentioned to you that the Vice President has raised a question as to whether the negatives of official photographs taken in his office are part of his official or personal papers, or are the property of the White House.

As I indicated, the Vice President's official photographer is a member of the Vice President's staff, paid out of appropriated funds authorized for the Vice President's office, but he uses film and reproduction facilities furnished by the White House photographers.

It is my understanding that in the past the negatives of photographs taken in the Vice President's office have remained in the possession of the White House photographers. But in that case, of course, the photos were not taken by a member of the Vice President's staff.

Please let me have your views on this matter.

GERALD R. FORD LIBRARY

Vice President
Rockefeller

THE WHITE HOUSE

WASHINGTON

July 6, 1976

Dear Nelson:

Bunny and I are glowing with joy and gratitude over your part in making possible our participation in the glorious events of July 4, 1976. Without your thoughtful help in providing the flights that whisked us from Washington to the deck of the Forrestal and back, I could not have managed the trip.

For that kindness and for many, many other reasons, I am full of heartfelt thanks to you and feel deep and enduring admiration for you and Happy and all your delightful family.

Sincerely yours,

Phil

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THE WHITE HOUSE

Vice Presidential

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: Tuesday, October 5, 1976 Time:

FOR ACTION:
Phil Buchen
Jim Cannon
Max Friedersdorf
Jack Marsh
Jim Lynn
FROM THE STAFF SECRETARY

cc (for information):

DUE: Date: Wednesday, October 6, 1976 Time: Noon

SUBJECT:
The Vice President: Presidential Initiative in the Arts

ACTION REQUESTED:

____ For Necessary Action
____ Prepare Agenda and Brief
__X__ For Your Comments
__X__ For Your Recommendations
____ Draft Reply
____ Draft Remarks

REMARKS:

No objection but believe statement is not an appropriate place for quotation from John Adams.

P.W.B.

Philip W. Buchen
Counsel to the President

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

THE WHITE HOUSE

WASHINGTON

October 7, 1976

MEMO FOR: PHIL BUCHEN

FROM: BOBBIE KILBERG

SUBJECT: The Vice President: Presidential Initiative in the Arts

Suggested response:

No objection. Suggest poem be removed from "A Statement of Policy on Vocations and The Arts".

Type after remarks:

"No objection but believe statement is not an appropriate place for quotation from John Adams."

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