The original documents are located in Box 126, folder "Buchen, Philip (2)" of the Ron Nessen Papers at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE
WASHINGTON

7/1/75

NOTE FOR: Phil Buchen

FROM : RON NESSEN

F.Y.I.

RHN

Q He has been very busy with the CIA investigation.

THE PRESIDENT: The CIA, of course, up on the Hill as the presiding officer of the Senate. He has been active in the National Security Council, the Domestic Council, the Cabinet meetings and the Economic Policy Board and the Energy Policy Council. He has been in everytying, which I think is the right role for a Vice President.

Q Speaking of the CIA, Mr. President, do you feel that these investigations of the CIA have gone so far that they have harmed the national interest?

THE PRESIDENT: I think it is right on the border and I believe that the potential could be very harmful for the intelligence community in this country.

Q If what happened, for example if they got into public hearings on so-called assassinations --

THE PRESIDENT: I think that would be very ill-advised. I said that I was submitting this information on assassinations to the Church committee and urged them to handle the material with extreme prudence and I certainly would reiterate that statement today.

We need very, very badly a strong intelligence community, the Central Intelligence Agency, NSA, Defense Intelligence Agency, and to destroy that would destroy a very important national security arm of the President of the United States. If it goes much further with leaks, with unfortunate disclosure of information by one means or another, I think we could seriously cripple our intelligence community.

Q Mr. President, the Attorney General said that his view is that if his investigation which you put him in charge of determines that there was violation of law by anyone in the CIA or in the Government and that there is a reasonable prospect that a prosecution could be successful, that the Department of Justice should proceed and should not give particular weight to the question of any damage that a prosecution would do to the CIA as an organization or to what he called policy considerations about past officials. Do you have any problem with that point of view?

THE PRESIDENT: I think the Attorney General has to take that position and if that situation develops I would certainly want to discuss the pros and cons. I would hesitate to make an abstract judgment at this point.

Q But you would expect to be consulted on that?

THE PRESIDENT: I should think that the President ought to not be -- I think I should be informed. On how you describe the discussion, I certainly ought to be informed if a prosecution is going to potentially harm the national interest. Whether I have the authority or should exercise it is another question, but I would expect to be informed.

Q You have been very specific about the dangers, Mr. President, and the hazards. What else can you do to prevent this crippling effect which you have described?

THE PRESIDENT: There is not much I can do about what the Congress does because, after all, they are a separate body. We have cooperated with them so far in a responsible way in giving them information. What I am saying is the time may come if by any chance they should act irresponsibly that we would have to exercise limitations on our part. I am not saying they have but the potential exists.

Q On what you would give them?

THE PRESIDENT: That is right.

Q Mr. Colby -- I have been sort of out of the country and out of touch, but Mr. Colby seems to have become something of a controversial figure, to put it mildly. Would you expect that he would remain as Director of the CIA?

THE PRESIDENT: We have no plans to change.

Q Have you had a chance to look at the recommendations of the Murphy Commission?

THE PRESIDENT: I had a briefing by them last week. I had just finished an hour or so ago reading the Vice President's supplementary views and Senator Mansfield's views. I have read the summary of the Commission's report itself. I have not read all of the details of it.

file

THE WHITE HOUSE

WASHINGTON

August 7, 1975

Dear Mr. Curtis:

This is in response to your letter of July 10, 1975, inquiring whether President Ford maintains an office account, newsletter fund or similar account within the purview of 2 U.S.C. 439a.

I regret the delay in responding to your inquiry. However, it was necessary to review in detail our present practices in order to respond fully to your question. No such accounts are maintained by or on behalf of the President to defray "any ordinary and necessary expenses incurred by him in connection with his duties as a holder of Federal office...."

As an accommodation to the White House press corps which travels with the President on all trips, regardless of the nature of the trip, the White House travel office has traditionally maintained a so-called press travel account. This account receives payments from the White House press corps for its share of the costs of travelling on Air Force One, the press charter plane which follows the President's plane, and any ground transportation necessary for the press to accompany the President at virtually all times while away from Washington.

Due to the unique nature of the President's schedule; e.g., confidential departure times, use of military bases, possibilities for sudden schedule changes, etc., the White House travel office makes the necessary arrangement for these transportation costs and bills the media accordingly. Receipts are maintained in an account used only for this purpose. Disbursements from this account are generally made into the Treasury of the United States for travel on government planes, to the airlines from whom planes have been chartered, and to the appropriate companies for ground transportation expenses.

While this account is not used for support of a holder of Federal office, we would be pleased to make its records available for inspection by members of your staff.

It is our understanding that for a number of years the two national political committees have undertaken certain expenditures in furtherance of party goals for activities by the President and Vice President as the titular heads of their political parties. The Republican National Committee has made such expenditures during the present and prior Administrations. I have, therefore, requested the General Counsel of the Republican National Committee to respond to you directly with respect to these expenditures. He has advised that these expenditures have already been filed with the Federal Election Commission, the Clerk of the House and the Secretary of the Senate, in the Committee's quarterly reports, and that he will promptly contact the FEC to discuss the matter further.

If you have any additional questions, please do not hesitate to contact me.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. Thomas B. Curtis
Chairman
Federal Election Commission
Washington, D. C. 20463

CC: Cramer, Haber & Becker

bcc: Don Rumsfeld
Dick Cheney
Jim Connor
John Marsh
Robert Hartmann
Ron Nessen
Peter Wallison

PWB:Barry Roth

THE WHITE HOUSE

WASHINGTON

August 26, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: RON NESSEN RN

As you requested in today's meeting, here is list of White House personnel who traveled on the press plane during President Ford's trip to Cincinnati and Cleveland, July 3, 1975:

Press Office Staff

Bill Greener
Larry Speakes
John Carlson
Patti Presock
Pat Coyle

Press Office Advance

Pappy Noel
Thym Smith
Eric Rosenberger

Transportation Office

Ray Zook
Bob Manning
Charles Marceaux
Bob Law

Alderson's Reporting Service

Doris Goldstein
Gay Halterman
Doug Ross

Medical Unit

Gary Weaver
JoAnne O'Brien

WHCA

Brig. General Larry Adams
Allen Clouse (shotgun microphone recorder)

Secret Service

Andrew Yee

White House Photo Office

Bill Fitzpatrick

Navy Photo

Francis Zimmerman
John Kelley
Alan Harrison

AT&T

Paul Benson

cc: Jim Connor
Jerry Jones
Robin Martin

THE WHITE HOUSE

WASHINGTON

August 29, 1975

MEMORANDUM FOR: RON NESSEN

THROUGH: PHILIP BUCHEN

FROM: BARRY ROTH

SUBJECT: Revision of Standards of Conduct Regulations

As I mentioned at yesterday's meeting, I have been talking informally with the Civil Service Commission since mid-May on possible changes in our regulations governing standards of conduct. There are several reasons for considering changes:

1) As an outgrowth to Bill Casselman's work for Vice President Ford in drafting employee conduct regulations for the Vice Presidential staff, to update and clarify the regulations governing the Executive Office of the President.

2) The actual regulation now in effect, although re-emphasized by this Administration th/ / last fall, are substantially unchanged since thier issuance on February 29, 1968.

In addition, approximately one month ago Don Rumsfeld met with John Gardner and David Cohen of Common Cause, at whichs/ time they presented him with proposed revisons in Executive Order 11222 ~~e/m/p~~ employee governing conduct. The primar6/ y change they recommended ~~d~~ require public disclosure of employee financial interests. Bobby Kilberg and I met yesterday with David Cohen (a meeting which was scheduled prior to the Rustand situatibn) to dis/cuss further their proposals in this regard. The Common Cause proposal was prepared for ~~Exwctuvie~~- Executive branch wide applicability, and did not focus on the White6/ House alone ~~neightor the b~~- neither the ~~dislcu~~- discussions with the CSC nor the common Cause proposal ADDRESSED THE SITUATION OF An employee undertaking new investments while on the White House payroll.

A thrust of any changes will be to make the regulations more undertandable to non-lawyers.

THE WHITE HOUSE

WASHINGTON

August 29, 1975

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THROUGH: PHILIP BUCHEN

FROM: BARRY ROTH

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September 21, 1975

MEMORANDUM FOR PHIL BUCHEN

FROM: RON NESSEN

I agree with your position that the President's tax returns should not be made public at this time, and certainly not exclusively to Jack Anderson.

However, I think your letter to Anderson is just a little harsh. He has known the President for some time, has interviewed the President, and a somewhat warmer turn-down might be more appropriate.

I'm sure you've thought of this yourself, but I wanted to add my view that at some point during the coming Presidential campaign almost certainly the weight of public and press opinion will require serious consideration of publication of the President's tax returns.

RN/cg

THE WHITE HOUSE

WASHINGTON

September 11, 1975

MEMORANDUM FOR: RON NESSEN

FROM: PHILIP BUCHEN P.W.B.

Attached is a copy of a letter received by the President from Jack Anderson and a draft of a reply I proposed to send to him.

Kindly give me your comments as to the appropriateness of the proposed reply.

Attachments

cc: Don Rumsfeld

THE WHITE HOUSE

WASHINGTON

September 10, 1975

Dear Mr. Anderson:

Your letter to the President of September 3 has been referred to me for reply. It involves a request that the President furnish you on an exclusive basis copies of his tax returns for the past five years and the results of his latest medical examination.

As and when the President decides that any information of this type should be made available to the public, it will be done in a manner other than the one you have proposed for yourself.

Sincerely,

Philip W. Buchen
Counsel to the President

Mr. Jack Anderson
1401 Sixteenth Street, N. W.
Washington, D. C. 20036

JACK ANDERSON
1401 Sixteenth Street, N. W. Washington, D. C. 20036

September 3, 1975

Mr. President:

In view of the Watergate revelations and their aftermath, we believe it is important for the American people to know as much as possible about the health and finances of presidential candidates.

Would you, therefore, furnish us with copies of your tax returns for the past five years and the results of your latest medical examination.

As you know, it is customary upon receipt of an inquiry such as this to keep it on an exclusive basis. We would like to have this information exclusively until such time as we can put it together with the responses from the other candidates.

With best wishes,

Sincerely,

Jack Anderson

The President
The White House
Washington

THE WHITE HOUSE

WASHINGTON

September 25, 1975

RN
saw 9/26

MEMORANDUM FOR: RON NESSEN

FROM: PHIL BUCHEN P.

SUBJECT: Jack Anderson Letter

Many thanks for your note of September 21. As I reviewed the sour tone of my first draft, I did come up with a revised version which has already been sent and I attach a copy.

Attachment

THE WHITE HOUSE

WASHINGTON

September 22, 1975

Dear Mr. Anderson:

Your letter to the President of September 3 has been referred to me for reply. In your letter you request that the President furnish you on an exclusive basis copies of his tax returns for the past five years and the results of his latest medical examination.

I can appreciate that you may have good reasons for believing information of this type delivered to you may serve a salutary purpose in helping voters to judge the fitness of a candidate for nomination of election. However, it is doubtful that information in the form suggested is the best way of informing voters of the truly relevant facts. Income tax returns do not necessarily disclose all material financial connections and none entered into after the last taxable year reported. They also include personal information not significantly relevant to a candidate's fitness such as the particular objects and levels of his philanthropy. Also, as you know, the President's investments and financial transactions up to the time of his nomination to become Vice President were all made known in the process of the Senate hearings in late 1973. Furthermore, the physician's findings from the President's health examinations have already been publicly reported.

As the President decides that additional relevant information of this type which bears on his candidacy should be made known, he will probably do so in a manner different from the one you propose and not on an exclusive basis for any particular news outlet. However, I do thank you for your suggestions.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. Jack Anderson
1401 Sixteenth Street, N. W.
Washington, D. C. 20036

NATIONAL BROADCASTING COMPANY, INC.
THIRTY ROCKEFELLER PLAZA, NEW YORK, N.Y. 10020, CIRCLE 7-8500

Sent to Phil Buchen 10-14-75

JULIAN GOODMAN
Chairman and
Chief Executive Officer

October 9, 1975

Mr. Ronald H. Nessen
Press Secretary to the President
The White House
Washington, D. C. 20500

Dear Ron:

We had a difficult decision to make last Monday, when we received your request for time on the NBC Television Network at eight o'clock that night for a speech by President Ford on his proposal for tax reductions coupled with budget reductions. Because it's a long time between now and November 2, 1976, and because this subject will doubtless arise many times again, I thought I should give you some of the considerations that lay behind our decision.

First, when President Ford announced his candidacy for the Republican nomination, he became (and we became) subject to the provisions of Section 315 of the Federal Communications Act which says that any "use" a candidate makes of television or radio requires the broadcaster to provide equal opportunity to all other legally qualified candidates for the same office. As you know, the statute was amended in 1959 to exempt bona fide newscasts, regularly scheduled news interviews, certain news documentaries and on-the-spot coverage of a bona fide news event. A recent decision by the FCC indicates that coverage of news conferences and certain types of debates will be considered exempt, as they have not been until now.

Your statement that live broadcast of President Ford's speech constituted on-the-spot coverage of a bona fide news event is at variance with the advice of our counsel who specialize in the interpretation of Section 315. It also is at variance with my own personal experience of thirty years in dealing with appearances such as this and observing FCC and court interpretations of the law.

Although a speech of the President which has been prepared for television and radio broadcast may be important in the general sense, that does not put it, under the law, in the exempt category when the President is a candidate; and the only exceptions the FCC has made in the past thirty years of its administration were on two occasions when the President's speech dealt with international developments affecting national security and were urgent in nature.

The equal time law makes no sense. I have campaigned unavailingly for years to have it eliminated or modified so that broadcasters may make unhampered journalistic judgments and the public may be better informed on the issues.

There is one other factor I should mention, though it has nothing to do with Section 315. It has to do with our own standards of fairness, and particularly in an election year. You probably already know that often when the President goes on television the Democratic leadership in Congress asks -- usually in advance of the speech -- for similar time on the air. In the case of Monday's speech, since you requested the time for a speech on a controversial subject not universally embraced on a bi-partisan basis in Congress, we probably would have offered time on the air to the Democrats, just as we have done in the past for Republicans when a Democrat was in the White House.

There is one more small point which is so close to quibbling that I almost left it out, but I cite it because we have a long road to travel before election. We were called after 2:00 PM on Monday with a request for live coverage of the President's speech at one time only -- 8:00 PM that evening. The man who put the speech on a video roll had to have more notice than we did. You gave us six hours to make a difficult decision, and gave us conditions that made it necessary for our decision to be black or white. We need to work together better than that. We are both after the same objective: an informed public. I hope we can find ways of doing it better.

With best regards.

Sincerely,

Julian

Julian Goodman

THE WHITE HOUSE

WASHINGTON

October 16, 1975

MEMORANDUM FOR: DON RUMSFELD
BOB HARTMANN
DICK CHENEY
JIM CONNOR
RON NESSEN ✓

FROM: PHIL BUCHEN P.W.B.

SUBJECT: PFC Comments on RNC Expenditures

Attached is a draft letter from the PFC commenting on RNC expenditures in support of the President as head of the party.

I would appreciate any comments you might have by C.O.B. today in order that this letter can meet tomorrow's filing deadline.

Thank you.

(NO comments
(FROM Ron Nessen)

DRAFT - 3
RPV - 10/16/75

Office of General Counsel,
Advisory Opinion Section
The Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: AOR 1975-72

Gentlemen:

The President Ford Committee hereby submits the following comments in support of the position taken by the Chairman of the Republican National Committee, Mary Louise Smith, in her September 15 letter regarding the historical role of the President of the United States in his capacity as head of his national party. It is our understanding that the Democratic Senatorial Campaign Committee ("DSCC") has submitted comments alleging violation of certain provisions of the Federal Election Campaign Act of 1971, as amended, (the "Act") by both the Republican National Committee ("RNC") and The President Ford Committee ("PFC"). In particular, both the RNC and the principal campaign committee for the President were recklessly charged by the DSCC with a knowing criminal violation of Section 608(b)(2) of Title 18, United States Code, regarding the payment by the RNC of Presidential travel expenses solely involving Republican Party political activities. Such assertions are without merit and lack any substantive legal or factual basis.

It is our position, as demonstrated below, that such payments by the President's national party are both proper and lawful. Moreover, such payments recognize the three traditional and important functions of any incumbent President. He is President, the leader of his national party and possibly a Presidential candidate.

First, it is clear that the limitation set forth in Section 608(b)(2) regarding contributions by a political committee to a federal candidate relate solely to payments:

> ". . . made for the purpose of influencing the nomination for election, or election, of any person to Federal office or for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President of the United States; . . ."
> 18 U.S.C. §591(e)(1) (Emphasis Added)

Similarly, the definition of "expenditure" in Title 18 excludes any payment from being charged against the candidate's primary expenditure limitation of Ten Million Dollars ($10,000,000) unless it is in furtherance of one of the above cited purposes. Moreover, the definition of expenditure also explicitly excludes "any communication by any person which is not made for the purpose of influencing the nomination for election, or election, of any person to Federal office". 18 U.S.C. §591(f)(4)(F) As set forth in greater detail in Mrs. Smith's letter, the RNC has not and will not assume the

expenses of Presidential travel in connection with either the candidacy of the President himself or with the candidacy of any other individual. In the latter circumstances, of course, the appropriate contribution and expenditure provisions of the Act would apply on an allocable basis.

Second, the strength of the RNC position is underscored by the legislative history of the Act itself. One of the important goals of the legislative reform sought by the 1974 amendments was to strengthen the national, state and local party structures and their impact upon the political process while, at the same time, stemming the unchecked flow of undisclosed private funds from being covertly channeled into a federal candidate's coffers.

In the Senate Report on the 1974 Amendments, it was stated in a paragraph entitled "Strengthening Political Parties" that the Senate Committee "agrees that a vigorous party system is vital to American politics and has given this matter careful study." The Committee stated that "the parties will play an increased role in building strong coalitions of voters and in keeping candidates responsible to the electorate through the party reorganization". Finally, they noted

> "[P]arties [such as the RNC] will continue to perform crucial functions in the election apart from fundraising, such as registration and voter turnout campaigns, providing speakers, organizing volunteer workers and publicizing issues. Indeed, the combination of substantial public financing with limits on private gifts to candidates will release large sums presently committed to individual campaigns and make them available for donation to the parties, themselves. As a result, our financially hard-pressed parties will have increased resources not only to conduct party-wide election efforts, but also to sustain important party operations in between elections.
> Senate Report 93-689 at 7-8 (Emphasis Added)

The traditional and one of the most effective methods by which a national party obtains funds to support such activities and strengthen its political base is by inviting interested persons to fundraising events at which party leaders, and in particular, an incumbent President, speak on issues of concern to the Party. To date, it is my understanding that such activities on behalf of the RNC by President Ford have raised over $2,250,000 for his Party. The pragmatic effect of any blanket rule denying the RNC the party services of its chief spokesman would be to dramatically undercut and weaken that which the Act sought to promote and strengthen.

Thus, the RNC should be permitted to pay for expenses incurred by the President and his aides for party promotional activity since such activities are undertaken at the singular request of the RNC for its own purposes and benefit. In fact, the PFC has not been involved in any efforts to initiate

and/or coordinate any of the President's recent trips on behalf of the RNC. Such invitations and acceptances are independent judgmental determinations made by the RNC and White House in connection with party matters and for party purposes. Moreover, such activities are totally unrelated to the PFC campaign efforts which are directed towards the raising of money and the scheduling of activities for the purpose of influencing the nomination of the President for a full term.

Third, the test for determining whether or not a contribution or expense is a campaign expense related to a federal candidate's election and therefore chargeable to the aggregate limitations set forth in the Act, is one of intent and purpose. Although, as Mrs. Smith noted with regard to the differing roles of the President, such distinctions are sometimes subtle, they are nonetheless real and subject to dispassionate analysis. No inflexible rule should be issued by the Commission which would obviate and eliminate partisan but non-candidate related activities. Instead, it is our considered opinion that a

clear distinction exists between the activities of a President in his official capacity, the activities of a President in his party leader capacity and, finally, the activities of a President as a candidate for nomination. Further, reason dictates that any such determination by the Commission in this regard must be made on a case by case basis.

It was recognized in the Opinion of Counsel issued to the campaign manager of the Wyman-for-Senator Committee, that the fact that there will always be the possibility or even likelihood of "some carryover effect" or other incidental benefit to the President in connection with his appearance in New Hampshire on behalf of that candidate is immaterial when the timing of such a visit would have no significar demonstrable or measurable effect on the 1976 Presidential election, nominating convention or New Hampshire primary election. Although that opinion was restricted to a particular set of circumstances and was not deemed necessarily applicable to other campaign activity engaged in by a Presidential candidate, the logical conclusion is that a similar approach and analysis must be taken toward non-campaign activity by a federal candidate. In fact, there are no applicable contribution or expenditure limitations for ongoing party business and activities which are not for the purpose of influencing the election of a federal candidate.

The distinction between official acts by a federal office holder and candidate related activities is reflected

in both the legislative history of the Act (see, *e.g.* H.R. 93-1279 at 150) and in the initial Task Force draft regarding Allocation of Expenditures. Moreover, an equally real and viable distinction exists between candidate related activities and party related activities, particularly during the primary period prior to the nomination at the national parties' annual conventions.

Fourth, in order to determine whether or not partisan political activity is directed toward party activity or an individual's own candidacy, we would respectfully suggest that the following approach be considered in connection with the Commission's Advisory Opinion in this matter and as a basis for any proposed regulation in this area. The cost of promotional or other partisan activities on behalf of a national, state or local party by a candidate for federal office, whether or not a holder of public office, shall not be attributable as a campaign expenditure by such candidate if the activity is (1) at the sole invitation of such party, (2) for a recognized and legitimate purpose on behalf of the party and not for the purpose of directly raising funds for such candidate or for the purpose of influencing his election, provided that, notwithstanding the above, the costs of any such activities by a candidate who has registered and qualified as a candidate or been placed on the ballot in the

state in which such activity is held, shall be deemed an expenditure from the date of registration or placement on the ballot, in any event, at any time such activities are undertaken in that state within forty-five (45) days prior to the date of the respective state presidential primary.

This approach recognizes the importance and value of party promotional activity by federal candidates, while at the same time providing a pragmatic time frame within which any such activity would be deemed candidate related. In addition, of course, any alleged party activity which is demonstrated to be for the purpose of influencing the candidate's own election would be appropriately allocated and charged against the Act's contribution and expenditure limitations. This is in accordance with the approach recently discussed by the Commission regarding "unearmarked" contributions to the national committee of such a candidate.

Accordingly, in the foregoing discussion we have established that payment by the RNC of expenditures incurred by the President and his aides, when solely engaged in national, state or local political party promotional activities, are not subject to the Act's contribution and spending limits. Hence, the FEC should confirm in its Advisory Opinion that it is legally permissible for the RNC to continue to make such expenditures. Moreover, in any event, the Commission should also rule that the effect of an Advisory Opinion in this matter must be prospective only.

In the first place, the statutory language of Section 437(f) of Title 2, United States Code, which authorizes the FEC to render Advisory Opinions clearly reflects the fact that such Advisory Opinions look only to future acts, and not past acts. Section 437(f) states, in pertinent part, that:

> "(a) Upon written request to the Commission . . . the Commission shall render an advisory opinion, in writing, within a reasonable time with respect to whether any specific transaction or activity . . . would constitute a violation . . . ."
> (Empahsis Added)

The words "would constitute" do not encompass acts that occurred in the past. As the Comptroller General has frequently ruled that the question of retroactivity is strictly a function of the interpretation of the relevant statute in question, the conclusion that all Advisory Opinions must be solely prospective in application is compelling (See, *e.g.* 49 Comp. Gen. 505 (1970), 48 Comp. Gen. 477 (1969), 48 Comp. Gen. 15 (1968) and 47 Comp. Gen. 386 (1968))

Moreover, even if, arguendo, Advisory Opinions are not limited to matters of prospective application only in all matters subject to such rulings, the Commission still has full discretion to limit its opinions to matters in the future in appropriate cases. The United States Supreme Court, in Chenery v. SEC, 332 U.S. 194 (1947), held that an agency of the federal government may, in its discretion,

give a ruling prospective effect only. The Court stated that the agency, in exercising this discretion, should follow a balancing test, which involves weighing "the mischief of producing the result which is contrary to a statutory design or to legal and equitable principles" against "the ill effect of the retroactive application of a new standard . . ." (332 U.S. at 203).

The foregoing test is similar to the criteria followed by the United States Supreme Court on the question of whether a particular judicial holding should be given retroactive application. Recently the Court stated that the following matters should be considered in this regard:

> "'(a) The purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of justice of a retroactive application of the new standards'" Gosa v. Mayden, 413 U.S. 655, 679 (1973), quoting, 388 U.S. at 297.

At issue before the Commission is the appropriateness of the application of the Act's contribution and expenditure limitations set forth in 18 U.S.C. 608 to a Presidential candidate's travel for party purposes. Title 18, of course, is a criminal statute and

provides for extensive criminal penalties including imprisonment and fines. As with all criminal statutes, a principal feature of that section is that a violation cannot occur unless it is a "knowing violation". In this respect, subsection (h) of Section 608 states as follows:

> "(h) No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the the benefit or use of a candidate, or knowingly made any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section." (Emphasis Added)

Any person found violating any perovision of this section shall be fined not more than $25,000 or imprisoned not more than 1 year, or both (18 U.S.C. §608(i)).

The enforcement powers of the Commission set forth in 24 U.S.C. §437g also make it clear that the Commission may not order repayment of any such past payments in any event for a violation of Section 608. Appropriate apparent violations of Section 608 are to be referred to the appropriate law enforcement authorities. In the present instance any such referral would be ludicrous. Accordingly, the Commission would be committing an abuse of discretion if it should attempt

to retroactively apply any new standard against The President Ford Committee or the RNC in this instance.

The President Ford Committee and the RNC have at all times acted in good faith in accordance with their understanding of the law. The RNC expenditures in question have been filed quarterly with the FEC, the Clerk of the House of Representatives and the Secretary of the United States Senate and it would be unfair and an unconstitutional denial of due process to apply any new standard before such time as the PFC or RNC might be said to have been on notice that their position was not in accordance with the FEC's view of the law. Thus, it is impossible to conclude that such committees were ever on such notice as would support a conclusion that there had been a "knowing violation" of the law. Indeed, the Commission has still not in any way ruled upon the question now before it and any Advisory Opinion must be applied prospectively only in this matter.

Finally, I would like to review certain additional pragmatic considerations for the Commission's consideration. Allegations that the recognition of the role of political parties in the maintenance and development of a viable political structure in the United States would work an unfair burden upon non-incumbents and allow unlimited corporate and labor organization spending for federal candidates through the general treasuries of state party committees are both misleading and fallacious. As a general policy matter, as well as pragmatic political practice, the 1974 Amendments

were not intended (nor should they have been) to provide a perfect cosmic balance on which both incumbents and non-incumbents must be evenly weighed in either. Again, as noted in Mrs. Smith's letter, the question presented does not revolve solely upon the President's role as party leader but involves any incumbent federal office-holder. The fact that such party leaders are generally incumbent officeholders is merely a reflection of the public's real life interest in recognized elected leaders and public figures. Non-incumbents always perforce are faced with the traditional obstacle and challenge of name recognition and acceptance. The plain fact that many incumbents have lost to earnest new challengers even prior to the federal election campaign laws establishes that the advantages of incumbency are not all compelling. Further, the burdens of incumbency, including the obligation to speak and act responsibly toward his constituency and to represent their best interests in the harsh world of decision as opposed to the speculation and mere promise of the non-incumbent, are all too quickly and easily forgotten by those who would seek to mystically equalize the political system to their own advantage.

Similarly, the alrm sounded regarding corporate and labor organization spending is false and a sham. The Commission has already indicated that state parties will have to maintain separate, segregated funds regarding any support for federal candidates, which funds must exclude monies from corporations and unions that

may be accepted by them under State law for state and local candidates and activities. Full disclosure and exacting reporting requirements of such funds will avoid any such anticipated and feigned abuse. In addition, as in all of these matters, the watchful eye of the press as well as opposing candidates will expose and question any deceitful artifice or device. Accordingly, only legitimate state party business activities would be financed from the general treasuries of such state parties. Section 610 of Title 18, United States Code, would properly have no application to such legitimate state activities.

Reliance upon Advisory Opinion Request 1975-13 and the proposed House Account regulation is again misplaced. That Advisory Opinion solely decided that the payment of a Presidential Candidate's travel expenses from corporate funds was illegal. It in no way addressed the question whether the President may engage in political activities unrelated to his candidacy. The distinction in the House account proposal is self-apparent. In that situation, money is being contributed directly to the candidate to support activities that can have no substantive purpose other than to assist the candidate in influencing his constituency and, of greater

importance, such contributions certainly do not serve to advance a stated major purpose of the Act - the strengthening of political parties. Moreover, in its second proposed version of the House Account regulation it was again recognized by the Commission that, even with regard to such direct contributions to Congressmen, the application of the Act's limitations would apply only to a foreshortened period prior to an announced candidate's election.

In conclusion, we appreciate the opportunity afforded the PFC to comment on the above-referenced Advisory Opinion Request and we trust that these comments may prove useful in assisting the Commission in arriving at its determination in this matter.

Sincerely,

Robert P. Visser
General Counsel

THE WHITE HOUSE

WASHINGTON

October 17, 1975

MEMORANDUM FOR: RON NESSEN

FROM: PHILIP BUCHEN P.

Attached is a copy of the letter from the Citizens for Reagan for President Committee to the Federal Election Commission.

The President Ford Committee is preparing to send a letter on the same subject to the FEC today supporting the position of the RNC. This letter meets the objections raised earlier by the Democratic Senatorial Campaign Committee in its letter of October 7. Whether it will be changed before submission to include arguments against the Reagan position, I do not know.

Attachment

Citizens for Reagan
For President

October 14, 1975

Federal Election Commission
Office of the General Counsel
Advisory Opinion Comment
1325 K Street, N.W.
Washington, D.C. 20463

Dear Sirs:

We respectfully submit the following comments on AOR-1975-72. We hope this will be helpful to the Commission.

AOR 1975-72 raises the question of whether the Republican National Committee (RNC) can legitimately provide funds, in light of the recent federal election law amendments, for political travel by President Ford while he is a candidate for his party's presidential nomination. And further, whether these expenditures count against candidate Ford's campaign expenditure limitations under 18 U.S.C. section 608(c). It appears to our committee that several facts must be considered before a conclusion on the RNC's request can be reached.

First, President Ford is an announced and declared candidate for his party's nomination. He has, as of this date, made campaign trips and authorized a committee which has made campaign expenditures on behalf of his campaign. He indicated on a nationally televised news conference (October 9, 1975) that he hoped his political trips made on behalf of the RNC would help his election. He has made the decision to actively campaign at an earlier date than has been the customary political practice of past incumbent Presidents.

Second, Gerald R. Ford was the first individual appointed to the Vice Presidency under the provisions of the recently enacted 25th Amendment. Following the resignation of Richard M. Nixon as President, Gerald R. Ford succeeded to that office. His Vice President, Nelson A. Rockefeller, also became such by the operation of the 25th Amendment, after having been rejected for the Republican presidential nomination by the Republican National Conventions of 1964 and 1968. These facts are quite important in providing some political perspective to the relationship of the Presidency, its current occupant, and the Republican Party.

Third, there is an active political committee in existence, authorized by Governor Reagan, and registered with the Federal Election Commission, that has raised significant amounts of money from many thousands of persons in every state. This committee is actively promoting the candidacy of Governor Ronald Reagan for the Republican Party's presidential nomination.

Fourth, one of the basic purposes of the 1974 amendments to the body of federal election law is to insure that no candidate, regardless of his position or financial means, could "buy" the Presidency by means of excessive financial expenditures. To this end, the key provision of the 1974 Act is 18 U.S.C. section 608. This section imposes strict expenditure limitations on all candidates for federal office. The purpose of these limitations is, in part, to provide every candidate with an equal opportunity to present his campaign to the electorate.

Fifth, a key criticism of the new election law is that it favors incumbents in that it protects them against challengers. This is so, many feel, because a challenger can only overcome the multiple advantages of incumbency by greater campaign spending than the incumbent. It is certainly true that an incumbent President enjoys great political advantages by virtue of his official position, advantages such as government-paid travel around the country to "non-political events" and the national forum of the televised Presidential press conference (recently exempted from equal time by the Federal Communications Commission). Does he also, in a primary campaign situation, enjoy the official mantle of the party and use of its funds merely by virtue of his title?

With these basic factual referents in mind we submit the following analysis of the RNC's request:

Traditionally an incumbent President seeking reelection has been considered unchallengable within his own political party for his party's nomination. No incumbent President in this century has been denied renomination by his party. In fact, so strong is the traditional role of the incumbent President that only twice in this century has one been defeated in a general election. In 1975 and 1976 the situation in this country is and will be unique politically. The incumbent President and Vice President of the Republican Party have never faced the national electorate or, in the case of President Ford, the Republican Party membership as expressed through its national party convention. Thus, President Ford is clearly not in the same position as former Republican Party presidents were. In fact, it is clear that one of the important factors in the 1976 nomination contest is the current lack of a nationally chosen or mandated Republican Party "leader" in the traditional sense. The Republican Party's only elected national spokesman is its chairman, Mrs. Mary Louise Smith. →

Thus, while Gerald R. Ford is legally and constitutionally the Chief Executive, with all the President's powers and privileges, and entitled to all the traditional support and respect due our Head of State, he does not stand in the traditional role an incumbent President has had as the titular leader of the Republican Party. Further, actions that tend not only to place him in such a role but also to emphasize it directly benefit his campaign for the party's nomination for President. In fact, a key selling point of the President's campaign has been his incumbency. To argue that his campaign for the nomination should not be hindered because of his activities as "party leader," is very like the boy, who having killed his parents, says he should not be punished because he is an orphan.

Only the 1976 nominee of the Republican National Convention will be the party's chosen leader.

The 1974 amendments to federal election law mandate strict expenditure limitations for all federal candidacies. They do this separately with respect to candidates for the nomination of parties and

for the candidates of parties in general elections. Further, the law embodies a very expansive and comprehensive definition of contributions and expenditures so as to close nearly every potential loophole left in past legislative attempts at regulation. This legislative plan clearly manifests the intent of Congress, as ratified by President Ford in signing the law, to establish a system of electoral regulation that would control, limit and disclose all expenditures that promote and influence a federal campaign. It cannot be seriously argued that political trips made by a declared candidate, as "leader" of a political party, directed at those very individuals who will ultimately choose the party's nominee, does not directly benefit and influence and promote such candidate's campaign. If President Ford's campaign is not charged with the cost of trips made as the "leader" of the Republican Party under these circumstances then section 608 is not the comprehensive expenditure limitation section it clearly was intended to be.

If the Commission's interpretation of this new law is not to favor incumbents over other candidates and if the traditional relationship of the Presidency to its own political party is not to become a vehicle for allowing the new election law to be gravely distorted then the RNC's planned actions must be modified. It would certainly be divisive within the Republican Party if the RNC were to bestow a non-reportable and uncontrolled election benefit on only one candidate for the party's nomination. This would raise constitutional questions of whether 18 U.S.C. section 608's effect, if not its purpose, is to stifle legitimate political challenges to incumbents from within their own parties.

If the party provided truly equal treatment to all candidates for its nomination then few serious objections could be raised. Then, the party would not be promoting a campaign but would be providing its national membership with a better opportunity for seeing all its candidates. It would be performing a legitimate informational function by helping members to make more intelligent choices among the candidates. While a TV appearance by one candidate benefits his campaign, a program presenting all of the candidates equally benefits the electorate. Of course, a fair and equitable mechanism would have to be worked out to determine who the individuals are who are legitimately entitled to such consideration. But this should not be difficult. A simple criterion, like qualification for federal matching funds, would provide an adequate method for discriminating between bona fide candidates and others.

If the RNC chooses not to consider such an option it seems to our committee that its current proposal raises serious questions under both the contribution limitations and the expenditure limitations of section 608. If party "leadership" is to confer substantial financial electoral benefits it should be both formalized and brought within the guidelines of the election law. Governor Reagan has over the past years raised millions of dollars for the Republican Party at numerous party events across the nation and by direct mail. He has done this as a member of the party who deeply believes in its principles. Our committee feels that the party treasury, built up in the interests of the whole party, should not become a vehicle for any single candidate in contest for the party's nomination, regardless of any office he may hold.

In 1975 and 1976 a new federal election law prevails. Examples of past practice no longer suffice to justify present actions. We hope our comments will aid the Federal Election Commission in deciding this question.

Very truly yours,

Loren A. Smith

Loren A. Smith
General Counsel

LAS:jf

cc: Hon. Thomas B. Curtis
Hon. Neil Staebler
Hon. Joan Aikens
Hon. Thomas E. Harris
Hon. Vernon W. Thomson
Hon. Robert O. Tiernan
Hon. Benton L. Becker
Hon. Mary Louise Smith

THE WHITE HOUSE

WASHINGTON

October 17, 1975

MEMORANDUM FOR: RON NESSEN

FROM: PHIL BUCHEN P.

Attached is a copy of the Special Prosecution Force report. As indicated in the first paragraph on page 1, the report is made "to the public and to the Congress."

The principal portion dealing with the involvement of President Ford in matters of concern to the Special Prosecution appear at pages 115-119 and 128-133.

If you have any thoughts on issues that might be raised by the media, please let me know.

Attachment

THE WHITE HOUSE
WASHINGTON

[ca. 10/24/75]

NOTE FOR: Phil Buchen

FROM : RON NESSEN

How do I respond to this?

RHN

Money
888 16TH STREET, N.W. WASHINGTON, D.C.
202-293-4300

WILLIAM B. MEAD, Washington Correspondent

October 24, 1975

Mr. Ronald H. Nessen
Press Secretary to the President
The White House
Washington, D.C. 20500

Dear Ron:

For the January or February issue, we would like to do a story on the personal finances of the Fords. The One Family's Finances stories in the enclosed issues will give you an idea of our approach.

There is always interest in the finances of the First Family, but it appears to us that our readers would particularly identify with the Fords in this respect. They aren't particularly wealthy, their values seem to be solidly middle class, and they are going through an expensive period of life with children in college.

In addition, the President has mentioned in speeches that a government budget must be handled with the same prudence as a family budget. I think the Fords' own budget problems and practices would exemplify that concept. Of course, it is not lost on us that 1976 is an election year in which the President might find a straightforward disclosure and discussion of his own finances particularly timely. It would certainly further his reputation for openness and honesty.

To handle the piece well, we need your cooperation and that of the Fords in providing a thorough rundown on assets, income and outgo. We would like to sit down with the whole family to discuss their feeling, philosophy and practices in handling such things as grocery budgets, allowances, college costs, and so forth. Since the Fords made a rather sudden move from suburban living to the White House, we would also want to discuss how the presidency has affected their budgeting and spending. In the two stories I've enclosed, you will notice that we use a panel of advisors. We would be glad to do so

Money
888 16TH STREET, N.W. WASHINGTON, D.C.
202-293-4300

WILLIAM B. MEAD, Washington Correspondent

with the Fords; we'd also be glad to skip the advisers if they prefer.

It would be a great help if I could hear from you within a week. Many thanks for your help.

Cordially

Bill Mead

William B. Mead

THE WHITE HOUSE
WASHINGTON

October 30, 1975

Ron,

For discussion.

Phil Buchen

C G
set up mtg for
next week.

October 31, 1975

Dear Mr. Halperin:

This is to acknowledge your letter to me of October 28, 1975, transmitting your letter to the President on behalf of the American Civil Liberties Union, Americans for Democratic Action, the Center for National Security Studies, the Committee for Public Justice, Common Cause, the Institute for Policy Studies, the United Automobile Workers and the Project on National Security and Civil Liberties.

Inasmuch as your letter raises several important legal and policy questions, we should like to study it before responding on its merits. Please be assured that a reply will be forthcoming as soon as possible.

Sincerely yours,

Philip W. Buchen
Counsel to the President

Mr. Morton H. Halperin
122 Maryland Avenue, N.E.
Washington, D.C. 20002

cc: Ron Nessen

bcc: The Honorable Edward Levi

MORTON H. HALPERIN
122 MARYLAND AVENUE, N. E.
WASHINGTON, D. C. 20002
(202) 544-5380

October 28, 1975

Mr. Philip W. Buchen
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Buchen:

Enclosed is the letter per my conversation with Roderick Hills this morning.

We will be releasing it to the press on Thursday morning. Please do not hesitate to call me if you have any questions.

Sincerely yours,

Morton H. Halperin

MHH/fmo

121 Constitution Avenue, N.E.
Washington, D.C. 20002

The Honorable Gerald R. Ford
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

We write on behalf of the American Civil Liberties Union, Americans for Democratic Action, the Center for National Security Studies, the Committee for Public Justice, Common Cause, the Institute for Policy Studies, and the United Automobile Workers to ask thay you notify those individuals who have been the subject of surveillance in programs which are now admitted to be unconstitutional, illegal, or, at the least, violations of the charters of the intelligence organizations, that they have been the subject of such surveillance. We urge that these individuals and organizations be informed of the right to request access to any files which may exist under the Freedom of Information Act and the Privacy Law, and that they be advised that the possible violation of their constitutional rights might entitle them to civil remedies in the federal court system.

The programs which we have in mind include the following:

1. CIA/FBI Mail Opening - This program was carried on for 20 years with the conscious knowledge that it was illegal. According to testimony before the Senate Select Committee on Intelligence, the New York program alone involved the opening of some 215,820 individual letters. Watch lists were apparently supplied by the CHAOS operation, the FBI, and perhaps by other intelligence units. The opening of mail was not confined to those on the lists. We believe that every individual and group on the watch lists should be notified as should everyone whose mail was actually opened.

2. NSA Monitoring of International Communications. According to the Rockefeller Commission Report, CHAOS requested another Agency--clearly NSA--to monitor the international communications of individuals on a watch list. CIA later concluded that there were questions about the legality of its holding these files of some 11,000 pages and returned them to NSA. Recent press reports suggest that NSA monitors international communications of Americans for other agencies and as part of its own programs. We believe that every person on the watch lists and every American whose international communications were monitored should be notified.

3. CHAOS. The Rockefeller Commission Report suggests that substantial parts if not all of CHAOS were violations of the CIA charter. Some of the operations also raise questions about violations of the law and the constitution. We believe that all individuals who were the subject of personality files and all organizations on whom files were opened should be notified. This would be 7,500 individuals and 1,000 organizations.

4. COINTELPRO. All individuals and organizations subject to COINTELPRO operations by the FBI should be notified.

5. Burglaries. Both the FBI and the CIA have conducted illegal burglaries in violation of the Fourth Amendment. According to the Senate Select Committee on Intelligence, the FBI conducted some 238 entries in connection with the investigation of 14 "domestic security targets" in just one such program. The Rockefeller Commission Report states that the CIA conducted at least 12 unauthorized entries.

6. Warrantless Surveillance. The Supreme Court has held that warrantless surveillance in domestic security cases is unconstitutional where the object of the surv illance is not a foreign power or its agent. The D.C. Court of Appeals has held that such surveillance is a violation of the Fourth Amendment even when the President invokes his powers as Commander in Chief and foreign relations are involved. The FBI has in the past conducted a large number of electronic surveillances which have now been held to be illegal. We believe that everyone who was the subject of these surveillances or who was overheard on them should be notified.

7. IRS Special Services Staff. In violation of its charter the Special Services Branch of the IRS established files on some 8,500 Americans because of their political beliefs. Each one of them should be notified.

We recognize that you will be proposing legislation to the Congress to prevent such abuses in the future and that two special Congressional Committees are investigating some of these matters. We are aware also that the Justice Department is considering whether it should press criminal charges against any individuals involved in some of these programs. None of these activities are however a substitute for permitting individuals whose rights may have been violated to take whatever steps they might wish to take to protect and vindicate their rights to privacy.

No individual should have to guess as to whether he or she was the object of illegal, unconstitutional or improper activity by the intelligence community. We believe that these persons can and should be notified without affecting the constitutional rights of those who may be charged with illegal conduct and without interfering with the on-going investigations. This can be done simply by informing the individual that he or she is on the list without expressing any view as to the propriety of the listing or of the list. The individual should then be informed of the right of access to the files under the FOIA and the Privacy Law. We urge you to direct all agencies to respond to such requests expeditiously by assigning the additional personnel necessary, to waive all fees, and to construe all authority to withhold information as narrowly as possible.

While we write to urge you to notify the individuals involved we wish also to bring to your attention our strong objection to releasing any names publicly without the permission of the individuals involved. We believe that such action is an invasion of constitutional rights to privacy and simply compounds the injury already done. We would welcome an assurance from you that the Executive Branch will not make names public without the permission

of the individual concerned.

Sincerely yours,

Aryeh Neier
Executive Director
American Civil Liberties Union

Leon Shull
National Director
Americans for Democratic Action

Robert Borosage
Director
Center for National Security Studies

Ray Calamaro
Executive Director
Committee for Public Justice

David Cohen
President
Common Cause

Richard J. Barnet, Marcus Raskin
Co-Directors
Institute for Policy Studies

Stephen I. Schlossberg
General Counsel
United Automobile Workers

Morton H. Halperin
Director
Project on National Security and Civil Liberties