FUND-RAISING CALLS FROM THE WHITE HOUSE

In the aggressive drive to raise funds to support the DNC's advertising on behalf of the President, new ways were found to solicit contributors, such as using the public facilities of the White House to host coffees and other fund-raising events. In addition, the President and the Vice President made fund-raising telephone calls from the White House.[1] In fact, evidence suggests that the Vice President himself was the originator of the idea that he make such calls.[2] In furtherance of these plans, DNC Finance Chair Marvin Rosen, Finance Director Richard Sullivan, and others within the DNC's Finance Division prepared "call sheets" for the President, Vice President, and First Lady to suggest potential donors whom they might contact, and to encourage them to actually make the calls.[3]

The fund-raising calls became an issue in the investigation because a federal felony statute, 18 U.S.C. § 607, prohibits soliciting or receiving political contributions in a federal workplace.[4] In

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[1] There is evidence suggesting that the First Lady also may have made fund-raising phone calls. Memoranda received by the Committee from the DNC indicated that there was some consideration given to having the First Lady make fund-raising telephone calls in the period of late 1995. Memorandum from Terence R. McAuliffe to Harold Ickes October 22, 1994 (Ex. 1), and 12 additional call sheets were also received from the DNC.

The Committee interviewed by telephone a number of the potential donors listed on those call sheets. Based on this work, the Committee concludes that it was unlikely that the First Lady actually made any of the fund-raising telephone calls contemplated by the call sheets.

[2] In re Albert Gore, Jr., Notification to the Court Pursuant to 28 U.S.C. § 592(b) of Results of Preliminary Investigation, Dec. 2, 1997, p. 7 (Ex. 2).

[3] Deposition of Marvin Rosen, May 19, 1997, pp. 107-29; Memorandum from Don Fowler et al. to Harold Ickes, November 20, 1995 (Ex. 3); Memorandum from Harold Ickes to the President and the Vice President, November 28, 1995 (Ex. 4); Deposition of Richard Sullivan, June 4, 1997, pp. 178-99; Memorandum from John Raffaelli to Richard Sullivan (undated) (Ex. 5).

[4] 18 U.S.C. § 607 is quoted and discussed *infra*.

the early stages of the investigation, and as explained more fully below, the Committee discovered that the President and Vice President may have made fund-raising telephone calls from the White House, thereby potentially implicating section 607.

Evidence of Fund-raising Phone Calls

Vice President Gore

On March 2, 1997, an article by Bob Woodward entitled "Gore Was 'Solicitor-in-Chief' in '96 Reelection Campaign" appeared on the front page of *The Washington Post*. This was among the first of a series of articles in numerous publications that detailed the Vice President's fund-raising activities during the 1996 campaign. The picture that emerged from these articles was one of the Vice President being among the most aggressive, and enthusiastic, fund-raisers within the Clinton/Gore '96 re-election team. The Woodward article described a number of instances in which the Vice President made fund-raising telephone calls. One unidentified donor who received such a call described the Vice President's sales pitch as "revolting." Another stated that the call that he received from the Vice President had "elements of a shakedown."[5]

On the afternoon of March 3, 1997, and in response to a number of press inquires regarding his fund-raising activities which had been posed earlier in the day to White House Press Secretary Mike McCurry, the Vice President went to the White House press room for an impromptu press conference. In this press conference, it was revealed for the first time that the Vice President made some of the fund-raising phone calls from his White House office. Vice President Gore stated that

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[5] Bob Woodward, "Gore was 'Solicitor-in-Chief' in '96 Reelection Campaign," The Washington Post, March 2, 1997, pp. A1, A18.

he had charged the calls to a DNC credit card.[6] The Vice President also stated his belief that everything he did regarding the calls was legal, but that he had decided, as a matter of policy, not to make such calls ever again. In the course of the press conference, the Vice President stated several times that he had asked potential donors "to help raise campaign funds," "to ask people to make lawful contributions to the campaign," to ask potential donors "to support our campaign," to "help[] to raise funds for the campaign," and "to help raise money for the campaign."[7]

The Vice President was questioned extensively about the legality of making political fund-raising calls from his White House office. In response, the Vice President repeated seven times that he had been advised by his legal counsel that there was "no controlling legal authority"or case that proscribed his conduct in making these calls.[8] Nonetheless, the Vice President acknowledged that in the past, he had taken conscious steps to make prior fund-raising calls -- presumably of private persons not located in federal buildings -- away from official telephones in the White House. "I went to the DNC on one occasion I believe in October of 1994 to help raise money for the party."[9]

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6 The Vice President's office later issued a correction, stating that the Vice President had in fact used a credit card issued by the Clinton/Gore '96 campaign, not one issued by the DNC. (Of course, Clinton/Gore '96 can only accept contributions of "hard money.") In addition, the Committee later learned that a number of the calls had not been charged to any credit card at all, but rather were charged to official White House telephone bills. The DNC later reimbursed the government for the costs of such fund-raising calls that were originally charged to official government telephones. *See infra*, text accompanying notes 17-18.

7 White House Press Release, Press Briefing by the Vice President, Mar. 3, 1997, pp. 1-2, 7-8. (Ex. 6).

8 *Id*. at pp. 2-7.

9 *Id*. at p. 6.

Based on this press conference, the Vice President's telephone calls were one of a number of subjects that a majority of the members of the Senate Judiciary Committee asked Attorney General Reno to investigate as possibly warranting the appointment of an independent counsel.[10] The Judiciary Committee members believed that the facts known to date constituted specific and credible evidence that a covered person may have committed a federal crime.[11] Specifically, the Judiciary Committee members suggested that the Vice President's fund-raising telephone calls might constitute a violation of 18 U.S.C. § 607(a), which provides:

> It shall be unlawful for any person to solicit or receive any contribution within the meaning of ... the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties. . . . Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

On April 14, 1997, however, the Attorney General rejected the Judiciary Committee members' request that she appoint an independent counsel to investigate, among other things, the Vice President's telephone fund-raising calls. She listed two reasons to support her view that there was no specific and credible evidence that the Vice President's telephone calls were illegal. First, in her view, section 607 "specifically applies only to <u>contributions</u> as technically defined by the Federal Election Campaign Act (FECA) -- funds commonly referred to as 'hard money.'"[12] Second, she stated that "there are private areas of the White House that, as a general rule, fall outside the scope

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[10] Letter from Senator Orrin Hatch et al. to Attorney General Reno, March 13, 1997 (Ex. 7); *see* 28 U.S.C. § 592(g)(1).

[11] *See* Ex. 7; 28 U.S.C. § 591(b).

[12] Letter from The Honorable Janet Reno to The Honorable Orrin G. Hatch, Apr. 14, 1997, p. 4 (emphasis in original) (Ex. 8).

of the statute, because of the statutory requirement that the particular solicitation occur in an area 'occupied in the discharge of official duties.'" [13] Since there was no evidence that the Vice President's calls had raised hard money, and no evidence that the calls had been made from areas of the White House that fall within the statutory prohibition of section 607, the Attorney General declined to seek the appointment of an independent counsel.

As explained later in this section, the Committee rejects the Attorney General's reading of section 607 with respect to the scope of "contributions" that fall within its prohibition. Nevertheless, only a few months after her letter to Senator Hatch, the Committee learned that both of the factual premises for the Attorney General's declination of the appointment of an independent counsel were wrong. The Justice Department had apparently assumed these facts without investigating them.

DNC General Counsel Joseph Sandler provided the Committee with critical testimony regarding the Vice President's phone calls. Sandler's knowledge of these phone calls was unexpected, and came to the Committee's attention only by piercing the DNC's frivolous assertions of privilege. The Committee initially deposed Sandler on May 15 and May 30, 1997. At both of these sessions, Sandler refused to answer a number of questions, principally because the DNC was asserting the attorney-client privilege, or variations of it. In particular, Sandler refused to answer questions concerning meetings among lawyers for the White House, the DNC, and Clinton/Gore '96, based principally on the DNC's assertion of a "common-interest doctrine" theory of the attorney-client privilege.[14]

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[13] *Id.* at p. 5 (quoting 3 Op. Off. Legal Counsel 31 (1979)).

[14] *See, e.g.,* Deposition of Joseph Sandler, May 15, 1997, pp. 172-99; *see also* Deposition of Joseph Sandler, May 30, 1997, pp. 106-08.

In response to these assertions of privilege, Chairman Thompson issued an Order on June 6, 1997, in which he rejected certain privileges previously asserted by, or on behalf of, Sandler, including any privileges based on the "common-interest doctrine," among the DNC, the White House, or any other third party.[15] The ruling thus permitted the Committee to inquire into conversations that Sandler had with personnel and attorneys within the White House (including the Vice President's office) and the Clinton/Gore Campaign.[16]

At his resumed deposition on August 21, 1997, Sandler identified and discussed a bill for $24.20 from the "Office of the Vice President," requesting "Reimbursement to U.S. Treasury for DNC telephone expenses."[17] According to an attached check, the DNC paid the bill on the day it was presented, June 27, 1997. Sandler testified that the bill was for long distance fund-raising telephone calls that were presumed to have been made by the Vice President from one of his official telephones, but which had not been charged to a Clinton/Gore '96 credit card.[18]

Sandler further testified that the bill and its payment were part of a project that he had worked on with the Vice President's counsel, Charles Burson and Buzz Waitkin, and with Lyn Utrecht,

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15 Order of Chairman Fred Thompson, June 6, 1997 (Ex. 9).

16 The White House must have been uncomfortable with the DNC's claim of "common interest" between the DNC and the White House, given President Clinton's public statement, made in an effort to deflect personal responsibility for the illegalities committed by the DNC in the course of its fund-raising, that such illegalities were not committed by the Clinton-Gore campaign, but by "the other campaign." News Conference of President Bill Clinton, Nov. 8, 1997, CNN Special Event, Transcript # 96110801V06.

17 Deposition of Joseph Sandler, August 21, 1997, pp. 114-119; Invoice from Office of the Vice President to DNC, June 27, 1997 (Ex. 10).

18 Deposition of Joseph Sandler, August 21, 1997, pp. 115-23.

counsel to the Clinton/Gore '96 campaign, regarding the telephone calls.[19] Sandler stated that the members working on the project determined that the Vice President had actually made at least 52 telephone calls soliciting funds, not including calls in which he was not able to reach the person he intended to solicit.[20] The Vice President potentially raised $795,000 as a result of his telephone calls.[21] Sandler was asked about legal issues that were discussed among the lawyers involved in the project. He described the focus of those discussions as follows:

> **Q:** Did your conversation with Mr. Burson or Ms. Utrecht involve issues of legality of the calls?
>
> **A:** Yes, we did discuss that.
>
> **Q:** And what was said?
>
> **A:** There were--well, we talked about the question of whether the statute that prohibits--assuming even for the sake of discussion, which I believe is not the opinion of the Office of the Vice President, that this statute precludes solicitation of people out office [sic] buildings used in performance of an official duty, even assuming that, there is a question of whether it applies to the solicitation of money for non-Federal accounts of political parties, so-called soft money. And we looked at the kind of money that was raised from various donors and looked at the kind of money that the Vice President would have likely thought [he] was raising given what was on the call sheets and that kind of thing. So we discussed that issue, application of the

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[19] *See generally id.* at pp. 114-27; Deposition of Joseph Sandler, August 22, 1997, pp. 7-60.

[20] Deposition of Joseph Sandler, August 22, 1997, p. 37. At his press conference, the Vice President had indicated that he had raised funds by telephone "on a few occasions." *E.g.*, Ex. 6, p. 1.

[21] Deposition of Joseph Sandler, August 22, 1997, p. 58.

statute.[22]

On this issue, and as part of the project, Sandler conducted an analysis of the DNC accounts into which contributions potentially resulting from the Vice President's phone calls had been deposited.[23] In the course of his work, Sandler discovered that some such contributions had been deposited into the DNC's federal, or "hard money," accounts. Sandler's deposition testimony described this discovery as follows:

> **Q:** To your knowledge, has a donor solicited by the Vice President on an official phone call ever made a subsequent donation to the DNC where any portion of such donation was deposited in the DNC's Federal account?
>
> **A:** Yes.
>
> **Q:** Tell me about that.
>
> **A:** Well, subsequent--you mean--those were not necessarily result-- donations resulting from the Vice President's solicitation, but there were donations that were made, you know, at some point subsequent to the calls. And we prepared a spread sheet-- I prepared a spread sheet showing the Federal--I believe I prepared one spread sheet showing just the Federal donations that followed these phone calls by donors who were called by donors who called for some--you know, covering .... some period of time. I don't know how far into '96 we went....
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> * * *

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[22] Deposition of Joseph Sandler, August 21, 1997, pp. 117-18.

[23] As evidence of Sandler's work in this regard, the DNC produced a file of his handwritten notes. File of Joseph Sandler, entitled "VPOTUS Phone Calls" (Ex. 11). These notes list all contributions received by the DNC during the period from October, 1995 to June, 1996 which were determined to be potentially attributable to the Vice President's fund-raising telephone calls. These handwritten notes show that a number of these contributions were deposited into DNC federal accounts. The DNC's individual federal account is denoted by the symbol "FO1" in Sandler's notes.

> **A:** We talked about--I talked about that issue with Mr. Burson.
>
> **Q:** In other words, the issue of whether or not the contribution had properly been deposited in the Federal account first came up in a conversation between yourself and Mr. Burson?
>
> **A:** Well, the question of whether in these particular cases, if the donor had written one check in excess of the Federal amount and we deposited the--you know, a portion of the check in the Federal account and a portion in the non-Federal, that the DNC should have obtained specific--there's a procedure you're supposed to do obtain specific designation or authorization from the donor to do so, and that may not have been done in these cases. And that was checked at some point.[24]

Monies allocated to the DNC's federal accounts are, in the parlance of the federal campaign finance laws, "hard" dollars.[25] Thus, under the analysis of Attorney General Reno in her April 14 letter to Senator Hatch, "hard" dollars unquestionably constitute "contributions" within the meaning of the FECA, thus triggering the application of section 607. The Attorney General, of course, had refused to initiate a preliminary investigation under the Independent Counsel Act at that time because of her assumption that the Vice President had raised "soft," as opposed to "hard money." Sandler's August 21, 1997 disclosure to the Committee that certain contributions presumably resulting from the Vice President's phone solicitations were deposited into the DNC's "hard money" account eviscerated that assumption.

When asked about the Vice President's knowledge regarding the accounts into which these contributions had been deposited, Sandler acknowledged that he had never spoken with the Vice

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[24] Deposition of Joseph Sandler, August 21, 1997, pp. 123-24; 125-26.

[25] Deposition of Joseph Sandler, August 22, 1997, p. 32.

President about the matter, and was not aware whether the Vice President's counsel had done so.[26] Sandler did volunteer, however, that he and Burson had discussed the matter among themselves and, based solely on circumstances surrounding the Vice President's telephone calls, had concluded that the Vice President must have thought he was raising "soft money."[27] The principal circumstances relied on by Burson and Sandler in forming this conclusion were that the amount of money that the Vice President would typically ask for in these telephone calls was in excess of the $20,000 aggregate annual limit on individual "hard money" contributions imposed by the FECA, and the fact that the Vice President was asking for money to fund the DNC's media campaign.[28]

As part of his hearing testimony before the Committee on September 10, 1997, Sandler addressed these issues in the following exchange:

> *Mr. Mattice [Senior Counsel to the Committee]*. I think you will recall, Mr. Sandler, in your deposition, I asked you in the course of this project whether you and Mr. Burson, the Vice President's counsel, had ever had any discussions regarding what might have been the Vice President's state of mind at the time he made these calls with respect to how
>
> the monies were to be used or into which accounts they might have been deposited. Do you recall that?
>
> *Mr. J. Sandler*. Yes, I do.
>
> *Mr. Mattice*. Okay. I believe you told me in your deposition that you personally have never discussed that matter with the Vice President. Is that accurate?
>
> *Mr. J. Sandler*. That is correct.

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[26] *Id.* at pp. 27; 41-42.

[27] *Id.* at pp. 30-32; 41-42.

[28] *Id.*

> *Mr. Mattice*. I think you also testified that, to your knowledge, you do not recall Mr. Burson ever telling you that he had discussed that issue with the Vice President. Is that accurate?
>
> *Mr. J. Sandler*. That is accurate.
>
> *Mr. Mattice*. All right. And I think that you had also told me your deposition that you and Mr. Burson did discuss this issue, but the things that you relied on were things such as the amounts of money that the Vice President was asking for and the fact that at that point in time, he was asking for money in connection with the media campaign. Is that accurate?
>
> *Mr. J. Sandler*. Both that and the fact that the call sheets given to the Vice President asked him to solicit amounts in excess of the Federal limits in each of these cases, in which we had determined that a contribution resulted from a phone call made by the Vice President and--
>
> *Mr. Mattice*. Okay. I just--oh, I am sorry. Go ahead.
>
> *Mr. J. Sandler*. And the fact that in each of those cases--and there were five cases that we had identified, and I know others can add and subtract and so forth, but--and those five cases that we had identified, not only did the Vice President's call sheet ask him to solicit an amount in excess of the Federal limits, in other words, soft money, but the donor had written a single check for in excess of the Federal limits.[29]

At his testimony before the Committee on September 10 , 1997, Sandler confirmed his deposition testimony that some of the money raised by the Vice President's telephone calls was "hard money." Throughout his testimony, Sandler insisted that the Vice President had no knowledge of the DNC accounts into which contributions resulting from his telephone calls had been deposited. Sandler even alluded to the Vice President's state of mind in his opening statement, when he said:

> Even if the statute did apply in that way, it is limited by its terms to the solicitation of contributions subject to the Federal

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[29] Testimony of Joseph Sandler, September 10, 1997, pp. 34-36.

> Election Campaign Act, meaning, in the case of party committees, Federal or so-called hard money. Though we don't think the fact is relevant because of our view of--my view of the application of the statute that I just mentioned, all the materials that we have seen clearly indicate that the Vice President was soliciting non-Federal money. And that's true even though, because of internal DNC procedures of which the Vice President would have no reason to be aware, the DNC--after the fact and without the Vice President's knowledge--deposited a small percentage of a portion of those contributions that he had solicited into our Federal Account.[30]

At the September 10, 1997 Committee hearing, Sandler was asked about a series of memoranda prepared by then-White House Deputy Chief of Staff Harold Ickes that appeared to cast doubt on whether the Vice President had in fact made his telephone solicitations with the state of mind that Sandler and the others had attributed to him. These memoranda described the manner in which funds raised for the DNC would be allocated. These memoranda (which sometimes transmitted other memoranda prepared by Brad Marshall, Chief Financial Officer of the DNC) repeatedly highlighted the fact that, as a matter of DNC policy, the first $20,000 of money received annually by the DNC from an individual donor would be allocated to the DNC's federal (hard money) accounts, and that only after this allocation was made would any additional monies raised from such individual be allocated to the DNC's non-federal (soft money) accounts.[31]

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30 *Id.* at pp. 15-16.

31 *See, e.g,* Memorandum from Harold Ickes to the President and the Vice President, February 22, 1996 (Ex. 12); Memorandum from Harold Ickes to the President and the Vice President, June 3, 1996 (Ex. 13); Memorandum from Harold Ickes to the President and the Vice President, July 15, 1996 (Ex. 14); Memorandum from Harold Ickes to the President and the Vice President, July 28, 1996 (Ex. 15); *see also* Memorandum from Bradley Marshall to Debra DeLee, July 12, 1994 (Ex. 16).

Most, if not all of these memoranda from Ickes were directed to both the President and the Vice President. According to Heather Marabetti, then executive assistant to the Vice President, the Vice President received an overwhelming volume of memoranda, and was not able to read them all. Some memos received by the Vice President were moved, unread, directly to his "out" box. Others, which the Vice President intended to read, would remain in his "in" box. Marabetti testified that these memoranda from Ickes were the type of internal memoranda which "stayed in [the Vice President's] in-box," and, were, therefore, presumably reviewed by him.[32] Obviously, these memoranda raise an implication that the Vice President had personal knowledge that a portion of monies he solicited on behalf of the DNC in his fund-raising telephone calls would be deposited into the DNC's hard money accounts.

More important, the issue of the Vice President's precise mental state when making the calls is not necessary in evaluating whether his calls violated section 607. A Federal Election Commission regulation on this subject states:

> Any party committee solicitation that makes reference to a federal candidate or a federal election shall be presumed to be for the purpose of influencing a federal election, and contributions resulting from that solicitation shall be subject to the prohibitions and limitations of the Act. This presumption may be rebutted by demonstrating to the Commission that the funds were solicited with express notice that they would not be used for federal election purposes.[33]

The effect of this regulation is to create a legal presumption that, in the absence of an explicit disclaimer to the contrary, contributions solicited for party accounts (such as those maintained by the

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[32] Deposition of Heather Marabetti, September 3, 1997, pp. 66-67 and *see* Ex. 14.

[33] 11 C.F.R. § 102.5(a)(3).

DNC) are treated as a matter of law as "hard money" if there is a reference in the solicitation to a particular campaign or candidate. This presumption arguably renders the subjective state of mind of the solicitor irrelevant with respect to whether money raised is deposited into "hard" or "soft" accounts in an analysis of the applicability of a statute such as 18 U.S.C. § 607; so long as the solicitor refers to a particular candidate or campaign, the resulting contribution is, as a matter of law, "hard money."

At his deposition testimony on August 22, 1997, Sandler conceded that he and Burson had not considered the effect for this regulation in their discussions regarding the legality of the Vice President's telephone calls. He did, however, acknowledge the operative effect for the regulation:

> **Q:** Was this regulation discussed in the course of conversation you may have had with Mr. Burson or others in the course of this project or investigation we've been discussing?
>
> **A:** Not that I recall.
>
> **Q:** Okay. Tell me your understanding of what subsection of the Code of Federal Regulations does.
>
> **A:** If money is solicited in a way that's earmarked for the election of a Federal candidate in the conception of the--the framework of the FEC rules, it will be treated as Federal money unless the donor has advised that it was--or indicated that it would be deposited in a non-Federal account.
>
> * * *
>
> **Q:** All right. Give me again--you're the expert at this sort of thing. Tell me, can you put in a little bit more layman's language for me your interpretation of this, of what is done by this particular regulation?
>
> **A:** Yes. If you solicit funds to a party account without indicating to the donor into what account it's going to be deposited, or if the donor doesn't indicate on the check what account to deposit to,

> and you say this is going to be used to-- we're going to use this to elect Senator Smith, you know, a U.S. Senate race or a U.S. House race, Presidential race, the money will be presumed to be Federal unless the donor's advised different.
>
> **Q:** Was there ever--in the course of the discussions you may have had with Mr. Burson or others in the course of this investigation, was there ever any discussion that the Vice President may have mentioned to any of these potential donors anything about the accounts into which their contributions would be deposited?
>
> **A:** No. I don't think--the Vice President isn't necessarily going to be familiar with those accounts, which you can tell I don't even know the codes, and I'm ultimately in charge of it.[34]

The Committee concludes that the regulation is most probably applicable to the Vice President's solicitation calls, as he repeatedly volunteered during in his March 3, 1997 press conference that he was raising funds for "the campaign" or for "our campaign."[35]

The timing of the Committee's discovery that monies raised by the Vice President had been deposited into hard money accounts is also significant. At his testimony before the Committee on September 10, 1997, Sandler confirmed that in construing the Committee's subpoena for documents, the DNC had concluded that it need not produce to the Committee any document created after April 9, 1997. Sandler further confirmed that the fact that, because his handwritten notes, which indicated that monies raised by the Vice President's calls had been deposited to hard money accounts, had been produced, those notes had been prepared on or prior to April 9.[36]

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[34] Deposition of Joseph Sandler, August 22, 1997, pp. 44-45.

[35] *See supra*, text accompanying note 7.

[36] Sandler testimony, pp. 30-31.

This sequence of events makes clear, then, that at least Sandler and Burson knew that monies presumably raised by the Vice President's solicitations from his office phone had been deposited into hard money accounts before the Attorney General publicly stated her contrary factual assumption in her April 14, 1997 letter to Senate Judiciary Committee Chairman Hatch.[37] A question raised is why, given this knowledge, Sandler or Burson (or Burson's client, the Vice President) never undertook to make the Attorney General aware of the fallacy of her assumption in this regard after her letter was released.

President Clinton

At a White House press conference on March 7, 1997 (four days following the Vice President's press conference), and in response to questions of whether the President had made telephone calls soliciting contributions to the DNC from the White House, the following exchange took place:

> Q: Mr. President, your press secretary this week left open the possibility that you, too, had made calls like the vice president did. Did you ever make those calls?
>
> A: I told him to leave the possibility open because I'm not sure, frankly. I don't like to raise funds in that way. I never have liked it very much. I prefer to meet with people face to face, talk to them, deal with them in that way. And I also, frankly, was very busy most of the times that it's been raised with me. But I can't say, over all the hundreds and hundreds and maybe thousands of phone calls I've made in the last four years, that I never said to anybody while I was talking to them, "Well, we need your help," or "I hope you'll help us."

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[37] Sandler also knew before April 9, 1997 that the telephone calls had been made on the Vice President's official telephones in his White House office. Deposition of Joseph Sandler, August 21, 1997, pp. 115-16, 123.

At his deposition before the Committee on June 26, 1997, Ickes testified that based on his review of documents presented to him by Committee counsel, and based on his vague recollections and assumptions, the President may have made a limited number of telephone calls to DNC donors during 1994.[38]

Based principally upon the information provided by Ickes and on "call sheets" apparently prepared for the President by officials at the DNC, the Committee undertook a project with respect to the President's telephone calls under the direction of Jerome O. Campane, Supervisory FBI detailee to the Special Investigation. As part of this project, the Committee contacted a number of the potential donors listed on the call sheets to determine whether the President, in fact, had contacted those individuals and, if so, what had been the results of the telephone calls. The results of this project are outlined in the "Statement of Jerome O. Campane," dated October 28, 1997.[39]

As can be seen from Mr. Campane's statement, and the referenced letter dated October 21, 1997 from White House counsel Charles F.C. Ruff to Michael J. Madigan, Chief Counsel for the Special Investigation,[40] it was ultimately determined that telephone calls were made from the White

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[38] Deposition of Harold Ickes, June 26, 1997, pp. 80-108; *see also* Ex. 3; Memorandum from Harold Ickes to Leon Panetta, December 2, 1994 (Ex. 17); Memorandum from Harold Ickes to Jack Quinn, December 2, 1994 (Ex. 18); Memorandum from Harold Ickes to the President and the Vice President, November 28, 1995 (Ex. 19); Memorandum from Harold Ickes to the President with attached call sheets, February 7, 1996 (Ex. 20); Handwritten Notes of David Strauss (Ex. 21); Electronic Mail from Karen Hancox to Kim Tilley, November 24, 1995 (Ex. 22); Memorandum from Nancy Hernreich & Rebecca Cameron to the President, December 22, 1995 (Ex. 23); Fax Cover Sheet from Ann Braziel to Karen Hancox with attached call sheets, March 7, 1996 (Ex. 24).

[39] Statement of Jerome O. Campane, October 28, 1997 (Ex. 25).

[40] Letter from Charles F.C. Ruff to Michael J. Madigan, October 21, 1997 (Ex. 26).

House residence to six of the nine individuals circled on the October 18, 1994 call sheet. Two of the individuals (Jenrette and Frost) listed in Ruff's letter were among the five persons who were interviewed in connection with their contributions.

Of these individuals, the Committee was able to determine that the President had called and solicited a contribution to the DNC from at least one -- Richard H. Jenrette, Chairman of the Board and Chief Executive Officer of The Equitable Companies, Incorporated. Mr. Jenrette was interviewed by telephone by the Committee, and testified before the Committee at a hearing on October 29, 1997.

Jenrette testified that he received a telephone call from the President on October 18, 1994, and that the President requested his assistance in raising two million dollars from forty friends.[41] Jenrette agreed to collect $50,000 to donate to the DNC as his share of that two million dollar goal. In his orders to fulfill his $50,000 commitment, Jenrette wrote a personal check for $10,000 to the DNC and collected an additional $40,000 from businesses he helps manage, and then forwarded all checks to the President on October 24, 1994.[42] In a letter accompanying the checks, Jenrette described in detail his conversation with the President, especially the fact of the President's solicitation. Jenrette provided the Committee copies of the five checks he collected in response to the President's solicitation.[43]

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41 Testimony of Richard Jenrette, October 29, 1997, pp. 3-6.

42 *Id.*

43 *Id.*; Checks drawn on accounts of The Equitable Companies Incorporated, The Equitable, Richard H. Jenrette, Alliance Funds Distributors, Inc., and Donaldson, Lufkin & Jenrette, Inc. (Ex. 27).

Later that day, White House counsel Ruff, along with his assistants Lanny A. Breuer and Michael X. Imbroscio, testified before the Committee. In response to a request from Chairman Thompson, Ruff agreed to compare entries in memoranda (referred to as a 'diary') regarding President Clinton's activities to White House telephone logs to determine whether the President had made other fund-raising telephone calls.[44]

On November 17, 1997, Chief Counsel Madigan received a letter from Breuer, which set forth the result of that work. According to that letter, the White House counsel's office was able to determine that the President placed three other calls to individuals listed on DNC call sheets. According to Breuer's letter, the White House could not determine that funds were raised as a result of any of these calls.[45] The Committee determined that the President's calls had all been made from the White House residence. Later in November, the Committee received documents which suggested that other White House officials may have made telephone calls soliciting funds for the DNC.[46]

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[44] Testimony of Charles F.C. Ruff, October 29, 1997, p. 220.

[45] Letter from Lanny Breuer to Michael J. Madigan, November 17, 1997 (Ex. 28).

[46] This document, produced by the DNC in late November, after the Committee's hearings concluded, reflects plans to have Ickes make fund-raising telephone calls for significant amounts of money to a number of labor leaders. Because Ickes had already been deposed and had testified before the Committee in public session, the Committee never had the opportunity to ask him about the document.

Excerpts from October 11, 1996 DNC Memorandum:

Union	Caller	Request/Action Item
AFSCME	Harold Ickes	Reminder call. Rosenthal suggests that AFSCME will hold $100,000 to $200,000 for distribution to coordinated campaigns "at the end." Harold should confirm this.

The Justice Department's Investigation

As discussed, the Attorney General refused to recommend the appointment of an independent counsel to investigate the Vice President's telephone calls in April 1997, primarily due to her assumption that only soft money was raised by those calls. The Committee's investigation, which began long after the Justice Department's, had proven these assumptions incorrect by August 21, 1997, the date when Sandler testified to the Committee of his knowledge that the calls had raised hard money.

In fact, even a consideration of evidence in the public domain should have caused the Justice Department to realize that its assumptions were incorrect. This became clear on September 3, 1997, when an article in The Washington Post, based on information available to the public, determined that

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AFT	Harold Ickes	List to be prepared by Jill Alper and Jim Thompson for specific request.
Firefighters	Harold Ickes	Ask for $100,000 with list prepared by Jill Alper and Jim Thompson . . .
Laborers	Harold Ickes	At the end of June, the Laborers had $1 Million in the PAC account; ask for contributions with list prepared by Jill Alper and Jim Thompson . . .

Memorandum from Charlie Baker to Craig Smith, October 11, 1996 (Ex. 29).

The Committee's investigation has shown that at least two of these organizations made contributions to the DNC after October 11, 1996. To the extent that Ickes participated in effort cultivate potential donors, questions arise concerning 5 U.S.C. § 7323(b), prohibiting fund-raising by such employees. In fact, if Ickes made the telephone solicitations that were the subject of the DNC's October 11, 1996 memorandum, quoted above, it would appear that he violated the criminal provisions for the Hatch Act, prohibiting a federal employee from soliciting any contributions at any time from any location. The Committee strongly recommends further investigation of these matters.

the Vice President's telephone calls from the White House had raised $120,000 in hard money for the DNC.[47] The article set forth facts suggesting that at least 8 of the 46 donations that resulted from the Vice President's calls were deposited into hard money accounts. One donor to whom the reporter spoke stated that the call "was clearly focused on the reelection campaign of Clinton and Gore,"[48] an impression consistent with the Vice President's own recollection of the nature of his calls.[49] There is no question that the Justice Department had not made any inquiry to determine whether the funds raised by the Vice President's telephone calls were hard money, despite the Justice Department's novel view that the answer to that inquiry determined the legality of the solicitation. "The first I heard of it was when I saw the article in 'The Washington Post,' Reno said .... It is my understanding that is the first time that the public integrity section learned of it, as well."[50] In these circumstances, the public and the Congress are justified in questioning the competency and credibility of the Justice Department's investigation.[51]

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47 Bob Woodward, "Gore Donors' Funds Used as 'Hard Money,'" Washington Post, September 3, 1997, p. A1.

48 *Id*.

49 *See supra*, note 7 and accompanying text (discussing Vice President's characterization of the content of his phone calls at March 3, 1997 press conference).

50 Roberto Suro, "Justice Did Not Review Legality of Gore White House Solicitations," Washington Post, September 6, 1997, p. A1.

51 Indeed, the Attorney General adopted a tortured interpretation of the Independent Counsel Act, one which no prior Attorney General has adopted for the precise reason that the statute cannot be so read. According to published reports, the Attorney General will not begin an investigation of whether a covered person has violated the law until specific and credible information has been presented to her that such a violation has occurred, even though a prosecutor may begin an investigation into anyone's conduct based on any information she receives. *See*

Prodded by the newspaper article, the Attorney General commenced a preliminary investigation into whether an independent counsel should be appointed to investigate the Vice President's fund-raising calls on October 3, 1997. On December 2, 1997, the Attorney General notified the United States Court of Appeals for the District of Columbia Circuit, Independent Counsel Division, that the Department of Justice had concluded its preliminary investigation, and that she had determined that there were "no reasonable grounds to believe that further investigation is warranted of allegations that the Vice President violated Federal law, 18 U.S.C. § 607, by making fund-raising telephone calls from his office in the White House." In her notification, the Attorney General stated the basis for her determination:

> My conclusion is supported by two independent dispositive grounds. First, the evidence that the Vice President may have violated Section 607 is insufficient to warrant further investigation. Second, even if the evidence suggested a possible violation of law, established Department of Justice policy requires that there be aggravating circumstances

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Susan Schmidt & Roberto Suro, "Troubled From the Start: Basic Conflict Impeded Justice Probe of Fund-Raising," Washington Post, October 3, 1997, p. A1. In short, she took the unprecedented position that unless she is presented with sufficient evidence that would justify opening a preliminary investigation under the independent counsel law, then she would not investigate the actions of covered persons to see whether in fact specific and credible evidence of wrongdoing existed. Consequently, the Justice Department's interpretation of the Independent Counsel Act produced the incongruous result that it became harder to investigate a covered person under that statute for wrongdoing than to investigate non-covered persons for potentially crimes generally. Obviously, this interpretation confers an immunity from investigation that non-covered persons do not enjoy; if the Justice Department will not look for evidence of wrongdoing, then no independent counsel will be appointed to fulfill that statutory role, unless some third party presents specific and credible evidence of a criminal act by a covered person. This result hardly fulfills the intent of the Independent Counsel Act, which was designed to make sure that an authority not beholden to the President could investigate any allegations of wrongdoing against high-level officials.

> before a prosecution of a Section 607 violation is warranted. There is no evidence of any aggravating circumstances in this matter.[52]

After recounting the factual and legal background for the preliminary investigation and outlining the scope of the inquiry, the Attorney General's notification outlined the results of the investigation. The Attorney General acknowledged that the fact that DNC contributions were deposited to "hard" money accounts raised the "plausible inference" that the Vice President may have asked the donor to make a hard money contribution. In this regard, the Attorney General addressed the significance of one of the series of memoranda from Ickes and Marshall which were directed to the President and the Vice President. This memorandum described the DNC's "splitting" practice whereby the first $20,000 of money received annually from an individual donor would be allocated to the DNC's hard money accounts, and only subsequently would additional sums raised from those individuals be deposited into "soft" money accounts.

According to the Attorney General's notification, the Vice President stated in an interview with Justice Department attorneys or FBI agents that he did not recall having seen the memorandum, and that he tended not to read Ickes' memoranda that would be discussed at meetings. The Attorney General concluded, however, that even if the Vice President had seen the memorandum, it would have significance only if it could be shown that the Vice President had independent, detailed knowledge for the DNC's allocation or "splitting" practices. The notification states:

> It is my conclusion that the memorandum, standing alone and without independent knowledge of the splitting practice, cannot reasonably be read as putting anyone on notice that the DNC was engaging in a practice of splitting contributions without the

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[52] Ex. 2, p. 1.

> donor's consent. Therefore, even if the Vice President read the Marshall memorandum, it is my conclusion that there is no evidence on which to base a conclusion that the Vice President was aware of the DNC practice, and thus may have been soliciting contributions knowing that a portion of some contributions would end up in hard money accounts.[53]

The Justice Department also attempted to ascertain whether, in the course of his solicitations, the Vice President had, in fact, solicited hard money. The notification states that the FBI interviewed more than 200 of the 216 prospective donors identified from call sheets prepared for the Vice President by the DNC. Of this number, the FBI was able to identify 45 who recalled actually receiving a telephone call from the Vice President during the period of late 1995 to mid-1996 in which political contributions were discussed. According to the notification, "[n]one of these 45 persons state that the Vice President explicitly or implicitly asked them to give money to the DNC's federal account or to any federal political campaign."[54] Accordingly, the Attorney General concluded:

> It is my view that there are no further grounds to investigate whether any of these calls violated Section 607 on the mere grounds that a portion of the subsequent contributions were deposited into hard money accounts. There is no evidence that the Vice President

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[53] *Id*. at p. 10.

[54] *Id*. at p. 13. The Attorney General's notification did not mention 11 C.F.R. § 102.5(a)(3), which states that if a federal campaign is referenced, the solicitation will be presumed for federal election law purposes to be hard money unless the solicitor makes an explicit statement that the funds are to be deposited into the soft money account. Nor did she discuss the Vice President's own statements at his March 3, 1997 news conference, in which he repeatedly made reference to his making telephone calls on behalf of "the campaign" or "our campaign." A reference to the use of the money for a media campaign is not the same as an explicit disclaimer that the funds would be accounted for as soft money, particularly given the Committee's conclusion that these advertisements were in fact Clinton-Gore campaign advertisements.

> was aware that part for the donations would be deposited into hard money accounts, and the donors' own descriptions of the solicitations makes it clear that they interpreted the solicitations as being for soft money.[55]

Beyond her conclusions relating to the Justice Department's factual investigation, the Attorney General also rested her determination not to seek an independent counsel on the grounds that Justice Department policy would, in any event, preclude a prosecution in the absence of "aggravating circumstances" not presented in this case. The authority cited in the notification for the Attorney General's reliance on this factor is a provision of the Independent Counsel Act, 28 U.S.C. § 592(c)(1)(B), which states:

> In determining whether reasonable grounds exist to warrant further investigation, the Attorney General shall comply with the written or other policies of the Department of Justice with respect to the conduct of criminal investigations.

Relying on this authority, the Attorney General observed:

> A number of different aggravating factors are mentioned in the Departmental records concerning Section 607. They include, in addition to coercion, a demonstration of specific intent to flout the law by one who has been put on notice of its requirements; a substantial number of violations; a substantial misuse of governmental resources or property in conjunction with the prohibited solicitations; and a substantial disruption of government functions resulting from the solicitations.
>
> We have conducted, as is explained above, an extensive investigation of the Vice President's telephone solicitation calls; and I find no evidence in the investigative results that any of these aggravating factors is present. There is no evidence that the Vice President was specifically aware of the prohibitions of Section 607, and no evidence

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[55] *Id*. at p. 14.

> that he was warned that his conduct would be in potential violation of that or any other statute. There are at most five telephone calls, even if we could draw every conceivable speculative inference against the Vice President, that could be construed as hard money solicitations, and hence potential violations for the law. The bulk of his calls were not charged to the government, and the few that were have been reimbursed. There is no suggestion that either the Vice President or any of the few staff members who were involved in these telephone solicitations neglected their official duties as a result.
>
> Beyond these factors that have been specifically identified in Department of Justice records as potential aggravating circumstances in a Section 607 case, I am unable to identify any other factors in this case that might properly be regarded as aggravating.[56]

Thus, the Attorney General concluded:

> In short, the preliminary investigation has established that, even if the Vice President were found to have technically violated Section 607, there is no evidence suggesting the presence of any aggravating factors of the sort that might warrant consideration of prosecution under established Departmental policy. Furthermore, I am unable to identify any way in which further investigation might lead to development of evidence of aggravating factors in this case. Therefore, in light of the clearly established policy of the Department of Justice that aggravating factors are required before prosecution of a Section 607 matter can be considered, it is my obligation under the Independent Counsel Act to close this matter without seeking the

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[56] *Id*. at pp. 27-28. A number of these conclusions are questionable. The fact that the Vice President declined to make fund-raising telephone calls from the White House in 1994, when he made such calls from the DNC, but did so in 1996, suggests that he indeed was specifically aware of the prohibitions of section 607. In addition, if the statute is not in fact limited to the raising of "hard money," as discussed below, then the Vice President made 52 such calls that may have raised as much as $795,000, certainly a "substantial number of violations."

appointment of an independent counsel.[57]

The Committee's Evaluation of the Legality of the Vice President's Phone Calls

The Committee believes that an independent counsel should be appointed to review a whole range of possible illegalities in connection with fund-raising in the 1996 federal election campaigns, including the telephone calls, to determine whether high-ranking federal officials violated federal campaign finance laws, and to make such a determination through a process that would command public respect.

The primary federal criminal statute implicated by the fund-raising telephone calls is 18 U.S.C. § 607(a). The predecessor statute to current 18 U.S.C. § 607 was first enacted in 1883 as part of the Pendleton Act. Although telephones were new in 1883, the statute has not been allowed to fall into disuse as modern communications developed. It was amended in 1980, and its existence is both a known and constant reality for all members of Congress. The Committee concludes that despite several arguments advanced to the contrary, telephone calls made by any person from an official area of the White House to solicit campaign contributions violate the express prohibition of section 607.

Vice President Gore stated at his press conference that no law prevented the President or Vice President, as opposed to all other federal employees, from raising federal campaign contributions from the White House.[58] The Committee disagrees. On its face, the plain language of section 607 applies to all federal officers, indeed, to "any person" who violates the statute, including the President and Vice President. Nothing in the legislative history or any court decision excludes the president or vice president from its scope. Nor has any court case held either of these officials exempt from

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[57] *Id*. at p. 28.

[58] Ex. 6, pp. 2-3.

any generally applicable federal criminal statute. In addition, the Attorney General's April 14, 1997 letter declining to seek an independent counsel in response to the letter sent her by Senate Judiciary Committee Republicans does not make the argument that these officials are exempt. Because such an exemption would have been a dispositive response to a request for an independent counsel, apparently the Attorney General was not then prepared to take the position that the President and the Vice President are excluded from the operation of section 607.

Nonetheless, more supports this conclusion than the statutory language and inferences from the Department's failure to raise the argument. In 1979, the Justice Department's Office of Legal Counsel issued an opinion which concerned whether the predecessor statute to section 607 was violated when President Carter invited about 20 private persons to a dinner in the Family Dining Room on the first floor of the White House, where some were solicited for campaign contributions.[59] In that opinion, the Department found that the term in the statute "no person" (now "any person") was "broadly inclusive." Similarly, the statute then, as now, by reference to section 603, referred to "an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States. . . ." That opinion found that the intent of Congress enacting the original 1883 statute was that the "President [and *a fortiori* the vice president]. . . be included among the 'officers governed by the bill.'" The Department concluded that since averting coercion to contribute was the goal of the statute, then "[p]articularly where only criminal penalties were provided rather than provision made for discharge or removal of an offending official, policy reasons for prohibiting such

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[59] "The President -- Interpretation of 18 U.S.C. § 603 as Applicable to Activities in the White House," 3 Op. O.L.C. 31 (1979).

abuses of power by the president as much as by any other Government official are clearly present." The Justice Department's views cannot be squared with Vice President Gore's claim that the statute does not apply to him or to President Clinton.

The Committee also concludes that the Attorney General erred in concluding that section 607 applies only to the raising of "hard money." Section 607 applies only when "contributions" within the meaning of the Federal Election Act of 1971 are solicited or received in a federal building. Section 607 references the definition of "contribution" contained in section 301(8) of the FECA. Subject to various exceptions that do not include funding for media advertising, that legislation defines the term "contribution" to mean "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. . . ." Such definition does not permit "contribution" to refer only to "hard" and not to "soft money," and the Attorney General cited no court case for her interpretation for the statute.

Even if the statutory definition were unclear, there are two reasons why "contribution" under the FECA, as referenced in section 607, cannot be limited to "hard money." First, the FEC does not equate "contribution" with "hard money." In its view, when coordinated with a candidate, a party's "electioneering" activity" is subject to regulation as a "contribution." Although the Attorney General purported to agree that "[e]lectioneering message" is the test when determining whether an advertisement constitutes a "contribution," her April 14, 1997 letter erroneously appears to equate "electioneering message" with "express advocacy."[60] In actuality, the FEC defines "electioneering message" more broadly than express advocacy to mean statements "designed to urge the public to

[60] Ex. 8, p. 7.

elect a certain candidate or party."[61] The advertisements run by the DNC for which Vice President Gore solicited funds contained electioneering messages, and because of their coordination with the candidate, were "contributions" within the meaning of the FECA and section 607. "Express advocacy" must be financed with hard money. By contrast, the FEC has determined that an advertisement can be a "contribution" if it contains an electioneering message. To the FEC, and contrary to the Attorney General's letter, the two terms "hard money" and "contribution" are simply not synonymous.

Under well-established administrative law principles, the FEC's view that "contributions" include soft money used to fund electioneering messages prevails over the Attorney General's position that "contributions" are limited to hard money. Where a statute is ambiguous, and Congress charges a federal regulatory agency to interpret the statute, the agency's interpretation governs the meaning of the ambiguous statute, even where another party has a plausible view of the statute. Chevron Corp. v. Natural Resources Defense Council, 467 U.S. 837 (1984). The Supreme Court has held that the FEC "is precisely the type of agency to which deference should presumptively be afforded." Federal Election Commission v. Democratic Senatorial Campaign Cmte., 454 U.S. 27, 37 (1981). Thus, the Department of Justice is precluded as a matter of law from interpreting "contribution" to mean "hard money."[62]

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[61] *See* FEC Advisory Op. 1985-14, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5819 at 11,185 (April 12, 1985); FEC Advisory Op. 1984-15; FEC Advisory Op. 1984-23; FEC Advisory Op. 1984-62; MUR 3608; MUR 3918.

[62] Under Chevron, statutory terms that are unambiguous apply without regard to the interpretation provided by an administrative agency. If this prong of Chevron were to apply, the FEC's view of the meaning of "contribution" would also govern, since it is consistent with the plain meaning of the statutory definition of "contribution." *See* Colorado Republican Campaign Comm. v. FEC , ___ U.S.

A second reason why "contributions" under the FECA are not limited to "hard money" is that, under the Attorney General's view, the statute would be rendered meaningless. The FECA's prohibitions on various forms of illegal campaign funds are all triggered by those funds constituting "contributions." For instance, the FECA prohibits campaign "contributions" greater than $1000 per election, 2 U.S.C. § 441a(1); foreign "contributions," 2 U.S.C. § 441e; "contributions" made in the name of another, 2 U.S.C. § 441f; and cash "contributions" in excess of $100, 2 U.S.C. § 441g. Under the FEC's interpretation of "contribution," soft money from these prohibited sources would be illegal. The DNC apparently agrees with the FEC that soft money from these sources is illegal; otherwise, it would not have returned $2.8 million in soft money that came from foreign and/or laundered sources.

Under the FEC's view, "contribution" has the same meaning each time it appears in the FECA. This approach is consistent with the "normal rule of statutory construction" that "identical words used in different parts of the same statute are intended to have the same meaning." Gustafson v. Alloyd Corp., 513 U.S. 561 (1995). By contrast, under the Attorney General's interpretation of "contribution," all the sums the DNC returned would have been legal because they were "soft money" and therefore fell outside the various FECA "contribution" prohibitions. It would be legally incoherent that for some purposes in the same statute, "contribution" means hard money and for others means "soft as well as hard money." Since "contribution" must have the same meaning each

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___, 116 S. Ct. 2309, 2316 (1996) (recognizing that the "FECA permits unregulated 'soft money *contributions* to a party for certain activities, such as .... voter registration and 'get out the vote' drives.... Unregulated 'soft-money' *contributions* may not be used to influence a federal campaign, except when used in the limited, party building activities specifically designated in the statute" (emphasis added)). As noted above, such limited activities do not include general media advertising.

time it appears in the FECA, then under the Attorney General's view, it logically follows that it would be legal to raise foreign soft money in the name of another in unlimited cash sums. The Committee rejects an interpretation of "contribution" that would lead to such absurd results.

Even if the Attorney General's view of the statute were correct, the Vice President in fact raised hard money. The calls were made on a Clinton-Gore campaign credit card, which obviously implies that the calls were made for the purpose of advancing these candidates. The letters he sent to donors following his calls state, "President Clinton and I thank you for your continued support and contribution to the Democratic National Committee. We appreciate your dedication to our Administration and your help at a time when needed."[63] This ties the donations to the Clinton-Gore Administration and its campaign for reelection. One letter of the Vice President's, to Frank Pearl, reads, "President Clinton and I thank you for your continued support of our Administration." [64] This letter makes no reference to the DNC at all, and could not possibly be read as having raised soft money.

In addition, the two memoranda cited above from Harold Ickes to the President, Vice President, and others make clear that the first $20,000 of donations would be treated as "hard money" and the rest deposited in non-federal accounts because of the campaign's shortage of federal funds. Moreover, the FEC regulation cited above states that if the solicitor mentions a particular candidate or campaign and does not expressly state that the funds being solicited will be deposited in a "soft

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[63] Letter from Al Gore to Michael Adler, Dec. 11, 1995; Letter from Al Gore to William Dockser, Feb. 5, 1995; and Letter from Al Gore to Robert L. Johnson, Feb. 5, 1996 (Ex. 30).

[64] Letter from Al Gore to Frank Pearl, Feb. 9, 1996 (Ex. 31).

money" account, then the money donated will be presumed to be "hard money." Thus, section 607 is not limited to "hard money," and even if it were, the Vice President raised hard money.

For section 607 to apply, the solicitation must occur in a room occupied by federal employees performing official duties. The Attorney General's April 14, 1997 letter declined to appoint an independent counsel in the absence of evidence that the vice president made calls from official places in the White House. The 1979 Office of Legal Counsel opinion exonerated President Carter because the solicitation that prompted that opinion occurred in the family dining room. In OLC's view, the statute did not apply to solicitations in the private residence and other areas of the White House. OLC opined that "the statute is not framed in terms of property owned or held by the United States; it rather adopts a functional test, focusing on areas used by Federal personnel while they are conducting the Government's business." OLC's views therefore mean that section 607 would apply to calls made from the official office of the Vice President. Sandler's deposition testimony made clear that this is where Vice President Gore made his calls. The record also establishes that President Clinton made his few calls from the White House residence, so section 607 would not apply to his calls.

Although the Vice President went to great lengths at his press conference to state that he did not solicit any federal employee, and that he did not solicit anyone who was in a federal building, those two issues are irrelevant to determining whether section 607 has been violated. On the face of the statute, this is irrelevant. As the statute unambiguously reads, it is a criminal offense to solicit or receive contributions in a federal office. The 1979 Office of Legal Counsel opinion on which the Attorney General relied for her view that the statute only applies to official areas of the White House states that "solicitations of private citizens fall within the scope" of section 607. And the Justice

Department's prosecutorial manual states, "Section 607 makes it unlawful for anyone to solicit or receive a contribution for a federal election in any room, area, or building where federal employees are engaged in official duties. . . . The employment status of the parties to the solicitation is immaterial; it is the employment status of the persons who routinely occupy the area where the solicitation occurs that determines whether section 607 applies."[65]

If section 607(a) applied only to the solicitation of federal employees, then section 607(b) would be meaningless in the federal criminal code. Under that provision:

> The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative ..., provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee. . . .

As section 602 already makes it illegal for members of Congress to solicit federal employees, and section 603 prohibits members of Congress from soliciting or receiving contributions from their own employees, the exemption contained in section 607(b) would be unnecessary if Congress believed that section 607(a) merely applied to the receipt of contributions from other federal employees in their Congressional offices. Congress must have believed that without this exemption, funds received in

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[65] In neither her April 14, 1997 letter to Senator Hatch nor her December 2, 1997 notification to the Special Division of the United States Court of Appeals for the District of Columbia Circuit did the Attorney General make the argument that section 607 did not apply to solicitations of non-federal employees by federal employees in areas where official duties are performed. Since such an argument would have been dispositive of the legality of the calls, it is clear that the Attorney General would have relied on it if there were a basis for doing so.

such offices from non-federal employees would nonetheless fall within the scope of section 607. It is a basic rule of statutory construction that statutes should be read so as not to render other parts of that statute surplusage.[66] A reading that made section 607 apply only when federal employees were solicited would render sections 602, 603, and 607(b) redundant. Thus, it is legally irrelevant that the Vice President's calls were not made to federal employees, since he was in a room in a federal building in which official duties are performed at the time he made those calls.

Finally, it is also incorrect that "there is no controlling legal authority" that section 607 renders criminal the telephone calls the Vice President made. It is true that no case has ever been brought under section 607 for soliciting a non-federal employee from a federal building. But in a statutory criminal law system such as ours, federal criminal statutes apply according to their language as soon as they are enacted. Thus, the statute itself is the "controlling legal authority" that prohibits federal employees from making telephone calls to non-federal employees from official areas of federal buildings. The notion that a statute can apply to a particular set of facts only when a court says that it does so is a feature of a common law criminal legal system, not ours.[67]

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[66] "Judges should hesitate ... to treat [as surplusage] statutory terms in any setting, and resistance should be heightened when the words describe an element of a criminal offense." Bailey v. United States, 516 U.S. 137 (1995), quoting Ratzlaf v. United States, 510 U.S. 135 (1994)(brackets in original).

[67] Thus, the only Supreme Court decision on the meaning of section 607, United States v. Thayer, 209 U.S. 41 (1908), is irrelevant to the facts here at issue. In Thayer, the defendant was outside the federal building when he mailed solicitations of campaign contributions to employees at their federal building. Some of the employees read those letters in their offices. In his defense, Thayer argued that since he was not in the federal building, he could not have solicited in the building. Unsurprisingly, the Supreme Court rejected that view. As the Justice Department manual correctly notes, the holding in the case was that the statute applies to solicitations made by mail as well as in person. The case simply does not address the situation in which the person in the federal building is making a call outside the

The Committee therefore concludes that an independent counsel should be appointed to evaluate the ample credible evidence of legal violations. Also, the Committee believes that the making of these calls was inappropriate for our nation's highest elected officials. This amounted to unsavory and unseemly activity that lessens the dignity of these offices, offices that should command the greatest respect from their occupants and from citizens. In addition, even without containing any words that could be construed to amount to coercion, it would defy reality not to recognize that the recipients of such calls, many of whom had business interests, would find it difficult to turn down requests for funds from persons who exercise such vast power. The Committee hopes that all future Presidents and Vice Presidents will refrain from making direct telephone solicitations for campaign contributions.

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building, and the case does not in any way constrict the scope of the statute.

Moreover, the decision does not stand for the proposition that the solicitation occurs where the person solicited is located. The Court pointed out that "[t]he time determines the place [of the solicitation]." Thus, if the letter is written and mailed, but the letter burns, there is no solicitation in the federal building. Only when the solicitation reached the employee in the federal building did the prohibited solicitation occur. 209 U.S. at 43. In fact, until the time the employee read the solicitation letter, no solicitation occurred. In Thayer, the Court thus held that if the employee received the solicitation letter in a federal building, but did not read the letter until he left the building, no solicitation occurred: *i.e.*, the time of the solicitation (when the employee read the letter) determined whether the solicitation occurred in a federal building (thus, no solicitation occurred if the employee did not read the letter until after leaving the building). Here, by contrast, at the time the Vice President made his solicitations, they occurred from a federal building's official space.