

THE WHITE HOUSE  
WASHINGTON

98 JUL 7 40151

July 7, 1998

Memorandum for Phillip Caplan

From: Karl A. Racine  
Associate Counsel to the President

Regarding: Certification of Document Request of June 22, 1998

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On June 22, 1998, Charles F.C. Ruff circulated a memorandum which requested records from certain offices (Oval Office Operations, Chief of Staff, Political Affairs, First Lady, Staff Secretary, Vice President and Records Management) relating to campaign advertisements. The memorandum requested a response by June 30, 1998 and July 7, 1998. To certify that the files of your office have been searched, please sign the attached certification and return it to me as soon as possible.

Thank you for your cooperation and for complying with the request for documents.

Spoke with  
Karl 8/6/98

THE WHITE HOUSE  
WASHINGTON

July \_\_\_\_, 1998

Memorandum for Karl A. Racine  
Associate Counsel to the President  
479 OEOB

From: Phillip Caplan

Regarding: Certification of Document Request of June 22, 1998

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This certification is in response to the document request memorandum from Charles F.C. Ruff dated June 22, 1998. By signing this document, I certify that I have directed all the individuals in the Office of the Staff Secretary to search their files as well as the office's files. To the best of my knowledge, these files have been reviewed and all potentially responsive documents have been provided.

On behalf of the Office of the Staff Secretary:

\_\_\_\_\_  
Phillip Caplan

98 JUN 23 PM 4:52

THE WHITE HOUSE  
WASHINGTON

June 22, 1998

MEMORANDUM FOR: OVAL OFFICE OPERATIONS; CHIEF OF STAFF'S OFFICE,  
POLITICAL AFFAIRS OFFICE, FIRST LADY'S OFFICE; STAFF  
SECRETARY'S OFFICE; OFFICE OF VICE PRESIDENT; AND  
OFFICE OF RECORDS MANAGEMENT STAFF

FROM:  CHARLES F.C. RUFF  
COUNSEL TO THE PRESIDENT

SUBJECT: Request for Documents

We have received a request for documents relating to campaign television, radio and print advertisements<sup>1</sup> paid for by the DNC, State Democratic parties, or Clinton/Gore '96. Accordingly, please conduct a thorough and complete search of all of your records -- whether in hard copy, computer or any other form -- for any of the following material for the period January 1, 1995 - December 31, 1996:

1. All documents and records referring or relating to television, radio or print advertisements developed or created by Squire, Knapp, Ochs Communications that were paid for in part or whole by the DNC, any State Democratic Party, or Clinton/Gore '96.
2. All documents and records referring or relating to television, radio or print advertisements developed or created by the November 5 Group that were paid for in part or whole by the DNC, any State Democratic Party, or Clinton/Gore '96.

Every employee is responsible for searching his or her own files and records to ensure a comprehensive search. Each office head or Assistant to the President must certify that his or her staff has done a complete and thorough search.

In addition, if you believe that files from your office that have been sent to the Office of Records Management may contain responsive materials, please advise us so that we may ensure that all responsive documents have been located.

All materials must be provided to Karl Racine (OEOB 479) **by noon on Tuesday, June 30, 1998**.  
If you have any questions, please call Karl at 6-6285.

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<sup>1</sup> Such advertisements, among others, include: "Protect," "Moral," "Emma," "Sand," "Wither," "Families," "Threaten," "Firm," "People," "Children," "Splash," "Table," "Supports," "Defend," "Values," "Enough," "Economy," "Photo," "Same," "Finish," and "Dreams".

<sup>2</sup> If you are traveling to China for the President's trip, you have until noon on July 7, 1998 to produce any responsive documents

CAPLAN, PHILLIP  
WHITE HOUSE OFFICE

STAFF SECRETARY

WH

GFL/WW

THE PRESIDENT HAS SEEN

12-10-95

THE WHITE HOUSE  
WASHINGTON

95 DEC 8 P12:38

8 December 1995

MEMORANDUM TO THE PRESIDENT

CC: Leon Panetta  
Jack Quinn  
Jane Sherburne

From: Harold Ickes *HEI*

Re: Attorney client privilege and congressional  
investigating committees.

Attached is a 7 December 1995 article from The New York Times captioned "Senate Panel Will Subpena Notes of Whitewater Meeting". In the last paragraph of his article, Mr. Labaton states:

Although the fight over Mr. Kennedy's notes could spill over to the courts, Federal judges have deferred to Congress when witnesses asserting the privilege have declined to testify or produce documents under subpoena. No court has ever questioned a committee's decision to deny a witness the privilege, according to a report prepared earlier this year by the Congressional Research Service of the Library of Congress.

According to David Kendall, with whom I spoke this morning (Friday), the issue of whether a Congressional investigating committee can "pierce" the attorney client privilege (which is a court doctrine, not a constitutional right, at least as I understand it) has never been litigated in federal court. It is, however, David's opinion that if this issue were squarely tested in federal court, there is a "high probability" that the court would find in favor of the attorney client privilege. David pointed out that the last paragraph of Mr. Labaton's article was based on Congressional Research commentators, not case law.

PHOTOCOPY  
WJC HANDWRITING

# A Plea to Clinton to Lead U.S. Efforts Against AIDS

## Advocates Urge the President to Protect Prevention Programs and Patient Services

By DAVID W. DUNLAP

WASHINGTON, Dec. 6 — For two hours yesterday, President Clinton had his ear bent — and, once or twice, his arm twisted — by advocates for people with AIDS who pleaded with him to protect Medicaid, to support needle-exchange programs and to take a greater leadership role in the fight against the epidemic.

Mr. Clinton declared that a reduction in the Medicaid budget would be "a stake in the heart of our effort to guarantee dignity to the people with AIDS in this country," and promised to protect research efforts.

"I do not want to wait until every single family has somebody die before we have a good policy," Mr. Clinton said. He also spoke glancingly of the impediment posed by "homophobia" in getting care and treatment to those in need, perhaps the first time a President has used that word.

By design, however, it was Mr. Clinton who did most of the listening at the first White House conference

*'I do not want to wait until every single family has somebody die before we have a good policy.'*

on H.I.V. and AIDS, which was held across the street from the White House, in the Treasury Building.

More than 300 advocates, lobbyists, researchers, doctors, nurses, teachers, clergy, elected officials and service providers attended the meeting. The immediacy of their concern became clear when Martina Clark, of the Joint United Nations Program on AIDS, asked for a show of people in the room who had H.I.V., the virus that causes AIDS. More than 40 stood up.

Mr. Clinton spoke of the "death spiral" faced by poor youngsters who believed either that they were invulnerable to H.I.V. or that they would not live much beyond their mid-20's in any event and so did not worry about AIDS prevention.

But he said nothing about needle exchange programs, in which drug users are provided with sterile syringes in an effort to reduce the transmission of the virus.

"I sense the President's heart is in the right place," said Dennis deLeon, president of the Latino Commission on AIDS in New York, a private group. "But I wish he'd used the words 'needle exchange.'" Fifty-five

percent of all H.I.V. infections among Hispanic people in New York occur through the use of contaminated needles, Mr. deLeon said.

Although participants gave Mr. Clinton several standing ovations, many could not conceal their impatience.

"I support what you're doing for the Bosnian people," said Sean F. Sasser of Atlanta, a board member of the AIDS Policy Center for Children, Youth and Families, who introduced the President. "But we also have had a war here for the last 15 years." Mr. Sasser's companion, Pedro Zamora, an actor, died of AIDS last year.

And just as the session was ending, Bob Lederer, the senior editor of Poz, a magazine for people with H.I.V., yelled from the back of the room that the President had not followed all the guidance of two previous Presidential commissions on AIDS. "Why has it taken three years for you to convene a conference and make a call for recommendations?" he shouted. "The recommendations have been ample!"

After a brief, shouted exchange, the President cut Mr. Lederer off. "I am very sorry that there is not a cure," Mr. Clinton said. "I am very sorry that there is not a vaccine. I regret that not everything I have asked for has been approved by the Congress. In the context of what has happened in this country in the last three years, I believe we've gone a long way toward doing what we said we would do."

Picking up on a theme sounded by Mr. Sasser, he said, "We can't let our bigotry — or, to use his word — we can't let our homophobia blind us to our obligations."

The President was seated at a U-shaped table between Patricia S. Fleming, director of the Office of National AIDS Policy in the White House, and Gregg Gonsalves, policy director of the Treatment Action Group in New York.

"The event was neither more nor less than a piece of political theater, an engaging piece," said Thomas B. Stoddard, a prominent civil liberties lawyer in New York who was in the audience. Mr. Stoddard, who has AIDS, was among the leaders of gay and lesbian organizations who met with Mr. Clinton at the White House in April 1993.

But he added, "In the context of H.I.V., political theater is much more desirable than the silence and the evasion that characterized the two previous Administrations."

Asked about the Administration's policy on needle exchanges, Donna E. Shalala, the Secretary of Health and Human Services, said that there was a "controversy over research" into the effectiveness of such programs, but that the research would be regularly reviewed.

# Senate Panel Will Subpoena Notes of Whitewater Meeting

By STEPHEN LABATON

WASHINGTON, Dec. 6 — Paving the way for a significant constitutional and political clash, the chairman of the Senate Whitewater committee announced today that the committee would issue a subpoena for the notes of a 1993 meeting where President Clinton's top lawyers and other officials discussed Whitewater.

The chairman, Senator Alfonse D'Amato, Republican of New York, said the subpoena would be formally voted on Thursday, a result of the recent refusal by two of Mr. Clinton's closest advisers to answer questions about the meeting or provide notes of what occurred there.

Those advisers, Bruce Lindsey and William H. Kennedy 3d, appearing before the committee under an earlier subpoena, said they had been instructed by the White House not to answer the questions, on the ground that the meeting was protected by attorney-client privilege.

The meeting took place on Nov. 5, 1993, just as two politically sensitive investigations touching the President were beginning to heat up.

Shortly before the meeting, the White House was told by the general counsel at the Treasury Department about an investigation into Madison Guaranty, a failed savings and loan association that had been owned by James B. McDougal, who with his wife, Susan, was a partner of Bill and Hillary Clinton in the Whitewater real estate venture.

About the same time, the White House was learning the details of new accusations by David Hale, an Arkansas municipal judge who was facing a fraud indictment. Mr. Hale, who ran a federally backed investment company, said Mr. Clinton, as Governor of Arkansas, had pressured him to make an improper \$300,000 Government-backed loan to Mrs. McDougal.

Republicans have asked whether the officials at the Nov. 5 meeting used improperly any confidential information they had gleaned about the investigations. The White House

has said that the meeting was intended to brief the Clintons' new top personal lawyer, David Kendall, about Whitewater, but has declined to say anything more about the discussion, which lasted two and a half hours. Mr. Kennedy, who at the time was an associate White House counsel, took extensive notes of the meeting, and Mr. D'Amato said today that they would be the subject of the subpoena.

The clash over the meeting poses considerable political stakes for both the White House and Senate Republicans.

For the White House, the decision to refuse to answer questions about the discussion undercuts Mr. Clinton's position that he has replied to the committee's every request to provide information and has hidden nothing. White House officials and Senate Democrats remain concerned that as the President heads

## A Clinton-Congress confrontation with high stakes appears to be at hand.

into an election year, the decision to rebuff the committee will be used by his opponents to argue that he has stonewalled a Congressional investigation.

For the Republicans, the decision to undertake a high-profile legal fight over the notes raises great expectations that they will produce some significant new disclosures about Whitewater. If they do not, the effort could well backfire in embarrassment.

The privilege that keeps a client from being forced to disclose conversations with his lawyer is not specified in the Constitution but is instead a creation of the courts. Generally the attorney-client privilege has been associated with legal work performed involving civil and criminal cases. Although both houses of Congress have recognized that the privilege can also be invoked in committee hearings, its exercise has at times been rejected by lawmakers as inconsistent with the investigative functions of the legislative branch.

Several Congressional committees have rejected the assertion of the privilege in the past, particularly when it has been viewed as obstructing a focus of their hearings.

Although the fight over Mr. Kennedy's notes could spill over to the courts, Federal judges have deferred to Congress when witnesses asserting the privilege have declined to testify or produce documents under subpoena. No court has ever questioned a committee's decision to deny a witness the privilege, according to a report prepared earlier this year by the Congressional Research Service of the Library of Congress.

DO NOT FORGET THE NEEDLE!

## Outsider to Explore Gingrich Ethics Case

business. But it said it would take no action on those complaints.

Mrs. Johnson announced that the committee was aware of other recent accusations against GOPAC, including the disclosure last week by the Federal Election Commission that GOPAC improperly aided Mr. Gingrich's own election campaign.

Mrs. Johnson would not say what the committee was doing about that charge, but others indicated that it would begin considering action only when a formal complaint was filed. The complaint is expected to be filed in a few days by Representative David Bonior of Michigan, the House Democratic whip.

Various charges have been before the committee for 15 months, and today it took a seven-hour meeting to decide what to do about most of them.

### *A committee recommends new rules on income earned from books.*

Democrats have frequently demanded that the committee hire an outside lawyer to give the its investigation credibility, as the committee did in 1988 when Mr. Gingrich himself leveled ethics charges against Speaker Jim Wright. The outside counsel hired then, Richard Phelan, raised questions beyond those that Mr. Gingrich cited as a basis for action against Mr. Wright, who ended up resigning from Congress.

The Democrats stepped up their demand last week after the Federal Election Commission made public GOPAC documents showing that several of the Republican members of the ethics panel itself had connections to the political action committee. The papers also suggested that GOPAC had improperly aided Mr. Gingrich's own 1990 House campaign in Georgia. At the time, the committee was registered only to be involved in state and local races, not Federal ones.

Republicans have said tax questions and little more were involved. Democrats hoped that a thorough inquiry into GOPAC's affairs would turn up more damaging information and have urged that no limits be put on any counsel's area of inquiry.

On its own, the committee spent a couple of months looking into the terms of his deal with HarperCollins to publish his book, "To Renew America." From the pace of that inquiry, it appears that the committee has decided he violated no rules of the House and was not improperly helping Rupert Murdoch, who owns HarperCollins and many other enterprises that have frequent business before Congress.

But the committee did announce tonight that it would recommend a new rule to put book income within the overall ceiling on members' outside income. Members are allowed to earn an amount equal to 15 percent of their salaries outside, but book royalties do not count.

Other charges pending against Mr. Gingrich include accusations that he rewarded some GOPAC donors by championing their causes with Federal agencies, and that he violated House rules by letting a Wisconsin businessman with an interest in telecommunications legislation work as a volunteer in his office.

On at least two previous occasions, Democratic proposals for hiring an outside lawyer have failed on 5-to-5 tie votes. With five Republicans and five Democrats on the panel, any action must have some element of bipartisanship in it to be adopted.

Representative Johnson has repeatedly said it was making progress and has complained about attempts to make the panel move faster. Representative Jim McDermott of Washington, the committee's senior Democrat, has argued that its staff is inadequate, and has proposed the outside counsel motions.

Over the course of several weeks this fall, Mr. McDermott, Mrs. Johnson and committee staff members interviewed several Washington tax lawyers, asking if they would be interested in working on the case and discussing the conditions with them. Six lawyers made it past interviews by Theodore J. van Der Mied, the committee's chief counsel, and talked with the committee chairman and the ranking minority member.

According to people involved in the search process, it was clear to the lawyers that Democrats and Republicans on the panel had very different ideas of how much scope they wanted an outside lawyer to have.

Republicans wanted the focus to be kept very precisely on tax law. At one time they suggested that all an outside lawyer would be needed for was to decide whether Mr. Gingrich bore any personal tax liability.

At another point, Republicans sug-

gested that they wanted a lawyer to serve as an adviser and tell them whether they had enough information to proceed on the tax issue.

Throughout, the Democrats made it clear that they wanted the lawyer to have more authority — and to have had experience in conducting an investigation, rather than just experience in tax law.

The two lawyers interviewed who have the most investigating experience are James M. Cole, of the law firm Bryan, Cave, who served in the Public Integrity Section of the Department of Justice, and Cono R. Namorato, of Caplin & Drysdale, formerly of the criminal section of the Justice Department's tax division.

One participant said that lawyers were left with the impression that "the committee doesn't know what it wants to do, whether they want to appoint an outside counsel, and if they do, they don't know what the scope should be and what direction to give the outside counsel and what kind of outside counsel they want."

Another participant said that at one point, Mrs. Johnson asked a lawyer what he would do if he found a lead he wanted to pursue, and the committee wanted him to ignore it. "You wouldn't do that," he replied, emphasizing how embarrassing it would be for the committee to try to squelch an inquiry by a lawyer who could always quit and make public accusations of a cover-up.