

## **The White House Controlled the DNC and Improperly Coordinated the Activities of the DNC and Clinton/Gore '96**

“That was the other campaign that had problems with that, not mine.”

-- President Clinton, November 8, 1996<sup>1</sup>

In the wake of the President's re-election, questions were raised about allegations of improper fund-raising. The President's response was to shift blame away from himself (and his re-election campaign) and to the DNC. This response was disingenuous. During the 1996 election cycle, the White House, in its thirst for money, took control of the DNC.

First, the White House took control of the DNC's finances, micro-managing how the DNC raised and spent money. Harold Ickes, Deputy Chief of Staff to the President, simply seized the reins of financial power at the DNC. The DNC could not spend any money without prior White House approval. Ickes also exerted direct control over the DNC's Finance Division, the division charged with fund-raising. DNC National Chairman Don Fowler was unsuccessful in contesting Ickes' assumption of power and asserting control over the DNC.

The White House's financial control of the DNC was designed to fund the advertising strategy developed by Dick Morris. Yet White House control was not limited to financial control of the DNC; using the DNC as an adjunct to the re-election campaign led to unprecedented coordination between the DNC, Clinton/Gore '96, and the White House over the content, placement, and production of advertisements. This unprecedented coordination violated the letter and spirit of existing federal campaign laws.

In short, the White House took control of the DNC, particularly its fund-raising apparatus, to squeeze as much money out of the DNC as it could. The purpose of this money was to fuel the

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<sup>1</sup> News Conference of President Bill Clinton, November 8, 1996, CNN Special Event, Transcript # 96110801V06.

White House's massive advertising campaign, which itself was the result of unprecedented illegal coordination. By the end of the campaign, any distinctions remaining between the White House, the DNC, and Clinton/Gore had been obliterated.

### **Ickes Takes Charge of the DNC as the President's "Designee"**

Despite his being a federal employee, Harold Ickes simply took control of the DNC and ran it from 1995 through the 1996 election. In particular, he micro-managed the DNC's budget, deciding how much DNC money would be spent and on what projects. Moreover, he exercised independent control of the DNC's Finance Division, which controls fund-raising. Ickes did so with the approval of the President; indeed, Ickes was the President's "designee" for handling DNC issues. Ickes' control led to friction with the DNC's nominal head, Fowler.

Fowler's involvement with the DNC began in 1971,<sup>2</sup> and as time passed and he remained involved, he developed "an interest in being Chairman of the National Committee."<sup>3</sup> After the Democrats' devastating defeat in the 1994 elections, Fowler was given the chance. At that time, Ickes called Fowler and asked him if he would be interested in serving as the DNC's National Chairman.<sup>4</sup> The position being offered to Fowler was unusual; he was to be part of a "bifurcated" chairmanship, the brain child of Harold Ickes.<sup>5</sup> Senator Christopher Dodd (D-CT) would serve as the DNC's "General Chairman," and be a spokesman for the party. Fowler, as "National Chairman,"

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<sup>2</sup> Deposition of Donald L. Fowler, May 21, 1997, p. 12.

<sup>3</sup> *Id.* at p. 26.

<sup>4</sup> *Id.* at p. 27.

<sup>5</sup> Deposition of Harold Ickes, June 26, 1997, p. 26.

would be responsible for managing the day-to-day operations of the DNC.<sup>6</sup> Fowler was initially uncertain about serving in this arrangement, but after several subsequent entreaties from Ickes and at least one meeting with the President, Fowler agreed.<sup>7</sup> He began his tenure as National Chairman on January 21, 1995.<sup>8</sup>

Fowler quickly learned the limits of his power as “National Chairman.” He realized immediately that he and Ickes “had differences of opinion about how things should be run” at the DNC.<sup>9</sup> They disagreed on an entire range of significant issues from “budget matters” to “the operational thrust of the party.”<sup>10</sup> Fowler testified that the disagreements “generally [were] about budget matters.”<sup>11</sup> According to Fowler, these disagreements arose as early as the spring or summer of 1995, and persisted until the very end of his service as National Chairman in January 1997.<sup>12</sup>

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<sup>6</sup> See generally Fowler deposition, pp. 26-27; Testimony of Donald L. Fowler, Sept. 9, 1997, pp. 9-10.

<sup>7</sup> Fowler deposition, pp. 27-32.

<sup>8</sup> *Id.* at p. 12.

<sup>9</sup> *Id.* at p. 38.

<sup>10</sup> *Id.* at pp. 38-39; Fowler testimony, p. 20.

<sup>11</sup> Fowler deposition, p. 38.

<sup>12</sup> *Id.* at pp. 38-39. Although Fowler’s deposition testimony about his disagreements and problems with Ickes was strongly worded and candid, Fowler tried to hedge his testimony during public hearings. For example, he preferred not to associate himself with his deposition testimony that he and Ickes had differences of opinion that started soon after Fowler arrived and continued until Fowler left. Instead, Fowler testified that he and Ickes had a relationship of “dynamic tension.” Fowler testimony, p. 20. In fact, Fowler even quibbled with some of the terms he used in his own deposition. See Fowler testimony, pp. 13-15 (disputing that the Finance Division “ignored” his directives, though such was his deposition testimony, and asserting that he “might quibble a little bit with the use of that term on my part”).

Fowler vividly remembered once such instance of his disagreeing with Ickes concerning the DNC's fund-raising, an incident in which Fowler was more cautious than Ickes. In the summer of 1995, the *Chicago Sun-Times* reported that the DNC was selling access to the President and to the White House.<sup>13</sup> In response to this report, Fowler proposed that the DNC limit the contributions it would accept to \$2,000 per person.<sup>14</sup> Ickes, however, disagreed with Fowler's proposal, and Fowler's recommendation was never implemented by the DNC, despite his nominal control over the organization.<sup>15</sup> In this instance, Ickes demonstrated more enthusiasm than Fowler for raising large sums of money.

Ickes' enthusiasm was not limited to raising money in large sums; he was also enthusiastic about controlling DNC expenditures. In fact, the extent of Ickes' control over the DNC is evident from an April 17, 1996 memorandum from Ickes to Fowler, which addresses the DNC's expenditures. The entire text of that memorandum reads:

This confirms the meeting that you and I and [White House political affairs director] Doug Sosnik had on 15 April 1996 at your office during which it was agreed that all matters dealing with allocation and expenditure of monies involving the Democratic National Committee ("DNC") including, without limitation, the DNC's operating budget, media budget, coordinated campaign budget and any other budget or expenditure, and including expenditures and arrangements in connection with state splits, directed donations and other arrangements whereby monies from fundraising or other events are to be transferred to or otherwise allocated to state parties or other political entities and including any proposed transfer of budgetary items from DNC related budgets to the Democratic National Convention budget, are subject to the prior approval of the White House. It was agreed that a small working committee would be established which would include Chairman Fowler (or his representative),

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<sup>13</sup> Lynn Sweet, "The President's Price List," *Chicago Sun-Times*, June 30, 1995, p. 1; see Fowler deposition, pp. 344-45;

<sup>14</sup> Fowler deposition, p. 343; Fowler testimony, p. 7.

<sup>15</sup> Fowler deposition, p. 346.

Chairman Dodd (or his representative), B.J. Thornberry, Brad Marshall, Marvin Rosen, Doug Sosnik, and others as may be agreed to, to meet at least once weekly, and more often if necessary, to implement this agreement.<sup>16</sup>

Although Ickes was “not sure” whether he sent the memorandum to Chairman Fowler, he did affirm that it reflected the process in place during 1996 concerning the expenditure of funds by the DNC.<sup>17</sup> The memorandum itself purports to memorialize an agreement struck in a conversation between Fowler, Ickes, and Sosnik. It is difficult to conceive of any more explicit evidence of Ickes’ level of control over the DNC than the agreement memorialized in this memorandum.<sup>18</sup>

Fowler, as nominal head of the party, thought that Ickes was usurping his authority. Fowler testified that, although he wouldn’t necessarily describe Ickes’ involvement as “micro-management,”

I did feel that he was involved in the management of the DNC in a fashion that I didn’t appreciate, that I didn’t agree with, that I felt that I should have been the instrument for a management effort and that the management effort should have come through me.<sup>19</sup>

Fowler complained to Ickes about his undue involvement in the management of the DNC. Ickes, according to Fowler, “disagreed” with Fowler’s concern, and essentially “ignored” Fowler’s objections.<sup>20</sup>

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<sup>16</sup> See Memorandum from Harold Ickes to Don Fowler, April 17, 1996 (Ex. 1) (emphasis in original).

<sup>17</sup> Deposition of Harold Ickes, June 27, 1997, p. 24.

<sup>18</sup> Sosnik testified, “I don’t think I would have sent this memorandum.” Deposition of Doug Sosnik, June 20, 1997, p. 65.

<sup>19</sup> Fowler deposition, pp. 61-62.

<sup>20</sup> Fowler deposition at p. 62; Fowler testimony at pp. 22-23.

Given that “all matters dealing with allocation and expenditure of monies involving the” DNC were subject to “prior approval of the White House,”<sup>21</sup> it is obvious that the White House was most concerned with the DNC’s financial condition. In fact, Ickes held regular meetings to discuss DNC operations with Senator Dodd and Fowler.<sup>22</sup> In March 1995, he began weekly meetings held on Wednesday afternoons at the White House to discuss the DNC budget.<sup>23</sup> White House representatives at these meetings included Ickes, Sosnik, and Karen Hancox, Sosnik’s deputy. Fowler, Finance Chairman Marvin Rosen, Finance Director Richard Sullivan, Chief Financial Officer Brad Marshall, and Executive Director B. J. Thornberry attended on behalf of the DNC.<sup>24</sup> Ickes ran the meetings.<sup>25</sup>

Ickes did a very thorough job keeping the President and Vice President informed on the daily finances of the DNC. Ickes prepared weekly memoranda to the President and Vice President (copied to various senior White House officials) summarizing the information gleaned from these weekly DNC money meetings. The memoranda generally identified deposits, projected fund-raising, calculated actual fund-raising (including federal, or “hard” dollars raised), documented expenditures, and reviewed the DNC’s budget in detail. These memoranda demonstrated the President’s concern

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<sup>21</sup> Ex. 1.

<sup>22</sup> Deposition of Harold Ickes, June 26, 1997, p. 44.

<sup>23</sup> *Id.* at p. 44, p. 55. These meetings have been referred to as “money meetings” and “budget meetings.”

<sup>24</sup> *Id.* at p. 56.

<sup>25</sup> Deposition of Karen Hancox, June 9, 1997, p. 19; Sosnik deposition, p. 35.

with the DNC's fund-raising, and the level of control the White House asserted over such fund-raising.

Some of these memoranda provide glimpses into Ickes' attention to the DNC's finances. For example, Ickes' January 2, 1996, memorandum to the President and Vice President (among others) regarding the DNC's proposed 1996 budget notes that Ickes, Sosnik, and Hancox had met with Fowler, Rosen, and others "to review the first draft of the proposed calendar 1996 DNC budget as well as the proposed source of funds."<sup>26</sup> The memorandum then analyzes the DNC budget in great detail, making comments and recommendations. Ickes' January 31, 1996 memorandum to the President and Vice President also analyzes the DNC's budget, noting that "Chairman Fowler was also asked to take a very hard look at the \$25 million coordinated campaign's budget and see how much savings could be achieved there."<sup>27</sup> Like many of Ickes' memoranda, Ickes used the passive voice ("Chairman Fowler was also asked") when recounting his instructions to Fowler. The memorandum goes on to note Ickes' suggestion for "a meeting early next week including the President, Vice President, Chairman Dodd and Chairman Fowler to review the revised proposed DNC operating budget . . . ."<sup>28</sup>

Collectively, Ickes' weekly memoranda document a White House that closely scrutinized all aspects of the DNC budget. Ickes' memoranda kept the President and the Vice President closely apprised of all details of the DNC's finances on a weekly basis, presumably to advise the President of the status of the fund-raising effort to support his re-election through the DNC's advertising.

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<sup>26</sup> Memorandum from Harold Ickes to The President et al., January 2, 1996, p.1 (Ex. 2).

<sup>27</sup> Memorandum from Harold Ickes to The President and The Vice President, January 31, 1996, p. 2 (Ex. 3).

<sup>28</sup> *Id.*

The White House's control of the DNC was especially evident in the "special relationship" that developed between the White House and the DNC's Finance Division -- the division in charge of fund-raising.<sup>29</sup> This relationship also had its roots in Ickes' involvement with the DNC, and the relationship may have infused the Finance Division with an attitude conducive to abuse and impropriety.

Fowler testified "that the Finance Division had an independent relationship with the White House that sometimes bypassed what my office would do or would be involved in."<sup>30</sup> The officials in the Finance Division believed they derived their authority directly from the White House; in fact, Fowler testified that the Finance Division "thought it had a separate charter from the White House."<sup>31</sup> Because of this "separate charter," the Finance Division believed that it did not have to respond to Fowler's directives.<sup>32</sup> In Fowler's view, the Finance Division had a "disposition to ignore" him.<sup>33</sup>

Of course, organizations do not have "relationships;" people within organizations do. The people within the Finance Division who had the special, independent relationship with White House personnel were principally Rosen and Sullivan.<sup>34</sup> From the White House, Ickes had the most

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<sup>29</sup> See Fowler deposition, p. 80 (referring to Finance Division's "special relationship with the White House").

<sup>30</sup> *Id.* at p. 75.

<sup>31</sup> *Id.* at p. 79; *see also* Fowler testimony, p. 16.

<sup>32</sup> Fowler deposition, p. 80; Fowler testimony, p. 16.

<sup>33</sup> Fowler deposition, p. 80.

<sup>34</sup> *Id.* at p. 75.

authoritative relationship with Sullivan and Rosen, although Hancox also had frequent contact with them.<sup>35</sup> Sosnik also had a relationship with Sullivan and Rosen.<sup>36</sup>

As a result of these relationships, Rosen and Sullivan both clearly understood that, if they wanted something to happen or not to happen, it was Ickes, not Fowler, who had the final authority to make a decision.<sup>37</sup> Fowler even acknowledged that Rosen and Sullivan knew that, if they disagreed with Fowler, they could go to Ickes, and Ickes could “in every case overrule” Fowler.<sup>38</sup> Sullivan testified that he knew he could go around Fowler to the White House.<sup>39</sup>

Needless to say, the Finance Division’s unique relationship with the White House created management problems. Fowler testified that “having any division of an organization like that, not being fully integrated in the operations of the other divisions is a problem in the process.”<sup>40</sup> Fowler

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<sup>35</sup> *Id.* at pp. 85-86.

<sup>36</sup> Fowler testimony, pp. 15-16.

<sup>37</sup> *Id.* at p. 86; *See also* Fowler testimony, pp. 23-24.

<sup>38</sup> *Id.*

<sup>39</sup> Sullivan testified that he knew that when Fowler disagreed with either Ickes or Doug Sosnik, Ickes’ or Sosnik’s position “would usually prevail.” Deposition of Richard L. Sullivan, June 4, 1997, p.60.

Ickes had a somewhat different view of his power. He “absolutely” denied that he circumvented Fowler and dealt directly with the DNC’s Finance Division, and testified that Fowler “ran the day-to-day operation of the DNC.” Deposition of Harold Ickes, June 26, 1997, p.208; *see also id.* at pp. 208-10. When Senator Domenici read these portions of Ickes’ deposition to him, Fowler dryly noted that he “perhaps would have described it a little differently.” Fowler testimony, p.247.

<sup>40</sup> Fowler deposition, p.77; *see also* Fowler testimony, p.17. Had the Finance Division’s independent relationship with the White House not existed, Fowler believed that he might have had a curative effect on some of the things that went wrong at the DNC during the 1996 election cycle. *See* Fowler testimony at p. 18.

was concerned that this attitude spawned a number of problems, including: insufficient notice to his office regarding events;<sup>41</sup> failure to coordinate dates and participants for events;<sup>42</sup> and failure to follow the Chairman's directives.<sup>43</sup>

As nearly everyone was aware of the tension afflicting the relationship between Ickes and Fowler,<sup>44</sup> including the Vice President,<sup>45</sup> the question that naturally arises is whether the President

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<sup>41</sup> Fowler deposition, pp. 57-58.

<sup>42</sup> *Id.* at p. 74.

<sup>43</sup> *Id.* at pp. 59-60. *See generally* Fowler testimony, pp. 12-13. The most striking example of the latter occurred during the summer of 1996, when Fowler became aware that some DNC fund-raisers were listing the address of contributors as 430 S. Capitol Street, which is the DNC's headquarters. Fowler deposition, pp. 79-80. Fowler testified that he believed "that would never have happened if we had more thorough control over the Finance Division." *Id.* at p.79. Fowler circulated a memorandum, requiring DNC fund-raisers to obtain the actual address for donors. In the memorandum, Fowler noted, "If you are able to get people to give you checks for thousands of dollars, you really should be able to get them to give you their addresses." Memorandum to DNC Fund-raisers from Don Fowler, August 1, 1996 (Ex. 4). Fowler later learned that the directive was disobeyed, and he blamed the Finance Division's special relationship with the White House for such disobedience. Fowler deposition, pp. 80-83.

<sup>44</sup> Sullivan testified that "there were times when there was tension exhibited between Fowler ... and Harold Ickes and Doug Sosnik." Deposition of Richard Sullivan, June 4, 1997, p. 57. Sullivan recalled that Fowler and Ickes disagreed often over "state splits," the amount of money the DNC would give to a state party or campaign when a fund-raising event was held within a state. *Id.* at pp. 58-59. Senator Dodd, the DNC's General Chairman, was also aware of the running disagreements between Fowler and Ickes. Fowler deposition, p. 63. Dodd, however, refrained from taking a position concerning these disagreements. *Id.* at 64. Deborah DeLee, Fowler's immediate predecessor at the DNC, also shared Fowler's concerns. She informed Fowler that "she had [had] some of the same problems" with Ickes. *Id.* at 65.

<sup>45</sup> Fowler testified that the Vice President was aware of the running disagreement between Ickes and Fowler, as the Vice President made allusions to it in conversation. Fowler deposition, p. 64.

was aware of the disagreements between Fowler and Ickes, and, if so, with whom the President usually sided. Fowler testified that he did not know what the President understood about Ickes' ability to prevail in the many disagreements between Ickes and Fowler, and he declined to venture an opinion.<sup>46</sup>

Ickes was not so shy. Though he interspersed his comments with allusions to the "latitude" given to Fowler to run the DNC, Ickes' testimony makes clear that he was the President's "designee" for running the DNC:

**Q:** If in these Wednesday fund-raising meetings that you chaired in the White House, if there were disagreements about fund-raisers or amounts of money or anything of that nature, did you make the final decision, or how was the authority line there structured?

**A:** *The President is to have the party. He is the CEO of the party. If the President says this is the way I want it, it was up to me to see that it was done, and the chairman understood that, but beyond that, the chairman had great latitude, and there may -- whatever disagreements there were, we tried to work out collectively ...*

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**Q:** It turns out the way they structured that, I understand the answer to be that basically the President had ordered that you would be in charge and if there were a disagreement, that you would be the one to make the final decision?

**A:** No, I didn't say that.

**Q:** Okay.

**A:** What I said was that the president of the party, in this case the Democratic, is basically, some people say, the titular leader of the party, but I think any chairman would tell you that his president, that is the party chairman's president, *is the person who basically has the last word.*

Now, *from a very technical point of view*, the party is a separate entity and we all recognize that. It has its own charter and all of that, but the President's opinion has extraordinary weight within the party apparatus, as it should. He is the

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<sup>46</sup> Fowler testimony, pp. 243-44.

party's leader. Although we're not a parliamentary system, it's basically, in some sense, similar to that.

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But Fowler was a full-time real operational head of the party and acted as such. That's not to say there was not very close consultation with the White House; there was, very close consultation with the White House.

**Q:** I was trying to get at, and I think you answered in a round-about way, about if there were disagreements and you tried to work it out and whatever, who made the final decision? Was it you or --

**A:** If there were disagreements, the President of the United States wanted something, you know what? The President of the United States got his way. And you know what? That's the way it ought to be.

**Q:** So you would make the final decision if there were disagreements?

**A:** If the President of the United States wanted something and there was a disagreement between the President of the United States and the chairman of the party, the President prevailed. That's the way it should be.

**Q:** And in this context of Wednesday meetings, it would be through you as his designee?

**A:** Through me as his designee. I kept the President fully informed, as you can see by reams and reams and reams of documents . . . .<sup>47</sup>

The President, who acknowledged using the DNC as a vehicle for running ads designed to assist his re-election,<sup>48</sup> had to know that the DNC was being run out of Ickes' hip pocket. The logical conclusion is that the President was comfortable with Ickes' serving as his "designee," which may

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<sup>47</sup> Deposition of Harold Ickes, June 26, 1997, pp. 209-12 (emphasis added).

<sup>48</sup> Transcribed statement of President Bill Clinton, White House Communications Agency videotape, December 7, 1995 (Hay-Adams dinner).

explain why Fowler never went over Ickes' head to try to get any of his decisions overruled.<sup>49</sup> Ickes was merely doing the President's bidding.

### **Coordination in the Retention and Payment of DNC and Clinton/Gore '96 Media Consultants**

While Ickes was busy controlling the DNC's purse strings, Dick Morris was busy controlling the closely-coordinated campaign activities of Clinton/Gore '96 and the DNC -- the very purpose for which the DNC, under Ickes control, was raising funds. The close coordination commenced in December 1994, when the President made three commitments to Morris to get him to work on the President's behalf: (1) Penn & Schoen would be hired as polling consultants; (2) a White House staff member would be hired as personal liaison for Morris; and (3) Morris would get weekly meetings with the President.<sup>50</sup> These commitments marked the beginning of extensive coordination between the White House, the DNC and Clinton/Gore '96 on a massive advertising campaign to re-elect the President.<sup>51</sup> The coordination included: (1) sharing and compiling consultants' work product between

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<sup>49</sup> Fowler testified, both in his deposition and hearings testimony, that the only people to whom he could have gone to overrule Ickes were the President, the Vice President, and Leon Panetta, Chief of Staff to the President. Fowler testified, however, that he never tried to go over Ickes' head to discuss his concerns about Ickes' intrusion into DNC affairs. Fowler testimony, p. 23; Fowler deposition, p. 64.

<sup>50</sup> Deposition of Richard Morris, August 20, 1997, p. 70; see Dick Morris, *Behind the Oval Office* (1997), pp. 24-25. Morris testified that all the statements in his book, *Behind the Oval Office*, were true. Morris deposition, pp. 28; 36-37.

<sup>51</sup> From April through June 1995, Morris described the substance of the consultants' work as follows:

You decide whether you are going to advertise, what you are going to advertise about, what goals you seek to achieve in the advertisement. You poll the best ways of presenting the ads. Then you try to think of creative and attractive ways of presenting it. You write the ads. You produce them. In

the White House, the DNC and Clinton/Gore for media purposes; (2) extensive contact between the DNC and Clinton/Gore '96 consultants and the White House regarding advertising and polling issues; and (3) weekly strategy meetings held in the White House with DNC and Clinton/Gore '96 representatives specifically designed to coordinate and implement the President's re-election campaign. Moreover, the work of Morris and the other consultants was used for both political and official purposes.<sup>52</sup>

In early October 1994, the President hired Morris for the first time since 1991 to conduct a survey concerning issue positioning and strategy for the 1994 congressional elections.<sup>53</sup> Morris did not have a written agreement concerning these services.<sup>54</sup> In fact, from October 1994 through January 1995, Morris was unaware of whether he was retained by the White House, Clinton/Gore

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general, sometimes you test them before audiences . . . and then you have to decide what markets you are going to run it in, how money you are going to spend, how many points you are going to buy, what programs you are going to buy it on, and how long you are going to run them.

*See* Morris deposition, p. 79.

<sup>52</sup> *Id.* at pp. 85-87. Morris defined political activity as activity “designed to promote the re-election of the President or to assist the Democratic Party generically in the 1996 elections” and official activity as activity “undertaken by the President or a member of his staff in connection with his duties as President.” *Id.* at p. 87.

<sup>53</sup> *Id.* at p. 25.

<sup>54</sup> *Id.* at p. 43. Morris and the President initially agreed to keep their consulting relationship a secret because of, among other reasons, Morris's work on behalf of Republican clients. *Id.* at p. 46. Morris used the code name “Charlie” to disguise his initial meetings with the President. *Id.* at p. 54.

'96 or the DNC, despite performing work that was used by all three entities.<sup>55</sup> In addition, he did not recall receiving any invoices or Internal Revenue Service 1099 forms in connection with his consulting work during this time period.<sup>56</sup> He billed the DNC and Clinton/Gore '96 in one of four different methods: (1) receipt of funds personally, whereupon he would pay a subcontracted "interviewing house;" (2) the "interviewing house" was paid directly; (3) his company, Message Advisors, was paid directly; or (4) Penn & Schoen was paid directly.<sup>57</sup> With regard to whether the DNC, Clinton/Gore '96, or the White House paid for his consulting services, Morris testified as follows:

I did not understand - I did not know whether it was being done on behalf of the DNC or the Re-Election Committee for the President. I, again, assumed that it was a poll for the President, but I don't know how he elected to pay for it.<sup>58</sup>

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<sup>55</sup> *Id.* at p. 62. Morris testified that he did not routinely send out client invoices and that, on occasion, he would receive checks without formally billing a client. *Id.* at pp. 30-32.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at pp. 41-42.

<sup>58</sup> *Id.* at pp. 43, 60.

At Morris's request, Penn & Schoen began working for the President and the DNC.<sup>59</sup> Mark Penn reported to Ickes, whom Penn believed had the highest authority relative to the DNC and Clinton/Gore '96 work performed by Penn & Schoen.<sup>60</sup> Penn was unsure whether his firm had been retained by the White House, the DNC, or Clinton/Gore '96.<sup>61</sup> He testified as follows:

Q: And at the time you conducted polling from the spring of '95 through the election, you were not sure, Penn & Schoen was not sure whether or not a specific poll was for the Re-Elect or the DNC; is that correct?

A: Right. We knew that we were doing polling that would work -- that would be work for both entities, but we didn't know exactly which poll or part of polls would be for which entity.<sup>62</sup>

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Q: Was there ever a time that you were aware of in these creative meetings where you were working simultaneously on a DNC ad and a Re-Elect ad?

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<sup>59</sup> Penn deposition, p. 8. In early 1995, Morris convinced the President to retain the polling firm of Penn & Schoen. Morris deposition, p. 64. For a period of time, Penn & Schoen paid Morris for his consulting work as a subcontractor, such that he received no compensation directly from the White House, the DNC or Clinton/Gore '96. *Id.* at pp. 64-66. Morris also was unaware of whether Penn & Schoen had a written agreement with the White House, the DNC, or Clinton/Gore '96, nor did he know which of those entities paid for their services. *Id.* at pp. 66-67. In July 1996, Morris finally negotiated a compensation arrangement consisting of a \$15,000 monthly retainer from the Clinton/Gore Primary Campaign Committee and a percentage of the commissions from DNC and Clinton/Gore '96 media time buys. *Id.* at p. 104.

<sup>60</sup> Penn deposition, pp. 26-28.

<sup>61</sup> *Id.* at pp. 11, 18.

<sup>62</sup> *Id.* at p. 32.

A: Yes. I think in '96 - in '96 I think there were some points where ideas relative to the DNC and ideas relative to Clinton/Gore would have been on the table at similar times.<sup>63</sup>

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Q: . . . But to the best of your understanding when the bill [for consulting services] was actually - or the invoice was submitted to Ickes, did your firm make an effort to distinguish what work was performed on behalf of either the DNC or the Re-Elect?

A: Typically, no.<sup>64</sup>

### **The White House Weekly Strategy Meetings**

Representatives from the White House, the DNC, and Clinton/Gore would meet at the White House approximately once a week at what became known as the weekly strategy meetings (which the President agreed to conduct pursuant to Morris' three conditions). The topics discussed at the weekly strategy meetings included media, polling, speech writing, and policy and issue positioning.<sup>65</sup> All the attendees of the weekly strategy meetings were involved in the process of creating the advertising in various degrees.<sup>66</sup> Morris listed the following individuals as a "typical guest list" for the White House weekly strategy meetings:

the President; the Vice President; Leon Panetta, chief of staff; Harold Ickes, deputy chief of staff; Evelyn Lieberman, deputy chief of staff; George Stephanopoulos, senior adviser; Don Baer, director of communications; Doug Sosnik, political affairs director; Ron Klain, vice president's chief of staff; Sandy Berger, deputy national security adviser; Senator Chris Dodd of Connecticut; John Hilley, legislative

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<sup>63</sup> *Id.* at p. 44.

<sup>64</sup> *Id.* at p. 48.

<sup>65</sup> *See* Morris deposition, p. 124.

<sup>66</sup> *Id.* at p. 187.

director; Maggie Williams, First Lady's chief of staff; Mike McCurry, press secretary; Henry Cisneros, secretary of Housing and Urban Development; Mickey Kantor, secretary of Commerce; Mack McLarty, adviser and former chief of staff; Peter Knight, campaign manager; Ann Lewis, deputy campaign manager and director of communications; Ron Brown, secretary of Commerce, until his death; Erskine Bowles, deputy chief of staff, until his departure; Jack Quinn, vice president's chief of staff until his appointment as White House counsel; Dick Morris, consultant; Doug Schoen, consultant; Mark Penn, consultant; Bob Squier, consultant; Bill Knapp, consultant.<sup>67</sup>

The weekly strategy meetings, which “became the central forum for campaign strategy and decisions,” are a definitive example of the illegal and improper coordination between the White House, the DNC, and Clinton/Gore.<sup>68</sup> Morris chaired the meetings, distributed his weekly agendas summarizing the advice the consultants and he planned on giving the President, and received substantive input from most of the attendees.<sup>69</sup>

### **The Implementation of Morris’ Advertising Campaign Resulted in Unprecedented, Illegal, and Improper Coordination Between the DNC, Clinton/Gore, and the White House**

Ickes’ management of the DNC, particularly its fund-raising operation, was designed in large part to quench the White House’s thirst for advertising money. The flip side of the same coin was that the White House, the DNC, and Clinton/Gore ‘96 engaged in extensive coordination to develop, fund, and run that advertising. Simply stated, all practical distinctions between the White House, the DNC, and Clinton/Gore were eliminated.

The White House, the DNC, and Clinton/Gore ‘96 retained a number of media and advertising consultants, but made little distinction concerning which consulting work was being performed on

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<sup>67</sup> See Dick Morris, *Behind the Oval Office* (1997), p. 26, note.

<sup>68</sup> *Id.* at p. 26.

<sup>69</sup> *Id.*

behalf of each entity. The consultants' work was shared by all three entities, without regard to laws limiting coordination between the DNC and Clinton/Gore '96 or restrictions against White House participation in political activity. The improper coordination between the DNC and Clinton/Gore '96 is demonstrated by the failure of the political consultants to know which entity they were working for with respect to specific assignments. Moreover, these same consultants often were unaware of which entity was paying for their consulting work.

According to Morris, DNC General Counsel Joe Sandler and Lyn Utrecht, Clinton/Gore '96's counsel, "laid down the rules of what advertisements - of what the content of advertisements and the timing of the media buys could be in connection with the Democratic National Committee advertising and in connection with the Clinton-Gore advertising."<sup>70</sup> Morris did not receive any legal advice from Sandler or Utrecht, however, concerning the type of coordination between the White House, Clinton-Gore '96, and the DNC that was permissible when creating the issue advocacy

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<sup>70</sup> See Morris deposition, pp. 117-18. In the July 26, 1995 agenda, Morris first explained that the campaign would use DNC funds to pay for advertisements. *Id.* at p. 288; see also July 26, 1995 meeting agenda (Ex. 5). Morris testified that:

This agenda was issued after the President had approved and, in fact, was airing crime ads funded by Clinton-Gore. It was also subsequent to my conversation with Bowles in which he advised me to come up with a plan B after I had investigated DNC media and found that that was precisely what I wanted to do anyway.

So, this marks the beginning of the DNC phase of the media campaign and here I recommend that we do media aimed at swing Republican Senators on Medicare during the recess.

Morris deposition, p. 289.

advertisements.<sup>71</sup> In fact, Morris testified that he “never received any information from them which would have indicated any limitations on discussions with the President, the Vice President, or members of the White House staff concerning the advertising that was done by the DNC” and that he was “never advised that there were constraints on that.”<sup>72</sup> Moreover, Morris testified “there was no indication of any such constraints in connection with DNC coordination with the Clinton-Gore campaign.”<sup>73</sup> He recalled a meeting at Utrecht’s office where he specifically was informed that the identical pollsters, consultants, and media creators would be used to prepare advertisements paid for by the DNC and advertisements paid for by Clinton/Gore ‘96, and, “since it was the same people [working on both DNC and Clinton/Gore ‘96 advertisements], that the closest of coordination was perfectly acceptable legally.”<sup>74</sup> Indeed, the coordination between the DNC and Clinton/Gore ‘96 was so extensive because the consultants used by each “were the same people.”<sup>75</sup>

The coordination in the advertising campaign became so extensive that Mark Penn, a consultant at the firm Penn & Schoen who worked on the President’s campaign with Morris, had a White House office from September through December of 1995 located in a coat closet adjacent to

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<sup>71</sup> *Id.* at pp. 146-47.

<sup>72</sup> *Id.* at p. 147.

<sup>73</sup> *Id.* at p. 148.

<sup>74</sup> *Id.* Morris was never instructed by the DNC or Clinton/Gore ‘96 attorneys that there are legal restrictions against coordinating the consultants and media team efforts with White House officials. *Id.* at p. 164. Indeed, at the time of his deposition on August 20, 1997, Morris still was unaware that such restrictions existed. *Id.*

<sup>75</sup> *Id.* at p. 149.

Sosnik's office.<sup>76</sup> Penn had access to a computer and a dedicated campaign telephone line.<sup>77</sup> Eventually, Morris had the President "evict" Penn from the office, stating that he "did not think it was appropriate for a political consultant to have an office in the White House, particularly not one that was located 40 or 50 feet away from where the speeches were being written when that consultant had a plethora of commercial clients who had interests in those speeches."<sup>78</sup>

The coordination between the DNC and Clinton/Gore '96 extended to the exact day the media team chose to run a DNC advertisement versus a Clinton/Gore '96 advertisement. For example, Morris testified as follows concerning coordination between placing a DNC or a Clinton/Gore '96 advertisement:

Q: Now, did anyone ever caution you or advise you as to whether or not a coordination of expenditures like this by the DNC and Clinton/Gore would run afoul of any laws or regulations?

A: No, and indeed, Sandler and Utrecht advised us to do this coordination because their view was that you had to stop your DNC advertising four weeks before a primary, and then you had to start again with Clinton-Gore.

There were some States where we literally pulled an ad off the air, and then the next day went on with a Clinton-Gore ad so that we could continue our hit in the State, but it was an entirely different ad because it was funded differently.<sup>79</sup>

Further demonstrating the close coordination between the DNC and Clinton/Gore '96, the July 26, 1995 meeting agenda states that, with regard to DNC issue advocacy advertising, "[u]se

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<sup>76</sup> *Id.* at p. 191; *see* Deposition of Mark J. Penn, June 19, 1997, pp. 131-33.

<sup>77</sup> *See* Morris deposition, p. 191.

<sup>78</sup> *Id.* at pp. 192-93.

<sup>79</sup> *Id.* at pp. 339-40.

DNC to pay for it, we [the joint White House, DNC and Clinton/Gore media team] control production.”<sup>80</sup> Morris testified he was:

afraid that there would be an effort made by Ickes to make the DNC ads produced by a separate media creator and I was making the point here that I wanted the same, for us to control the creation of both ads so that we [the November 5th Group] were not sending contradictory messages.<sup>81</sup>

Moreover, specific media planning and fund-raising details were contained in virtually each weekly agenda produced to the Committee. Indeed, Morris testified that the February 22, 1996 agenda contained “the specific underlying factual detail as to how much money of Clinton-Gore we needed for each week” and the need to use Clinton/Gore ‘96 money to pay for advertisements that could not be paid for by the DNC.<sup>82</sup>

Morris believed the use of issue advocacy to pay for the President’s advertising throughout most of 1995 was appropriate because it “had basically nothing to do with re-election advertising.”<sup>83</sup>

In support of that theory, Morris testified as follows:

I was not very concerned . . . throughout most of ‘95 with the President’s reelection, per se, because I felt that for the President to have a hope of being re-elected, he first had to win the fight over the budget. He first had to defeat the agenda of the Gingrich-Dole Congress and win the battle associated with the budget and tax cut

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<sup>80</sup> See Ex. 5.

<sup>81</sup> Morris deposition, p. 296.

<sup>82</sup> *Id.* at pp. 338-39; *see also* Feb. 22, 1996 meeting agenda (Ex. 6). The coordination between the DNC and Clinton/Gore ‘96 extended to the budgeting of advertising expenditures. In order to project his advertising budget, Morris received periodic estimates of the incoming funds from both the DNC and Clinton/Gore ‘96. *See* Morris deposition, pp. 304-06. Morris testified that his “proposal for advertising totaled 50 million,” with \$17 million from Clinton/Gore and \$33 million from the DNC. *Id.* at p. 304.

<sup>83</sup> *Id.* at p. 138.

issues, and I felt that winning that battle was a condition prior to being able to be re-elected President. I felt that if he failed to win that fight, there was no way that he would ever be re-elected.<sup>84</sup>

Regarding whether the DNC issue advocacy advertisements would provide any benefit to the President's re-election effort, however, Morris testified:

. . . at any point in a presidency, any advertising, any issue advertising the President does whether for health care reform or for the stimulus package or to win the budget fight would eventually accrue to his benefit in the reelection.

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I believe that once we won the budget fight, first of all, it was a very important victory for the party, it was a very important substantive issue the President was heavily invested in, and I believe that winning that fight, itself, was a prerequisite to being able to win the election.<sup>85</sup>

Another manner of coordination between the White House, the DNC and Clinton/Gore '96 occurred through the same consultants' use of information obtained for each respective entity in the planning and execution of advertisements. While Morris testified that the consultant team determined whether an advertisement was on behalf of the DNC or Clinton/Gore '96 based on the results of mall tests and other forms of feedback, even the funding for these polls was shared between the DNC and Clinton/Gore '96.<sup>86</sup> In addition, while the nature of a particular advertisement allegedly determined whether it was paid for by the DNC or Clinton/Gore '96, Morris conceded that advertisements originally planned as DNC ads were switched to Clinton/Gore '96.<sup>87</sup> The advertisements were

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<sup>84</sup> *Id.* at p. 135.

<sup>85</sup> *Id.* at pp. 293.

<sup>86</sup> *Id.* at pp. 160-61.

<sup>87</sup> *Id.* at pp. 157-60.

created in the same room, by the same consultants with identical information.<sup>88</sup> In fact, Morris often was unaware of which entity actually paid for advertisements;<sup>89</sup> apparently such distinctions were unimportant. Morris testified that the only thing separating DNC and Clinton/Gore '96 materials “was a bright line running through the middle of our conference table of DNC versus Clinton-Gore.”<sup>90</sup>

Morris testified that “[t]here was a review [of the polling] as to the extent to which it was related to the reelection campaign or the Democratic Party generically, but all of it was treated as political.”<sup>91</sup> In fact, the only attempts to separate the polling data between the DNC and Clinton/Gore '96 came after the polling was completed.<sup>92</sup> Morris understood that, after polls were conducted, Ickes and Utrecht reviewed them and apportioned the cost between the DNC and Clinton/Gore '96 based on the content of the questions.<sup>93</sup>

Ickes apparently was aware that this close coordination in advertising and polling created legal risks; indeed, he pressed Morris to sign an indemnification agreement so that Morris would be responsible for any FEC fines. Morris testified:

Ickes was pressing for an indemnification . . . he wanted an indemnification where basically, any violation that the FEC found, we would be indemnifying the campaign and saying, “It’s our fault guys.” And what we were offering was an indemnification where, if there was any FEC fine of the campaign that resulted from our refusal or inability to produce documentation about the time buy that we would be liable, but

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<sup>88</sup> *Id.* at p. 161.

<sup>89</sup> *Id.* at pp. 279-80.

<sup>90</sup> *Id.* at p. 161.

<sup>91</sup> *Id.* at p. 90.

<sup>92</sup> *Id.* at p. 90.

<sup>93</sup> *Id.* at p. 91.

that if the FEC ruled that the underlying expenditures themselves were illegal under FEC rule[s] and imposed a fine, we took the position that we were doing this pursuant to the legal advice we were given from Sandler and Utrecht and the instruction we were given from Ickes to follow their legal advice, and therefore, there was no reason for us to indemnify them.<sup>94</sup>

### **White House Coordination in the Design and Implementation of Issue Advocacy Advertising:**

The relationship between Morris and Bill Curry provides an example of the coordination between the White House and the DNC and Clinton/Gore media consultants. Curry was the White House staff member specifically hired to work with Morris.<sup>95</sup> The President suggested that Morris work with Curry to implement a "series of principles" to guide the President's "comeback in the face of the Republican victory."<sup>96</sup> Morris made it clear to the President, however, that he "needed Curry to work directly with [him] to implement the entire strategy, not just a piece of it." Morris testified he and Curry:

would talk frequently, and he would give me his thinking as to what he thought we should be saying in our advertisements, and I would listen to it and I'd take account of it, and I would - and it was one of a number of inputs I received on that.<sup>97</sup>

In addition to the advertising and consulting work, Morris and Curry worked on Presidential "policy initiatives," the President's position on issues of national concern, congressional strategies, speech writing, polling results, and media plans on a regular basis.<sup>98</sup> Morris also testified that "a number of

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<sup>94</sup> *Id.* at pp. 361-62.

<sup>95</sup> *See* Morris deposition, p. 72.

<sup>96</sup> Dick Morris, *Behind the Oval Office* (1997), pp. 37-38.

<sup>97</sup> *See* Morris deposition, p. 74.

<sup>98</sup> *Id.* at pp. 73-74.

people at the White House [and] at the DNC . . . participated at one point or another in the process of thinking up ideas for a media.”<sup>99</sup>

As a result of the early advertising using Clinton/Gore ‘96 funds and the subsequent use of DNC- funded issue advocacy advertisements, Morris divided White House involvement in campaign advertising into two distinct time periods: April 1995 through June 1995; and July 1995 through August 1996.<sup>100</sup> From April through June 1995, the media consultants conducted polls and created advertisements primarily for Clinton/Gore ‘96 because they had not yet adopted the concept of using DNC funded issue advocacy advertising.<sup>101</sup> From July 1995 through August 1996, the media consultants conducted polls and created advertisements using DNC funded issue advocacy advertising and, to a limited extent, Clinton/Gore ‘96 funds.<sup>102</sup> Thus, the coordination that occurred between White House officials, the DNC, and Clinton/Gore ‘96 is analyzed in these distinct time periods.

Morris testified that among the White House officials who primarily coordinated with the DNC and Clinton/Gore ‘96 media consultants and representatives were: the President, the Vice President, Leon Panetta, Harold Ickes, George Stephanopoulos, Erskine Bowles, and Doug Sosnik.<sup>103</sup>

Morris described the involvement of each of these individuals as follows:

The President:

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<sup>99</sup> *Id.* at p. 76.

<sup>100</sup> Morris resigned during the Democratic National Convention in August 1996 due to a personal scandal. *See* Dick Morris, *Behind the Oval Office* (1997), pp. 331-34.

<sup>101</sup> Morris deposition, pp. 78-90.

<sup>102</sup> *Id.* at pp. 125, 154-55.

<sup>103</sup> *Id.* at p. 76.

The President had significant involvement with the Clinton/Gore '96 and DNC media consultants in the areas of polling, advertising, speech-writing, legislation strategy, and general policy advice. The President: (1) reviewed, modified and approved all advertising copy; (2) reviewed, adjusted and approved media time buys;<sup>104</sup> (3) reviewed and modified polling questions; and (4) received briefings on and analyzed polling results.<sup>105</sup> Indeed, a significant amount of the polling work the consultants performed for the President “related to substantive issues in connection with his job as President, but it [also] could be considered political.”<sup>106</sup>

The President wanted to keep total control over the advertising campaign designed by Morris and the media consultants.<sup>107</sup> From May through June 1995, Morris testified that the President “insisted on seeing every question before [the consultants] asked it in the questionnaire.”<sup>108</sup> In addition to the weekly strategy meetings, Morris met with the President privately to discuss the media campaign.<sup>109</sup> For example, if the media team “had to do an ad and there wasn’t a strategy meeting scheduled conveniently,” *i.e.*, a rapid response to Republican advertisements, Morris would schedule a private meeting with the President.<sup>110</sup>

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<sup>104</sup> Time buys are the “list of markets . . . to buy ads in and how much you are going to spend in each media market.” *Id.* at p. 83. For example, at the March 2, 1995 weekly strategy meeting, the President decided Clinton/Gore '96 would pay for the time buys during that period. *Id.* at pp. 84-86.

<sup>105</sup> *Id.* at pp. 80-84.

<sup>106</sup> *Id.* at p. 81.

<sup>107</sup> *Id.* at p. 167.

<sup>108</sup> *Id.* at pp. 176-77.

<sup>109</sup> *Id.* at p. 190.

<sup>110</sup> *Id.*

The President's participation began with initial discussions concerning the specific details of DNC and Clinton/Gore '96 advertisements.<sup>111</sup> He would review the story lines and scripts and occasionally make detailed and significant changes.<sup>112</sup> Morris testified that the President was the "day-to-day operational director" of the media campaign.<sup>113</sup> The President "worked over every script, watched each ad, ordered changes in every visual presentation, and decided which ads would run when and where."<sup>114</sup> Morris further testified that the President "was as involved [in the DNC and Clinton/Gore '96 media campaign] as any of his media consultants were," "[e]very line of every ad came under his informed, critical, and often meddlesome gaze," such that "[t]he ads [for both the DNC and Clinton/Gore '96] became . . . the work of the President himself."<sup>115</sup> From July 1995 through August 1996, Morris described the President's involvement in the media campaign as follows:

The President would be heavily involved in the first issue, the discussion of the strategy, and he would look at the ad - and we would present to him at each of these strategy meetings the scripts of media that we wanted to run and the visuals, the animatics that had been tested, and would brief the assembled group, which included the President and the Vice President, on the results of the mall test. And armed with those results, looking at the visual and looking at the script, the President would make fairly specific suggestions as to what he wanted or didn't want included in the final ad.

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<sup>111</sup> *Id.* at p. 177.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at pp. 182-83.

<sup>114</sup> *Id.* at p. 183.

<sup>115</sup> *Id.* at pp. 182, 183, 184-88, 189; *see also* Dick Morris, *Behind the Oval Office* (1997), p. 144.

We would then take those suggestions, and suggestions that were also made by all the other people in the group in the room, including Senator Dodd and Stephanopoulos and a bunch of folks, and we would then have a creative meeting, which was a group meeting of the consultants, right after the-the day after the strategy meeting.<sup>116</sup>

Morris recounted a conversation with the President that demonstrates both the high level of White House coordination with the DNC and Clinton/Gore '96 advertising and its true purpose of supporting the President's re-election. Morris recalled a private Oval Office meeting with the President to discuss the use of comments by Speaker Gingrich and Senator Dole in advertisements.<sup>117</sup> The President stated that he did not want to run "the Dole Medicare quote in our national ad buy" because he feared Senator Dole might lose the Republican nomination if he were associated with the proposed Medicare reforms.<sup>118</sup> Because the President and Morris wanted to run against Senator Dole,<sup>119</sup> Morris wrote an advertisement that "in early November . . . featured Gingrich's quote but not Dole's," and this advertisement ran "for three weeks in about 40 percent of the country during the [federal government] shutdown."<sup>120</sup>

Based on the evidence provided by Morris, it is evident that of all the White House officials involved in the advertising campaign, the President himself was the most actively and intimately involved.

The Vice President:

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<sup>116</sup> See Morris deposition, pp. 168-69. Morris and the other consultants also assisted the President with speech writing. *Id.* at p. 197.

<sup>117</sup> See Dick Morris, *Behind the Oval Office* (1997), p. 184.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

From April through June 1995, the Vice President was involved with the DNC and Clinton/Gore '96 concerning polling, advertising, speech-writing, legislation, policy and general advice to a lesser degree than the President.<sup>121</sup> The Vice President reviewed, modified and approved advertisements.<sup>122</sup> From July 1995 through August 1996, the Vice President attended all the strategy meetings and would make suggestions to proposed advertisements.<sup>123</sup> In placing the level of individual involvement in the media campaign and polling work on a scale from one to 100 (with 100 representing the President's level of involvement), the Vice President's participation was roughly 40 percent of the President's level of involvement.<sup>124</sup>

Leon Panetta:

From April through June 1995, he had essentially the same involvement in the media campaign as did the Vice President, which included polling, advertising, speech-writing, legislation, policy and general advice.<sup>125</sup> From July 1995 through August 1996, Morris placed Panetta's level of involvement at approximately 50 to 60 percent of the President's level of involvement.<sup>126</sup>

Harold Ickes:

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<sup>121</sup> See Morris deposition, pp. 187-88.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at p. 186.

<sup>124</sup> *Id.* at pp. 187-88.

<sup>125</sup> *Id.* at pp. 95-96.

<sup>126</sup> *Id.* at p. 188.

Morris believed that Ickes was in “minute to minute control over all field activities in connection with the Clinton-Gore campaign or the DNC.”<sup>127</sup> Morris understood that Ickes essentially ran the DNC and, until Peter Knight arrived, he also ran the Clinton/Gore ‘96 re-election campaign.<sup>128</sup> Morris testified that:

[ Ickes] was the one who had to approve any expenditure of money, and he was the one who had to be informed of any polling and had to be informed of any media.

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I had the impression that he was in charge of every aspect of the campaign except for the substance of the message which I was in charge of.<sup>129</sup>

Regarding Ickes’ involvement with the advertising campaign, Morris testified that, from April through June 1995, Ickes had approximately the same level of involvement in the media campaign as did the President.<sup>130</sup> Ickes did not have final approval (as the President did) and made fewer substantive changes than the President, but he “focused with greater scrutiny than the President on the amount and the distribution of the time buy.”<sup>131</sup> For example, Ickes approved every questionnaire, script, time buy or other campaign expenditure.<sup>132</sup> He also chaired all the meetings with Sandler and Utrecht in which it was determined whether an advertisement should come from

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<sup>127</sup> *Id.* at p. 236.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at pp. 236-37.

<sup>130</sup> *Id.* at p. 96.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at p. 221.

the DNC or Clinton/Gore '96.<sup>133</sup> In addition, Ickes was “heavily involved” in discussions concerning how much to spend on advertising and whether the President should accept Federal matching funds.<sup>134</sup> From July 1995 through August 1996, Ickes’ level of involvement was roughly 10 to 20 percent of the President’s level of involvement in the advertising campaign.<sup>135</sup>

George Stephanopoulos:

Stephanopoulos was a senior White House advisor. From April through June 1995, Stephanopoulos did not have any significant involvement in the media process.<sup>136</sup> He became more involved in September of 1995 and remained actively involved through Morris’ departure from the campaign in August of 1996.<sup>137</sup> On behalf of both the DNC and Clinton/Gore '96, he reviewed advertising copy before it was approved and suggested changes to advertising visuals and advertising themes.<sup>138</sup> He also was in charge of the vetting process for factual accuracy for both DNC and Clinton/Gore '96 advertisements.<sup>139</sup> Beginning in May 1995, Stephanopoulos played a greater role in reviewing the polling conducted by Morris.<sup>140</sup> By September 1995, Stephanopoulos’ role “evolved to a point where he received all questionnaires in advance and approved the questions and

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<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at p. 97.

<sup>135</sup> *Id.* at p. 188.

<sup>136</sup> *Id.* at p. 101.

<sup>137</sup> *Id.* at p. 103.

<sup>138</sup> *Id.* at p. 101-02.

<sup>139</sup> *Id.* at pp. 102, 106, 170.

<sup>140</sup> *Id.* at p. 107.

frequently made suggestions for modifications, additions, or deletions.”<sup>141</sup> Morris also called Stephanopoulos “[e]ach morning at seven-twenty . . . with the data from the previous night’s interviewing so he could report to the daily seven-thirty meeting that Leon [Panetta] held with the top White House staffers.”<sup>142</sup> From July 1995 through August 1996, Stephanopoulos’ level of involvement was roughly 70 to 80 percent of the President’s level of involvement in the media campaign.<sup>143</sup>

Erskine Bowles:

Bowles was a White House deputy chief of staff (and now serves as chief of staff). He attended the weekly strategy meetings and acted as a liaison between Morris and the President.<sup>144</sup> Bowles also supported Morris’ view that advertising should not be conducted on a piecemeal basis.<sup>145</sup> At Bowles’ suggestion, Morris divided the advertising plan into four components, each costing approximately \$10 million.<sup>146</sup> From July 1995 through August 1996, Morris placed Bowles’ level of involvement at roughly 10 to 20 percent of the President’s level of involvement in the media campaign.<sup>147</sup>

Doug Sosnik:

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<sup>141</sup> *Id.*

<sup>142</sup> *See* Dick Morris, *Behind the Oval Office* (1997), p. 183.

<sup>143</sup> *See* Morris deposition, p. 188.

<sup>144</sup> *Id.* at p. 110.

<sup>145</sup> *Id.* at p. 111.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at p. 188.

From July 1995 through August 1996, Sosnik’s level of involvement was roughly 30 to 40 percent of the President’s level of involvement in the media campaign.<sup>148</sup>

**The President and Vice President Agreed to Limit the Amount of Money They Would Spend on Their Campaign, and the Violation of That Agreement May Constitute a Violation of 18 U.S.C. § 371**

In addition to the White House’s coordination with and control of the DNC in producing and paying for ads containing electioneering messages on behalf of the President’s reelection, there is a question as to whether the fundraising and expenditures necessitated by the desire to run those ads constitute a “conspiracy to defraud the government.”<sup>149</sup>

Under the FECA, a presidential candidate who accepts federal matching funds cannot exceed the applicable expenditure limits for his campaign.<sup>150</sup> To ensure that the statutory scheme and its purposes are complied with, the FECA requires that candidates who receive matching funds under 26 U.S.C. § 9037 certify that they will not exceed the FECA expenditure limits.<sup>151</sup>

Here, the certification was made, and the government wrote its check only after being told that what in fact was already occurring (the raising and spending of private money) would not occur. The foresworn fundraising and spending was undertaken using the DNC as a conduit.

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<sup>148</sup> *Id.*

<sup>149</sup> Under 18 U.S.C. § 371, “[i]f two or more persons conspire either to commit any offense against the United States, or . . . to defraud the United States, or any agency thereof, and commit an overt act in furtherance of the conspiracy, then they have committed a federal criminal offense” (emphasis supplied).

<sup>150</sup> 26 U.S.C. § 9035. The expenditure limits are set out at 2 U.S.C. § 441a(b)(1)(A).

<sup>151</sup> 26 U.S.C. § 9033(b).

As pointed out above, the intent of the FECA in providing limited federal funding is to remove the candidate from the fundraising process and to prevent the raising of large private campaign contributions. The deal the taxpayers make with the candidate is that in exchange for their funding, the candidate will forswear outside money, thereby making it less likely that the election will be influenced or appear to be influenced by big money. Obviously, in the matter before us, the clear purpose of the law was circumvented. If a candidate can easily circumvent those limitations through coordination with a third party, such as by raising unlimited sums for a party committee the candidate controls, that objective of the statute is completely undermined.

The “defraud the United States” portion of section 371 of title 18 is broad in scope and is applicable to any activity that has the effect of defrauding the government. This is the case even if no other criminal statute has been violated. In other words, under section 371 even an act that is not itself a violation of any statute can result in criminal liability if the government is defrauded. Accordingly, the quotation attributed to Attorney General Reno that “a conspiracy has to be a conspiracy to violate specific laws” is incomplete.<sup>152</sup> That statement may be correct in regard to the portion of section 371 dealing with conspiracy “to commit an offense against the United States,” but apparently does not address the conspiracy “to defraud the United States,” which is the other portion of section 371. So even though it appears that the FECA may have been violated, even if the FECA was not violated, the activity at issue may still constitute a conspiracy to defraud the United States.

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<sup>152</sup> David Johnston, “Campaign Finance: Wider Implications; Justice Dept. Reopens Campaign Plot Case,” *The New York Times*, December 11, 1997, p. A24.

For instance, in United States v. Touhey,<sup>153</sup> the court decided a case in which the defendants conspired to gain control of a bank without reporting the transaction to the FDIC. Because each co-conspirator purchased less than 10% of the bank's stock, the group thereby evaded the reporting requirement. Violations of the reporting requirements carry only civil, not criminal penalties. The court held that the defendants' acts defrauded the government by interfering and obstructing the FDIC's lawful government function of administering the banking laws. Therefore, criminal sanctions were imposed even though the underlying acts were not criminal violations.

The Supreme Court has read section 371 even more broadly. It has consistently held that the participants in a conspiracy need not conspire to violate any particular criminal or civil statute if they conspire to defraud the government. In the leading case, Dennis v. United States,<sup>154</sup> the defendants submitted false affidavits to the NLRB purporting to satisfy the requirement of federal labor law that union officials not be members of the Communist Party. Such an affidavit was required to be filed before the union could call upon the NLRB to investigate charges. The defendants were alleged to have falsely certified that they were not Communist Party members. The government charged the defendants with conspiracy to defraud the NLRB under section 371.

The Supreme Court found that, unable to secure the benefits of the NLRB without submitting non-Communist affidavits, the union officers deliberately concocted a fraudulent scheme. In furtherance of that scheme, they submitted false affidavits, and then used the NLRB facilities made available to the union.<sup>155</sup> The Court held that such a scheme was a conspiracy to defraud the United

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<sup>153</sup> 867 F.2d 534 (9th Cir. 1989).

<sup>154</sup> 384 U.S. 855 (1966).

<sup>155</sup> *Id.* at p. 861.

States, whether or not the affidavits were themselves violations of the false statements statute. As the Court found, section 371 covers “any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government.”<sup>156</sup> For the Court, the key facts of the conspiracy in Dennis were “that petitioners and their co-conspirators could not have obtained the Board’s services and facilities without filing non-Communist affidavits; that the affidavits were submitted as part of a scheme to induce the Board to act; that the Board acted in reliance upon the fact that affidavits were filed; and that these affidavits were false. Within the meaning of section 371, this was a conspiracy to defraud the United States or an agency thereof.”<sup>157</sup>

The advertisements themselves may be specific and credible evidence that overt acts were carried out in support of the conspiracy to evade the expenditure limits and other FECA requirements. The resulting interference and obstruction of the FEC’s lawful function of administering the election laws as a result of either a civil or criminal violation of the FECA may form the basis for a criminal conspiracy to defraud the government under section 371.<sup>158</sup>

As far as the President’s use of the DNC to run the money through, a person cannot protect himself from liability by doing something in another’s name that he is not allowed to do himself.

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<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at p. 862.

<sup>158</sup> In the most famous example of an attorney general’s use of the discretionary provision of the Independent Counsel Act, Attorney General Meese sought the appointment of an independent counsel to investigate Col. Oliver North. The immediate issue presented in that case was whether any criminal law may have been violated by Col. North’s diversion of CIA funds to the Nicaraguan *contra* rebels in light of the Boland Amendment which prohibited the use of CIA funds for that purpose. Violation of the Boland Amendment carried no civil or criminal penalties.

Direct criminal prohibitions are not skirted through indirect violation. Whittaker v. Whittaker Corp.<sup>159</sup>

Also, “[m]en must turn square corners when they deal with the Government.” Rock Island & L.R.R.. Co. v. United States.<sup>160</sup> Ordinary American citizens dealing with the Internal Revenue Service, for example, come to learn this quickly. Under our system of law, the same obligation is placed on the President.

### **Coordination Between the DNC, Clinton/Gore, the White House, and Union Organizations**

Morris testified that in August 1995 Ickes organized and chaired a White House meeting in the Roosevelt Room between representatives of the DNC and Clinton/Gore ‘96 media team and approximately seven representatives of various labor unions.<sup>161</sup> Morris recalled the meeting was attended by, among other individuals, representatives of the National Education Association, the American Federation of State, County, and Municipal Employees, the American Federation of Labor-Congress of Industrial Organizations, Sosnik, Stephanopoulos and Ickes.<sup>162</sup> During the meeting, both the union representatives and the DNC and Clinton/Gore ‘96 media team displayed advertisements each had run or were considering running.<sup>163</sup> Morris testified that the union representatives:

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<sup>159</sup> 639 F.2d 516 (9th Cir. 1981) (corporate insider violates section 6(a) of the Securities Act of 1934 by purchasing company stock for his mother’s account over which he “exercised complete control” and selling stock for his own account within six months; this prohibition applies to such person’s transactions “for his benefit”).

<sup>160</sup> 254 U.S. 141, 143 (1920).

<sup>161</sup> *Id.* at pp. 216, 223.

<sup>162</sup> *Id.* at pp. 216-17.

<sup>163</sup> *Id.* at p. 217.

spoke in turn about what their media plans were that they were planning to advertise in States of Republican Senators, they were going to spend \$1 million over the course of the next year on doing it, here are the ads they had already run, here were the ads that they were about to run. It was a full briefing of us by them on their media plans.<sup>164</sup>

Morris testified that the union representatives “suggested to us [Clinton/Gore ‘96 and the DNC consultants] that there be coordination of the advertising . . . issue-oriented ads about the budget.”<sup>165</sup> Morris also recalled the union representatives suggesting Clinton/Gore ‘96 should run advertisements in states where the unions were not advertising and, in particular, he recalled the following specific suggestion of coordination:

And I remember in particular they said, for example, we’re going to be on in Vermont to go after Jeffords, and you don’t care about winning Vermont politically, so we’ll do Vermont and you don’t.<sup>166</sup>

While Morris could not recall the name of the individual who suggested the coordination, he believed it may have come from the union representatives’ time buyer (possibly affiliated with Vic Fingerhut’s agency).<sup>167</sup> Morris testified that Ickes was in favor of the coordination.<sup>168</sup> In contrast, Morris testified that he rejected a coordinated advertising effort between the White House, the DNC, Clinton/Gore ‘96, and the unions because he believed the union’s media strategy was flawed.<sup>169</sup>

## Conclusion

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<sup>164</sup> *Id.* at p. 222.

<sup>165</sup> *Id.* at p. 217.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at p. 222.

<sup>168</sup> *Id.* at pp. 222, 224.

<sup>169</sup> *Id.*

One does not expect government officials, with salaries paid by the taxpayers, to manage directly the day-to-day operations of a political party. Yet that is precisely what happened in 1995-1996. Ickes ran the DNC as the President's "designee."

The White House's unprecedented level of control over the DNC arose because the DNC was not in any sense independent from the President's re-election effort; the DNC was merely a vehicle for financing Morris' advertising blitz. With the Democratic Party serving primarily as a re-election vehicle, the President wanted control. Ickes obliged that desire, and Fowler was unable to go over Ickes' head, because Ickes was merely doing the President's bidding.

The nation's oldest political party simply became an arm of the White House with the primary mission of re-electing the President. The illegalities and improprieties discussed in this report stem from this simple fact. The President's attempt to slough responsibility for illegal and improper fundraising by the DNC in 1995-96 by pinning blame on "the other campaign" rings hollow in the light of the facts uncovered by the Committee's investigation and outlined in this report.