



U. S. Department of Justice
Criminal Division

Washington, D.C. 20530

November 25, 1997

MEMORANDUM

TO: THE ATTORNEY GENERAL

THROUGH: Mark Richard
Acting Assistant Attorney General
Criminal Division

FROM: Charles G. La Bella *for f. ca*
Supervising Attorney
Campaign Financing Task Force

Re: Common Cause Allegations

Winey came

I am sending you a copy of [REDACTED] memo on the Common Cause allegations along with this cover memo. As you know, [REDACTED] has spent a fair amount of time and a good deal of thought on the issues presented by Common Cause. These issues have also generated a great deal of debate within the Department. It is fair to say that no one, within Public Integrity or the Criminal Division, who has been involved in our discussions of the allegations, supports [REDACTED] conclusion. However, the reasons for the division are as much a cause of concern to me as is the conclusion that we ultimately reach on the issue.

I have approached the Common Cause allegations with much the same mind set as I did my Section 607 analysis. When I was asked by the Attorney General to head the Task Force, one of the things that she emphasized was that I should not reach any premature decisions on matters within my purview. In addition, I was told not to leave any stone unturned in the pursuit of Task Force investigations. These ground rules have been reiterated during many of our weekly updates over the last two months.

In carrying out the Attorney General's instructions, we have considered all allegations related to the scope of this inquiry, however tangentially. With the Attorney General's knowledge and consent, the FBI has taken the unusual step of investigating some allegations that appear to be within our mandate although they have no reference to any specific criminal statute. One such example is overnight stays by contributors in the Lincoln Bedroom, a clearly

DOJ-03459



residential area of the White House. They have also been investigating allegations that have only the most tenuous connection to possible criminal violations e.g., alleged misuse of the White House database or uncompensated travel on Air Force One and Two. The Attorney General has made clear that she is concerned that the failure to pursue even frivolous appearing allegations can result in a situation that can come back to haunt us.

tony ame
When I assigned the Common Cause allegations to [REDACTED] I told him that his task was to take a fresh look at their assertions and not to prejudge any aspect of their claim. It is evident to me that he followed my instructions scrupulously.

The allegations presented by Common Cause are arguably the most serious among the plethora of charges concerning campaign financing, because they suggest that our political leaders at the highest level, and in both parties, intentionally and knowingly made a mockery of the political system. The Attorney General is being encouraged to let the FEC decide whether that is so.

At the heart of the problem is the fact that no one can say with certainty if the facts alleged by Common Cause, even if true, present a potential violation of law. Some argue that, like tax avoidance, what happened here was nothing more than some very clever people taking full advantage of loop holes in the election laws. Others argue that, like tax evasion, there was a scheme to circumvent the law and to engage in a series of sham transactions to accomplish that goal.

tony ame
[REDACTED] concludes that we cannot say, as a matter of law, that the Common Cause allegations do not set out potential criminal violations under the Presidential Primary Matching Payment Account Act or the Presidential Election Campaign Fund Act. While acknowledging that any potential prosecution would be problematic, [REDACTED] reasons that there are too many unknown facts to conclude at this stage that prosecution is barred as a matter of law. Since the alleged scheme is one premised on deception, it will be the facts that determine whether a prosecution is warranted.

The FBI, included for the first time in our last meeting on these issues, shares [REDACTED] view that a review of the allegations is called for at this time. Like [REDACTED] they believe that absent a factual inquiry, it is premature to close the matter. They would prefer to investigate the matter from the Task Force than from a detail to the FEC.

For my part, I have tried to stay on the side lines and listen to the debate. I have asked at our last two meetings whether the Department was prepared to say that as a matter of law the Common Cause allegations do not present a potential criminal violation. No one has ever suggested that they were prepared to reach such a conclusion. Indeed, the most anyone would say was that they could not make a decision but that the matter should be referred to the FEC in the first instance. The reasoning seems to be that there is

nothing to lose because if, after review, the FEC believes that a potential violation exists, they will refer the matter back to the Department for investigation. This, we were told, is consistent with the MOU that exists between the Department and the FEC.

I believe this analysis is shortsighted and that there is much to lose. Although the proposal sounds reasonable on its face, what troubles me is that everyone in attendance at the meetings has told me, in no uncertain terms, that the FEC is an impotent organization which cannot agree on a course of action with respect to the simplest of matters within its jurisdiction. Indeed, they have told me that the FEC is -- and in all likelihood was intentionally designed to be -- weak and ineffective. And yet, these same people urge that, in the face of extraordinarily serious allegations, the FEC is the "expert" in the field to whom we must, in the first instance, defer for "a preliminary scrub" of the issues.

I think that such a course of action is ill advised for a variety of reasons. On the most practical level, the FEC is not an investigative agency. It is clear from our discussions that whatever factual investigation needs to be conducted in order to determine if there has been a violation of the statutes, cannot be accomplished unless the Department supplies the investigative (and possibly attorney) resources. As I understand the situation, the proposal is to refer the matter to the FEC -- because of its expertise -- and then detail FBI agents (and possibly attorneys) to the agency so that it can accomplish a task that everyone believes it is ill equipped to handle. This seems to me to be a shell game which could reasonably be perceived as being result oriented, i.e., calculated to avoid a preliminary inquiry which might be triggered under the Independent Counsel Act if the Task Force were to pursue the investigation. However, the reality is that the Task Force is in as good a position -- if not better -- than the FEC to handle what will certainly be a complex factual inquiry. If we do not provide resources to the FEC, it is likely that they will never be able to jump start the investigation. If we do provide the resources, what is to be gained? Draining resources from the Task Force will serve only to hamstring the Task Force while we wait, perhaps interminably, for the FEC hierarchy to reach some conclusions. We will not merely be depleted of resources but we will be tiptoeing around issues which we should be investigating. This will be done in the name of an effort not to "interfere" with the FEC, which would inevitably be investigating many of the same things and people that the Task Force is studying.

So what will be accomplished by shuffling this matter off to the FEC? I think that the perception will be that the decision to send the most crucial aspect of this investigation to the FEC -- a weak civil regulatory agency -- was designed to avoid the appointment of an Independent Counsel. As has been noted in our meetings, if the matter stays with the Department, there is a fair chance that any preliminary inquiry will result in the appointment of an IC. On the other hand, if the matter is sent to the FEC, it is unlikely that the matter will see the light of day in our lifetimes plus 99

years.

If, as we originally thought, resolution of the Common Cause allegation depended upon an analysis of the content of the ads, there would be some logic to sending the allegations to the FEC for that purpose. However, this is not the case. As Steve points out in his memo at page 6, there are potential violations which exist without regard to content analysis. Indeed, also at issue in the Common Cause allegations is whether the costs for the ads were in fact incurred "by the candidates or their authorized campaign committees either in connection with the primary campaign or to further election to the office of president, and whether the ads constituted qualified campaign expenses, regardless of" their content. See memo at p. 6 and fn.1. What is missing from the equation at this time is, in part, an investigation of the surrounding facts. See memo at p. 13. While the investigation of these facts may lead to a conclusion that there could not be a wilful violation of the statute (see Public Integrity's Nov. 21 memo on the calls of VPOTUS in which they reach such a conclusion following their factual inquiry), it is premature to foreclose an investigation of the Common Cause charges at this time by referring the matter to the FEC. The likely public perception that this is being done as a matter of political chicanery is the worst possible outcome, both for the country and for the Attorney General personally.

DOJ-03462