

INVESTIGATION INTO POSSIBLE VIOLATION OF  
POLITICAL RIGHTS OF FEDERAL EMPLOYEES

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HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON  
EMPLOYEE POLITICAL RIGHTS AND  
INTERGOVERNMENTAL PROGRAMS  
OF THE  
COMMITTEE ON  
POST OFFICE AND CIVIL SERVICE  
HOUSE OF REPRESENTATIVES  
NINETY-FOURTH CONGRESS  
SECOND SESSION

DECEMBER 14 AND 15, 1976

Serial No. 94-94



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Committee on Post Office and Civil Service

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LLOYD A. JOHNSON, *Subcommittee Staff Director*, Room 603, HOB Annex—Ext. 59124

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# INVESTIGATION INTO POSSIBLE VIOLATION OF POLITICAL RIGHTS OF FEDERAL EMPLOYEES

TUESDAY, DECEMBER 14, 1976

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
SUBCOMMITTEE ON EMPLOYEE POLITICAL RIGHTS  
AND INTERGOVERNMENTAL PROGRAMS,  
*Washington, D.C.*

The subcommittee met at 10 a.m. in room 304, Cannon House Office Building, Hon. William Clay (chairman of the subcommittee) presiding.

Present: Representatives Clay, Spellman, and Harris.

Also present: Lloyd Johnson, counsel; and Gail Weiss, staff assistant.

Mr. CLAY. The hearing will come to order.

Today the Subcommittee on Employee Political Rights and Intergovernmental Programs begins hearings into the possible violation of the political rights of Federal employees.

In October of this year, a Federal career employee brought to this subcommittee's attention a brochure entitled "Partners in Progress." This political document, published by a group calling itself black Voters for Republican Congress, cited the progress of blacks within the administration.

The brochure contained the photographs of some 286 high ranking black Federal employees. The vast majority of these employees are career officials and are prohibited from active participation in political activities. I immediately called for the withdrawal of "Partners in Progress" from circulation.

The subcommittee staff, on my direction, began an investigation into the circumstances of the photographs appearing in this political publication. The underlying question was, "Did any employee give his or her approval for the political use of his or her photograph?" If so, the Hatch Act has been violated. If not, I am concerned about the extent to which any employee may have been exploited and improperly influenced by officials in the administration.

The Civil Service Commission was asked to investigate this situation in terms of any possible violations of the Hatch Act. I expect their report to be available to us when they appear before the subcommittee tomorrow.

Agency and department heads employing these workers have stated that they simply responded to a White House request for official photographs for Bicentennial and Government Day programs. I want to include for the record agency and departmental responses to my inquiry.

[The information referred to follows:]



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

NOV 19 1976

November 19, 1976

Honorable William L. Clay  
Chairman, Subcommittee on Employee  
Political Rights and Intergovernmental  
Programs of the Committee on Post  
Office and Civil Service  
U.S. House of Representatives

Dear Mr. Chairman:

I appreciate your concern about the use of photographs of several Black USDA employees in a brochure which was published during the past Congressional campaign.

As best I can ascertain, no one in this Department was responsible for obtaining these photographs nor making them available to a political organization for campaign use. In fact, I am advised that none of the USDA employees were aware that their photographs were to be used for this purpose. For that reason, there was no reason for them to provide consent for such use.

I hope this will be helpful to you. I share in your efforts to keep the Federal career Civil Service free from partisan use, no matter which party is in control of government.

Sincerely,

*John A. Knebel*  
JOHN A. KNEBEL  
Secretary



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
WASHINGTON, D. C. 20301

8 DEC 1976

Honorable William L. Clay  
Chairman  
Subcommittee on Employee Political  
Rights & Intergovernmental Programs  
U.S. House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

This is in reply to your letter of October 28, 1976, concerning the appearance of photographs of senior-level, Black Department of Defense personnel in partisan campaign literature.

Initially, let me express my appreciation to you for the assistance of Mr. Lloyd A. Johnson, the Subcommittee's Staff Director, who provided us with a copy of the political brochure which caused your concern.

The Department of Defense maintains official portraits of all individuals serving at the Assistant Secretary level and of some individuals serving at the Deputy Assistant Secretary level. In addition, portraits of General and Flag rank officers are required by Military Service regulations. When a photograph is taken, the official concerned understands that his portrait will be used for governmental functions and will be released to representatives of the press in connection with coverage of departmental operations without further consulting him.

On the other hand, official portraits are not routinely released to private requesters. Before an official portrait is released to a private requester, he must indicate the purpose of his request. This request is then considered in light of the stated or assumed purpose and the privacy interest of the individual whose portrait is sought. In questionable circumstances, the subject of the portrait is consulted.

Official portraits of senior-level, Black Department of Defense officials have been released to the press upon request in accordance with the above-stated understanding regarding the use and release of official photographs.

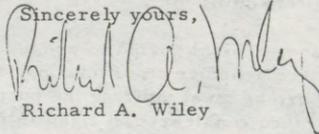
The Office of the Assistant Secretary of Defense (Public Affairs) received the enclosed memorandum from the White House, dated April 5, 1976, which requested five copies of photographs and the titles of all Blacks serving in policy-making positions at or above the GS-15 level. The request indicated that these portraits would be used in response to requests from cities and private organizations "for Bicentennial displays and Government Day programs." Based upon this understanding, five copies of all of the official portraits available, with accompanying official titles, were provided to Mr. John Calhoun, Special Assistant to the President, by the Office of the Assistant Secretary of Defense (Public Affairs) on April 16, 1976 (copy attached). Because the intended use indicated in the request involved legitimate public activities and a commensurate public interest, none of the officials whose portraits were furnished was consulted.

A review of the brochure reveals that the photographs of Department of Defense personnel appearing therein are the official portraits maintained by this Department. However, it is not known who furnished the photographs to the organization which published the political brochure in question.

We believe that the Department of Defense has acted in accordance with applicable law and regulations and with due regard to the privacy interests of its officials.

I trust the foregoing information satisfies the purpose of your inquiry.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Richard A. Wiley". The signature is written in a cursive style with a large, prominent initial "R".

Richard A. Wiley

Attachment

THE WHITE HOUSE

WASHINGTON

April 5, 1976

MEMORANDUM FOR

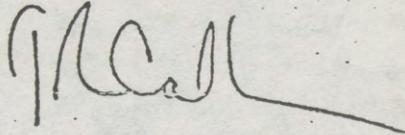
PUBLIC AFFAIRS/INFORMATION DIRECTORS

- SUBJECT: Bicentennial Photographs

Several requests have been received from cities and private organizations for photographs and titles of Blacks serving in top positions in government for Bicentennial displays, and Government Day programs.

Please send five photographs of all Blacks serving in a policy-making position, to include those in GS-15 or higher with correct titles only (no grades), prior to April 16.

Thank you.



JOHN CALHOUN  
Special Assistant to the President



ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D.C. 20301

PUBLIC AFFAIRS

16 APR 1976

Mr. John Calhoun  
Special Assistant to the President  
The White House  
Washington, D.C. 20500

Dear Mr. Calhoun:

This is in response to your letter requesting photographs of Blacks serving in policy making positions in the Department of Defense.

Enclosed are photographs of all Black General and Flag Officers and Flag Rank Selectees along with Black civilians who have had photographs taken.

Photographs of Flag rank officers are required by Service regulations. Photographs of senior Defense Officials at the Assistant Secretary and Deputy Assistant Secretary level are maintained by this office and are made available to the public and the media on an "as requested" basis. There is, however, no regulation or requirement for photographs to be taken of civilian employees below that level. Accordingly, photographs of civilians below the Deputy Assistant Secretary level are not available.

Sincerely,

A handwritten signature in dark ink, appearing to read "Guy E. Winston, Jr." with a stylized flourish at the end.

Guy E. Winston, Jr.  
Major General, USMC  
Deputy Assistant Secretary

Attachments



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

NOV 11 1976

Honorable William L. Clay  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Clay:

The Secretary has asked that I respond to your letter of October 28, 1976 regarding the photographs of several Black employees of the Department that appeared in a partisan political brochure, "Partners in Progress", published by Black Voters for a Republican Congress.

We have determined that 10 of the 11 employees listed in your letter are in a career status. The other Departmental employee identified in your letter, Dr. Benjamin L. Hunton, retired on August 31, 1976. It should be noted however that Hunton, while identified as a Departmental employee in your enclosure, was pictured as a military officer.

We have consulted with Mr. Lynn Collens, Deputy Assistant General Counsel, Political Activities Section, Civil Service Commission, who advised that the Commission would retain jurisdiction to investigate any possible violations of the Hatch Act by these employees or some other Department employee who may have been involved in arranging release of those pictures.

Accordingly, the Commission rather than the Department will be addressing two of the three questions you raise. These two questions are:

- "Who in the Department was responsible for making official photographs of these employees available to political organizations?"
- "Did any employee consent to the use of his or her photograph in this political document?"

The Commission has asked that the Department's Office of Audit and Investigation provide assistance in this inquiry, and the scope of that assistance request should enable us to answer your third question regarding the adequacy of protection to prevent the unauthorized use

of official photographs. We will respond to this question as soon as the results of our inquiry are available.

I share your concern about improper use of official photographs for partisan political purposes. We will take whatever action the inquiry suggests is necessary to prevent any future release and use of employee photographs for unauthorized purposes.

Sincerely,

(SGD) Albert C. Zapanta

Assistant Secretary -  
Administration and Management



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

Honorable William L. Clay  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Clay:

This is in further response to your letter of October 28, 1976, regarding the photographs of several Black employees of the Department that appeared in a partisan political brochure, "Partners in Progress," published by the Black Voters for a Republican Congress.

Inquiries by the Office of Audit and Investigation within the Department disclosed that the photographs of these employees were released by the Office of Equal Opportunity in response to a White House letter, dated April 5, 1976, addressed to Public Affairs/Information Directors, and signed by John Calhoun, Special Assistant to the President. The letter stated that photographs of Blacks serving in a policy-making position in the grade of GS-15 or above were needed in conjunction with bi-centennial displays and for Government Day programs.

As the request was for authorized purposes there was no impropriety in the release of the official photographs by the Department. In fact, inquiry disclosed that official photographs can only be released by a request from the individual concerned; or by a properly documented request through the Office of Public Affairs which will authorize such a release for a stated purpose.

I share your concern that official photographs of these employees have been used without their permission; however, within the Department of the Interior controls in effect are adequate to prevent unauthorized releases. We now consider this matter closed.

Sincerely,

Assistant Secretary -  
Administration and Management





THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE  
WASHINGTON, D. C. 20201

NOV 22 1976

NOV 24 1976

The Honorable William L. Clay  
Chairman, Subcommittee on Employee  
Political Rights and Intergovernmental Programs  
Committee on Post Office and Civil Service  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of October 27, in which you noted that photographs of several black employees within this Department appeared in a political brochure, "Partners in Progress," published by Black Voters for a Republican Congress.

I have been assured that this Department did not furnish pictures of black employees for political purposes. The White House contributed to a Bicentennial display opening July 29, 1976 in Philadelphia where the invited audience comprised leading African diplomats. This Bicentennial effort was government-wide and not confined to this Department.

If there should be further questions, you might want to contact John Calhoun, Special Assistant to the President, at the White House, who put this display together.

I share your concern for the rights of the individuals referred to in your letter and greatly appreciate your bringing this to my attention.

Cordially,

Secretary



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410

NOV 10 1976

November 8, 1976

OFFICE OF THE ASSISTANT SECRETARY  
FOR LEGISLATIVE AFFAIRS

IN REPLY REFER TO:

Honorable William L. Clay  
Chairman  
Subcommittee on Employee Political  
Rights & Intergovernmental Programs  
Committee on Post Office and Civil Service  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Clay:

Secretary Hills has asked me to respond to your letter of October 28 concerning photographs of several HUD employees which appeared in a political brochure, "Partners in Progress."

As I indicated to Mr. Johnson on your Subcommittee staff, the photographs of those HUD employees whose names were furnished by your staff to this office were provided by our Public Affairs office to Mr. John Calhoun, Special Assistant to the President. The photographs were requested on April 5 by Mr. Calhoun per attached memorandum. The indicated use of the photographs at that time was for use in Bicentennial displays and Government Day programs. At the time the request was made and complied with, there was no reason to believe that any other use might be made of the photographs and, therefore, no further questions were raised. In retrospect, a precautionary note advising against any use of the photographs beyond the indicated purpose in the April 5 memorandum would have been the wiser course of action. By copy of this letter to our Public Affairs office, they are being asked to exercise such caution for similar requests in the future.

With kindest regards, I am

Sincerely,

Sol Mosher  
Assistant Secretary  
for Legislative Affairs

Enclosure

ASSISTANT ATTORNEY GENERAL  
LEGISLATIVE AFFAIRS

Department of Justice  
Washington, D.C. 20530

December 8, 1976

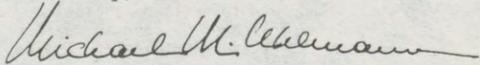
Honorable William L. Clay  
Chairman  
Subcommittee on Employee Political  
Rights and Intergovernmental Programs  
Committee on Post Office & Civil Service  
U.S. House of Representatives  
Washington, D.C.

Dear Mr. Chairman:

This refers to your letter of October 28, 1976, regarding a political brochure containing the photographs of several Department employees. Please accept our apologies for the delay of this response.

You should know that the Department shares your concern about the use of official photographs for political purposes and that the allegations set forth in your letter are under active review. At the same time, I am certain that you appreciate our concern that it would be inappropriate to make further comment on allegations that are the subject of such an ongoing Departmental review.

Sincerely,



Michael M. Uhlmann  
Assistant Attorney General



DEPARTMENT OF STATE  
AGENCY FOR INTERNATIONAL DEVELOPMENT  
WASHINGTON, D. C. 20523

ASSISTANT  
ADMINISTRATOR

DEC 13

Honorable William L. Clay  
Chairman, Subcommittee on Employee  
Political Rights and Intergovernmental  
Programs  
Committee on Post Office & Civil Service  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your letter of October 27, addressed to Secretary Kissinger, concerning the source of photographs used in the brochure, "Partners in Progress".

Our records indicate that we received a request dated April 5, 1976 from Mr. John Calhoun, Special Assistant to the President, for photographs of high level black officials for use in "Bicentennial displays and Government Day programs." We responded with the requested photographs on April 16 and 19. Copies of that exchange of correspondence are enclosed. That exchange accounted for the twenty-two A.I.D. officers on the list enclosed with your letter.

I understand from the Department of State that a request for a photograph of Ambassador Beverly Carter cannot be found. However, the Department informs us that the photograph of the Ambassador used in the brochure is the official Department of State photograph and that there is no restriction on the distribution of such photographs to anyone requesting them.

Sincerely,



Denis M. Neill  
Assistant Administrator  
for Legislative Affairs

Enclosures

ACTION: <sup>HLT</sup> JTW  
INFO: CFW

THE WHITE HOUSE  
WASHINGTON  
April 5, 1976

*Clyde - I hadn't noticed this before, can we*

MEMORANDUM FOR

PUBLIC AFFAIRS/INFORMATION DIRECTORS

*do it?*

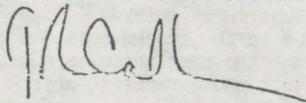
SUBJECT: Bicentennial Photographs

*JTW*

Several requests have been received from cities and private organizations for photographs and titles of Blacks serving in top positions in government for Bicentennial displays, and Government Day programs.

Please send five photographs of all Blacks serving in a policy-making position, to include those in GS-15 or higher with correct titles only (no grades), prior to April 16.

Thank you.



JOHN CALHOUN  
Special Assistant to the President

April 16, 1976

MEMORANDUM

TO: Mr. John Calhoun  
Special Assistant to the President, The White House

FROM: Herbert L. Thompson, Acting Director  
Office of Public Affairs, A.I.D.

SUBJECT: Bicentennial Photographs

Re your memo of April 5, I am enclosing 5 prints each of 18 Black officials of the Agency for International Development. There are several other personnel overseas whose photos we are still trying to obtain. These will be forwarded as soon as available.

HLThompson/led

April 19, 1976

MEMORANDUM

TO: Mr. John Calhoun  
Special Assistant to the President  
The White House

FROM: Clinton F. Wheeler <sup>1/3/</sup> *Clinton F. Wheeler*  
Director, Office of Public Affairs, A.I.D.

SUBJECT: Bicentennial Photographs

Attached are photos of four more Black officials of the Agency for International Development to go with those sent to you April 16. You should now have a total of 22 A.I.D. officials represented. We do not anticipate receiving any others in time for your use.

Attachment  
a/s

*HL*  
OPA/HLThompson:led  
attached: JACooper/TRStuman/ASmith/JLWithers  
photos



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

NOV 17 1976

NOV 18 1976

Honorable William L. Clay  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Clay:

This is in response to your letter of October 28, 1976, regarding photographs of Black employees of this Department that appeared in the brochure, "Partners in Progress."

In a memorandum dated April 5, 1976, we were advised by Mr. John Calhoun of the White House staff that several requests had been received from cities and private organizations for photographs and titles of Blacks serving in top positions in government for Bicentennial displays and Government Day programs. Photographs of Black employees in top positions in the Department of Transportation were furnished Mr. Calhoun on April 21 in response to the above representation.

I assure you that I will take all steps in my power to make sure that any employee in the Civil Service or otherwise under the Hatch Act will not be used in any way as to infer or imply any support of a particular political candidate or party.

Sincerely,

William T. Coleman, Jr.

Enclosure



OFFICE OF  
THE DIRECTOR

**ACTION**  
WASHINGTON, D.C. 20525

NOV 19 1976

November 19, 1976

Honorable William L. Clay  
Subcommittee On Employee Political Rights &  
Intergovernmental Programs of the  
Committee On Post Office & Civil Service  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

In response to your letter of October 28, 1976 concerning the appearance of ACTION Black employees in a brochure entitled "Partners in Progress", I report the following information.

We have examined our Photo Services files and find no record of a request from "Partners in Progress" publication or from a political organization for photos of Black or other minority employees - nor did we by reason of verbal request or on our own initiative provide such photos to a political organization.

When staff pictures are taken the person photographed understands that the photos will be used for normal public affairs purposes; any restrictions of use requested by an individual staff member are honored.

As a matter of policy we routinely keep photos of ACTION senior staff on file and provide copies of these photos upon request from legitimate sources such as federal agencies, White House, Congress, and press.

If, as a matter of judgment we ascertain that a particular request is made for illegal or improper purposes we refuse the request through our General Counsel.

We are not aware of employees' consent in the matter referred to in your letter. I note that you have requested the Civil Service Commission to inquire whether consent was in fact secured. If we can provide any further information, please feel free to contact us.

Sincerely,

*William B. Prendergast*  
William B. Prendergast  
Assistant Director  
for Congressional Affairs





EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
WASHINGTON, D. C. 20506

November 16, 1976

Honorable William L. Clay  
Chairman  
Subcommittee on Employee Political  
Rights Intergovernmental Programs  
Committee on Post Office and Civil Service  
603 House Office Building, Annex 1  
Washington, D. C. 20515

Dear Chairman Clay:

Thank you for supplying me with the brochure entitled  
"Partners in Progress" referred to in your October 28, 1976  
letter.

I have spoken with Alfred Sweeney, Director of Public Affairs  
about the use of his picture in that document.

Mr. Sweeney did not authorize nor was he aware of the use of his  
picture prior to the dissemination of the brochure. Neither he  
nor I have any knowledge of who is responsible for its inclusion in  
the document.

If I can be of further assistance to you and any other member of  
the subcommittee on this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, reading "Ethel Bent Walsh".

Ethel Bent Walsh  
Vice Chairman



## FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D.C. 20461

DEC 9 1976

OFFICE OF THE ADMINISTRATOR

Honorable William L. Clay  
Chairman, Subcommittee on Employee  
Political Rights and Intergovernmental  
Programs  
Committee on Post Office  
and Civil Service  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

I have asked my staff to conduct a review in response to your letter of October 28, 1976, requesting information with respect to a partisan political brochure called "Partners in Progress." (See Enclosure A)

Specifically, you asked: (1) who in the FEA was responsible for making the official photographs of employees available to the political organization; (2) what protection, if any, exists whereby employees may prevent the unauthorized use of official photographs by political organizations; and (3) did any employee consent to the use of his or her photograph in this political document.

The results of the staff review follow. We do not know who was responsible for releasing photographs of FEA employees to the publication you mentioned in your letter. We do know that Mr. Gerald Jackson, GS-13 Media Specialist, in the Office of Communications and Public Affairs released the photographs of Floyd J. Collins, Hazel Rollins, Emmanuel A. Moore, and Cecil Thompson (not mentioned in your October 28 letter) to the White House, in response to a memorandum (see Enclosure B) from John Calhoun, Special Assistant to the President.

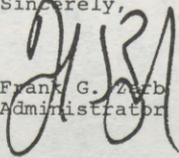
Mr. Calhoun's memorandum requested the photographs of Blacks serving in top positions in Government for Bicentennial displays and Government Day programs. In view of Mr. Calhoun's memorandum, no action is being taken with regard to Mr. Jackson's release of the photographs, since he was responding to a legitimate and proper request.

There are no specific internal guidelines within FEA protecting employees from unauthorized use of their photographs by a political organization. General regulations for all Federal Agencies regarding the unauthorized release of employee documents are contained in both the Federal Personnel Manual and the Privacy Act of 1974. However, neither the Federal Personnel Manual nor the Privacy Act addresses this specific situation. It should be noted that an employee may have redress through the courts, as a private litigant, when the circumstances warrant such action.

The FEA's Office of Internal Review interviewed the four employees involved and determined that none of them had been contacted for permission to use their photographs in the publication you mentioned and, in fact, they were not aware that their photographs had been used.

If I may be of any further assistance to you or your staff regarding this matter, please do not hesitate to call upon me.

Sincerely,

  
Frank G. Zarb  
Administrator

Enclosures

FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D.C. 20461

April 15, 1976

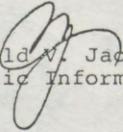
Mr. John Calhoun  
Special Assistant to  
the President  
The White House  
Washington, D.C. 20500

Dear John:

Enclosed are photographs requested by your office

April 5, 1976.

Sincerely,

  
Gerald W. Jackson  
Public Information Officer

THE WHITE HOUSE

WASHINGTON

April 5, 1976

MEMORANDUM FOR

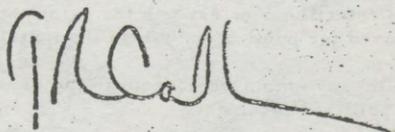
PUBLIC AFFAIRS/INFORMATION DIRECTORS

SUBJECT: Bicentennial Photographs

Several requests have been received from cities and private organizations for photographs and titles of Blacks serving in top positions in government for Bicentennial displays, and Government Day programs.

Please send five photographs of all Blacks serving in a policy-making position, to include those in GS-15 or higher with correct titles only (no grades), prior to April 16.

Thank you.



JOHN CALHOUN  
Special Assistant to the President

UNITED STATES OF AMERICA  
GENERAL SERVICES ADMINISTRATION  
WASHINGTON, DC 20405



NOV 29 1976

November 23, 1976

Honorable William L. Clay  
Chairman, Subcommittee on Employee  
Political Rights and Intergovernmental Programs  
Committee on Post Office and Civil Service  
House of Representatives  
Washington, DC 20515

Dear Mr. Clay:

Thank you for your letter of October 28, 1976, in which you advise that photographs of Black employees in the General Services Administration (GSA) appeared in a partisan political brochure.

The only situation of which we are aware that the photographs may have been released by GSA was in response to a request from the White House staff. Several months ago, our Office of Public Affairs received a request for pictures of Black executives for a Bicentennial publication. Those Black officials who were contacted authorized use of their pictures for this purpose.

Specifically the answers to your three questions are as follows:

Q. Who in our agency was responsible for making official photographs of these employees available to the political organization?

A. No one in GSA, to our knowledge, made official photographs of Black employees available to a political organization.

Q. What protection, if any, exists whereby employees may prevent the unauthorized use of official photographs by political organizations?

A. Protection does exist to the extent that photographs will not be released for publication unless the individual employee approves.

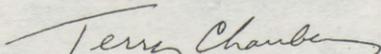
Q. Did any employee consent to the use of his or her photograph in this political document?

2.

A. Employees consented to use of their photographs in a Bicentennial promotion publication only.

We will be pleased to cooperate with the Civil Service Commission in any way that we can in their pursuit of possible Hatch Act violations.

Sincerely,



TERRY CHAMBERS  
Deputy Administrator



UNITED STATES  
INFORMATION AGENCY  
WASHINGTON 20547  
OFFICE OF THE DIRECTOR

November 8, 1976

Dear Congressman Clay:

The Director is out of the country and I am responding to your letter of October 28.

Upon receipt of your letter, we immediately checked our records to determine the answers to the questions you raised. I am satisfied that the United States Information Agency in no way violated the rights of its employees.

On April 5, 1976, we received an official request from John Calhoun, Special Assistant to the President, for photographs of Blacks serving in policy-making positions to be used in response to requests from cities and private organizations for Bicentennial displays and Government Day programs.

On April 16, 1976, we provided photographs of five such officers and a subsequent photograph was provided on May 11.

In each case, prior to our meeting this request, we obtained the consent of the individual concerned, in writing, in conformance with the Privacy Act of 1974. The one exception to the written consent was in the case of Mr. James Kirk, who was serving in India. We did, however, receive a telegraphic reply from Mr. Kirk stating that he had no objection to our meeting the White House request.

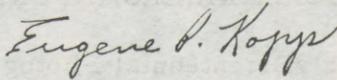
The Honorable  
William L. Clay  
House of Representatives

- 2 -

We obviously cannot speculate on any other possible use that may have been made of the photographs. However, I can assure you that we are meticulous in protecting the rights of our employees and that our response to the request was for the specific purpose stated in the memorandum we received--that is, for the use of these photographs in connection with Bicentennial displays and Government Day programs.

If we can be of any further help to you in this matter, please do not hesitate to contact us.

Sincerely,



Eugene P. Kopp  
Acting Director

THE WHITE HOUSE

WASHINGTON

April 5, 1976

MEMORANDUM FOR

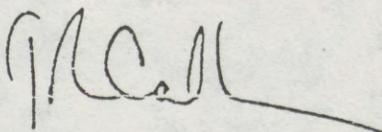
PUBLIC AFFAIRS/INFORMATION DIRECTORS

SUBJECT: Bicentennial Photographs

Several requests have been received from cities and private organizations for photographs and titles of Blacks serving in top positions in government for Bicentennial displays, and Government Day programs.

Please send five photographs of all Blacks serving in a policy-making position, to include those in GS-15 or higher with correct titles only (no grades), prior to April 16.

Thank you.

A handwritten signature in dark ink, appearing to read "J. Calhoun", with a long horizontal line extending to the right.

JOHN CALHOUN  
Special Assistant to the President



National Aeronautics and  
Space Administration

Washington, D.C.  
20546

Office of the Administrator

DEC 3 1976

Honorable William L. Clay  
Chairman, Subcommittee on Employee  
Political Rights and Intergovernmental  
Programs  
Committee on Post Office and Civil Service  
House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter of October 28, 1976, inquiring as to the circumstances surrounding the use of the names and photographs of several Black NASA employees in a partisan political brochure entitled "Partners in Progress."

The NASA Office of Inspections and Security has conducted an investigation of this matter and has determined that the names and photographs of seventeen NASA employees (fifteen current employees and two former employees) appeared in the "Partners in Progress" brochure. The fifteen current employees were interviewed with the following results:

None had been asked for their permission or had consented to the use of their name or photograph for publication in the "Partners in Progress" brochure.

Many of the individuals were totally unaware of the "Partners in Progress" brochure until shown a copy by the interviewing NASA Inspector.

Our investigation found that the seventeen photographs of NASA employees, which appeared in the "Partners in Progress" brochure, were of the same seventeen employees whose official photographs were sent to Mr. John Calhoun, Special Assistant to the President, on April 20, 1976, by the NASA Office of Public Affairs. The photographs sent to Mr. Calhoun were provided in response to his memorandum of April 5, 1976, which advised our Public Affairs office as follows:

"Several requests have been received from cities and private organizations for photographs and titles of Blacks serving in top positions in government for Bicentennial displays, and Government Day programs.

"Please send five photographs of all Blacks serving in a policy-making position, to include those in GS-15 or higher with correct titles only (no grades), prior to April 16."

Although NASA's regulations concerning the protection of personal privacy (14 C.F.R. 1212) permit current biographical information and recent photographs of senior NASA employees to be made available to other agencies in connection with NASA public affairs activities, in responding to this particular request a decision was made that each employee involved would be informed of the request and given an opportunity to withhold permission for the use of his or her photograph. In the letter transmitting the photographs to Mr. Calhoun, the Acting Assistant Administrator for Public Affairs specifically noted that:

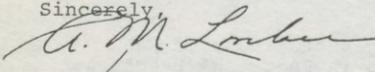
"Each individual has been given an opportunity to decline participation in the use of their names and photographs for Bicentennial or Government Day programs and each of those submitted has agreed."

The investigation we performed reveals that there is some question as to whether all of the employees were actually notified beforehand, and to prevent any such occurrence in the future, I have asked the Associate Administrator for External Affairs to recommend specific safeguards.

Our investigation disclosed no evidence that any NASA employee made the official photographs available to any political organization or otherwise in any way violated the Hatch Act. More specifically, there was no evidence that any NASA employee had prior knowledge with respect to the publication of employee photographs in the "Partners in Progress" brochure.

A copy of our investigative report in this matter is being furnished to the General Counsel of the U.S. Civil Service Commission.

Sincerely,



James C. Fletcher  
Administrator

OVERSEAS  
PRIVATE  
INVESTMENT  
CORPORATION

1129 20th Street, N.W.  
Washington, D.C. 20527  
Telex-OPIC Wash 89-2310



Office of the President

November 18, 1976

Honorable William L. Clay  
Chairman  
Subcommittee on Employee Political Rights  
and Intergovernmental Programs  
Committee on Post Office and Civil Service  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

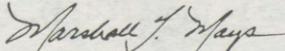
Pursuant to your request for information in connection with a possible violation of the Hatch Act, I enclose a copy of the White House memorandum of April 5, 1976, asking for pictures and biographical background of Blacks in GS-15 grades or above.

As you can see, the memorandum indicated that the material was intended for use in connection with the Bicentennial and in no way inferred that it would appear in a political publication.

I can state unequivocally that neither Mr. Earl A. Gumbs, whose picture appeared in the publication in question, nor our public affairs department, which forwarded the material, had any knowledge of its use in a political document.

I trust that the foregoing will satisfy your inquiry. If you have any additional questions, I would be pleased to help.

Sincerely yours,

  
Marshall T. Mays

Enclosure

THE WHITE HOUSE

WASHINGTON

April 5, 1976

MEMORANDUM FOR

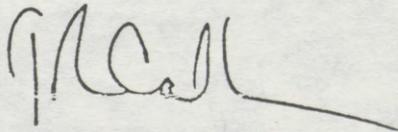
PUBLIC AFFAIRS/INFORMATION DIRECTORS

SUBJECT: Bicentennial Photographs

Several requests have been received from cities and private organizations for photographs and titles of Blacks serving in top positions in government for Bicentennial displays, and Government Day programs.

Please send five photographs of all Blacks serving in a policy-making position, to include those in GS-15 or higher with correct titles only (no grades), prior to April 16.

Thank you.

A handwritten signature in dark ink, appearing to read 'J. Calhoun', with a long horizontal line extending to the right.

JOHN CALHOUN  
Special Assistant to the President



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

NOV 9 1976

Honorable William L. Clay  
Chairman, Subcommittee on  
Employee Political Rights and  
Intergovernmental Programs  
Committee on Post Office and Civil Service  
House of Representatives  
Washington, D. C. 20515

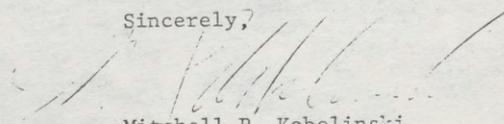
Dear Mr. Clay:

This will acknowledge your letter of October 28 regarding alleged violations of the Hatch Act and the possible unauthorized use of the photographs of certain of this Agency's employees.

Before responding to your questions in detail, I believe it appropriate that we have the opportunity to examine the brochure in question. I am advised that your Mr. Johnson cannot provide us with a copy and we are now attempting to locate one by other means. When we have reviewed the brochure we will respond further.

While I am confident that no SBA employee is guilty of any wrongdoing, I also assure you that a thorough investigation will be made.

Sincerely,



Mitchell P. Kobelinski  
Administrator



VETERANS ADMINISTRATION  
 OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS  
 WASHINGTON, D.C. 20420  
 NOVEMBER 18 1976



The Honorable  
 William L. Clay, Chairman  
 Subcommittee on Employee Political  
 Rights and Intergovernmental Programs  
 House of Representatives  
 Washington, D. C. 20515

Dear Mr. Chairman:

Thank you for your letter of October 27 making inquiry about the use of photographs of Black Veterans Administration officials in a political brochure, "Partners in Progress."

First, please let me assure you that no one in the VA supplied the photographs in question to any political organization.

The photographs were supplied in good faith to John Calhoun, Special Assistant to the President, in compliance with an April 5, 1976, memorandum from Mr. Calhoun.

A copy of this memorandum is attached for your information. You will note the subject of the memorandum is "Bicentennial Photographs," and it states the photographs are for use in "Bicentennial displays, and Government Day programs."

You will further note that the memorandum was addressed to "Public Affairs/Information Directors" and not to any particular agency, thus indicating the communication was probably transmitted to a number of departments and agencies.

The requested photographs were transmitted to Mr. Calhoun one day before the due date specified in his memorandum via an April 15, 1976, memorandum from F. R. Hood, Director of our Information Service. A copy of this April 15, 1976, memorandum is attached for your information.

In response to your three specific questions, I am completely satisfied that no one in VA made the photographs of VA Black officials available to any political organization, or had any idea that such photographs might eventually be used for political purposes.

The Honorable William L. Clay

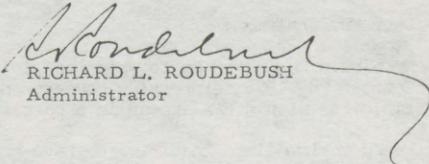
Page Two

Second, within the VA employees are protected against the unauthorized use of their official photographs by political organizations by the fact the agency simply would not honor requests for photographs if the stated or even implied purpose of the request was for political use. Any such denial would be predicated on provisions of the Hatch Act.

Third, none of the VA Black officials gave consent for the use of his or her photograph in the cited political document. They consented only to the release and use of their photographs for the express purposes stated in the Calhoun memorandum.

If the VA can supply any additional information, please let me know.

Sincerely,



RICHARD L. ROUDEBUSH  
Administrator

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

17 NOV 1976

OFFICE OF  
PLANNING AND MANAGEMENT

Honorable William L. Clay  
Chairman, Subcommittee on Employee Political  
Rights and Intergovernmental Programs of the  
Committee on Post Office and Civil Service  
House of Representatives  
Washington, DC 20515

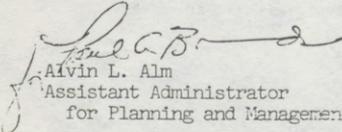
Dear Mr. Chairman:

Mr. Train has asked me to send this interim reply to your letter of October 28, 1976, expressing concern that photographs of several Black employees within EPA appear in a partisan political brochure.

Based on immediate inquiries we have not been able to identify the source of these photographs. However, we are conducting an extensive investigation and hope to obtain answers as soon as possible to all the questions which you have raised.

We will get back to you on this as soon as we have completed our investigation.

Sincerely yours,

  
Alvin L. Alm  
Assistant Administrator  
for Planning and Management

Mr. CLAY. On October 16, 1976, I alerted the President to this situation and asked for what, if any, official use these photographs had been used. As of this moment, the President has not replied to me and the President's staff members contend they cannot find the letter of request.

The White House official involved in this controversy has not replied to three telephone calls by subcommittee staff. He has broken one appointment with the staff. He has not responded to my invitation to appear before this subcommittee. I regret his uncooperativeness.

The senior staff person of Black Voters for Republican Congress has informally stated that he would prefer to testify only in response to a subpoena issued by this committee. I intend to meet this preference, too.

Our first witnesses will be a few of those Federal employees whose photographs were published in "Partners in Progress."

At this point, I want to include for the record statements of Federal employees, whose photographs appeared in the brochure, but are unable to appear in person.

[The statements referred to follow:]

## STATEMENT

of

DAVID L. ANDERSON  
DEPUTY DIRECTOR, SOCIAL WORK SERVICE

VETERANS ADMINISTRATION  
Department of Medicine and Surgery  
WASHINGTON, D.C. 20420

Appearance of Picture in Political Brochure  
"Partners for Progress"

Concerning the publication of the political brochure, "Partners in Progress," I was unaware that my picture was included in the brochure until contacted by Gail Weiss, a member of your staff, during the week of November 14.

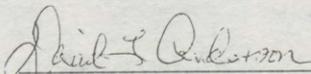
I was not informed by anyone at the VA that my official photograph would be used for any purpose. I did not authorize its use and to this day, I have not seen the publication being discussed.

I believe that the picture used was the photograph taken by the VA in November 1972 to accompany an article for the "Vanguard" a VACO publication announcing my appointment as Deputy Director of Social Work Service.

I have no official knowledge as to what person or persons were responsible for the use of my photograph in the political brochure. Inquiries which I made subsequent to the contact from your office, indicated that my name was part of a list of minority executives, GS-15 and up compiled in response to a memo request of Mr. John Calhoun, Special Assistant to the President to be used for Bicentennial Displays and Government Day Programs.

As to future safeguards against unauthorized use of official photographs or records, I suggest an agency directive requiring written authorization or other material stating the purpose for which a photograph is to be used.

For example, all persons participating in a VA training film, sign releases for public use. A similar requirement might resolve the problem. I do realize that this would not correct deliberate misuse when the stated purpose is in fact not the purpose to which material is to be used.



---

DAVID L. ANDERSON

Deputy Director, Social Work Service

UNITED STATES DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
WASHINGTON, D. C. 20250

DEC 20 1976

DEC 17 1976

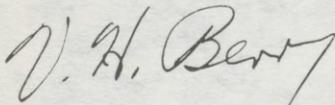
Honorable William L. Clay  
Committee on the Post Office and Civil Service  
Chairman, Subcommittee on Employee Political Rights  
House of Representatives  
Washington, DC 20515

Dear Mr. Clay:

This is in reply to your letter of November 23, 1976, regarding my photograph which appeared in the politically oriented "Partners in Progress" publication. Mr. Chairman, I wish to inform you that I did not endorse, subscribe, or even had an awareness of the existence of this publication which included use of my photo prior to this incident. I do wish to cooperate with your Subcommittee and am concerned for future victims of such misrepresentation. Unfortunately, at that particular time, I had a pressing schedule which prevented me from attending the hearing which you held December 14, 1976.

As an official of the U.S. Department of Agriculture, I am thoroughly familiar with the Hatch Act relating to political activity restrictions and the consequences of violating the Act. Please feel free to insert this letter into the record of the Subcommittee's hearing. If further questions arise concerning this incident, and you feel I may be able to supply additional assistance, please let me know.

Sincerely,



V. H. Berry  
Acting Deputy Administrator  
Meat and Poultry Inspection Program



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410

OFFICE OF THE ASSISTANT SECRETARY  
FOR COMMUNITY PLANNING AND DEVELOPMENT

IN REPLY REFER TO:

December 6, 1976

Honorable William L. Clay  
Chairman, Subcommittee on Employee  
Political Rights and Intergovernmental Programs  
Committee on Post Office and Civil Service  
U. S. House of Representatives  
Washington, D. C. 20515

Dear Mr. Clay:

Thank you for your invitation to testify at the hearings of the Subcommittee on Employee Political Rights and Intergovernmental Programs of the Committee on Post Office and Civil Service regarding the circumstances surrounding the publication of the brochure "Partners in Progress." Unfortunately, the press of work related events make it impossible for me to be available on December 9, 1976, the initial date of your proposed hearing.

In an effort, however, to provide an effective response to some of the concerns raised in your invitational letter of November 23, 1976, I requested certain information from appropriate officials in my Department. As a result of this inquiry, I have learned that a White House staff official requested the production of information regarding the identity of "Blacks serving in top positions in government for bicentennial displays and Government Day programs."

I have been informed that after giving consideration to the specific nature of the request and its purported utilization the Department initiated efforts to comply.

During the course of developing the response to the subject inquiry, Black employees meeting the substance of the White House definition were identified and where photographs of such persons were in existing files these were provided without contact with the affected individuals. In circumstances where photographs were not in hand, affected persons

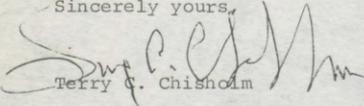
2

were contacted and informed regarding the specifics of the request and asked to provide photographs to be utilized for the programs identified by the White House. Some of the individuals contacted through this effort expressed a desire not to participate and information concerning them was not provided. My photograph, however, was available in the files of the Department and as a consequence I was not informed of the fact that it and related information was being released.

The lack of notice regarding this information is of paramount concern to me.

I am reassured in this regard, however, since Departmental procedures have been developed which provide that individuals will be notified should similar situations occur in the future.

Sincerely yours,



Terry C. Chisholm



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
OFFICE OF THE SECRETARY  
P.O. BOX 1182  
WASHINGTON, D.C. 20013

OFFICE OF CHILD  
DEVELOPMENT

Mr. Lloyd A. Johnson  
603 House Office Building Annex  
Washington, D.C. 20515

Dear Mr. Johnson:

This letter is in response to a telephone call which I received from you and subsequently a letter from Congressman William L. Clay concerning the presence of my photograph in a publication entitled "Partners for Progress".

I was informed of a telephone request from the Public Information Division of the Office of Child Development for a picture of me to be utilized in an official document that was to identify high-level black Federal employees. At no time was there any mention that such a document was politically motivated. I had no picture available. However, a staff member of OCD Public Information showed me a photograph of myself which was taken upon entry into Federal service in my present job and I agreed that it would have to suffice. It was my understanding that my agency's public information office would make such a request of me only if it were for official purposes and therefore gave my consent.

In the future, I shall require that any such requests be made in writing, stating the purpose of the request and individual(s) responsible for initiating the request.

Sincerely,

Linda A. Randolph, M.D., M.P.H.  
Director of Health Services



U.S. GOVERNMENT  
SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

December 7, 1976

Honorable William L. Clay  
Chairman, Subcommittee on Employee Political  
Rights and Intergovernmental Programs  
Committee on Post Office and Civil Service  
603 House Office Building Annex I  
Washington, D.C. 20515

Dear Mr. Clay:

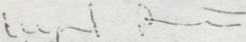
I am responding to your letter of November 23, 1976, wherein you requested that I address myself to a series of six questions subject "Violation of Political Rights of Federal Employees."

I must admit that the whole subject comes to me as a surprise. I was not aware that there existed a publication wherein I was profiled as being an official of the Republican Administration. I must state that at no time was I approached for authorization for use of my photo for unofficial or political purposes. It would appear that the authorization for such use was cleared by my Agency.

I am not aware of any existing legislation that would protect Federal employees against this unofficial use of their official records and/or photographs. Further, I have no suggestions as to the administrative or legislative remedies that might prevent a reoccurrence of this situation.

I am hopeful that this statement will be of benefit to you during your hearings.

Sincerely,

  
Winford Smith  
Director  
Office of Business Development

Mr. CLAY. The first panel will consist of Dorothy Butler, Hanley Norment, Otis Ducker, Bob Brown, and Vinette Jones. If you will come forward and please remain standing. Because of the nature of this hearing, all witnesses will be sworn in.

**TESTIMONY OF DOROTHY J. BUTLER, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, OFFICE OF HUMAN DEVELOPMENT, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE; OTIS DUCKER, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; HANLEY J. NORMENT, DIRECTOR, OFFICE OF CIVIL RIGHTS, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION; VINETTE JONES, DIRECTOR FOR RECRUITMENT, ACTION; AND ROBERT W. BROWN, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE**

Mr. CLAY. Please raise your right hand and repeat after me :

Do you promise that the testimony you are about to give before this subcommittee will be the truth, the whole truth and nothing but the truth so help you God ?

Ms. BUTLER. I do.

Mr. DUCKER. I do.

Mr. NORMENT. I do.

Ms. JONES. I do.

Mr. BROWN. I do.

Mr. CLAY. Now I understand that each of you has submitted a written statement for the record. You may read the statement in its entirety or you may paraphrase it. At any rate the entire statement will be included in the record.

We will start with Ms. Butler.

Ms. BUTLER. I am Dorothy Butler. I work for the Department of Health, Education, and Welfare.

In April of this year I was asked by our Public Information Office to submit a picture of myself to be used in the Bicentennial. I had a photograph made at Government expense and submitted it. I didn't think anymore about it until October when a friend called and said that they had seen a picture of me in a publication called "Partners in Progress," with a further caption of "Meet Some of the Blacks in the Ford Administration."

To say the least, I was surprised to find that that was what had happened to my picture. I had certainly not given anyone permission to use it in that fashion.

Being a 27-year career employee, I am pretty well aware of what I can and cannot do with respect to the Hatch Act. One is certainly not to actively campaign for any party.

In making inquiry at the office about the disposition of the picture, the Public Information Office said they simply had submitted it to John Calhoun at the White House and that was the last they had heard of it.

Mr. CLAY. Just for the record now, is this your photograph appearing in a copy of this "Partners for Progress"?

Ms. BUTLER. Yes, it is.

Mr. CLAY. And you said that you had a photograph made at Government expense?

Ms. BUTLER. I did.

Mr. CLAY. Where did you go to get that?

Ms. BUTLER. We have a Visual Aids Department at HEW.

Mr. CLAY. Well, I think we will proceed with all of the witnesses before we get into questions.

[The statement of Ms. Butler follows:]

STATEMENT OF DOROTHY J. BUTLER

My name is Dorothy J. Butler, I work for the Department of Health, Education, and Welfare, Office of Human Development, as the Director of the Division of Administrative Services.

In April of 1976, I was asked by our office of Information if I would like to submit a photograph of myself to be used for the Bi-Centennial Celebration. The pictures were to be used to keynote Blacks in key or managerial positions.

I had a photograph made in the Department's Visual Aids Section and submitted it to the OHD Public Information Office.

I thought no more about it until approximately four weeks before the election when a friend, who is a non-Federal worker called me at home and told me she had seen a picture of me. I asked her where she had seen it and she told me in a paper called "Partners in Progress"—with a further caption "Meet Some of the Blacks in the Ford Administration."

I was thunderstruck to say the least—since I certainly had not submitted a picture to anyone for release to such a publication.

Upon returning to the Office Monday, I asked the Public Information Office if they knew what had happened to the photograph I had submitted. The response was negative other than that it along with others had been forwarded to John Calhoun at the White House.

I told them what I understood had happened and gave the name of the National Crusader as the publisher and asked that they obtain copies of the paper.

Two were mailed to the Public Information Office but after that, I understand from several people who called that copies were not available.

I deeply resented the misuse of my photograph which made it appear that I was involved in partisan politics. Several factors concerned me—the most paramount one being, violating the Hatch Act. As a career employee (I have 27 years of Federal Service) I am precluded from campaigning for an individual party. I was further concerned by the fact that my picture was obtained under false pretenses and that my privacy had been invaded. Even had I been a Republican the persons who issued the document would have had no right to publish my party affiliation without my permission.

I take sharp issue with unethical practices such as this which could very well have put me in violation of the Hatch Act. Provisions and jeopardized a 27-year career achieved through the merit system.

Just as I could have been penalized for violating the Hatch Act in this circumstance, I would like to see measures taken which would lead to prosecution of persons who engage in such acts of falsification and misrepresentation.

Mr. DUCKER. Mr. Chairman, I would like to read my prepared statement.

Mr. CLAY. All right.

Mr. DUCKER. My name is Otis Ducker and I am employed by the Department of Health, Education and Welfare at the National Institutes of Health and have worked there for the past 23 years. My job is to direct the Division of Administrative Services, an organization of approximately 800 employees engaged in providing a number of administrative services to a biomedical research facility.

I have been asked to testify today as one of the individuals whose picture appeared in the political brochure "Partners for Progress."

Additionally, I am here representing the Black Managers Self-Development Group of HEW.

I state emphatically that I nor any of my colleagues in the group I'm representing approved of the release of our photographs for any unofficial or political use, nor were we aware that our official photographs would be used for any purposes other than those for which they were taken and that is official use by the agency.

I understand that in most cases the photographs of high level blacks were requested for use in a Bicentennial publication. In my own case I was informed as of December 1, 1976 that the NIH Office of Information received a request from the Office of Public Affairs, Public Health Service, who stated that the request came from the White House. I have not seen a copy of the Bicentennial publication and have no knowledge that such a publication was printed.

The "Partners for Progress" brochure gives us grave concerns because:

1. It was used for political purposes and partisan politics and thereby subjects many of us to being accused of violating the Hatch Act.

2. It infers that all of us are political appointees when, in fact, most are career civil servants who obtained our positions through the merit system.

3. The pictures, titles, and other information were used without our knowledge or consent and could result in irreparable damage to our careers by portraying us as political partisans in our official capacity.

4. This situation and its usurping of our rights to privacy suggests that there is no protection for black civil servants from this kind of flagrant abuse and manipulation, as well as a complete lack of concern for what this type of exploitation does to the reputations and careers of those blacks involved.

We cannot help but be outraged at the flagrant misuse and manipulation of so many dedicated Government employees. We have indicated our outrage in this matter by sending a letter to the chairman of the Federal Elections Commission with a copy to the Attorney General of the United States. We have grave concerns and misgivings when the misuse or abuse of authority is exercised by the White House or any branch of government, and a mere phone call to Federal departments can set in motion a chain of events that could result in damage to so many reputations and careers, if not the loss of many jobs.

We believe that this kind of situation can only, and should be resolved and corrected by appropriate legislation, and ensuing administrative regulations to prohibit future abuses of this type within the executive branch of government.

Mr. CLAY. Thank you.

Hanley Norment.

Mr. NORMENT. Mr. Chairman, I am Hanley J. Norment, Director of the Office of Civil Rights since 1973, U.S. Department of Transportation's National Highway Traffic Safety Administration.

During late spring or early summer 1976, I received a telephone call from our Office of General Services. The young lady requested that I be photographed at the request of the White House. I didn't have any

discretion as to when the photograph was to be made, only the particular time of day.

Remembering that photographs had been made in 1972 and had been printed in a similar brochure of high ranking blacks in Federal service, I raised several questions of the young lady:

One, Who specifically at the White House desires my photograph?

Her response: I don't know.

My question: How did word get to you that the White House desires my photograph?

Her response: Information was relayed from S-30, the departmental code for the departmental Office of Public Affairs.

My question: Was I specifically requested by name?

Her response: No.

My fourth question. How was I then selected?

Her response: Because of your position in the Administration.

My question: How many persons are scheduled for photographing?

Her response: Five or six.

My question: Are they all minorities?

Her response: Yes.

My question: For what purposes do you think the White House will use the photographs?

Her response: I have no idea.

I was rather concerned because I am a career civil servant and I am not happy to be used as a political pawn in the hands of any political aspirant. I really felt I should protest the use of the photograph because I anticipated it would be used as were pictures of similar persons in 1972, but my former supervisor who was at that time visiting my office suggested that he didn't think I had any choice but to cooperate so I did cooperate, but I informed both the requester and the photographer that I was being photographed under protest.

Thank you.

[The statement of Mr. Norment follows:]

#### STATEMENT OF HANLEY J. NORMENT

I am Hanley J. Norment, Director, Office of Civil Rights since 1973, U.S. Department of Transportation's National Highway Traffic Safety Administration.

During early summer of this year (1976), I received a telephone call from our Office of General Services indicating that the White House had requested a photograph of me and that a particular date had already been scheduled for me with the photographer. Only the time of that day was left to my discretion.

Remembering that photographs of minority-group colleagues in positions similar to my own were printed in a brochure in 1972 and used for political purposes, I raised several questions, as follows: (1) Who specifically at the White House desires my photograph? Response: I don't know. (2) How did word get to you that the White House desires my photograph? Response: Information was relayed to us from S-80 (Departmental Office of Public Affairs); (3) Was I specifically requested by name? Response: No. (4) How then was I selected? Response: Because of your position in the Administration. (5) How many persons are scheduled for photographing? Response: Five or six. (6) Are they all minorities? Response: Yes. (7) For what purposes do you think the White House will use the photographs? Response: I have no idea.

At that point, I indicated that I was quite concerned that the photographs would be used in the context of the political campaign as similar photographs were used in 1972 and that I, as a career civil servant, did not want to be a pawn in the hand of any political aspirant. Just prior to being photographed, I related this unusual White House request to my immediate predecessor in office, who is now retired and was visiting my office. His response was: "Hank, I know how you feel, but you have no choice but to cooperate since you don't control the situation."

I did cooperate, but I informed both the Office of General Services' Representative and the photographer that I was being photographed under protest.

It was not until December 2, 1976, that I saw a copy of the brochure in which the photographs were published. However, in mid to late October 1976, two Washington-area acquaintances, whom I saw at social gatherings, informed me, separately, that they had seen my photograph in the political campaign booklet.

Mr. CLAY. Thank you.

Mr. Brown?

Mr. BROWN. Mr. Chairman, I do not have a prepared statement, but I can make a remark or two if you will permit.

Mr. CLAY. Go ahead.

Mr. BROWN. I am Robert W. Brown, an employee of the Department of Health, Education, and Welfare and my position is that of Associate Administrator for Program Coordination with the Alcohol, Drug Abuse, and Mental Health Administration. I am a career Federal employee where I have spent some 20 years which represents my entire professional career.

My picture was among the 286 blacks portrayed in the "Partners for Progress" document, a Republican campaign document.

Neither did I give my consent to using my picture for political purposes, nor would I have done so if I had known. I was told that the document and the picture had been requested by the White House for use in connection with Bicentennial activities. I strongly object to the political partisan impression that action and document imply.

The statement that Mr. Ducker has presented is reflective of my concern as well. Mr. Ducker and I belong to a group of black managers in HEW. His statement speaks in behalf of our group.

Mr. CLAY. Thank you.

Ms. Jones?

Ms. JONES. I am Vinette Jones, Director of Recruitment in ACTION.

In 1973 the photo which appears in "Partners in Progress" was taken in the normal course of business at ACTION. Usually whenever someone is appointed to a position, a managerial position, a photo is taken. This was my case at that time. I was promoted to regional director in the New England office. As a result, the photo was taken and it has been used innumerable times since 1973. This is the first time I know of that there has been some misuse of the photo.

Ordinarily it has been used in news releases, hometown stories, promoting programs, promoting minority interests in programs, trying to cultivate new contacts and liaison roles for our agency. This is the first time I know of and also as a result of research done through our files, it is the first time it has been used for any campaign literature or anything out of the ordinary routine flow of business.

I was upset when I found out that it had been used for this type of purpose because I, too, am a career employee. I have not found it necessary to go through any other kind of merit system to obtain a job. I have gotten it through merit only, the merit system.

So I was quite nonplussed when I found out and was questioned about the appearance of my photo in "Partners in Progress."

I think ACTION has a pretty strong system for the use of photographs. We get many, many requests, thousands of requests every year for the use of photos not only of staff but also volunteers in the work

in local communities. Usually these are honest requests and we handle them honestly by supplying the photos requested.

I don't know if there is any true way that you can stem something like this occurring, although I am sure it is a one of a kind situation.

I would suggest that maybe in responding to such requests that maybe some official warning could be attached to all photos for requests saying that any out-of-order use would be prohibited under the Hatch Act.

I thank you for the chance to testify.

[The statement of Ms. Jones follows:]

#### STATEMENT OF VINETTE E. JONES

Mr. Chairman and Members of the Committee: I am Vinette Jones, Director for Recruitment at ACTION. My job gives me the responsibility for planning and developing programs which will recruit, evaluate and place all full-time volunteers for ACTION's programs. This includes VISTA and Peace Corps. I have held this position since August 1976.

Prior to August 1, 1976, I was responsible for ACTION Communications efforts which support our recruitment activities as well as being responsible for the recruitment of volunteers.

I am now serving my eleventh year as a federal employee.

In early November of this year, I met with ACTION's Public Affairs' Director who informed me that the agency had received a letter from Congressman Clay stating that photos of certain black staff had appeared in "Partners in Progress", a publication of Black Voters for a Republican Congress. My photo was included. I was asked if:

1. Was I aware that my photo had been used?
2. Had I given clearance for its use in that publication?
3. Was I aware that such use could be a violation of the Hatch Act?
4. Had I seen the publication?

These questions are quite similar to the ones Congressman Clay asked in his letter to me of November 23, 1976.

My answers to the above questions are that I had no knowledge of the picture being used and that I certainly had not given permission for its use in a campaign publication for I had been informed of Hatch Act restrictions.

The agency, through the Public Affairs Director, researched requests for photos and found none from the Black Voters for a Republican Congress.

It is ACTION's policy to respond to photo requests from many varied sources: in-house publications, newspapers, periodicals, and other out-of-agency uses. Such requests may be seeking photos, not only of agency personnel, but of our volunteers and program activity.

However, it is understood that photos of staff will be used for normal and proper purposes only. This intent is widespread usage as the work of our agency is decentralized to state and local communities. Usage could be to present program highlights, local identity with ACTION's programs or minority focus, for our programs cross ethnic and racial lines. There are also many opportunities for republication. Thus, the staff understands proposed usage and if there are personal restrictions requested by staff. It is made known to our Photo Services/Public Affairs Office and such requests are honored.

To my knowledge, this is the first recognized "misuse" of photos of which I am aware—both before, during, and after my service as Recruitment and Communications Director. Responding to requests is, of course, judgemental in so far as determining the legitimacy of proposed usage. Should it be felt that a request is illegal or improper, the fulfillment of the request is refused—with clearance through our General Counsel's office.

As a career federal employee, I have been informed of the Hatch Act and its restrictions. In fact ACTION, provides such information to all new employees and also provides emphasis during campaign seasons with special handouts to all employees. It is understood by staff that specific concerns can be directed to our General Counsel's office.

Further emphasis is given through ACTION policy and through the ACTION Employees Union.

It seems to me that ACTION's method of handling photo requests is adequate for both the agency and the user. Recommendations I would have include an insert mailed with the response. The insert would inform the user of Hatch Act restrictions.

Another method would be to stamp the reverse side of each photo with Hatch Act information.

Such recommendations allows the agency to meet the deadlines of the users with little additional work by current staff.

In conclusion, I did not give permission to any person or organization to use my photo in "Partners in Progress". I was not aware that my photo was being requested for such use. I consider such use dishonest, and personally discrediting.

I appreciate the opportunity to testify before this subcommittee.

Mr. CLAY. Thank you.

Of course, I think there are adequate ways to deal with this under the present law. Not only is it a violation of the Hatch Act but it is a violation of the criminal code to misappropriate Federal funds for political purposes.

The mere fact that the Federal employees' photographs were taken and Federal resources were used to take them, in my opinion, is a violation of the Federal criminal statutes.

Now, Ms. Jones, you have testified that the photograph of you appearing in this paper was taken in 1973 and it has been used on various occasions for legitimate purposes by the Federal Government.

Is that true of any of the other witnesses? Was the photograph taken prior to 1976 and has it been used for other purposes?

Mr. NORMENT. No; my photograph was made specifically for that purpose and has not been used as far as I know since that time.

Mr. BROWN. My photograph was taken prior to 1976 and has been used by the agency in a number of official ways.

Mr. DUCKER. This is true of me. This is the second official agency photograph that I have made and it has been used on other occasions for the NIH Record which is an agency publication. It has been used when I have been involved in speaking engagements and this sort of thing.

In my case I was not directly requested to submit a photograph. My photograph is on file in the Office of Information. It was simply submitted through those routes.

Mr. CLAY. Ms. Butler, you have already testified to that aspect.

Let me ask each of you another general question. Are you testifying here today as individuals or as representatives of the agencies for which you work?

Let's start with Ms. Butler.

Ms. BUTLER. I am testifying as an individual.

Mr. DUCKER. So am I. The only representing I am doing is for the black managers group of HEW.

Mr. BROWN. That holds true for my testimony, Mr. Chairman.

Mr. NORMENT. I am testifying as an individual and with the knowledge of my supervisor.

Ms. JONES. I am testifying as an individual.

Mr. CLAY. Did your agency in any way become involved in the statements that you are presenting to us today. Did they ask to see it or did they make any recommendations for change?

Ms. JONES. I prepared it myself. There were many people who offered to help me, but since I was testifying as an individual I did not go to any other sources to help me prepare.

Mr. NORMENT. I simply prepared it myself and sent copies to my congressional liaison officer and to my supervisor.

Mr. DUCKER. In my case it is agency protocol that we advise the Office of Legislation whenever we have been called to testify. I simply did that and the advice I was given was "keep your supervisor informed." Nobody requested a copy of my testimony and I did not submit one.

Ms. BUTLER. I prepared my statement myself and advised my immediate supervisor and the Assistant Secretary that I would be testifying.

Mr. CLAY. Thank you.

Mr. DUCKER. I don't know your political affiliation and I don't believe it is relevant to this issue, but would you be any more or less distressed by this situation if you were sympathetic or opposed to the objectives of this publication?

Mr. DUCKER. No; my position is that I don't feel I was to be politicized by any party or branch of government.

Mr. CLAY. And your answer, Mr. Norment.

Mr. NORMENT. Same for me.

Mr. BROWN. That is how I feel.

Mr. CLAY. Mrs. Spellman?

Mrs. SPELLMAN. When you learned that your photographs had been misused in this way, did you feel that your agency ought to be protecting you and that the Civil Service Commission ought to get involved?

Ms. JONES. I don't know that that kind of thinking even came into being at that time. I guess I was mainly upset because it was a partisan effort. I did speak with Congressional Affairs, General Counsel, and also my supervisor just to alert them that I wanted to testify, but I did not think at that point that they should protect me even though my picture was there because I worked for the agency.

I still looked at it as an individual thing.

Mr. NORMENT. It was not until very close to the election that I knew in fact that the picture had been used in this publication. Admittedly I anticipated its use because of the 1972 experience. I did feel that we were positioned so as to be taken advantage of by the Federal bureaucracy. I was quite impressed to hear of this hearing in the hope that something can be done to protect us in the future.

Mr. BROWN. My first reaction, Mrs. Spellman, was one of being personally offended in the sense of being manipulated and exploited. I did not think of the agency immediately in that context. I think after some more sobering thought my concern was how easily authority and power can be abused because most of us in the executive branch do not have a tradition of saying no when something is asked by our leadership and particularly if it comes from the White House.

So I think the point here from my perspective is that the mere request from a source of power and authority in that sense is likely to influence people to do things that they might otherwise not do.

Mrs. SPELLMAN. I am reminded of the Cuban plumbers who said since they were asked by the White House it couldn't be wrong. I suppose this is it. You are asked and without really knowing how it is going to be misused you just take it for granted that it would be a proper thing to do.

Mr. BROWN. Might I add that that at the time there was some concern just around the language. When one says, "Are you a member of the present administration?"

Again, if one is in the career service of the executive branch of government, can you say no that you are not, even though the implications might certainly be otherwise. It was that kind of question. Can you say that I am not a member of the executive branch of the Government under this administration? No; I can't say that so I could not refuse.

Mr. CLAY. In spite of the administration, you are a member of the executive branch.

Mr. DUCKER. In my case, Mrs. Spellman, I was outraged when I first learned that my picture had been used. In direct response to your question, yes, I felt first and foremost since it was agency protocol and it was a requirement that certain officials have to have a photograph on file. I felt that the agency owed us protection for the use of that photograph.

I immediately called our Office of Information to find out, one, if they were aware of such a document as the "Partners in Progress" brochure. Nobody had heard of it. When I asked the question, "Did you release my photograph for use in that document?"; nobody knew what I was talking about. There didn't appear to be any record that my photograph had been released. This was back in October, immediately prior to the election.

When I received a letter from Congressman Clay where he posed certain questions that would lead me to believe that I had to testify to that data when I attended this hearing, I went back to the Office of Information and was successful in impressing on them the importance of my knowing under what circumstances my photograph was released. It was only after some probing that somebody recalled that a phone call was received from the Public Affairs Office and my photograph was requested.

But I guess the point I am making is that there doesn't seem to be any discipline in the system or any record kept of the fact that a photograph is released or the circumstances under which it was released.

Ms. BUTLER. I didn't give any particular thought to protection by my agency. I was extremely angered when I learned my picture had been misused. I think in good faith our Public Information Office requested my photograph along with others based on either a memo or phone call from John Calhoun.

I was told when asked that the phone call had come from the White House and specifically from John Calhoun. I learned through a friend who is a non-Federal worker as I referenced earlier that my picture was in the publication. I asked our Information Office if they knew anything about it and they didn't. Through a fluke they managed to get a couple of copies of the paper. After that it went underground completely and there were no copies available.

Mrs. SPELLMAN. I guess my time is up.

Thank you, Mr. Chairman.

Mr. CLAY. Thank you.

Mr. HARRIS?

Mr. HARRIS. Thank you, Mr. Chairman.

You may have made this clear at the beginning before I arrived, but I would like to ask the question anyway. Did any of you have the opportunity to refuse the issuance of the picture? Were any of you notified that the picture was requested and asked if it was alright?

Mr. DUCKER. I wasn't.

Mr. BROWN. In our situation it didn't exactly happen in that way. We had concern about how it might be used because the information came to us from the Public Affairs Office. We felt that it would be proper to have a formal release of information statement saying we were releasing our photographs, but not for political purposes.

Mr. HARRIS. For the purpose of the record, then, all except the witnesses who spoke are indicating that they did not know the picture had been requested and did not have an opportunity to refuse the issuance of the picture?

Mr. DUCKER. I did not know my picture had been released.

Ms. BUTLER. I did not know it had been released for that purpose. It was released for use for Bicentennial activities. That was our understanding.

Mr. HARRIS. You were told it was being released for that purpose?

Ms. BUTLER. Right.

Mr. HARRIS. You were not asked if it was all right? You were just told that?

Ms. BUTLER. Mine was not a telling factor. They asked if I would release a picture to be used for Bicentennial purposes.

Mr. HARRIS. I see.

Mr. NORMENT. In my case, Congressman Harris, I was told the White House requested my picture. The implication was, how could you maintain your position and not be cooperative with the White House. So I merely had the picture made under protest.

Mr. HARRIS. There has been some discussion about controls by the agency. Now I am thinking toward legislation and possible controls by the agency as to the release of the picture.

Frankly, I don't know how in the world an agency can really control it. Of course, the other members don't have this much of a problem but my office gets asked for pictures all the time. I would hate to have anybody in my office have the responsibility of making sure they are releasing it to the right people.

Mrs. SPELLMAN. I can understand that.

Mr. HARRIS. May I ask this—there is no need to respond unless you want to. Obviously, an awful lot of political activities are proscribed and prohibited by the Hatch Act with respect to you all who are all in the merit service, as I understand it.

Did you participate in any way in partisan political activities during this past year in your community?

Ms. JONES. No.

Mr. NORMENT. Not partisan politics. I was involved quite actively in a school board race.

Mr. BROWN. No; I did not.

Mr. DUCKER. My sole participation was to attend a number of coffee klatches to get to know candidates and beyond that to simple vote in the election.

Ms. BUTLER. The same applies to me.

Mr. HARRIS. Very good. I am not sure that that is a good thing. I point out that people like you probably should be doing things in the political scene. I think this may indicate one of the problems that we have here. We have a law that I think is telling you, and I notice your reluctance just now, but we have a law that is telling you that you should not do a whole lot of things voluntarily. This law was in action at exactly the same time when you were involuntarily impressed into partisan political activities.

Mr. Chairman, I am going to submit that that is wrong. It should be the other way around.

I want to express my appreciation to you for coming before us today because we are going to have to be working on legislation like this. We have to make sure that things like this don't happen. And there is a way and a place for you to go to help prevent it from happening. We have to be sure that your rights of citizenship are protected, also.

Thank you very much, Mr. Chairman, for allowing us to have this hearing.

Mr. CLAY. Thank you, Mr. Harris.

We are going to call on the counsel now who has a few questions.

Mr. JOHNSON. I am impressed by the fact that we have before us over 100 years total Federal experience. I would like to ask the witnesses whether or not they feel that they are familiar with the provisions of existing law governing political activities of Federal employees. As you know, it is made up of over 3,000 administrative regulations.

I would like to know whether or not any of the witnesses feel they are conversant and comfortable with existing law in terms of understanding its provisions?

Ms. JONES. I will take a stab at that. I don't know that I am fully conversant. One of the things that happens in our agency is at every campaign zone plus when you enter into Federal service and now and then throughout the year you are told about the Hatch Act, but usually it is a listing of the things you can't do and maybe a few things you can do.

I would say that is average for many of our employees. I don't know that we have any more depth than that. It is usually you can or you can't do such and such, a laundry list type of understanding.

Mr. NORMENT. That is the extent of my knowledge having been gleaned from a list of do's and don'ts from the Hatch Act.

Mr. BROWN. I don't feel I am fully conversant. My impression of the Hatch Act is a maze of do's and don'ts in the career service. I find that on a number of occasions I go back to the document and read pieces here and there to see what I can and cannot do. The fact that one has to constantly go back to a source for something like that is I think evidence of how confusing it is.

That is my personal reaction.

Mr. DUCKER. I am not in any way conversant with all the finite details of the Hatch Act. My knowledge of the act is confined like the other folks. I know what I am not permitted to do. There are so many things I am not permitted to do it makes it kind of academic for me to research the act any further.

I know I am not permitted to engage in partisan politics. That is about enough.

Ms. BUTLER. My position is about the same as Mr. Ducker. Being a Washingtonian, we have been so limited up until almost the present time in what we could do politically that I really just focus more on the don'ts than looking beyond.

Mrs. SPELLMAN. May I ask a question? How many of you would feel that you could have worn either Ford or Carter buttons?

Mr. NORMENT. I thought I could.

Mrs. SPELLMAN. How many of you felt you could take your neighbor, the little old lady next door who can't drive, how many felt you could take her to the polls?

[Hands raised.]

Mrs. SPELLMAN. You would have been violating the law. You could wear the button but you could not take the poor little old lady to the poll. Isn't that dumb? My husband used to be in violation of the law. He would not wear the button because he thought he would be violating the Hatch Act, he said. But he would take the ladies who called for a ride to the polls. Then I learned after I got here that he was violating the law.

Mr. DUCKER. You mean in spite of the fact that I don't ask her political affiliation?

Mrs. SPELLMAN. That is right.

Mr. DUCKER. I didn't take any old ladies to the polls.

Mrs. SPELLMAN. It does show that we need to revise that ridiculous law.

Thank you.

Mr. JOHNSON. Why didn't any of you, when you learned about the use of your photograph, go to your agencies or to the Civil Service Commission?

Mr. DUCKER. I went to my agency. I first checked with my supervisor to find out if any photograph was in fact released by way of agency channels, where would it have been released. He informed me that it was through the Office of Public Information. I immediately called them.

As I said before, Mr. Johnson, nobody was aware of what I was talking about. They had not heard of the document. My frame of reference at the time was, "Are you aware that my photograph was released for use in the document 'Partners in Progress?' Nobody knew what that document was, nor had they seen it. They promised me that they were going to try to get a copy of it.

So I did go back to the agency and ask the question, but I was unsuccessful in getting an answer until December.

Mr. JOHNSON. Why didn't you go to the Civil Service Commission?

Mr. DUCKER. I guess we were doing some other things. Mr. Brown and I were communicating as to what our stance should be. I consulted a lawyer to find out what my legal rights were. Bob was also talking to a lawyer.

One of the things I was advised to do was to prepare a letter to the Chairman of the Federal Elections Commission which I did. I also sent a copy of that letter with another cover letter to the Attorney General of the United States to ask him what was my legal posture in regard to this matter.

So mine was, more or less, seeking information as to whether or not my rights had, in fact, been violated and, if so, how and what was my recourse.

Mr. JOHNSON. Have you received a response from the Attorney General?

Mr. DUCKER. No; I have not. I got a letter within the last couple of days from the Chairman of the Federal Elections Commission which did not answer any questions I had posed. He simply sent me copies of the regulations that I have not had an opportunity to go through, but I have not received a response from the Attorney General.

Mr. JOHNSON. So it is safe to say that you did not see your agency or the Civil Service Commission as being your protector or a source of comfort or relief to you in this situation?

Mr. DUCKER. Not particularly; no.

Mr. JOHNSON. I would ask whether any of the witnesses felt that either their agency or the Civil Service Commission provided to them a possible source of comfort or relief in this situation which clearly was uncomfortable?

Ms. BUTLER. Mine was almost the opposite experience. I had a call from the Office of the Secretary, the Information Office regarding it. I had a copy of the paper at that time. They wanted to borrow the paper. I loaned it to them on a very limited basis. I understand they initially planned to send it to the White House but then they changed their mind and said they called the White House and informed them that the pictures we submitted were misused and it is the White House's problem.

That made me madder than ever and I decided through an individual basis that from some mechanism I would like some coverage on that because I objected to the whole thing. I did manage to get Carl Rowan's ear and he did an article on it. I had no way of knowing what the distribution was in this. I thought there could be thousands of people misled about how black people got their jobs if they read this article and there is nothing that anybody says to refute it, but I did not find my agency particularly supportive.

Mr. JOHNSON. Mr. Norment?

Mr. NORMENT. I tried first to find a copy of the publication before making an issue out of it. I did read Carl Rowan's article and I was pleased that he had reported it.

But I would have no real confidence in the Civil Service Commission as being protective. I worked there for several years and there were several instances in which there were conflicting situations with the White House. The Civil Service Commission seemingly did not seek to prevail in such a situation.

So I did not expect the Civil Service Commission to challenge anything or anybody at the White House.

Mrs. SPELLMAN. You don't feel the Civil Service Commission represents you?

Mr. NORMENT. Not really, in this kind of situation.

Mr. JOHNSON. Who do they represent?

Mr. NORMENT. Mostly high level management, whether that is embodied in the White House or agency heads or just beneath that level.

Mrs. SPELLMAN. And you worked there so is that the feeling first-hand?

Mr. NORMENT. I don't claim to have known all about the Commission, but I did have some understanding of the way the operations were carried on as related to my work area.

Mr. JOHNSON. One last question, if I may: Given the complexity of existing law, do you feel that legislation which clearly and simply stated what you could and could not do would help prevent this kind of situation?

Let me elaborate on this. Existing law consists of over 3,000 administrative rulings promulgated by the Civil Service Commission. These rules, to a large extent, determine what is permissible and prohibited political activity on the part of Federal employees. You have described to the subcommittee a situation in which (a), you are not clear specifically on what you can and cannot do, and (b), that you don't see the Civil Service Commission or your agencies as protective of your interests.

I might say, parenthetically, that I am struck by that because all of you are senior officials and if you feel that the Commission is looking out for the interests of higher management officials, then it confuses me a bit.

So what I am suggesting is whether or not you feel that legislation which clearly and simply defined what you could and could not do, legislation which was not ambiguous or confusing would help prevent this kind of situation from recurring?

Mr. DUCKER. Let me try that, Mr. Johnson, if I might.

I think to set the record right, I think we misunderstand that in the executive branch there seems to exist the feeling that if the White House issues forth a request, all must be responsive. So I think that is what we are dealing with in terms of responding to the question of whether or not the Civil Service Commission represents me.

I think that when the White House calls, it is my impression that the Civil Service Commission responds. At least that is what I have been told when I check back through my communication channels.

You know, "The White House called and we all saluted and we sent you a photograph. And we did not do a great deal to find out for what purpose it would be used."

So I think it is safe to say that in that context the Civil Service Commission was not representing me and did not have my interests at heart. So I think that is one thing.

The other thing is that I don't see where just the issuing of regulations or the enacting of legislation is going to necessarily prohibit or prevent the misuse of power. In my opinion, based on the information that the Federal Elections Committee provide, that part of it I have been able to read, there is already a prohibition against politicizing Federal employees. Nonetheless it was done.

So I don't know if just the promulgation of regulation is the answer.

Mr. BROWN. I have a view that is somewhat similar to Mr. Ducker, on that. I think we are talking about how we respond to authority and the potential for misuse and abuse of authority from high places.

Legislation, as we all know, is a very difficult process. A statute could be laid out, but typically you have a statute and you have a set of regulations and you have a set of departmental or agency or program guidelines. What may have started out as a simple kind of thing becomes complicated or what started out as complicated may ultimately become even more complicated.

I am not convinced that legislation in and of itself is the exclusive answer. We are dealing with a question of how we respond to authority. I think we are dealing with a question of ethics of leadership in terms of how authority is used, directly and indirectly.

Mr. NORMENT. I think a considerable amount of oversight is necessary on the part of congressional committees, if not individual Congress people, and the feeling that also, that the White House is not necessarily all that is good and great in all matters.

I will echo what has already been said to some extent. The feeling is that we as Federal employees work for the President. Almost any and everything that the White House sends down in the way of request is responded to most expeditiously. Agencies don't think twice about it.

Ms. JONES That is probably the way it should be, that there should be an element of trust. I think up to this time we have trusted that the requests that have been made have been legitimate requests. I guess it really boils down to the misuse of power. Up to this point we have trusted, but now it has become dingy.

Mr. HARRIS. May I interject a question? This is the point I referred to before. If the White House requests pictures for a Bicentennial issue or something, what is supposed to happen? Is the agency supposed to verify that that is what the White House is going to do or is the employee supposed to check to see if that is what the White House is going to do?

I have a notion that is not exactly where the problem is.

Mr. CLAY. All right.

Mr. JOHNSON. Is this the first time your photographs have ever been used in this way? Have there been other incidents to your knowledge where political brochures have been published and pictures used this way?

Mr. NORMENT. Yes; there was a similar brochure far more widely distributed in 1972. My photograph did not occur because I did not hold the position I now hold, but persons similarly situated were photographed and their pictures presented in that publication.

Mr. CLAY. Was your predecessor's picture in there?

Mr. NORMENT. No; my predecessor was not a minority, but there are minority people on a parallel with me in the Department of Transportation whose pictures occurred in 1972.

Mr. JOHNSON. So this is not an isolated occurrence? There has been precedent for what has happened here?

Mr. NORMENT. At least at 1972 precedent.

Mr. BROWN. My picture appeared in 1972.

Mr. DUCKER. I heard of such a document in 1972. I have no knowledge of its existence and I don't know whether my picture was in there or not.

Mr. JOHNSON. Thank you very much.

I have no further questions.

Mr. CLAY. Mrs. Spellman?

Mrs. SPELLMAN. No thank you.

Mr. CLAY. Mr. Harris?

Mr. HARRIS. No thank you, Mr. Chairman.

Mr. CLAY. I have one last question.

The impression created by this Partners in Progress was that in some way the Ford administration had something to do with your getting the positions you presently hold. I would like for each one of you to respond.

Were there any calls or letters written by the Ford administration or any attempt made to influence the Civil Service Commission either in getting you the position you have now or getting you promoted or transferred to where you are?

Ms. BUTLER. No.

Mr. DUCKER. Not to my knowledge. I have been with the same agency for 23 years. I have weathered a number of administrations. There was no intervention as far as I know.

Mr. BROWN. No; not to my knowledge, Mr. Chairman.

Mr. NORMENT. No; I was in my present position when Mr. Ford became President.

Ms. JONES. Not to my knowledge either.

Mr. CLAY. We want to thank each of you for your testimony and cooperation. We hope somewhere down the line we can find a remedy for the kinds of abuse that has been heaped upon you.

Thank you.

Mr. CLAY. The next panel of witnesses will consist of Ray Gilbert, Percy Luney, Ms. Beatrice Moore, Ed Rhodes, and Herbert Tyson. Remain standing, please. Will you raise your right hand?

Do you promise the testimony you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GILBERT. I do.

Mr. LUNEY. I do.

Ms. MOORE. I do.

Mr. RHODES. I do.

Mr. TYSON. I do.

**TESTIMONY OF RAY GILBERT, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; PERCY R. LUNEY, DEPARTMENT OF AGRICULTURE; MS. BEATRICE D. MOORE, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE; EDWARD T. RHODES, ENVIRONMENTAL PROTECTION AGENCY; AND HERBERT TYSON, ACTION**

Mr. CLAY. I understand that each of you has prepared statements. You may proceed as you see fit, either read the statement or give us your testimony in your own words. It is up to you.

You may start at this end.

Mr. RHODES. Mr. Chairman, members of the committee, my name is Edward T. Rhodes. I am Deputy Assistant Administrator for Administration of the Environmental Protection Agency. I have submitted a statement, and request that it be inserted into the record. Therefore, I would like to make a very brief summary statement.

I was unaware of the fact that there was such a document known as the brochure "Partners in Progress." I was not aware that my photo was going to be used in such a document, and it wasn't until a friend brought to my attention that there was in existence such a publication that I became aware of the fact that my photograph had been used for improper purposes.

In November, Congressman Clay sent a letter to our agency, to Administrator Train of the EPA, and because it falls within the purview of my responsibilities, it was sent to me for investigation and answer, which was rather interesting. I had our security and investigations people look into the matter, and I discussed it with other individuals in the Agency whom I felt might have knowledge of it.

The Office of Public Affairs in our Agency is an office of public information, and, after speaking to Mr. Carol Thomas, our Director of Civil Rights. I was made aware of the fact that he was called by Mr. Wyche, of our Office of Public Affairs, in April, I think it was. And Mr. Wyche had concern about the fact that he had been contacted by Mr. John Calhoun, of the White House, who had requested photos of high-level blacks in GS-15 and above policymaking positions. Mr. Wyche was concerned about this and felt there might be some impropriety and asked if there was one from a civil rights standpoint. Mr. Thomas informed him that the request was unusual but that there was nothing violated in terms of civil rights regulations since the use of the photos were ostensibly for publication in a publication entitled "Bicentennial Brochure."

After I became aware of the publication of the document, I made my administrator and my immediate superior aware of the fact my picture had been utilized. They were concerned.

I was requested to testify before the committee, and I prepared my own testimony. There was no input made by any member of the Agency, I did, as a courtesy, let them see copies of it. In closing, the only statement I would like to make is that I was appalled to find that civil servants' pictures could be used for blatant political purposes without their knowledge.

I am concerned because I don't see any way to avoid a future occurrence of this, because no matter what legislation is written, if someone requests use of a photograph for one purpose and submits it to other bodies for use of an illegal nature, there would be no way for the agency, itself, to avoid such an occurrence.

[Mr. Rhodes' complete statement follows:]

#### STATEMENT OF EDWARD T. RHODES

Mr. Chairman and Members of the Committee, I am Edward T. Rhodes, Deputy Assistant Administrator for Administration of the Environmental Protection Agency. As Deputy Assistant Administrator, I am responsible for the Agency's personnel, procurement, ADP, management and organization, facilities and support services and security and inspections programs. I am here today to make a

statement in regard to the brochure entitled "Partners in Progress" which carried my photograph, along with other Black Government executives. Since your letter of invitation indicated interest in determining the source from which this brochure originated, I shall relate briefly my knowledge on the subject.

In early October a friend of mine, Mr. Howard Tucker, asked if I were aware that my picture had appeared in a brochure entitled "Partners in Progress."

Until that time, I was (1) unaware of the existence of such a brochure; (2) had not been approached by anyone regarding the use of my photograph in any such publication; and (3) because I am a career civil servant, I would have automatically taken exception to the request because the use of my photo in such a brochure would constitute a flagrant violation of the Hatch Act.

I attempted to secure a copy of the brochure but was unsuccessful. In early November, I received a call from Ms. Gail Weiss, a staff member of the Subcommittee on Employee Political Rights and Intergovernmental Programs, and was queried about the brochure. Ms. Weiss was informed that I had no prior knowledge of the brochure, no knowledge of how my picture was obtained and that I had not authorized the use of my picture for any purposes.

On November 1, 1976, Mr. Train, Administrator of the Environmental Protection Agency, received a letter from Congressman Clay which sought information about the use of my photo in the brochure—Partners in Progress. The letter was referred to my office for preparation of the response. As Deputy Assistant Administrator for Administration, matters of this sort fall within the purview of my authority and I directed the Office of Security and Inspections to make an investigation.

I also discussed the entire matter with Mr. Carol Thomas, Director of the EPA Office of Civil Rights. Mr. Thomas stated that in late April 1976 he received a call from Mr. Paul Wyche, EPA Office of Public Affairs, who had a question in regard to the propriety of releasing the photographs of Blacks in GS-15 and above policy-making positions to the White House for inclusion in a Bicentennial brochure. Mr. Thomas stated that while the request was somewhat unusual that it did not appear to be improper and he so advised Mr. Wyche. Mr. Wyche was unable to find a copy of the April 1976 White House letter from Mr. John Calhoun which made the request but was able to provide a copy of his letter of response which transmitted the photos. The letter transmitted the photographs of:

Carol M. Thomas—Director, Office of Civil Rights.

Clifford V. Smith, Jr.—Regional Administrator, Region X.

Edward T. Rhodes—Deputy Assistant Administrator for Administration.

Needless to say, I am concerned about the implications which result from the appearance of my picture in the brochure. I am a career civil servant and have received every promotion under the merit system. Use of my picture in the brochure as a "Partner in Progress" implies that my advancement has resulted from political appointments. I feel that a misrepresentation has occurred which cannot be rectified by any action on my part.

In an effort to control the future use of photographs of agency employees, EPA now requires that a log be kept of requests for photographs.

In closing, I would like to reiterate that (1) I did not provide my photograph to the publishers of "Partners in Progress"; (2) I am appalled to learn that a civil servant's picture could be used in such a manner without his or her authorization; and (3) I would hope that the Committee will be able to find a way to preclude a recurrence of this in the future.

Mr. CLAY. Thank you.

Ms. Moore?

Ms. MOORE. Mr. Chairman, my statement is on record, and I would like to make a few points, if I may.

I did not know to what use my photograph would be put in this brochure, and it was done without my permission. Thinking over what you have been asking before, I should note that I felt comfortable to refuse sending my photograph had I been able to be clear on what it was used for. But after several inquiries, I couldn't find out, and I let it go along without pursuing it further.

This photograph has been on record and was taken by the Agency for use in my official functions, and I do believe that very little thought was given as to how it is used, or indeed, how any of us do respond to requests from the White House, and sitting here listening to you, as I give thought to it, I must say I notice that the Agency does seem to feel comfortable that we are all directed to whatever is required. On the other hand, I am not sure how that is supposed to be dealt with.

I think, though, that the use of my photograph in this brochure was a frank violation of my political rights. In fact, I think I am on record as being amazed at the use to which it was put. It also was a violation of my privacy as an individual.

I think the 18 years I have worked under Civil Service is not given proper respect when it is implied I am where I am because of the largesse of the Ford administration.

I did want to say on behalf of the black people of America to whom this brochure was directed, I think it is more likely to offend them than to persuade them to anything. References to Democrats have lied, and pictures don't lie. A picture is worth a thousand words, is very insulting, and I think there is some assumption about the people to whom they were addressed which would have to be considered offensive.

At the same time, I must say that the names and images of the Civil Service employees who were used in this brochure demonstrate there aren't sufficient safeguards against exploitation, and clearly the Federal employees are considered to be the property of the administration in charge. But I think this experience calls for a reexamination of the protection of privacy and rights of Federal employees, and I do believe that it is possible to put some safeguards on the use of records and political photograph and other job-related materials for employees at the agency level. In fact, my agency has been giving some thought to what it can do. I think the one thing that clearly can be done is someone should be accountable for noting the request, making an attempt to find out what it is for and note how they responded and when it happened. This is a simple administrative procedure that one might assume would be in effect in every agency, anyway.

[Ms. Moore's complete statement follows:]

#### STATEMENT OF BEATRICE D. MOORE

My photograph was used in the political brochure "Partners in Progress" without my prior knowledge, and without my permission. The picture is an "official" photograph, taken at public expense by my Agency, for use in the course of the performance of my duties. It was initially requested by the Office of Public Affairs of SRS without an explanation. I declined, however, to submit it without clarification of the intended use. I received a second request a week later. In response to this I submitted the picture, but again inquired about the purpose. I did not receive a response, but I did not pursue the matter.

I first knew of the brochure when a friend brought it to my attention. I called the telephone number given on the brochure for obtaining additional copies, but was told that the publication was no longer available.

I subsequently understood from my agency that the photographs were requested by the Office of Public Affairs in the Office of Secretary, DHEW, in response to a request from the White House. The SRS Office of Public Affairs believes that they were told that the photographs were intended for use in a Bicentennial brochure.

I believe that the use of my photograph in a frankly political publication is a violation of my privacy as an individual and of my rights as an employee under

the Civil Service Act. In addition, however, it is a distortion of my record of performance over the past 18 years to imply in any way that I have progressed to my position due to the largesse of the Ford Administration.

I must also add, on behalf on the Black People of America to whom this brochure was directed that it is more likely to offend than to persuade. "Democrats have lied—pictures don't," "Pictures don't lie! A picture is worth a thousand words!" are insulting in their assumptions about the people to whom they are addressed.

I believe that this use of the names and images of Civil Service System employees demonstrates that there are not sufficient safeguards against exploitation, particularly political exploitation. Clearly, in this case Federal employees were accorded a proprietary disregard in a fashion which we had thought was behind us.

I think that this experience calls for a re-examination of the protection of the privacy and the political rights of Federal employees. Further, agencies must be required to build in their own safeguards for controlling the use of employee's files and other job related materials—such as photographs. As we can see, present systems are inadequate.

Mr. CLAY. Thank you.

Mr. Luney?

Mr. LUNEY. Mr. Chairman, ladies and gentlemen, my name is Percy R. Luney. I am chief of the Program Planning and Evaluation Division, Office of Equal Opportunity, U.S. Department of Agriculture. I am a career Federal employee with 25 years of service. I am responding to the subcommittee's request for information about the circumstances under which my photograph was used in "Partners in Progress."

In an April 5 memorandum, the White House asked the Department of Agriculture's Office of Communication to provide five photographs of all blacks serving in a policymaking position, GS-15 and above. The White House memorandum indicated that these photographs were to be used in Bicentennial displays and Government Day programs as requested from cities and private organizations.

The Department's Office of Communication handled this request for information in a routine manner. A list of black employees, GS-15 and above, was sent to our Photography Division, where the photographs were made from negatives on file. For some black employees, who had no negatives in the files, a special photograph was made. My photograph, along with those of 11 other black employees from the Department of Agriculture, was delivered to the White House prior to the deadline of April 16.

As of this date, I am unaware as to which Bicentennial display and Government Day program my photograph appeared in. I did not authorize its use in the brochure, "Partners in Progress" and was unaware, until just recently, it was so used.

Mr. CLAY. Thank you.

Mr. Gilbert?

Mr. GILBERT. Mr. Chairman, and members of the subcommittee, my testimony before this subcommittee today is being provided as a result of a written invitation from the chairman, dated December 7, 1976, requesting my appearance to give information for the record surrounding the printing of my photograph in the political brochure "Partners in Progress." The invitational letter poses five questions which I now will proceed to answer for the committee.

Q. Were you led to understand that the photograph was to be used to be used for official purposes?

A. Yes; as it relates to my official duties.

Q. Did you authorize the use of your official photograph for unofficial or political purposes?

A. No; neither verbally nor written.

Q. What person or persons are responsible for the use of your official photograph in this political brochure?

A. It is my understanding that the NASA photographs which appeared in the brochure "Partners in Progress" were the same employees whose official photographs were sent to Mr. John Calhoun, Special Assistant to the President, on April 20, 1976, by the NASA Office of Public Affairs.

However, I feel that those acting on behalf of NASA did not make a willful or intentional disclosure of the pictures for political purposes.

[Questions and answers follow:]

*Question.* What safeguards exist to protect Federal employees against this unofficial use of their official records and/or photographs?

*Answer.* NASA's regulations concerning the protection of personal privacy permit the use and release of official photographs to other agencies if it relates to NASA Public Affairs activities.

As an employee of an Executive agency of the Government, under the Hatch Act, I am prohibited from using my official authority to affect the results of an election or participating in partisan political campaigning. This provision of the Act is enforceable by the Civil Service Commission.

*Question.* Do you have any suggestions as to the administrative or legislative remedies which might prevent a recurrence of this situation?

*Answer.* No, other than possibly a more careful adherence to existing Federal statutes such as the Privacy Act, the Hatch Act, and the prohibitions against the use of Federal funds for other than official purposes.

If not already defined, it might be advisable to amend the parameters or categories of "authorized, official purposes."

Another safeguard would be for agencies or offices contemplating a photo release for official purposes required to receive the expressed, written consent of the subject individuals.

Lastly, and I think this is the key to what I would like to say, a nonwillful disclosure can occur if photographs or records are lost, stolen or in any way wrongfully appropriated from the custody of a legitimate or authorized user for a prohibited purpose. Another way of saying the same thing, in my opinion, is that the photographs could be released under very official reasons, complying in every detail with the law, but once in the hands of a legitimate user, be it the host agency or the requester, the pictures could be stolen, or taken in an authorized way, and then used in the fashion that we are discussing here today.

Mr. Chairman, this ends my prepared remarks.

Mr. CLAY. Thank you.

Mr. TYSON?

Mr. TYSON. Mr. Chairman, and members of the committee, I have a statement that I have submitted on record. I will make a few remarks.

On or about November 8, 1976, the Deputy Assistant Director of the Office of Policy and Planning for ACTION asked me if I were

aware that my photograph had been published in the political brochure, "Partners in Progress." I was not only shocked but incensed.

I strongly objected to the implications conveyed by the utilization of my photograph. I obtained a copy, a Xerox copy, of the brochure, and I discovered that my name was listed in the brochure twice. The first photograph was not me. The second one was a photograph that had been taken in 1972.

Mr. CLAY. When you graduated from high school?

Mr. TYSON. That is really a compliment. In 1972 I was serving as Peace Corps Director in Africa and happened to come back to the United States, and my photograph was taken at that time. So the second photograph in the brochure is a very old one, and the first one I have no idea who the individual is. I have heard the statement that we all looked alike, but I didn't think among blacks.

I knew nothing about the utilization of my photograph. I certainly have not authorized it in the past, nor did I recently authorize the utilization of my photograph, and do feel that it was a violation of my political rights.

I don't know what safeguards there are at this point to prevent the unauthorized use of photographs, as many speakers have said. You have a law that provides that protection now, but how does one legislate integrity and morality. Perhaps we do need some kind of check and balance system where those violators cannot seek refuge in those institutions designed to protect the political rights of the employees.

Mr. CLAY. Thank you.

I would like to ask each of you, did the agency that you work for in any way help to you to prepare your statements this morning, any one of you?

Mr. GILBERT. No.

Mr. LUNEY. No.

Ms. MOORE. No.

Mr. RHODES. No.

Mr. TYSON. No.

Mr. CLAY. Did any of them require that you clear your statement through their channels before you presented it?

Mr. GILBERT. No.

Mr. LUNEY. Yes.

Ms. MOORE. No.

Mr. RHODES. No.

Mr. TYSON. No.

Mr. LUNEY. In my case it had to be cleared, but it was not changed.

Mr. CLAY. How long did it take to clear your statement?

Mr. LUNEY. Because the Secretary was out of the country, approximately a week.

Mr. CLAY. How long did it take them to get the photograph to the White House; do you know?

Mr. LUNEY. No; I don't know how long it took them to get the photograph to the White House, sir.

Mr. CLAY. At that time, I understand the Secretary was telling jokes; is that right?

You are with the Department of Agriculture?

Mr. LUNNEY. Yes; I am.

Mr. CLAY. He was telling jokes at that time.

Mrs. Spellman?

Mrs. SPELLMAN. Would any of you have any suggestions? You did point out that we can't legislate morality, but would you have any suggestions to us for ways in which we might be able to protect employees from this kind of thing?

Mr. GILBERT. I would like to attempt to provide an answer on that question, Mrs. Spellman. Although I do not have a detailed understanding of the laws that are applicable to this type of a problem, I think one feature that one might consider would be the necessity for written consent; however, that would only help and not guarantee against this type of occurrence. I can imagine a situation where information and a photograph is sent to a newspaper for a very legitimate, authorized purpose, and then a week or 2 later the picture could appear in a partisan publication.

Mrs. SPELLMAN. It occurs to me, as you are talking, that there might be a few things that we ought to be concerned about: one, I think, a real clarification of the laws so that people working under them know what they are, and don't have a few "dos" and "don'ts", but have it all put together.

Second, oversight, Congress watching what is being done, because you have a right to look to the Congress to protect you and to provide its part of the whole equation.

And then thirdly, action taken. Some definite action taken when there has been a violation of the law and not just a slap on the wrist saying, "Well, this shouldn't have been done."

It occurs to me that after the last election charges that had been made were dropped because the election is over and let's not worry about it any more. But if we do that time after time after time, then we are going to have this same kind of violation of good faith, good taste, and your rights and our rights.

So I think it is important that we do follow up on this. I don't know what can be done, but whatever can be done should be done, not just being vindictive, but just to say, "He can't get away with this. I can't get away with this. No one should get away with this."

I can't help thinking, Ms. Moore, that you are right when you say that this offended people more than it appealed to them.

Mr. CLAY. Would the gentlewoman yield for a second?

Mrs. SPELLMAN. Sure.

Mr. CLAY. I see a photographer in the room, and these persons are very sensitive about having their pictures taken, so maybe we had better ask their permission before you take a picture. It is for official use.

Is it all right?

[The witnesses indicated assent.]

Mr. CLAY. If it is all right with the witnesses, we will permit you to take pictures.

Mrs. SPELLMAN. I was saying I thought Ms. Moore was right. I can't help but think of something done in my campaign. My opponent—they had requested my picture, too, Mr. Harris—and then used it, sending it out in the mail. It was a nice photograph, and it looked like it was autographed by me, but when you read it, you found it said, "Gladys Spellman is the problem in Washington," and all these various other things, and I am reminded of one of the women who wrote in saying, "I had no intention of voting for you until I saw that picture, and when I looked at your eyes, I knew you had to be a good woman." So it turned around. There were those who decided that they had gotten my picture and now they had to vote for me.

But really, it is an offense, I think, to any thinking person that this sort of thing is being done. I personally feel that we have a responsibility to do something about it, whether Democrat, Republican, or what. We just have got to carry this thing through, and I am glad, Mr. Chairman, that you haven't decided that the election is over, so forget it.

Mr. CLAY. Thank you.

Mr. Harris?

Mr. HARRIS. I have two questions, and everyone may or may not respond to them, as they wish.

My first question is in a situation like this, would it have been helpful to you to have had an independent board that you could have gone to when you discovered that it had happened and complained so as to initiate an investigation of the matter? Would it have helped to have an independent board composed of Federal employees that could have checked out on this as soon as you discovered that it had happened?

Ms. MOORE. I think this whole matter of lack of consequence is very important. I notice in your statement how apparently this whole matter is being shrugged off and no one feels responsible to respond to it. Clearly that is a problem. If you can't divide it, there should be consequence for what you do.

On the other hand, the earlier remarks about the Civil Service Commission, it never would have occurred to me to try to get relief from the Civil Service Commission. I would have felt that I would never have known how to get to wherever it was I was supposed to be or know when I was there, because I wouldn't get a response, and if I got the right office, I couldn't be sure. Nor would I expect anything to happen as a result of it.

When I reflect on what you are saying, I realize I see the Civil Service Commission as not looking out for me in the course of what happens.

In response to your question, I think it would be useful if anything immediately happened. That is always a problem, that it takes so long, if it ever gets clear, and it is so watered down by the time it happens. I think if the requirements were clearer, the course of action for dealing with it, and clearly defined offenses were made known and the response was relatively immediate, it would have to make a difference, and I would think it would have to be a deterrent.

Mr. HARRIS. Suppose this board had the power to order suspension, without pay for a given period, of an official or supervisor who did this type of thing, so that independent board not only had the investigatory power, but powers actually to put in place penalties that were proportionate to the offense, do you think that would be helpful?

Ms. MOORE. As someone could just as easily be on the other end of such action, I would have to say you would have to have it very clear where the items rested that you were trying to safeguard. Pictures can come and go from anywhere, as can records, and if I were on the end of a penalty of that kind for such an action, I would certainly want every authority to be able to carry out the responsibilities that I had, and I wonder a little about that and all the ways it could happen.

My picture came from me. It wasn't on file anywhere else. I sent it up and a lot of things happened on the way to the White House, I guess, so I think it would have to be very clear. You could be placing a grave responsibility on someone who couldn't carry out all the things required to do.

Mr. HARRIS. Was it requested for a purpose?

Ms. MOORE. The purpose wasn't made clear. In fact, I refused to send it, and I got a second request. I just said, "Ask them what it is for," because it is a sort of proprietary way of dealing that I don't like anyway, and a week later I got another request, and they said, "You still haven't sent the picture," and I said, "That is right; ask them what it is for."

The young woman on the other end didn't know. So I said, "Send them up and I want to know what it is for." I never heard from them. I don't know if they knew what it was for. But there is a way of dealing with matters like that that suggested to me they hadn't thought about telling me what it was for.

Mr. HARRIS. Would anyone else like to respond?

Mr. GILBERT. When I first saw the picture, I immediately recognized the origin and was surprised and bewildered. It never happened before.

You asked the question as to whether or not I looked to my agency to give me some answers to things that were rather confusing at the moment. In the case of NASA (National Aeronautics and Space Administration) they did conduct, in my opinion a very thorough investigation. Our Office of Inspection and Security immediately contacted and took statements from various people who appeared in the publication. I was content with their objective inquiry and felt it was satisfactorily conducted.

Mr. HARRIS. But if, in fact, a public official had gained the photographs by misrepresentation as to their use, and if, in fact, he indicated that they were going to be used for specific official purposes and then, in fact, used them for purely political purposes, do you feel like there should be something under the law that would penalize them for doing something like that?

Mr. GILBERT. Very definitely, providing you could prove misrepresentation.

Mr. HARRIS. The other question which goes along with it, do you feel, in a situation like this, that the law should specifically authorize a civil action against someone who does this hypothetical thing I have just presented? Should the law authorize an individual that has had his or her picture used in an inappropriate way to bring civil action against somebody like that?

Mr. TYSON. I don't think so. As a matter of fact, when I learned about it, I consulted with an attorney, and he told me I really had no recourse. I hadn't seen the brochure. He wanted to know what did it state, so I told him I understood it had my picture and an indication of my position with my agency. He said, "Well, it is true, isn't it?" I said it is true, but I understand the brochure was used for partisan political purposes, and he advised that "Well, you could conceivably sue, but your prospects of winning are slim, and you would invest a lot of money." I knew of—

Mr. HARRIS. He wasn't willing to take it on contingency?

Mr. TYSON. No; he wasn't, and I knew of no recourse at that point. Certainly I was elated to have the opportunity of sharing my feelings with this subcommittee, with the hope that some solution may be found to assure that this kind of action is not repeated again.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. CLAY. Thank you.

Mr. JOHNSON?

Mr. JOHNSON. Mr. Chairman, I would like to ask each witness whether or not they hold career competitive status within the civil service?

Mr. RHODES. I am a career employee with 21 years of service, and I think the reason I was appalled by the fact my photograph was misused was the fact that a number of people will assume, and I am powerless to defend myself against this, that it was through some political chicanery that I got my position, which is in the merit service. There is no way at all that I will be able to get to people who have known me or know me slightly to make them aware of the fact that I am not involved in partisan politics, that I did not get my position through some sort of skullduggery, and there is no defense I have.

Ms. MOORE. Yes; I am a career civil service employee.

Mr. LUNEY. Yes; 25 years.

Mr. GILBERT. Career service.

Mr. TYSON. I am a career civil service employee. As a matter of fact, I have been in the same grade level since about 1968, and it disturbed me to suggest that I had really been pushed up as a result of the Ford administration.

Mr. JOHNSON. Let me ask a question which some might pose privately, and I wish you would react to it in your own words briefly.

Some have said:

Well, you know most of these folks whose pictures appeared in the brochure have the best of all possible worlds. If the administration won, they could always say to the administration, we were with you from the very beginning and now, since the administration lost, they can say, look what they did to us.

So they say you have the best of all possible worlds. What about that?

Ms. MOORE. Let me answer that. I was the person who contacted the committee, and I think I contacted you in October. In fact, I wanted it clear that it was not after November. It was in October. So it was the case with people whom I know who protested to it.

Mr. RHODES. I feel used, and I don't feel that any advantage at all could accrue to me, if the Republicans won or the Democrats won. I am disgusted with the whole thing.

Mr. LUNEY. I welcome this opportunity, because my integrity is at stake here, and I wanted to clear my name.

Mr. TYSON. I don't view it as you do as the best of all political worlds.

Mr. JOHNSON. I didn't say I viewed it that way.

Mr. TYSON. No; I mean the statement. I expect persons who are not involved in the political process, and certainly as a Federal employee I have not been active, and don't think of it in that way at all. I would like to think I have, as a career Federal employee, performed a job and obtained a position on merit and any subsequent promotion will come by the same way rather than through any kind of political nuances.

Mr. JOHNSON. Mr. Gilbert, do you have the best of all possible worlds?

Mr. GILBERT. I think the article certainly tells a story. It declares one's political stripes, and I feel a person should be allowed the right to publicly announce their political party affiliations strictly as a matter of consent and not in an involuntary manner as occurred with "Partners in Progress."

Mr. JOHNSON. Mr. Gilbert, you mentioned in your earlier statement that you were contacted by representatives of your department in connection with the chairman's inquiry, and they will be testifying afterwards.

I would like to ask the other four witnesses whether or not you were personally contacted by a member of your department in response to the chairman's inquiry about the use of your photographs in this matter?

Mr. RHODES. I was contacted because it was my responsibility to formulate the reply. I am not aware of anyone in my agency having any intention of testifying on this matter. However, I am certain if they were requested, they would do so. Mr. Train, frankly, requested that he be permitted to see my statement, if it would not bother me in any way, so I feel they are sensitive to the matter.

Mr. JOHNSON. Did your agency contact you as a result of our letter?

Ms. MOORE. The Administrator of the agency met with us to understand what happened and to apologize for us and to ask what recourse we might want from the agency in the way of apology or recognition of our lack of responsibility for what had happened in appearing in the political brochure, but the secretary apparently had offered to send us a letter. We did accept a letter for our records that we had not been willingly involved in that and were given a personal copy of the letter.

Mr. LUNEY. Mr. Johnson, it worked the other way in my case. I received the invitation from Mr. Clay, and I notified my supervisor that I had been invited to testify and that I wanted to.

Mr. JOHNSON. Mr. Tyson?

Mr. TYSON. I was not contacted by any official in my agency. I did share the information with my supervisor that I would be testifying, and there was no followup from the agency at all. My testimony has not been seen by anyone in the agency.

Mr. JOHNSON. Let me, if I may, Mr. Chairman, ask the witnesses a couple of questions that we asked the previous group. My question is, given the fact that existing law consists of over 3,000 administrative rulings governing the extent of permissible and prohibited activities: Do you feel that you are knowledgeable with the Hatch Act governing political activity of Federal employees?

Mr. RHODES. I have seen the "dos" and "don'ts" given to each employee. I don't feel that I am knowledgeable, and I think most Federal employees' reaction to this is not to participate, period. It is easier not to do anything and not take a chance than to try to determine what is prohibited, particularly as Mrs. Spellman said, "who would think you would violate the act by giving someone a ride to the polls."

Ms. MOORE. I have to agree with that.

Mr. LUNEY. Yes; I receive a list of "dos" and don'ts" every year, and I feel that if I err, it is on the "don't" side, and when employees ask questions that I do not feel qualified to answer, then I check with the Office of General Counsel.

Mr. GILBERT. I have a very clouded understanding of the act, and it was very revealing to hear Mrs. Spellman's two questions, particularly the one having to do with giving an elderly person a ride to the voting poll. It would be interesting to compile a questionnaire of similar type questions. I think you would find a pattern, and that is most people don't know or understand what is permissible or prohibited under the act.

Mr. TYSON. My knowledge is approximately the same as members of the committee.

Mr. JOHNSON. I have no further questions, Mr. Chairman.

Mr. CLAY. Thank you.

We certainly want to thank you for your testimony. Somebody from the committee will probably be getting in touch with you at a later date. Thank you.

[Mr. Tyson's complete statement follows:]

#### STATEMENT OF HERBERT L. TYSON

Mr. Chairman and members of the subcommittee, on or about November 8, 1976, the Deputy Assistant Director, Office of Policy and Planning asked me if I were aware that my photograph had been published in the political brochure, "Partners in Progress". I was not only shocked but also incensed.

As a career federal employee, I respect the political choices and philosophy of others and expect others to respect my political choices and philosophy. I will do all within my power to maintain and preserve my political rights and strongly object to the implications conveyed by the utilization of my photograph in the political publication, "Partners in Progress".

I have not in the past, not did I recently authorize the use of my photograph for unofficial or political purposes. I was totally unaware that my photograph was used until it was brought to my attention as cited in my opening statement.

I understand that ACTION responded to a request from the White House for photographs and titles of Blacks serving in top positions for Bicentennial displays and Government Day programs.

There are no safeguards, to my knowledge, to protect Federal employees against the unofficial use of their official records and/or photographs. How does one legislate integrity and morality?

In my years of federal service, I have seen the system manipulated so many ways. We need a true check and balance system where those violators cannot seek refuge under the cover of those institutions designed to protect the employee's rights.

Mr. CLAY. The next witness is Dr. Alan M. Lovelace, Deputy Administrator, National Aeronautics and Space Administration.

Doctor, will you stand and raise your hand?

Do you swear that the testimony you are about to give before this committee is the truth, whole truth, so help you God?

Dr. LOVELACE. I do.

Mr. CLAY. Thank you. We have your prepared statement, but you are free to proceed as you see fit, either read the statement or summarize it.

**TESTIMONY OF DR. ALAN M. LOVELACE, DEPUTY ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Dr. LOVELACE. Mr. Chairman, members of the subcommittee, if I may very briefly read for the record and summarize my statement.

My appearance before the subcommittee today is in response to the chairman's letter of November 22, 1976, addressed to NASA's Administrator, Dr. James C. Fletcher, regarding the circumstances surrounding the use of the names and photographs of several black NASA employees in a partisan political brochure entitled "Partners in Progress." The purpose of my appearance is to supplement the information that NASA has already given to the subcommittee and its staff by way of our report of investigation dated November 16, 1976. It is my understanding that both this report and our accompanying letter of December 3, will be made part of the official hearing record of this subcommittee.

Mr. Chairman, when your letter of October 28, 1976, to Dr. Fletcher first brought the "Partners in Progress" situation to our attention, the NASA Office of Inspections and Security was immediately directed to conduct a full investigation into this matter. The actions taken by NASA inspectors in this regard were as follows: First, one of our senior inspectors contacted Mr. Lloyd A. Johnson, of your staff, to obtain possible additional background information relative to this matter.

Second, we conferred with Mr. Lynn Collins, Deputy Assistant General Counsel, Civil Service Commission, for the purpose of coordination and to determine investigative perimeters.

Third, each current NASA employee whose picture appeared in the "Partners in Progress" brochure, was interviewed by NASA inspectors to determine their knowledge relative to the use of their photograph, name, and title in the "Partners in Progress" brochure.

Let me now take up the results of NASA's investigation.

The Office of Inspections and Security determined that the names and photographs of 17 NASA employees—15 current employees and 2 former employees—appeared in the "Partners in Progress" bro-

chure. The 15 current employees were interviewed with the following results:

None had been asked for their permission or had consented to the use of their name or photograph for publication in the "Partners in Progress" brochure.

Many of the individuals were totally unaware of the "Partners in Progress" brochure until shown a copy by the interviewing NASA inspector.

Our investigation found that the 17 photographs of NASA employees, which appeared in the "Partners in Progress" brochure, were of the same 17 employees whose official photographs were sent to Mr. John Calhoun, Special Assistant to the President, on April 20, 1976, by the NASA Office of Public Affairs. The photographs sent to Mr. Calhoun were provided in response to his memorandum of April 5, 1976, which advised our public affairs office as follows:

Several requests have been received from cities and private organizations for photographs and titles of blacks serving in top positions in Government for Bicentennial displays, and Government Day programs.

Please send five photographs of all blacks serving in a policymaking position, to include those in GS-15 or higher with correct titles only (no grades), prior to April 16.

Mr. Chairman, in summary, our investigation disclosed no evidence that any NASA employee made the official photographs available to any political organization or otherwise in any way violated the Hatch Act. More specifically, there was no evidence that any NASA employee had prior knowledge with respect to the publication of employee photographs in the "Partners in Progress" brochure. Our investigation, of course, was limited to the confines of NASA, and we have no knowledge as to who is responsible for the political use of these photographs.

Mr. Chairman, this concludes my prepared statement.

I would be glad to respond to any questions from you and your subcommittee.

Mr. CLAY. Thank you.

Dr. Lovelace, to the best of your knowledge, has the administration ever before requested the official photographs of your employees which were then used in an unofficial or political manner?

Dr. LOVELACE. Not to my knowledge, Mr. Chairman. That has not happened in the past.

Mr. CLAY. To the best of your knowledge, did the White House ever make those photographs of the 17 employees available to public or private organizations in connection with Government Day or Bicentennial programs?

Dr. LOVELACE. Not to my knowledge, Mr. Chairman.

Mr. CLAY. Are you satisfied that adequate internal controls now exist to protect NASA employees against the release of their official photographs without their written authorization?

Dr. LOVELACE. I think, Mr. Chairman, that we have instituted some improvement in our internal procedures as a result of the investigation that I just described, namely, that we will henceforth request a release from individuals whose photographs and/or biographical data are being supplied for legitimate purposes but outside of our agency's public affairs program.

Mr. CLAY. Prior to your receiving a letter from this subcommittee, did any of your employees complain about the use of their photographs in this brochure?

Dr. LOVELACE. In almost real time, Mr. Chairman, with the receipt of your letter, one of the 17 NASA employees had, in fact, seen a copy of the "Partners in Progress" and had brought it to the attention of an assistant of mine. Before we could institute an investigation of that, your letter arrived, and we undertook that investigation forthwith.

Mr. CLAY. Thank you.

Mrs. SPELLMAN?

Mrs. SPELLMAN. Dr. Lovelace, had you not received the letter from the chairman, on the basis of the complaint made to you by the employee, would you then have conducted an investigation?

Dr. LOVELACE. Yes; Mrs. Spellman. I firmly believe we would have completed a thorough investigation at that point, without having received the chairman's letter.

Mrs. SPELLMAN. Yours is one of the agencies—and is it the agency or one of the agencies that really went into this whole question?

Mr. JOHNSON. It was most thorough.

Mrs. SPELLMAN. Yours was the most thorough investigation made, and it doesn't surprise me. I find that NASA operates that way.

It is interesting, though, that although you did make this kind of an investigation, I got the impression that none of the employees said that they felt their agencies should or would have backed them up. Do you know why there would be a reluctance on their part to feel that the agency should have been on their side in this?

Dr. LOVELACE. To make sure, Mrs. Spellman, that I understand the question, you mean have been on their side in terms of denying—

Mrs. SPELLMAN. Well, to protect their rights one way or the other. I have looked at the memorandum that came from the White House, and there would be nothing in this memorandum which would have caused your agency to question sending these photographs, so I can understand you doing that and can't feel that the agency should be called to task on that, and then you did initiate the study after it came to your attention.

But this is the sort of thing I would expect that every agency would do normally, and I would expect that employees would feel that they had a right to this kind of treatment on the part of their agency.

Dr. LOVELACE. Mrs. Spellman, when we received the request addressed to us by Mr. Calhoun, although it seemed to be a proper request, it did, in fact, have some other elements of rather broad distribution and use of the data that had been requested. It also clearly focused on the black minority employees of the agency.

This and other considerations caused us at that time to verbally query our employees prior to the release of the data and the photographs to Mr. Calhoun, and we attempted to in fact exercise an additional modicum of prudence in responding to this inquiry, and I should add our investigative report reflects this. In querying 15 of the 17 NASA current and former employees, not all of these employees recalled having been asked orally for the release of this for the stated

Bicentennial use in Mr. Calhoun's letter, and I think that has caused us to believe that a written procedure would be a more useful one in the future.

Mrs. SPELLMAN. Would you have any advice to this committee as to what we can do to prevent misuse of authorities this way?

Dr. LOVELACE. Well, it is a difficult question, Mrs. Spellman. I believe, as some prior witnesses have stated, that there is little that can be done to legislate the unauthorized use of this data. I think from our point of view in terms of the administration of our agency, and I guess I must say I am particularly sensitive at this point, having been a career civil servant for some 22 years myself. We will try to tighten up our own inhouse administrative procedures, because I think we are very much attuned to the interest of our employees and their potential exploitation if we don't discharge our administrative responsibilities in the most prudent way.

Mrs. SPELLMAN. Thank you very much.

Thank you Mr. Chairman.

Mr. CLAY. Thank you, Mrs. Spellman.

Mr. Harris?

Mr. HARRIS. Thank you.

Dr. Lovelace, I have one question. I am pleased that you did not carry out the investigation, and I am pleased that it gave you insight as to future policies, but after you carried out the investigation, did you take any followup action with regard to the occurrence? Was this turned over to the Civil Service Commission or anybody else for followup?

Dr. LOVELACE. The followup actions, Mr. Harris, that fall within the purview of NASA, we are taking those actions. I assume you are referring to external actions outside the agency?

To clarify, we are as I indicated, modifying our administrative procedures such, that in the future instances of this nature we would seek a written release of that data by the affected person.

Mr. HARRIS. I understood this. I understood that you carried out the investigation that gave you insight as to future policies that would be helpful in preventing this from happening again.

Yet, the investigation did indicate to you that someone in official authority had misled the agency with regard to the release of what you called data, which were photographs and biographies.

What I am asking is, was this information then turned over to the Civil Service Commission or anybody else in Government that could take followup action with regard to what had occurred?

Dr. LOVELACE. Mr. Harris, I must ask the chief of our inspections group, who is here with me today.

I am advised that we did supply a copy of that report to the Civil Service Commission.

As I indicated in my statement, we coordinated our investigation with the Civil Service Commission so that in fact the perimeters of our investigation were clearly not overlapping any investigations that they may be conducting.

Mr. HARRIS. Do you have information that they are conducting an investigation?

Dr. LOVELACE. I do not personally.

Mr. HARRIS. When you say you turned a copy of the investigation over to the Civil Service Commission, who was that sent to?

Why don't we have the gentleman come up here who knows, Mr. Chairman?

Dr. LOVELACE. All right; I understand the report was supplied to the General Counsel of the Civil Service Commission, and we can provide the name of that individual to the subcommittee.

Mr. HARRIS. OK, when this was turned over, was there any response from the Civil Service Commission or the General Counsel?

Dr. LOVELACE. Not that I am aware of.

Mr. HARRIS. Have you been advised because of this investigation that they are in fact investigating or intend to take any further action?

Dr. LOVELACE. We have not been advised that they are, Mr. Harris. To my knowledge we have not received any information that they are investigating.

Mr. HARRIS. When was this sent to the Civil Service Commission?

Dr. LOVELACE. December 6 was the date that it was supplied to the General Counsel of the Commission.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. CLAY. Thank you.

Mr. JOHNSON?

Mr. JOHNSON. I have no questions, Mr. Chairman, except to observe what to me appears to be a serious managerial problem, not only for NASA, but with other agencies, that on the one hand we have an agency moving forward vigorously and thoroughly in response to your letter, and I commend NASA for that.

On the other hand, we have a situation in which 10 senior Federal employees state they don't see this agency—and 1 a NASA employee—they don't see their agency or the Civil Service Commission as a source of support and comfort in this situation.

Again, I don't think that perceptions can be legislated, but I do think perceptions have a way of becoming reality. I would simply state that it seems to me this is an issue that will persist long after these hearings are concluded, and I certainly would suggest that they be examined very, very closely to try to narrow what is clearly a gap between senior employees and management.

Thank you.

Mr. CLAY. Thank you.

Thank you, Dr. Lovelace, and we would like to also express our appreciation for the fact that your agency took this matter very seriously, and, in my opinion, conducted a very thorough investigation. Thank you.

Dr. LOVELACE. Thank you, Mr. Chairman.

Mr. CLAY. The next witness will be Mr. Leon Perry, and he will be the final witness of the day. Will you raise your right hand? Do you swear that the testimony you are about to give this committee is the truth, the whole truth, nothing but the truth, so help you God?

Mr. PERRY. I do.

Mr. CLAY. Will you identify yourself and the agency that you represent?

TESTIMONY OF LEON PERRY, PUBLIC INFORMATION OFFICER,  
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Mr. PERRY. Yes, Mr. Chairman, my name is Leon Perry. I am public information officer for the National Aeronautics and Space Administration. I want to make it clear that my appearance here today is germane to the issue; however, I am not speaking for the Agency you just heard from, from our Deputy Administrator, Dr. Lovelace.

I do have brief opening comments.

Mr. CLAY. Go right ahead.

Mr. PERRY. Chairman Clay, my own Congresswoman, Mrs. Spellman, Mr. Harris, and counsel: Although I am a spokesperson for a number of groups and associations and organizations, since I have been unable to have my appearance cleared by any of these groups because of the suddenness of the appearance—I just became aware of it this morning in reading the wire service—I have to speak for myself, although I can assure you that the groups I represent are considerable in their interest, and this is very precise.

In retrospect to offending agencies. I would like to say that I think that the agency is liable. There should, as has been testified to earlier, been written permission given by employees of any agency pertaining to the use of their picture. As a public information officer for NASA currently, but also for other agencies in the State level and also in the Federal level, there are legitimate times when an employee's picture can and should be used. I have particular reference to high top-level or upper level minority persons. Many persons at that level serve as a motivator and stimulator to other minority youth, and, of course, anytime a public information department can legitimately expose that person's background or what they do, the success potential they have, this I do feel serves as a legitimate stimulant to the other young minority youth, many of whom come from meager circumstances and serves to let them know they can also overcome as well.

Congressman Harris asked one of the earlier persons who was at this table about a possible appeal process, and at that point, I believe the witness said they were not aware of just where they could go. I think this is a legitimate concern. I also seem to recall that under the potential Hatch Act revision cosponsored by you ladies and gentlemen of the Congress, that in that process there was an appeals process that would take place when violations would occur.

Now, of course, that oversight process, I believe, would have gone into immediate action if we had had such a process in place, and those of us who are in the career Federal service who would like to see a revision of the Hatch Act, feel this case reinforces the need for realistic assessment of the political guidelines governing Federal employees. So long as he is denied a reasonable access to political participation, we are going to have these instances of illegal tampering of the career civil service.

Two and one-half million Federal workers represent a tremendous potential reservoir for any political party or operation, and, in my opinion, it is much too much to resist. I think this again calls for a realistic reassessment of just how Federal employees can participate in their political system.

In many instances, we are experienced with Government; we deal with Government every day, and I do feel we could make a meaningful contribution in line with our sworn duties as Government employees and not violate a reasonable civil service Hatch Act revision.

Mr. CLAY. Thank you.

Mr. PERRY. Under the circumstances involved in this, do you really feel that the agency should be held liable for turning those photographs over to the administration after they received a letter on official White House stationery signed by a special assistant to the President?

Mr. PERRY. Mr. Chairman, I feel that if the agency is not liable, who is to be liable? Certainly the employee is powerless to know what happens to their photograph after they are told it is for official use.

As you know, it is the practice and procedure of all agencies that I have been associated with when a person comes in at a professional level, a photograph is taken for their use, and I feel that the liability rests strictly on the shoulders of the agency as to how that photograph is used, and under what context it is used.

I don't believe the agency can legitimately escape liability.

Mr. CLAY. The request was made from the Special Assistant to the President, indicating in the letter that the use of the photograph will be for the Bicentennial displays and Government Day programs, that is official use. Why would an agency head question the White House?

Mr. PERRY. I suppose they wouldn't, but on the face of it, Mr. Chairman, that sounds very ambiguous, and if I were the person at my agency responsible for monitoring that, I would have gotten a much more clearly defined explanation than just general use of that nature. I would have asked for some type of process at least where I could have had a chance to doublecheck before it was used.

This was, after all, election year, and I don't think anybody in this country, unless they had been stranded on an island for a number of years, was not aware of the fact that we were going into a Presidential contest.

Mr. CLAY. In other words, you are saying that the election was not a Bicentennial celebration of any type?

Mr. PERRY. Mr. Chairman, on the face of it, I would have been dubious of that type of general ambiguity. I would have asked for a more clearly defined explanation. I personally would have.

Mr. CLAY. Thank you.

Mrs. Spellman, it is your constituent.

Mrs. Spellman. Indeed, and one of whom I am quite proud, I might say.

Would you have any recommendations for this committee?

Mr. PERRY. Mrs. Spellman, I think the committee is doing an excellent job, and I don't want to oversell, but I think you have done a good job. I am proud of the immediacy with which the chairman called these hearings to deal with an issue that could have dangerous repercussions for the persons whose photographs were pictured.

My only recommendation would be that out of this would come some type—I guess everyone is saying it—but some type of calling for a stricter enforcement.

I believe there are protections on the books of every agency now. The public information mandate that every Government agency has to conform to does have restrictions on the use of photographs and the biographical sketches and other information that comes to our office.

I think what has happened is that up the line there are persons who just do not take it seriously enough when we say you have to legitimize the use of employees' photographs and their biographies and sketches. Certainly, I think that when the White House, and regardless of who is in the White House, when the White House calls for photos of GS-15's and titles, you have to be very naive not to know what they want to do. I certainly would have known what they wanted to do, and I would say, "OK, fellows, give me a clear picture of how this is going to be used because not all of these people are your political appointees."

It is strained credibility as far as I am concerned to say no one knew what these pictures were going to be used for or had an inkling there was a possibility. That would have been the first thing that leaped to my mind.

Mrs. SPELLMAN. I have to admit if I got this from the White House saying, "Several requests have been received from cities and private organizations for photographs;" private organizations, that is kind of a key to it, isn't it?

Mr. PERRY. Yes, ma'am, a simple reading between the lines would let you know the danger is there, the danger of violation.

Mrs. SPELLMAN. Boy, do I read well between the lines after it is over. I have great hindsight, but this would certainly serve in the future as an example of what we would have to be concerned about.

Mr. PERRY. Well, of course, if Congressman Harris' work that he is doing on the Hatch Act revision goes into effect, and, as I said before, the setting up of the process of machinery that all of you worked on, that would allow for immediate triggering of monitoring—

Mr. HARRIS. Mr. Chairman, I have had a lot of help.

I like your style, sir.

Mr. CLAY. If he lived in my district, I would get all the credit.

Mrs. SPELLMAN. I wore this red dress so the blood wouldn't show. Thank you very much, Mr. Perry.

Mr. CLAY. Mr. Harris?

Mr. HARRIS. Mr. Perry, I have heard your comments with regard to the Agency, and I can't say that they are wrong, although I frankly disagree with my colleague a little bit about what an agency head in the future would do if a special assistant to the President said he needed pictures to put into a Bicentennial program of some kind. He might cross-examine and demand further detail and verification and certification, and then again he might not. And the problem that starts sifting down, in my mind, is that I understand that there is a gentleman with the title special assistant to the President who was heavily involved in creating and distributing campaign material, and I wonder if our system of Government can survive that?

I wonder if this may be the point that we have to look at with new legislation. There is nothing wrong with someone with political experience, obviously, serving on the staff in the White House. It is absolutely necessary, but for a person to try to serve in an official capacity as a Presidential adviser and as a campaign official at the same time seems to me to be impossible if they are going to maintain any sort of division.

Would you support the notion that the legislation would have to look at those kinds of situations and prohibit them?

Mr. PERRY. Yes, sir, Congressman Harris. I feel for us to assume that an incumbent President in an election year would not use the machinery of his White House staff, I think again is the height of naivete. I think the heads of agencies must regard the White House as an arm or annex of the President's campaign committee.

I think you have to look at it that way, and therefore agency heads are going to have to ask some pretty difficult questions if they are going to avoid this type of potential for misuse of their career employees.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. CLAY. Thank you. I have no further questions.

Do you, Mrs. Spellman, or Mr. Johnson?

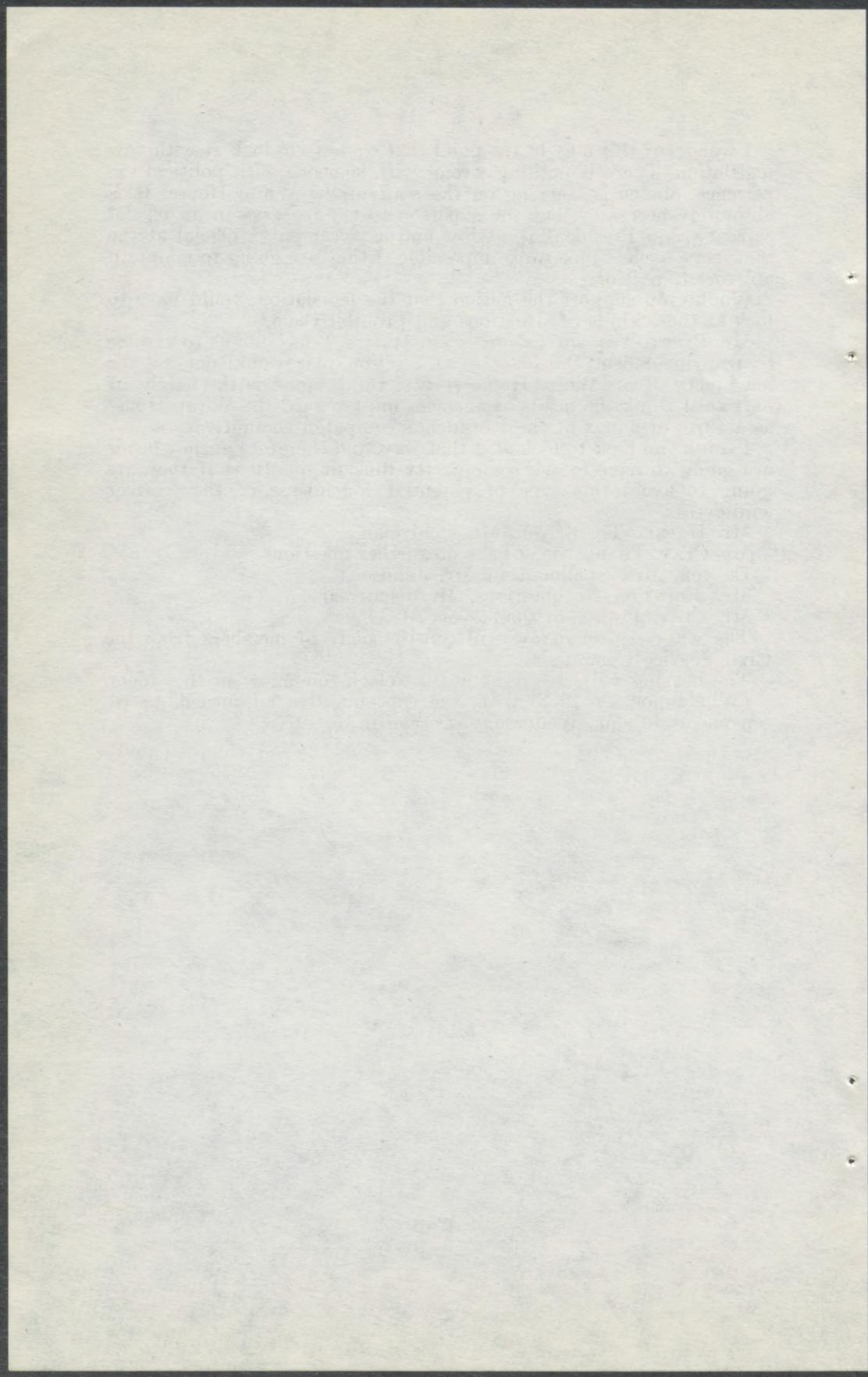
Mr. JOHNSON. No questions, Mr. Chairman.

Mr. CLAY. I want to thank you, Mr. Perry.

The witnesses tomorrow will consist solely of members from the Civil Service Commission.

The hearing will reconvene at 10 o'clock tomorrow in this room.

[Whereupon, at 12:15 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, December 15, 1976.]



## INVESTIGATION INTO POSSIBLE VIOLATION OF POLITICAL RIGHTS OF FEDERAL EMPLOYEES

WEDNESDAY, DECEMBER 15, 1976

U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON POST  
OFFICE AND CIVIL SERVICE, SUBCOMMITTEE ON EMPLOYEE  
POLITICAL RIGHTS AND INTERGOVERNMENTAL PROGRAMS,  
*Washington, D.C.*

The subcommittee met at 10:04 a.m., in room 304 of the Cannon House Office Building, Hon. William Clay (chairman of the subcommittee) presiding.

Present: Representatives Clay, Spellman, and Harris.

Also present: Lloyd Johnson, counsel; and Gail Weiss, staff assistant.

Mr. CLAY. The subcommittee will come to order. Today the subcommittee will continue hearings into the possible violation of employees' political rights, by the use of their photographs in a political brochure. We will receive testimony from the representatives of the U.S. Civil Service Commission.

Upon learning of the publication of the brochure, I requested the Commission to investigate the situation for any possible violations of the Hatch Act. The Commission has responded to that inquiry and a copy of their letter to me, received on December 14, 1976, will be inserted into the record in its entirety.

[The letter referred to above, follows:]



UNITED STATES CIVIL SERVICE COMMISSION  
OFFICE OF THE GENERAL COUNSEL  
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO  
GC:LEG 4

YOUR REFERENCE

Honorable William L. Clay  
Chairman, Subcommittee on Employee Political  
Rights and Intergovernmental Programs  
Committee on Post Office and Civil Service  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Clay:

The Commission has conducted an inquiry into the allegations of possible prohibited political activity on the part of 286 Black Federal employees whose photographs appeared in a document styled "Partners in Progress," prepared by a group identified as Black Voters for Republican Congress. We understand that you also requested each agency whose employees were identified in the publication to conduct an inquiry relative to how the photographs were arranged for and released to the publishing organization.

Our inquiry has disclosed that by memorandum of April 5, 1976, directed to "Public Affairs/Information Directors," a Mr. John Calhoun, Special Assistant to the President, requested each agency to furnish "five photographs of all Blacks serving in a policy-making position, to include those in GS-15 or higher with correct titles only (no grades), prior to April 16." The stated purpose for which the photographs were to be used was for "Bicentennial displays, and Government Day programs."

The inquiry further disclosed that copies of the photographs were apparently provided to Black Voters for Republican Congress by Mr. Calhoun, and were used to develop the brochure in question. Twenty-five thousand (25,000) copies of the document were reportedly printed. Mr. Clay Claiborne, treasurer of Black Voters for Republican Congress, stated that he contacted the Republican National Committee, and the President Ford Committee, soliciting their assistance in distributing the brochures. However, he said, those committees deemed the publication to be inappropriate and declined to authorize distribution. I am informed that, as a result, most

-2-

of the copies of the brochure have remained in storage.

Since this information indicates that neither the employees nor the employing agencies were aware that the photographs were to be used for campaign purposes, they have not committed any violation of the Hatch Act. Members of my staff contacted a random sample of employees whose photographs appeared in the brochure and confirmed that they in fact never authorized such use of the photographs. Accordingly, we anticipate taking no further administrative action with respect to any of the 286 employees, and the case has been closed.

As to Mr. Calhoun, since he is in the excepted, rather than the competitive, service, we have no jurisdiction with respect to any prohibited political activity on his part. However, we have directed a letter to the Honorable Philip Buchen, Counsel to the President, advising him of our findings.

Thank you for bringing the matter to our attention. If we can be of further service to you, please let us know.

Sincerely yours,



Carl F. Goodman  
General Counsel

Mr. CLAY. The Civil Service Commission is represented by Carl Goodman, General Counsel, and Lynn R. Collins, Deputy Assistant General Counsel.

Clay Claiborne, treasurer of Black Voters for Republican Congress, will appear before this subcommittee as soon as we have secured a subpoena directing his appearance.

John Calhoun, Special Assistant to the President, has not responded to our invitation to testify before this subcommittee. Apparently this is part of the pattern of reluctance on the part of the White House not to cooperate with the efforts of this subcommittee.

We have attempted to reach Mr. Calhoun by telephone on numerous occasions. He has refused to return the telephone calls with the exception of one. We have written several letters to Mr. Calhoun. He has refused to respond to those letters.

In the one call that we were able to get through to Mr. Calhoun, he promised us that he would be at the hearing today, but later we were told by another source that he would not be able to make it.

We have written letters to the President. His General Counsel, Mr. Buchen, contends they have not been able to find the letters at this point; therefore, we have no response or no cooperation from the White House. But we will deal with that at a later date.

May I ask you gentlemen to stand and raise your right hand?

Do you promise the testimony you are about to give before this subcommittee will be the truth, whole truth, nothing but the truth, so help you God?

Mr. GOODMAN. I do.

Mr. COLLINS. I do.

Mr. CLAY. You may proceed as you see fit.

**TESTIMONY OF CARL F. GOODMAN, GENERAL COUNSEL, CIVIL SERVICE COMMISSION, AND LYNN R. COLLINS, DEPUTY ASSISTANT COUNSEL, U.S. CIVIL SERVICE COMMISSION**

Mr. GOODMAN. Mr. Chairman, I have a short prepared statement which I would like to read at this time.

We appreciate the opportunity to appear before you today to report the findings with respect to our inquiry as a result of your request into whether any violations of the Hatch Act have been committed in connection with the publication of a document styled "Partners in Progress," which contained photographs of 286 black Federal employees.

I might explain that I, rather than Chairman Hampton, am appearing on behalf of the Commission this morning because the Chairman conceivably could have an adjudicatory role in any case resulting from the activities in question, and I, as General Counsel, have been specifically delegated the authority and responsibility for overall enforcement and interpretation of the Hatch Act.

Accompanying me is Lynn R. Collins, Deputy Assistant General Counsel. Mr. Collins is here to assist in answering specific questions which you may have.

For the record, I might point out that the Civil Service Commission has Hatch Act enforcement responsibility with respect to those Federal employees who occupy positions in the competitive service. By

regulation, specifically section 733.201 of title 5, Code of Federal Regulations, the responsibility for enforcement of the law with respect to employees in the excepted service, rests with the particular employing agency. Thus, as an initial matter in our investigation, we were concerned with whether any competitive service employee had authorized the use of their photograph in the campaign brochure, or had in any other way been involved in its planning or preparation.

During the course of our inquiry, we were in contact with several Federal agencies with employees whose photographs appear in the brochure. We understand that these agencies were also requested by you to conduct investigations to determine whether any Federal laws may have been violated in the preparation or release of the employees' photographs by the agency. It appears on the basis of the information my staff received from their contacts with five such agencies, that they had furnished the photographs of their employees in response to an April 5, 1976, memorandum from Mr. John Calhoun, Special Assistant to the President, which was directed to various public affairs and information directors. That memorandum, a copy of which is attached to our testimony, requested each agency to which it was sent to furnish five photographs of all blacks serving in a policymaking position, to include those in GS-15, or higher. . . . Such photographs were to be furnished by April 16, 1976, for the stated purpose of Bicentennial displays, and Government Day programs.

An attorney in my office contacted and interviewed one Mr. Clay Claiborne, who I am informed identified himself as treasurer of an organization called "Black Voters for Republican Congress," under whose auspices the "Partners in Progress" brochure was prepared and published. I am further advised that Mr. Claiborne acknowledged that he was responsible for assembling the document in question; that some 25,000 copies had been printed at a cost of approximately \$3,400; that he had not been able to afford national circulation of the document, and so contacted the Republican National Committee and the President Ford Committee, soliciting their assistance for distribution purposes; that neither of the committees felt that document was appropriate for distribution. I am advised that Mr. Claiborne stated that he obtained copies of the 286 employees' photographs from John Calhoun, Special Assistant to the President. I am further informed that as a result of being advised that the document was not appropriate for distribution all but a few of the copies are presently stored in a room adjacent to Mr. Claiborne's office.

My staff randomly selected a number of employees, and contacted them concerning the appearance of their photograph in the campaign document. I am told that all of those with whom we spoke denied that they had been contacted for permission or in anyway authorized the use of their photograph, other than for the purpose of Bicentennial displays and Government Day programs for which they were initially requested.

On the basis of the evidence available to us, we have concluded that there has been no violation of the Hatch Act by any employee within the Commission's jurisdiction in connection with the publication of the brochure. I am advise that Mr. Claiborne is not a Federal employee, and is therefore not subject to the provisions of the Hatch Act. We have received no evidence to indicate that any of the 286

employees authorized the use of their photograph for political purposes. And finally, Mr. Calhoun is a Presidential appointee outside the competitive service, and thus not within the Commission's jurisdiction. Accordingly, Mr. Chairman, I have addressed a letter to the Honorable Philip Buchen, Counsel to the President, advising him with respect to our findings.

Mr. Collins and I will be happy to answer any questions which the committee may have.

[See letter of explanation, p. 114.]

Mr. CLAY. Mr. Collins, do you have a statement you would like to make?

Mr. COLLINS. No.

Mr. CLAY. In the first paragraph of your statement, you say you are appearing on behalf of the Commission because the Chairman conceivably could have an adjudicatory role resulting from the activities in question.

Would you see that dual function as one of the shortcomings in the existing law where the Chairman of the Commission sits as both prosecutor and judge?

Mr. GOODMAN. Under the regulations in the Commission we have attempted to split off that dual role by having the General Counsel act in the nature of a prosecutor in these cases so that the Chairman, himself, does not get involved at any state in these cases other than the ultimate adjudicatory role.

Now, the result of that cleavage is that I am the prosecutor in these cases. The Chairman decides the cases. When it comes to a decision before the Chairman, I do not act as the Chairman's General Counsel at that point, nor give legal advice, but simply as the prosecutor.

We recognize there is a problem with being both adjudicator and prosecutor and by delegation we have attempted to split that problem off.

Mr. CLAY. In the process leading up to that decision or that precise moment, do you give advice relative to these cases?

Mr. GOODMAN. Not in regard to Hatch Act cases, Mr. Chairman, I do not, in order to keep the Chairman free for his adjudicatory role.

Mr. CLAY. You point out in the second paragraph that the Civil Service Commission has Hatch Act enforcement responsibilities with respect to those Federal employees who occupy positions in the competitive service.

What responsibility does the Civil Service Commission have in terms of protecting those persons in the competitive service from abuses, such as what we are discussing today, heaped upon them by outside factors?

Mr. GOODMAN. Only if the abuse is practiced by somebody in the competitive service would we have jurisdiction to deal with that. In other words, if an employee in the competitive service had the arm put on him, so to speak, in connection with a political matter, by somebody else in the competitive service, we could deal with that person because they are in the competitive service.

If it is put on by somebody in the excepted service, we would not have jurisdiction to protect the rights of the competitive service employee in such a case.

Mr. CLAY. What are the rights of those in the competitive service when the arm is put on them, as you paraphrased it, by someone outside the competitive service?

Mr. GOODMAN. I do not know they have any specific statutory rights. I do not believe that the present Hatch Act provides them with a specific statutory right on their own in connection with such a circumstance. Now it may well be that they have rights which arise from other provisions of the law. You know, the common law interest that would protect their privacy interest, for example, might be implicated in that circumstance. But I don't believe the Hatch Act provides it.

Mr. CLAY. There are no criminal statutes on the book that would protect Federal employees from this type of intrusion on their rights under the Hatch Act?

Mr. GOODMAN. I just simply am not familiar enough with the criminal provisions to deal with that. That would be a matter within the jurisdiction of the Justice Department and not the Civil Service Commission. I know there are provisions of the criminal law which do deal with political activity.

Mr. CLAY. Don't you have the overall responsibilities for enforcement of the Hatch Act?

Mr. GOODMAN. The overall responsibilities for enforcement of the Hatch Act, but that would be limited, Mr. Chairman, in the civil area. If there is a matter here of criminal violation, that would be the responsibility of the Department of Justice and not the Civil Service Commission.

Mr. CLAY. Then you are not in a position to advise employees of all of their rights relative to the Hatch Act?

Mr. GOODMAN. Again, in the civil area we would be in a position. If it comes to matters in the criminal area, we would not be in a position. That is not within our jurisdiction.

Mr. CLAY. On page 2 of your report, you say that you discussed the document with Mr. Claiborne and he told you that only 25,000 copies were printed at a cost of approximately \$3,400. Did you discuss it with him or somebody from your staff?

Mr. GOODMAN. A member from my staff, one of the attorneys in my office, discussed that with Mr. Claiborne.

Mr. CLAY. Did you produce any evidence or printers' receipts, or anything to that effect, to establish that fact?

Mr. GOODMAN. I have no receipts in the file. I do believe the attorney on my staff contacted the printer as well, and if you wait one moment, perhaps I can find that out from looking at some material I have here in the file.

The file does not indicate whether he contacted the printer. His report to me indicates that 25,000 copies were printed at a cost of \$3,400.

Mr. CLAY. Will you turn all the records that you have, as a result of your investigation over to us?

Mr. GOODMAN. If we can do that by letter, I will be happy to do that, yes.

[See p. 116.]

Mr. CLAY. Fine.

Further down on page 2, you say you are advised that Mr. Claiborne stated that he obtained copies of the 286 employees' photographs from

John Calhoun, Special Assistant to the President. Is that a violation of any rights of Federal employees for a member of the White House staff to turn over photographs that he secured under false pretenses to a private organization or private individual?

Mr. GOODMAN. Again, I don't believe that the Hatch Act provides specific rights to the Federal employees whose photographs are involved to proceed against an individual.

As I indicated earlier, there may be some rights that arise from these penumbra interests having to do with the right of privacy, for the use of somebody's photographs for another purpose, for example, but the Hatch Act, itself, I do not believe provides a specific right for these employees.

Mr. CLAY. What does the Hatch Act protect these employees from?

Mr. GOODMAN. The method by which the Hatch Act operates, Mr. Chairman, is not to provide specific rights as such to the employees but rather to provide prohibitions against other people who are also employees from dealing with these matters.

Mr. CLAY. It acts to deny rights, not to provide them?

Mr. GOODMAN. Well, you know there are two sides of the same coin, if I may. If you deny a competitive service employee the right to put the arm on somebody, then in a sense you have protected a right, but you haven't given a personal right.

Mr. CLAY. Who has a right to put an arm on somebody? That is not a right.

Mr. GOODMAN. It is not a right because the statute makes it very clear if a person in the competitive service does that, they can be discharged from the service, and that is the method by which the Hatch Act proceeds. The Hatch Act proceeds by a method of prohibition.

Mr. CLAY. Well, several months ago, when this committee was attempting to revise the Hatch Act and make it a little more democratic, your commission and you, I think, in particular, sat here and testified the present and existing law as a Utopia for Federal employees. You didn't want any changes. You made no recommendations for changes in the existing law.

Yet, we are hearing today that apparently there are some deficiencies; apparently there are some areas that we need to be involved in trying to straighten out.

Mr. GOODMAN. As you know, Mr. Chairman, the Civil Service Commission did testify in opposition to the amendments to the Hatch Act. I do believe that in the course of our testimony, either before this committee or before the Senate committee, that we did indicate that there were, in fact, some improvements in the legislation which we did support. For example, if I recall correctly, I am trying to look back at the testimony I gave before the Senate committee, we indicated that we applaud those sections of the bill which give long-needed clarification to the definition of what constitutes a misuse of official authority.

I believe the Commission supported those provisions of the bill which would have provided for subpoena power, and there were some other provisions of the bill that we did, in fact, support at that time.

I know that you are quite correct, that the Commission's position has been generally a position in opposition to amendment to the Hatch

Act, but I believe that was because the amendments that were proposed were viewed by the Commission as going beyond those which are useful in terms of protecting the rights of employees. I do believe there were provisions, however, that we did think were beneficial.

Mr. CLAY. Of course that last statement is debatable.

Mr. GOODMAN. Certainly.

Mr. CLAY. This committee and the House and the Senate didn't agree with that statement. We thought that we were just bringing the rights of Federal employees into compliance with the first amendment to the Constitution.

Yesterday, a number of senior Federal employees, 10 in fact, testified before this committee that they did not understand the complexities of the Hatch Act; this despite your circulation of a summary of the laws contained in some 3,000-plus administrative rules.

Would you care to comment on this? Why senior Federal employees, people grades GS-15 and above, could sit here and tell us that they don't understand what rights they have under the Hatch Act? How is that possible?

Mr. GOODMAN. Of course I cannot testify as to why these people don't know what their rights and obligations are in connection with the Hatch Act. The Commission has attempted to get material in the hands of the public, specifically in the hands of Federal employees, which would act as an aid in helping them understand what their rights and obligations are. We put out a flyer which contains the "do's" and "don't's" under the Hatch Act, and we put out other interpretative material.

We also have a section of my office which is devoted to the purpose of advising Federal employees. We get numerous requests from Federal employees to advise them as to what their rights are in a particular situation, and we do advise them of their rights in those situations. We advise them in a way which is binding on us. So, for example, if we advise them they can do something, they know definitely they can do it because we certainly would not prosecute in a case such as that.

I don't know what else I could say in that regard except we do attempt to keep Federal employees advised as to what the "do's" and "don't's" in the area are.

Mr. CLAY. Yesterday, most of those witnesses stated that they did not complain to either their agency heads or the Civil Service Commission because they felt that neither body could offer any protection in this situation.

Dow do you account for this perception?

Mr. GOODMAN. Again, I can't look into the minds of other people as to their perception. I would certainly hope that in such circumstances such people would in fact complain to their agency and would in fact complain to the Civil Service Commission so we could see if there is something that can be done in the circumstances. I can't comment on why one would have a perception that one would have.

Mr. CLAY. The feeling seems to be a general one that the Civil Service Commission, and it was stated specifically for the record yesterday, that they view the Civil Service Commission as not being there to protect their rights, the rights of employees, but rather the rights of management.

Have you found that to be the general feeling among the civil service employees?

Mr. GOODMAN. Congress has specifically given to the Civil Service Commission substantial authorities in regard to protecting the rights of Federal employees. For example, the Federal Employees Appeals Authority is engaged in the process of handling complaints regarding adverse actions by Federal employees on a very regular, continuous basis. I don't have the reversal rate of agencies involved in such cases, so I am not able to give you those figures, but I know the Commission does view as one of its prime responsibilities, its responsibilities to carry out those authorities given to it to protect the rights of Federal employees.

Mr. CLAY. If I, as chairman of this subcommittee, had not complained about this newspaper, "Partners in Progress," in which the 286 photographs of Federal employees appeared, would the Commission have conducted an investigation into the possible violations of the Hatch Act on its own initiative?

Mr. GOODMAN. The Commission would only investigate had it received a complaint. In this case the only complaint we did receive was the complaint from you, and it was on the basis of that complaint that we did our investigation.

Mr. CLAY. Don't you have the responsibility to initiate investigations?

Mr. GOODMAN. The Commission's actions under the Hatch Act aren't self-initiating in the present circumstances. The Commission's actions under the Hatch Act are actions that it takes as a result of information that comes to the Commission, normally via a complaint. It need not be a terribly formal complaint.

If we received, for example, a newspaper clipping from somebody that indicated that there might be a violation of the Hatch Act, we would investigate under those circumstances, but we don't on our own send groups of people into the field to initially discover whether the violations of the Hatch Act are in process.

Mr. CLAY. You would have to receive through the mail, I assume, a newspaper clipping.

Mr. GOODMAN. Some mechanism, some indication indicating there might be a violation.

Mr. CLAY. If the Washington Post ran a story indicating a violation, you wouldn't, based on the newspaper story, conduct an investigation?

Mr. GOODMAN. If that article were to come to the attention of the people in the Commission, and there were indications there of violation of the Hatch Act, we would look into that.

Mr. CLAY. Thank you.

Mrs. Spellman?

Mrs. SPELLMAN. I, too, am concerned that people don't understand the provisions of the Hatch Act, and I know you said: "Well, we send out these little 'do's' or 'don'ts'." Do you suppose there is some way you could make people more familiar with the provisions of the Hatch Act? Yesterday I commented that my husband had violated the Hatch Act inadvertently and wouldn't do things that really were permitted because there just isn't enough familiarity with it.

Mr. GOODMAN. The question of familiarity with the Hatch Act is one which has been of great concern to me personally, Mrs. Spellman. The Commission does attempt to get Federal employees to know what their rights are as well as to know what the prohibitions are through the publication of these posters on "do's" and "don'ts."

I consider one of the prime functions of the Hatch Act section in my office is the advisory function to advise Federal employees. We have attempted, to the extent we can, to make the matters understandable. It may well be that further steps are required, either of a regulatory nature or otherwise to attempt to clarify what the "do's" and "don'ts" in the area are.

But we make an honest effort to bring to the attention of Federal employees what their rights are as well as what the prohibitions are under the act.

Mrs. SPELLMAN. As we discussed this particular case I recognized that there wasn't a violation of the Hatch Act on the part of the people whose pictures appeared in the brochure, but is there enough protection for these people?

I must admit someone came up after the meeting yesterday and raised some interesting questions in discussing this situation with me. For instance, how would an agency go about determining whether to give a picture or a résumé of a person's background? For instance, if the Washington Post said, "We are going to do a story on some very fine things that are being done in the Federal Government," would the agency be permitted to give that picture and the vitae on the employee?

Mr. GOODMAN. The question that you raise, I think, is substantially broader than a Hatch Act question.

Mrs. SPELLMAN. That is right.

Mr. GOODMAN. And I think to some extent Congress attempted to deal with this problem last year, or the year before, in connection with the Privacy Act, which was designed to protect the privacy of individuals.

One of the problems in dealing with such a question is that the Privacy Act is limited in its application to those records which are contained in name retrievable files. There is lots of information about Federal employees that is contained in files that are not name-retrievable files, and to that extent the Privacy Act provisions would not in my view deal with that matter.

Aside from that statutory question, I think one does have the entire general question of common law rights in the privacy area. I recall in my law school days dealing with cases in which peoples' photographs were used to sponsor a product, and the question then of if you use someone's photograph for a commercial purpose, whether you aren't, in fact, violating some privacy interest, and so on, and it may be that that line of cases might have some applicability in this area to create a common law right.

Aside from that, I don't know that there is any legal provisions that would deal with this question.

Mrs. SPELLMAN. I found myself sort of getting tripped up not knowing just how far you go with the Privacy Act, with Freedom of Information, with the rights of the Fourth Estate, and I said hypo-

thetically of the Washington Post: "We want to do a very nice story on the great things that are being done in the Federal Government." I suppose at that point the agency would say: "Yes, let me give you these pictures of our public servants."

But suppose the Washington Post said: "We are going to do an exposé; this is going to be a page 1 exposé; we want those pictures." Would they then give that material, and, if not, are we censoring the materials that we give to the Fourth Estate, and since many of these pictures are taken at public expense, what does an agency do?

There really are some divisions here which I find a little difficult to sort out.

Mr. GOODMAN. I think to some extent we are dealing with an inherent inconsistency. The objective of legislation such as the Freedom of Information Act, for example, is to make information available to the public. The objectives of the Privacy Act are to withhold some information from the public.

Now, I think those two objectives can coexist side by side because what you are involved in is a balancing process. At what point do you cross the line where you are now unreasonably intruding into somebody's privacy, and you have to engage in a weighing process.

I think that the Freedom of Information Act and Privacy Act call upon Government officials to engage in that weighting process. Whenever you get involved in a weighting process, I think you have the potential present for abuse, because if you are making a weighted judgment, you can always add more weight to the side that you happen to favor.

But, in addition, I think whenever you are engaged in a weighting process, you have an uncertainty as to where you are going to come out because reasonable minds can differ about circumstances. I don't know how you deal effectively with such problems.

Mrs. SPELLMAN. It is a gray area really.

Mr. GOODMAN. Except to try and let the weighting process work, and, if necessary, appeal to the Federal courts when one believes there is an abuse of that weighting process.

Mrs. SPELLMAN. Just one more question, if I may, Mr. Chairman. Is the Civil Service Commission supposed to be the representative, in a sense, of the employees? Yet it isn't really viewed that way. We were told yesterday that there were instances when the White House would make requests which were not necessarily in the best interest of Federal employees and the Civil Service Commission felt impelled to act on them.

How do we restore the function of the Civil Service Commission so that it is working in the interest of Federal employees, and then, second, how do we restore confidence? I suppose the confidence comes after the initial restoration.

Mr. GOODMAN. As this committee knows, the Commission has recently engaged in a rather detailed self-audit of some of its functions. The Sharon report is a consequence of that, and the Commission does have under consideration various proposals to deal with recommendations that are contained in that report.

It would seem to me that such self-examinations, looking at problems that are in one's own agency, and then effectively dealing with

those problems in a manner that makes it clear to Federal employees that one is effectively dealing with those problems, is perhaps the only way to deal with the question of confidence.

To some extent the question of confidence may be influenced by appearances of things that may be other than real. For example, when the Civil Service Commission decides, through its appeals authority, for example, a case involving a Federal employee, if the Commission decides the case in favor of the employee, that is the end of it, and it is never heard of again. It does not become a cause celebre; it is not publicized. On the other hand, if the Commission decides against the employee, the defendant in the next lawsuit is not the agency that committed the act that brought forth the question, but is the Civil Service Commissioners, so the perception of the Civil Service Commission is that the Civil Service Commission did all of these things that the agencies have done, or alleged to have done, and there may be there a question of appearance rather than reality involved to a great extent.

Mrs. SPELLMAN. If I were one of these people who had had my picture taken and the Civil Service Commission ruled that it wasn't a violation and had not protected my rights I would lose confidence also. I would expect the Commission to raise holy hell with the White House and say to them, "You leave our people alone; they are protected under law and you, too, must follow these laws."

Mr. GOODMAN. There may here be a question of shortfall, which goes back to a question that the chairman raised in terms of amendment to the provisions. It may well be that there is a shortfall in the act in that excepted service employees do not come within our jurisdiction and only competitive service employees do, and it may well be that is an area in which there should be change.

Mrs. SPELLMAN. Thank you, Mr. Chairman.

Mr. CLAY. Mr. Harris?

Mr. HARRIS. Have you seen the political brochure we are talking about?

Mr. GOODMAN. I have seen a copy of it.

Mr. HARRIS. If, in fact, the people involved there had authorized their picture be used in a manner such as this, would that have been a violation of the Hatch Act?

Mr. GOODMAN. I believe it would have been.

Mr. HARRIS. Would they have then been subjected to penalties under the Hatch Act?

Mr. GOODMAN. One would have to make a judgment as to whether to prosecute in a particular case, and there may be other factors that would be taken into account in exercising prosecutorial discretion, but they would be subject to it, yes.

Mr. HARRIS. So as I understand your testimony now, and I think it is important for legislative history, if a merit system employee authorizes his picture to be used in this way, he can be disciplined. However, if a political appointee uses his picture that way, involuntarily, against his will, he can't be disciplined?

Mr. GOODMAN. I wouldn't go so far as to state under oath he can't be disciplined. I would go so far as to state I would not have jurisdiction to discipline him.

The question remains as to whether the agency has authority to discipline him.

Mr. HARRIS. There isn't any question about the testimony. We have it clear that voluntary participation in politics by a merit employee is subject to the jurisdiction of the Commission. Involuntary participation is not subject to the jurisdiction of the Commission.

Mr. GOODMAN. It depends on how the involuntary got there. If the involuntary got there through the use of another competitive employee, we would have jurisdiction.

Mr. HARRIS. Exactly. That is the question. You are in the business of protecting the merit system folks from one another but not somebody else.

Mr. GOODMAN. That may well be a shortfall in terms of the Hatch Act as to where it leaves authority, and that would go back to the answer I gave to Congresswoman Spellman about the division of authority in terms of the excepted service and the competitive service.

Mr. HARRIS. Then, if in fact you carry out an investigation of a violation of the Hatch Act, and you discover while the Hatch Act as such is not being violated but there is a possibility of other criminal offenses having been violated, do you do something about it?

Mr. GOODMAN. In this particular case, as I indicated, we wrote to the Counsel to the President because the individual involved was employed in the White House. That is our normal practice under the Hatch Act, to write to the agency involved.

Mr. HARRIS. You did that under section 733.201, is that correct?

Mr. GOODMAN. I believe that is correct.

Mr. HARRIS. At what date did you do that?

Mr. GOODMAN. The letter was sent over just the other day. We just recently completed the investigation.

Mr. HARRIS. Can you be more specific on that, what date the letter went over?

Mr. GOODMAN. My copy of the letter isn't dated, but I think it is yesterday.

Mr. HARRIS. Is it signed by you?

Mr. GOODMAN. Yes.

Mr. HARRIS. Come on now, was it sent over yesterday, or when?

Mr. GOODMAN. Yesterday.

Mr. HARRIS. OK, you haven't then received any response to the letter?

Mr. GOODMAN. No.

Mr. HARRIS. We had testimony yesterday from NASA, from Dr. Lovelace specifically, that on December 6 they sent a report outlining the results of their investigation of NASA employees who are the subject of the hearing, and he said that he wasn't aware of any response he had received from the Commission with respect to this.

I would like to know if the Commission has in fact advised NASA on what it is going to do or what it has done?

Mr. GOODMAN. No; I don't believe we have sent anything to NASA or advised them in that regard. I believe we asked NASA for a copy of their investigation to assist us in our investigation.

Mr. HARRIS. They say they sent it to you on December 6. Is that when you initiated your investigation? Or when did you start?

Mr. GOODMAN. Our investigation was initiated earlier by a member of our staff.

Mr. HARRIS. But when did you start your investigation?

Mr. GOODMAN. We will see if we have that in the file.

I don't have the exact date which the attorney went out. I suspect it was in late October or early November that an attorney in my office went out to look into this matter.

Mr. HARRIS. I have to be somewhat concerned that if you started the investigation in late October, that nothing went to the White House until yesterday?

Mr. GOODMAN. Well, I received a report which is dated on November 30 from an attorney on my staff. I didn't receive it on November 30, I received it somewhat later than that date. I read the report; I looked into it; and I asked that certain further investigation be conducted in this matter. That further investigation was handled by Mr. Collins, who sent me a report on the matter, which is dated on December 14.

Mr. HARRIS. I tell you what, if we can just hold off another month, I am sure Calhoun will be gone and yet the evidence of the violation apparently came to the Commission's attention in October. Relating back to other questions, this may have something to do with the lack of confidence in the Civil Service Commission, if I may observe that.

If Calhoun were in the competitive service, would the Civil Service Commission have pressed its investigation with a view toward disciplinary action?

Mr. GOODMAN. From all of the evidence I have in front of me now, if Mr. Calhoun were in the competitive service, I believe this would be an appropriate case for bringing action under the Hatch Act.

Mr. HARRIS. Summing it up, I think—

Mr. GOODMAN. I should indicate that there are some exceptions in the Hatch Act for political activity for persons who are paid out of the White House. Mr. Calhoun falls into that category, and, as a consequence, would not be subject to those provisions under which I would bring charges if he were in the competitive service, so that there is a different question which is presented at the White House now than would be the question that would be presented to me if he were in the competitive service. I think the record should be clear on that, Mr. Harris.

Mr. HARRIS. I think we have developed a record here and there is some frustration involved if, in fact, we have an official of the U.S. Government, and I presume a special assistant to the President is an official of the U.S. Government, if there are allegations made that he, in fact, used deceit or misrepresentation in order to obtain official documents, and then turned around and used it for purely political purposes.

If, in fact, those allegations come to officials in the U.S. Government, what happens, and what we are seeing here is that nothing happens until this committee announces this investigation and something is then sent to the White House that says they ought to look at this.

The Justice Department was never advised of this, was it?

Mr. GOODMAN. I have not advised the Justice Department of this. I know of no reason to advise the Justice Department of this.

Mr. HARRIS. I tend to agree with at least one of the statements you made. There are some deficiencies in the law if that is the case.

Mr. CLAY. Will the gentleman yield on that point?

Mr. HARRIS. I would be happy to yield, Mr. Chairman.

Mr. CLAY. I want to get the scenario clear.

In mid-October, we notified the Civil Service Commission of the possibility of Hatch Act violations; is that correct?

Mr. GOODMAN. Yes.

Mr. CLAY. According to your statement this morning, you randomly interviewed several of the 286 persons whose photographs appeared in the publication; is that correct?

Mr. GOODMAN. Maybe it would be useful if I gave you the scenario as I see it from my side of the receipt of the inquiry.

Mr. CLAY. Please do.

Mr. GOODMAN. We got the inquiry. That inquiry was sent to the Hatch Act section of my office. It was there assigned to an attorney on the staff who went out and conducted an investigation, I believe, in late October or early November.

He then prepared a report to me in which he recommended that the matter be closed with a letter to Congressman Clay.

I received that report sometime in early December. I was not satisfied with that, and so I asked my staff to conduct a further inquiry in this regard. They did that, and they sent me a further report. We had discussions before they sent me that report, and the result of that was that rather than the matter simply being closed, that the matter was closed in regard to those employees whose photographs were involved, and the matter was referred to the White House and a letter was sent to you, Mr. Clay, explaining what our actions in that regard were.

Mr. CLAY. That was the hand-carried letter we received yesterday?

Mr. GOODMAN. That is correct.

Mr. CLAY. But in mid-October, we made the complaint. What did your investigator do between mid-October and early November, when he brought in his initial report? Who did he interview and how much time was consumed?

Mr. GOODMAN. I would have to look at his report and base my answer solely on that, because I have no other knowledge of what he did. I am told it took him some time to get in touch with Mr. Claiborne, and it appears that he interviewed Mr. Claiborne—

Mr. CLAY. On one occasion?

Mr. GOODMAN. I don't believe the report indicates that. I would suspect probably on one occasion.

Mr. CLAY. But he completed his investigation the first week in November, according to you?

Mr. GOODMAN. I don't know when he completed his investigation, Mr. Clay. I do know the report he sent to me is dated the 30th of November.

Mr. CLAY. I thought you had said the first week in November.

Mr. GOODMAN. It was my understanding that he conducted the investigation in late October or early November. I don't know when he completed it. I only know that the report that I received, which is here in the file, is dated November 30, 1976.

Mr. CLAY. So it took him 6 weeks to randomly interview several of the 286, and Mr. Claiborne?

Mr. GOODMAN. Well, I am sure that during that period of time, Mr. Clay, the attorney involved was engaged in a great number of other matters, as well as this matter.

Mr. CLAY. Much more important than perhaps the violation of the rights of 286 career civil service employees?

Mr. GOODMAN. Well, this is an individual who works in the Hatch Act section of our office.

Mr. CLAY. How many other Hatch Act violations have been reported to you this year, last year, the year before?

Mr. GOODMAN. Mr. Collins advised me that we probably have about 30 to 40 cases in process right now. We don't have the figures before us—

Mr. CLAY. They have been in process for how long?

Mr. COLLINS. For various periods of time, depending on the complexities of the case, the staff available. We depend on investigators in the field to conduct investigations outside the Washington area. These investigators are not General Counsel Office employees. They work for the Bureau of Personnel Investigations. They have other duties and we depend upon them to provide the information to us, conduct the investigation and get them to us as quickly as they can.

Sometimes that process takes 5 or 6 weeks to get an investigation completed and back to us for review to determine whether or not any further action can be taken.

Mr. CLAY. Do any of them involve 286 people?

Mr. COLLINS. No; but a number of them involve large numbers of employees. We are also involved in State and local Hatch Act cases. I, myself, spent a week in Philadelphia recently on a Philadelphia city agency that is allegedly coercing contributions from employees.

Mr. CLAY. Federal employees?

Mr. COLLINS. No; their own employees and it is a federally funded program.

Mr. CLAY. Why would you be involved in that?

Mr. GOODMAN. We have jurisdiction if it is a federally funded program under those provisions of the Hatch Act which relate to State and local employees.

Mr. CLAY. We are going to try to relieve you of all that jurisdiction.

Mr. Harris?

Mr. HARRIS. I thank the chairman for clearing that up. I wonder if we could have a report in writing as to the dates and processes of the investigation? It seems to me this period from October through November 30, becomes an important element as to the matter at hand.

Would it be possible to supply us with a detail worksheet on this?

Mr. GOODMAN. Certainly.

Mr. COLLINS. May I make a comment also on this.

During that period of time I personally was coordinating with several of the other agencies on the investigations that they were conducting at the request of Chairman Clay with respect to how the photographs were obtained and released by the agency; and I felt personally, in my own judgment, felt it would be inefficient on my part to try to conduct a separate investigation from what they were doing, interviewing the same employees, so we were coordinating with

them in respect to what they were finding out and that determined in some part what we did from that point on.

Mr. HARRIS. May I ask Mr. Goodman to help me a little bit with regard to section 7324 of the Hatch Act which I will read to you.

7324(a)(1) states:

An employee in an executive agency or an individual employed by the government of the District of Columbia may not use his official authority or influence for the purpose of interfering with or affecting the result of an election.

Would that provision not apply in this case?

Mr. GOODMAN. Well, let me indicate first that it is my understanding that we have never had a decision in a Hatch Act case under 7324(a)(1); 7324(a)(1), unlike the provisions concerning taking an active part in political management, does apply to people who are on the staff in the White House.

Mr. HARRIS. That is what I thought.

Mr. GOODMAN. It is as a consequence of that that there was a letter from me to Mr. Buchen, because if all we had was 7324(a)(2), the management provisions, I believe that this gentleman would be exempt from the provisions because of his employment in the White House.

Mr. HARRIS. I tend to agree with you that the language is fairly clear. The fact that we don't have any cases on it indicates that the provision hasn't been enforced.

Mr. GOODMAN. No; I think it has been our experience that it is much easier from a prosecutorial standpoint to handle a case under 7324(a)(2) and in the normal course of events you are dealing with a situation where (a)(2) is applicable whenever (a)(1) is applicable, and so our experience has been while we have charged in cases under both 24(a)(1) and (a)(2), the decisions that have come down have come down under (a)(2).

Mr. HARRIS. Under (a)(2), the proper procedure would seem to be to go to the agency involved.

Mr. GOODMAN. If it is excepted service.

Mr. HARRIS. Yes; if it is excepted service. It seems to me under (a)(1) the proper procedure would be for the Civil Service Commission to pursue it.

Mr. GOODMAN. Under our regulations, which is what I have to operate under, Mr. Harris, we cannot pursue that. We must send that to the agency involved. That is what we did in this case, under 733.201 of our regulations dealing with the excepted service.

Mr. HARRIS. Well, I have to look at the statute that we are dealing with here and it seems to me that the statute is clear enough that an employee of an executive agency—and there is no exception for anybody in the executive agency—may not use his official authority or influence for the purpose of interfering with or affecting the result of an election.

It seems to me that your investigation documented a misuse of official authority; your comments today indicate to me that you certainly would have pursued it had it been a merit service employee. Yet for some reason we have ignored this provision of the law as it applies to a political appointee.

Mr. GOODMAN. Mr. Harris, I tried to make clear in indicating an answer to the question that we would have proceeded if this were a

person in the competitive service, that our jurisdiction there is somewhat different. I don't think there is any question but that this would come within 7324(a)(2) if this were competitive service. Obviously this is taking an active part in a political campaign.

I attempted to leave open the question as to whether there is a violation of 7324(a)(1). I don't think that is a decision that I can rightfully make. In these circumstances the matter is within another agency and has been referred to them, but I think there is no question but that the individual involved is subject to the provisions of 7324(a)(1). I don't think there is any question about that. That is why I sent it over.

Mr. HARRIS. I agree.

Who makes the decision to determine whether the politically appointed employee is in violation?

Mr. GOODMAN. The agency where employed. In this case the agency where employed is the White House.

Mr. HARRIS. Is there something in the law that causes that or is that a decision on the Commission's part?

Mr. GOODMAN. The regulations that have been in effect ever since I have been at the Commission call for that. I have never sat down and made a study of the statute to see whether the statute requires that regulation or does not. That has been the regulation in effect ever since I arrived at the Commission. It has been in effect long before that as well, and that is the regulation that I am bound by in exercising my jurisdiction in these areas.

Mr. HARRIS. I have to suggest, and, Mr. Goodman—I am not trying to apply responsibility to you with regard to what the processes are—but I think the law is clear. I think the anomaly now is clear, that if a nonmerit employee uses his position or his official authority to influence, interfere with, or affect the outcome of an election, that the law did not contemplate that anomaly. The law specifically prohibits non-merit employees from doing this, and yet the law has not been enforced.

Mr. GOODMAN. Well, let me say, Mr. Harris, I think you put your finger on a question—

Mr. HARRIS. I sure tried to.

Mr. GOODMAN [continuing]. That might have broader application than the Hatch Act.

As you know, there are jurisdictions that the Commission has in regard to the competitive service that it doesn't have in regard to the excepted service in general. Not simply in regard to the Hatch Act, but in general, and I think that the provisions which we are dealing with here, where authority is in the agency where employed, when you deal with an excepted service employee, is not inconsistent with that general proposition. It may be inconsistent with what is best for the administration of the Government personnel system.

Mr. HARRIS. Well, I have to wonder where that leaves this Government if that philosophy is maintained because it is probably hard for some of us to imagine, but if we leave it up to the agency involved, and if we apply that thesis to the White House staff, it would be possible—I know it is hard to contemplate—but it would be possible to have a White House staff that was dedicated to destroying the com-

petitive service," that would bend every effort to pervert the merit system into a political mechanism.

You could even have White House staffs that created plumber organizations and things like that to do secret investigations, and yet there would be nobody in the Government to stand up and say somebody is playing havoc with the merit system.

It seems to me that we have identified an important area which may not be in the law so much as it is in regulations, or administrative determination that nobody knew about.

Can I ask one last question, Mr. Chairman?

Mr. CLAY. Take all the time you need.

Mr. HARRIS. Obviously you have pointed out some deficiencies in the Hatch Act, at least in your mind, and you indicated that the Civil Service Commission did in fact support some changes, I believe, in the Senate testimony.

To your knowledge, while you have been at the Civil Service Commission, has the Civil Service Commission recommended any changes to the Hatch Act; have they taken any initiatives to change it?

Mr. GOODMAN. The staff at the Civil Service Commission has, yes.

Mr. HARRIS. The staff has?

Mr. GOODMAN. Yes.

Mr. HARRIS. To this committee?

Mr. GOODMAN. No.

Mr. HARRIS. To whom?

Mr. GOODMAN. The staff has dealt with this problem inhouse and in terms of the executive branch in general.

Mr. HARRIS. Did it ever get to Congress?

Mr. GOODMAN. I do not believe it has ever gotten to Congress.

Mr. HARRIS. Thank you, Mr. Chairman.

Mrs. SPELLMAN. May I, Mr. Chairman, follow that up?

Mr. CLAY. Yes.

Mrs. SPELLMAN. When was it that the staff made these recommendations?

Mr. GOODMAN. The staff has been working on the question of some modification of the Hatch Act for a substantial period of time. It spans a period of several years.

Mrs. SPELLMAN. When were some recommendations for changes submitted to the Commission?

Mr. COLLINS. I have been in the General Counsel's Office since 1970 and I believe in that period of time there have been three separate legislative proposals from our office on amendments to the Hatch Act which have been sent to the Office of Management and Budget, which have been circulated to the agencies for comments, which have come back to us, which were then revised in line with agency comments that we agreed with; you know, the process of putting together an executive branch legislative package.

None of those, as far as I know, has ever gotten to the Congress.

Mr. HARRIS. That is true.

Mrs. SPELLMAN. Has it gotten to the Commission?

Mr. COLLINS. Yes.

Mrs. SPELLMAN. How many years ago was it submitted to the Commission?

Mr. COLLINS. You are talking about the Civil Service Commissioners?

Mrs. SPELLMAN. Yes.

Mr. COLLINS. They have to approve anything we have done before it goes to the Office of Management and Budget.

Mr. HARRIS. It is the OMB that has stopped any recommendations from coming over here; right?

Mr. COLLINS. I am not saying that.

Mr. HARRIS. No; I was.

Mr. COLLINS. What I am saying is that I know that several legislative proposals have been submitted and we have not, as far as I know, seen them get to the Congress.

Mrs. SPELLMAN. Thank you.

Mr. CLAY. Thank you.

Mr. JOHNSON?

Mr. JOHNSON. Mr. Goodman, did I understand you right when you said you haven't reviewed the regulations for enforcement of this law since you have been here? Did I understand you to say it has just been on the books since you got here?

Mr. GOODMAN. I am saying it is my understanding that this regulation has been on the books for a substantial period of time, dealing with the excepted service. There is some history about that, too. Even prior to the passage of the Hatch Act there was an Executive order which dealt with prohibiting certain types of political activity. There was a distinction made there as well between who had jurisdiction when it was competitive service and excepted service.

This regulation has the same sort of thing, and what I meant to say was that it is my understanding this regulation about referring these matters to the agencies involved when it is excepted service has been on the books from prior to the time I arrived at the Commission.

Mr. JOHNSON. Are you ready to consider recommending changes in that?

Mr. GOODMAN. I would have to look and determine in the first instance whether the Commission would have jurisdiction at all even if the regulations were not there. I believe this may be an area, like many other areas, that Mr. Harris, I believe, was referring to in a comment made, where there is a shortfall, because there is a distinction drawn between the excepted service and the competitive service as to who has jurisdiction to enforce the rules of the game.

Mr. JOHNSON. So you are undecided?

Mr. GOODMAN. I am undecided because I don't know at the moment whether we would have the authority to deal with that.

Mr. JOHNSON. Thank you.

Mr. GOODMAN. It may well be the Congress has the authority to deal with it and not us.

Mr. JOHNSON. Thank you.

On October 28 the chairman wrote to the Attorney General, Edward Levi, asking him to look into the matter of the vice chairman of the parole board, the Administrator of the Philadelphia Regional Office of the Law Enforcement Assistance Administration, judge of the District of Columbia Court of General Sessions, Director of Civil Rights, concerning the photographs of these individuals appearing in this brochure.

I know you don't know this. I am informing you. The chairman received a response from the Attorney General after three or four phone calls from staff and I would like to read for the record, if I may, Mr. Chairman, the response of the Attorney General in its entirety:

DEAR MR. CHAIRMAN: In reference to your letter of October 28, 1976, regarding a political brochure containing the photographs of several departmental employees, please accept our apologies for the delay of this response. You should know the Department shares your concern about the use of official photographs for political purposes and that the allegations set forth in your letter are under active review.

At the same time, I am certain that you appreciate our concern that it would be inappropriate to make further comment on allegations that are the subject of such an ongoing departmental review.

I would like you to consider that letter along with the fact that the President on November 16, of this year, was alerted by the chairman of this subcommittee that a violation of the Federal statutes could have been committed by a member of his staff.

That letter, according to Philip Buchen, counsel to the President, has been misplaced somewhere in the White House.

Do you feel, given that context, that there is any logic to the testimony which was brought to this subcommittee yesterday? Specifically, Mr. Harris asked witnesses, including Beatrice Moore, whether or not they had confidence in the Civil Service Commission in terms of looking out for their interest.

Ms. Moore responded, "When I reflect on what you are saying, I realize I see the Civil Service Commission is not looking out for me in the course of what happens."

Do you feel that there is any basis for her feeling that way?

Mr. GOODMAN. I certainly do not feel that there is any basis in her feeling that way based upon a letter that was sent to the White House and a letter that was sent to the Attorney General of the United States. I don't see how one can draw a conclusion about the U.S. Civil Service Commission as a consequence of action or inaction, as the case may be, by other agencies of Government.

So I don't see how one can tie the two together, quite frankly.

Mr. JOHNSON. Were you involved in the preparation of Chairman Hampton's letter to this subcommittee under date of July 17, 1975?

In essence, that letter from the Chairman of the Commission to the chairman of the full committee, David Henderson, outlines the Commission's position with respect to modification of existing law governing political activities of Federal employees.

Were you involved in that in any way?

Mr. GOODMAN. I do not recall, frankly.

Mr. JOHNSON. Well, if I may, I would like to read to you some excerpts.

You don't recall whether you were involved—

Mr. GOODMAN. It was 1½ years ago.

Mr. JOHNSON. It is not long, given the fact that we spent 11 days on public hearings, received testimony from over 100 witnesses across the country, and you were in pretty close contact with us, or someone on your staff was, weren't they?

Mr. GOODMAN. I believe people on the staff were. I don't know that I was.

Mr. JOHNSON. You are in touch with your staff and there is no problem there?

Mr. GOODMAN. I believe it predated the date when I became the General Counsel and therefore had these responsibilities so that, you know, the staff might very well have been talking to my predecessor in office and not to me.

I just simply don't recall a letter 11½ years ago.

Mr. JOHNSON. Your staff was not involved then in the preparation of that letter?

Mr. GOODMAN. I am sure the staff was involved in it. But I personally have no recollection of that, no.

Mr. JOHNSON. Let me suggest that this was a major policy statement on the part of the Commission and I think I have some appreciation of how the bureaucracy works and it is, frankly, inconceivable to me that the staff was not involved in the preparation of this letter.

Mr. GOODMAN. Can I ask what the letter is about? Can I ask to see the letter? Maybe that will tell me something about it.

Mr. JOHNSON. Let me do this.

Mr. GOODMAN. I don't know what you are talking about, frankly.

Mr. JOHNSON. Since I only have the letter in a public document which is available to you, and I think we sent several copies of it and it is in your files, let me read to you what I am talking about and I will hand the entire document to you.

Mr. GOODMAN. Fine, that may help to refresh my recollection.

Mr. JOHNSON. I would hope it would.

The letter states:

As I testified before the subcommittee on March 25, 1975, it is an empty hope that the provisions against coercion, no matter how tightly drawn they may be, can alone protect the merit system against the encroachment of partisan political influences.

The letter continues:

Please realize that partisan political activity can subject them to removal, and know that those persons who request them to be politically active have no greater threat than that.

This entire protective fabric would be destroyed if the prohibitions against political management and campaigning are removed, as is being proposed in the bill to be considered by the committee.

It further continues:

One of the frequently made observations concerning the recent Watergate revelations was the matter in which the daily operation of Government continued uninterrupted, due in large measure to the dedication efforts of impartial civil servants in the career service. It seems incongruous for the Congress to now seriously entertain a proposal to deprive the Federal service of that shield of impartiality.

Mr. GOODMAN. That sounds familiar.

Mr. JOHNSON. I would assume it was.

Are you familiar with the President's veto message of H.R. 8617?

Mr. GOODMAN. I recall the President vetoed it and I recall that I read the veto message.

Mr. JOHNSON. That was April 12, this year.

The President at that time stated: "The public expects that Government service will be provided in a neutral, nonpartisan fashion. This bill would produce an opposite result."

He continues: "If this bill were to become law, I believe pressures could be brought to bear on Federal employees in extremely subtle ways beyond the reach of any anticoercion statute."

Given the context of the evidence which has been presented before this committee, do you believe that those statements are in need of modification?

Mr. GOODMAN. Again, I can see nothing in the evidence we have talked about which would indicate that those statements are not accurate. What I do see, frankly, is that maybe these provisions, the evidence you have submitted, indicates that there has to be greater protections written into the law. It would seem to me it would go in that direction rather than, say, write out some things from the law.

I don't see any necessary correlation between the evidence that has been presented here and a statement that indicates that the Hatch Act should be done away with or at least modified substantially. I mean there seems to me to be no relationship between the two. I am not saying that there may not be other arguments for doing it.

What I am saying in response to your question, I don't see any necessary correlation between this evidence and that ultimate objective.

Mr. JOHNSON. Have you investigated a misuse of authority allegation within the past few years?

Mr. GOODMAN. We did bring a case involving an official in American Samoa, I believe, hinged on the misuse of official authority, yes.

Mr. JOHNSON. When was that?

Mr. GOODMAN. 1973.

Mr. JOHNSON. Three years ago?

Mr. GOODMAN. Yes; we lost that case before the administrative law judge because the administrative law judge held that what was involved in that case was not an election but a referendum and therefore outside of the scope of the act.

Mr. JOHNSON. Given the fact that the President has lost or misplaced Chairman Clay's letters, given the fact that Mr. Calhoun has failed to respond to three phone calls, has broken an appointment and hasn't even dignified this committee with a response to its invitation, are you confident that the President will respond in any way to your letter?

Mr. GOODMAN. I can make no comment about what the White House will do in regard to my letter.

Mr. JOHNSON. I didn't ask you what they would do. I asked you if you are confident they will respond?

Mr. GOODMAN. I don't see I am in a position at all to render a judgment about what they are likely to do or not likely to do. That would require me to look into somebody else's mental process and I can't do that.

Mr. JOHNSON. I am not asking you to look into someone's mental process. I am saying on the basis of being a reasonable person of reasonable judgment, given the history of events, do you expect on the basis of your thoughts that the White House is going to respond to your investigation?

Mr. GOODMAN. I can make no comment about that except to indicate that the general course of conduct between my office and the White House is that we usually get responses from the White House.

As to what will happen in this case or won't happen, I just simply feel that it is inappropriate for me because I simply cannot do it, to look into the mind as to what might or might not happen at the White House.

I see no reason to believe that the normal course of events won't take place here. I just have no way of being able to make a judgment about what other people are likely or not likely to do in response to a letter I send them. I am sorry.

Mr. JOHNSON. If the law were to be changed retroactively, which, of course, it is not likely to be, but if that law were to be changed retroactively, giving the Commission authority over exempt employees, such as Mr. Calhoun, is it reasonable to assume that in your capacity of General Counsel you would bring this situation to the attention of the Commissioners for an adjudicative decision?

Mr. GOODMAN. Should the law be changed retroactively and should there be an indication of congressional desire to see the law as then changed applied to people's acts which took place at a time prior to that change in law, and should this be a situation where the change would affect applicability of (a) (2), I have no doubt that I would have no choice under those circumstances but to exercise my discretion in such a way as to bring an action.

Should it leave the question under (a) (1), then I think I would have to do some more thinking about the problem, some more analysis in my own mind as to where I would come out in that regard.

I have had to do that because that is not a matter within my jurisdiction. I would have to make a judgment on that.

Mr. JOHNSON. In the course of your investigation did you interview Mr. Calhoun?

Mr. GOODMAN. I do not believe that Mr. Calhoun was interviewed by our staff.

Mr. JOHNSON. Why not?

Mr. GOODMAN. I don't know why the individual on the staff didn't interview him. It would be my view that he wasn't interviewed because there was nothing to interview him about insofar as our jurisdiction was concerned.

Once the judgment is made that Mr. Claiborne is not a Federal employee, once the judgment is made that the individuals whose photographs were used did not accede to that use or authorize that use, then the only individual left in the scenario is someone who is not within our jurisdiction, and I do not see how interviewing Mr. Calhoun would throw light on the first two questions, namely, those individuals--well, basically the second question the Federal employees involved, because those are the only people over whom we would have jurisdiction.

So I suspect that is what went through the mind processes of the person on my staff when they looked into the matter. I know that when I looked into the matter at a later date, I saw no reason to interview him because so far as those people within our jurisdiction were concerned, the judgment had been made that they had not been in violation of the act.

Mr. JOHNSON. Isn't it possible that Mr. Calhoun could have said someone gave him the permission? Isn't it possible that Mr. Calhoun could have shed some further light on this investigation?

Mr. GOODMAN. I think there are a great number of possibilities. In our judgment, the consistent response that we got from the agencies involved, the consistent response we got from the sampling of employees involved, the evidence that we had as to how photographs were obtained, all pointed in the direction that we ultimately went, namely, that these employees whose photographs were used had not acceded to that use and therefore were not in violation of the Hatch Act, and it seemed at that point that that ended the scope of our authority and at that point we sent the matter over to where they would have jurisdiction to deal with Mr. Calhoun.

Mr. JOHNSON. Therefore, you did not interview Mr. Calhoun because you did not feel that there was anything he could offer?

Mr. GOODMAN. We felt insofar as people over whom we had jurisdiction were concerned, there need not be any further investigation into the matter. We were not going to charge them.

Mr. JOHNSON. How many agencies had employees whose photographs appeared in that brochure?

Mr. GOODMAN. I don't recall offhand. I could go through the brochure and count them.

Mr. JOHNSON. We have, and, if I may, 18 agencies were covered. How many agencies did you contact?

Mr. GOODMAN. I am told that we contacted six.

Mr. JOHNSON. Didn't you contact all?

Mr. GOODMAN. I think there is a question in every case when you investigate as to whether you are going to make a 100-percent investigation, by that I mean interview everybody, or whether you are going to look and find whether there is a pattern that develops and say at that point to continue further is simply a waste of resources.

In this case it was pretty clear that there was a consistent pattern, and I believe the testimony before this committee yesterday indicates that that pattern that we found was in fact the pattern that existed, namely, that the employees involved had allowed their photographs to be used for one purpose, to the extent that they knew they were being used and that in fact those photographs were being used for a different purpose.

We made a sampling of agencies, we made a sampling of employees and in each and every case my staff tells me we came up with the same answer, namely, that the person involved was not involved in political management, political campaigning, and was not in violation of the Hatch Act.

Mr. JOHNSON. Thank you. I have no further questions.

Mrs. SPELLMAN. Mr. Chairman?

Mr. CLAY. Mrs. Spellman.

Mrs. SPELLMAN. May I ask a question? I am confused. I suppose that is not unusual.

Mr. Harris had indicated in reading 7324(a)(1) that an employee of an executive agency may not use his position to influence an election. Is that correct?

Mr. GOODMAN. It says that an employee of an executive agency may not use his official authority or influence for the purpose of interfering with or affecting the results of an election.

Mrs. SPELLMAN. Right. You stopped short of interviewing these people because they are not under your jurisdiction.

Then, in order to carry out the intent of this law, under whose jurisdiction are they?

Mr. GOODMAN. Let me try to clarify that, if I may.

The individuals whose photographs were involved, several of them were interviewed, as were several of their agencies contacted.

Mrs. SPELLMAN. Right. But they were blameless and everybody knows that.

Mr. GOODMAN. Mr. Calhoun was the gentleman who was not interviewed and about whom the question was raised. He is not within our jurisdiction. He may be covered by the statute but the Civil Service Commission does not have jurisdiction to deal with him. It was for that reason that we sent the matter to Mr. Buchen.

Mrs. SPELLMAN. He is covered by the statute?

Mr. GOODMAN. That is correct.

Mrs. SPELLMAN. Who then determines whether there has been a violation and proceeds to carry out the intent of that law?

Mr. GOODMAN. The employing agency, and in this case the employing agency was the White House and that is why I wrote to Mr. Buchen.

[See letter of explanation, p. 114.]

Mrs. SPELLMAN. So is it now up to the White House to continue to make sure that the law is fully carried out?

Mr. GOODMAN. That is correct, and Mrs. Spellman, we dealt with that the same as we would deal with any situation involving an excepted service employee. If this were a situation of an excepted service employee employed by the Department of "X" as distinguished from the White House, we would do the same thing because we don't have jurisdiction to deal with that person.

Mrs. SPELLMAN. Do you have a copy of your letter to the White House?

Mr. GOODMAN. Yes; I do.

Mr. HARRIS. If my colleague would yield, I would like to help track this for her, and just to make it sound objective, Mr. Chairman, I would like to put it in a different time frame so we don't get involved in any emotions of the day.

If this had occurred in September 1972, and if the allegations had been made in October 1972, and if an investigation had been carried out by the Civil Service Commission in November 1972, the final action of the Commission would have been to send the complaint to Mr. John Dean in the White House and that would have been the end of it.

Mr. CLAY. Will the gentleman yield?

Mr. HARRIS. Yes.

Mr. CLAY. Precisely the same thing did happen in 1972. A paper almost identical to this was printed with far more than 286 employees under the civil service system, and I would like to ask if a similar investigation was conducted in 1972?

Mr. GOODMAN. I don't know. I did not have any jurisdiction in this regard at that time.

Mr. CLAY. Mr. Collins, were you present?

Mr. COLLINS. I was in the office. I do not recall ever having seen that, a complaint about it. I was not in a management position at that time. I was a staff attorney, but I recall nothing in the office being received or any investigation being conducted with respect to any such document in 1972.

I became aware during this investigation that such a document had in fact existed, but I had not known about it until then.

As far as I know, we never received a complaint. That is as far as I know.

Mr. CLAY. Unless you receive a complaint you take no action?

Mr. COLLINS. So far as I know, we received no information from anyone such a document existed in 1972, at that time.

Mr. CLAY. Some of these same people were victimized in 1972. They sat here yesterday and admitted to this committee that they were the victims of the same kind of illegal activity, as far as I am concerned.

Mr. COLLINS. As far as I know, none of those people ever brought that information to the attention of the Civil Service Commission in 1972.

Mr. CLAY. Your contention is still that the Civil Service Commission has to be notified by somebody that is directly affected?

Mr. COLLINS. It would be very difficult for us to undertake an investigation about something which we have not learned.

My point is, I did not know about it. I can't answer for whoever was there in 1972.

Mr. GOODMAN. I think, Mr. Chairman, neither Mr. Collins nor I can effectively deal with the question of 1972 because we had no authority at that time and just have no knowledge as to what went on at that time.

Mr. CLAY. Have you sufficient manpower now to initiate investigations?

Mr. GOODMAN. On our own?

Mr. CLAY. Yes.

Mr. GOODMAN. In my judgment, no.

Mr. CLAY. How many people work in the section where it is responsible for enforcement?

Mr. GOODMAN. We have four professional people in that office right now.

Mr. CLAY. Full-time or part-time?

Mr. GOODMAN. They are all full-time. I should indicate, Mr. Clay, in addition to our own staff in this regard, as Mr. Collins indicated earlier, many of the investigations which we do are done in the field and in that regard we use the resources of our Bureau of Personnel Investigations, to have those investigators go out in the field to perform the investigation.

However, in my office we have four, full-time professional staff people.

Mr. CLAY. What are their grades? Are they attorneys?

Mr. GOODMAN. They are all attorneys. Their grades are 15, 14, 13, and 11 in the general schedule.

Mr. CLAY. You have 34 cases pending over, I assume, the last several years?

Mr. GOODMAN. No.

Mr. COLLINS. Most of these cases are cases that have been initiated since August or September of this year.

Mr. GOODMAN. They are the cases presently pending. That doesn't cover cases that have been closed out over a period of time for whatever reason the case has been closed out, and that doesn't cover the informational function that we serve in terms of answering inquiries by people as to whether this activity is or is not covered by the Hatch Act and that sort of additional responsibility, which are handled by that staff.

Mr. CLAY. Mrs. Spellman?

Mrs. SPELLMAN. Mr. Goodman, you indicated that you felt that the two of you could not deal effectively with the 1972 situation. I believe that is what you said.

Would you also say that in view of the fact that you cannot pursue the real perpetrators of this whole problem, that you really can't deal effectively with this kind of a problem at all?

Mr. GOODMAN. Well, I believe that goes back to the answer I gave earlier that there may be a shortfall here in connection with the division of responsibilities in regard to the excepted service and the competitive service. I believe that shortfall of responsibility may have broader application, frankly, than simply in the Hatch Act area.

Mrs. SPELLMAN. Are you in a position to give us information on all of the areas where the gap needs to be closed?

Mr. GOODMAN. I believe that is something the committee has under consideration in connection with the Henderson bill introduced last year. There were some provisions dealing with that.

Mr. HARRIS. Including the Harris amendment.

Mr. GOODMAN. If you would like a study from the Commission in this regard, I would think the Commission could deal with a study which points out where are our authorities, in terms of competitive service, and where we don't have those same authorities in regard to the excepted service, if that might be helpful.

Mrs. SPELLMAN. We will talk about that.

Thank you, Mr. Chairman.

Mr. CLAY. Mr. Harris?

Mr. HARRIS. Mr. Chairman, I thank you.

There are a couple other things I wanted to go into, but in the interest of time I won't. I did want to ask a final question because I think it is important with regard to legislation.

I think the problem is that we have brought out testimony here today indicating that the Commission, even when it finds shortfalls, is unable to tell the Congress about it unless the Office of Management and Budget says it can.

This committee, this subcommittee, has identified this problem before and I have proposed specific provisions to correct this, to allow the Civil Service Commission to tell us about shortfalls.

You will recall, I am sure, how strongly the administration opposed this and I personally recall how vigorous the contacts were with me from the Office of Management and Budget, but I think this hearing will verify the need and what should be done for Congress to get this information.

Mr. CLAY. Mr. Goodman, I am having difficulty following your rationale for not interviewing Mr. Calhoun.

As I recall, you did not interview Mr. Calhoun because he fell outside of the jurisdiction of the Civil Service Commission. Is that correct?

Mr. GOODMAN. Let me try and explain to you the rationale that I could see for not interviewing him and then the reason why I didn't feel it was necessary when the matter got to me to interview him.

When the matter got to me, it got to me in a state at which my staff had concluded, as a consequence of their investigation, that the individual Federal employees whose photographs were involved were blameless.

The point that reached me, the people over whom we had jurisdiction—namely, the competitive service employees—appeared to be in a situation where we would not charge them with a violation of the Hatch Act. I was satisfied at that point that I was not going to go forward in connection with those employees.

It appeared to me that the individual who was involved in the actual preparation of the material was not a Federal employee and therefore I had no jurisdiction over him.

At that point, the only question that remained open, it seems to me, was the question regarding Mr. Calhoun. I had no jurisdiction over Mr. Calhoun. At that point I saw no need to continue and further the investigation in any respect, whether it be interviewing Mr. Calhoun or otherwise.

Mr. CLAY. I think my question deals with the initial investigation. Why did your staff not interview Mr. Calhoun?

Mr. GOODMAN. Again, I do not know why the attorney who handled it did not interview Mr. Calhoun in the first instance. I suspect that the reason is that in the course of his investigation he came to the same conclusion that I came to, namely, that the individuals whose photographs were involved had not violated the Hatch Act and saw no need at that point to continue in that vein. Once you are not continuing in that vein there is no need to interview Mr. Calhoun because we have no jurisdiction to deal with him.

Mr. CLAY. Why did they interview Mr. Claiborne? Are you contending you have jurisdiction over him?

Mr. GOODMAN. I think the initial contact here by a person on my staff was with Mr. Claiborne to find out how he got the photographs. I think it is a natural question. You go to the person preparing the materials, it appears to me, and say, "From whom did you get the photographs?"

If his answer is, "I got them from the individual," then you know you have a Hatch Act problem.

Mr. CLAY. His position was, "I got them from Mr. Calhoun?"

Mr. GOODMAN. That is right.

Mr. CLAY. Wouldn't the next place be to go to Mr. Calhoun?

Mr. GOODMAN. It depends on what information he had at that point or how he got information at that point.

I don't know what was the process of his investigation. It appears somewhere along the way he obtained a copy of this letter from Mr. Calhoun to the public affairs director. Now it may well be that hav-

ing that letter in hand he said to himself, "Well, I know how Mr. Calhoun got these photographs," and at that point then you know the question may well become moot in his mind. Or, "Shall I go interview Mr. Calhoun?"

It is difficult for me to look into the mind of the person who made the investigation. It is easy for me to tell you that when this matter got to my desk for my decision in this regard, it appeared to me at that point that there was no need to interview Mr. Calhoun because insofar as the people over whom we had jurisdiction were concerned, I was prepared on the basis of the information I had to make the decision I was not going to prosecute under the Hatch Act.

Mr. CLAY. It is very difficult for me to follow that.

Mr. GOODMAN. I am sorry.

Mr. CLAY. Especially in view of the fact that Mr. Calhoun is Special Assistant to the President of the United States and I would think that perhaps your investigator was reluctant to go to 1600 Pennsylvania Avenue to interrogate a Special Assistant to the President of the United States.

Mr. GOODMAN. I have no idea what was in the mind of my investigator. I know when it came to my desk—

Mr. CLAY. We speak of the quality of his investigation. He is a full-time professional employee. I think you should have some concern about whether or not they conduct complete investigations when serious allegations have been made.

Are you satisfied with the work done by that investigator?

Mr. GOODMAN. I was not satisfied with the initial investigation, as I indicated earlier. I asked Mr. Collins to do a further investigation in that regard.

Mr. CLAY. Did you reprimand him or did you talk to him about the quality of that investigation?

Mr. GOODMAN. I have not spoken to the employee since then. The employee has not been in the office.

Mr. CLAY. He quit?

Mr. GOODMAN. No, he is on vacation.

Mr. CLAY. I have no further questions.

We want to thank you for appearing this morning.

The hearings are adjourned until further notice of the Chair.

Thank you.

[Whereupon, at 11:55 a.m. the hearing was adjourned, to resume at the call of the Chair.]

[Subsequent to the appearance of the Civil Service Commission witnesses, the following communications were received for the record.]



UNITED STATES CIVIL SERVICE COMMISSION  
OFFICE OF THE GENERAL COUNSEL  
WASHINGTON, D. C. 20415

IN REPLY PLEASE REFER TO  
GC:LEG 4

December 29, 1976

YOUR REFERENCE

Mr. Lloyd A. Johnson  
Staff Director  
Subcommittee on Employee Political Rights  
and Intergovernmental Programs  
Committee on Post Office and Civil Service  
House of Representatives

*al*  
Dear Mr. Johnson:

Enclosed is a copy of a letter which was delivered to the White House today. The letter is self-explanatory.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Lynn R. Collins".

Lynn R. Collins  
Deputy Assistant General Counsel

Enclosure

UNITED STATES CIVIL SERVICE COMMISSION  
OFFICE OF THE GENERAL COUNSEL  
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

December 29, 1976

┌  
Honorable Philip W. Buchen  
Counsel to the President  
The White House  
Washington, D. C. 20500  
└

Dear Mr. Buchen:

As we testified on December 15, 1976, before the Subcommittee on Employee Political Rights and Intergovernmental Programs of the House Committee on Post Office and Civil Service, chaired by Representative William Clay, the enclosed letter was mailed to you on December 14, 1976. Inexplicably, however, the letter was misdirected to our Boston Regional Office and was finally returned to us yesterday. So that the record will be clear, we are forwarding a copy of this letter to the Subcommittee.

Sincerely yours,

Carl F. Goodran  
General Counsel

Enclosure

JAN 5 1977



UNITED STATES CIVIL SERVICE COMMISSION  
 OFFICE OF THE GENERAL COUNSEL  
 WASHINGTON, D. C. 20415

IN REPLY PLEASE REFER TO

GC:LEG 4

YOUR REFERENCE

JAN 4 1977

Honorable William L. Clay  
 Chairman, Subcommittee on Employee  
 Political Rights and Intergovernmental  
 Programs  
 Committee on Post Office and Civil Service  
 House of Representatives  
 Washington, D. C. 20515

Dear Mr. Clay:

Enclosed herewith are copies of the reports of investigation which you requested during our testimony before the Subcommittee on December 15, 1976.

You also requested a statement with respect to the time elements involved in our investigation. In this connection, our records indicate that your letter of October 21, 1976, to Chairman Hampton, requesting that an investigation be initiated, was received on October 29, 1976. The letter, with the copy of the "Partners in Progress" brochure, was then referred to the Office of General Counsel, being received in the political activity section on November 4, 1976. It was subsequently assigned to the staff attorney for investigation. The attorney determined that the appropriate way to initiate the inquiry was to contact the Black Voters for Republican Congress to obtain a statement as to how the employees' photographs were obtained, and more particularly, whether they had or had not consented to the use of the photographs for purposes of the brochure. He began to attempt to contact anyone at the organization who could provide such information.

In the meantime, Mr. Collins, Deputy Assistant General Counsel, was coordinating with the Department of Interior, the National Aeronautics and Space Administration and the Veterans Administration, with respect to the parameters of their, as well as the Commission's investigation of the matter.

Finally, on or about November 18, 1976, the staff attorney was able to contact Mr. Clay Claiborne, who identified himself as Treasurer of Black Voters for Republican Congress. The results of that contact are set forth in the attorney's report dated November 30, 1976. Also on November 18, the Veterans Administration was able to provide us with a copy of the April 5, 1976, memorandum from Mr. John Calhoun, Special Assistant to the President. A copy of that memorandum was

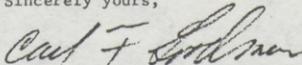
attached to the text of my testimony on December 15. Until we were so informed by the Veterans Administration, we had been unaware of the existence of the memorandum from Mr. Calhoun.

Upon review of the report dated November 30, 1976, I determined that additional inquiries should be made to confirm that the employees' photographs appeared in the brochure without the employees' consent, and that they had not been released by the agencies for any political purpose. I therefore requested that Mr. Collins, upon his return on December 10, 1976, from a Hatch Act investigation in Philadelphia, personally conduct an additional inquiry. The following business day, Monday, December 13, 1976, Mr. Collins undertook the additional inquiry. The results of Mr. Collins' efforts are set forth in his report to me of December 14, 1976.

As we testified on December 15, we determined, on the basis of the information obtained, to close the inquiry because there was no indication that there was a Hatch Act violation on the part of the employees whose photographs appeared in the brochure. Mr. Claiborne is not a Federal employee, and thus is not subject to the provisions of the Hatch Act. With respect to any possible violation by Mr. Calhoun, the Commission's basic authority, derived from the Civil Service Rules, would not permit us to pursue the matter. We therefore directed a letter to Mr. Buchen, a copy of which was previously furnished to you.

If we can be of further service to you, please let us know.

Sincerely yours,



Carl F. Goodman  
General Counsel

Enclosures

UNITED STATES GOVERNMENT

U.S. CIVIL SERVICE COMMISSION

*Memorandum*

Subject: Political Activity Inquiry:  
286 Federal Employees

From: Philippe M. Neff  
Senior Attorney

*PM:ndg 11/30/76*

Date:

In Reply Refer To:  
GC:LEG 4

PMN:dhp

Your Reference:

To: Carl F. Goodman  
General Counsel

COMPLAINT

The allegations of illegal political activity are contained in a letter and enclosure dated October 21, 1976, from Congressman William L. Clay. It is alleged that the photographs of 286 black Federal employees appear in a partisan political document entitled "Partners in Progress" published by a group called Black Voters for Republican Congress. Congressman Clay furnished us a zerox copy of the alleged document.

PRELIMINARY INQUIRY

The eight page document is headed on the first page by the words "meet Some of the Blacks in the Ford Administration". At the bottom of the following pages the document states:

2nd page - Living proof of Black people in the Ford Administration

3rd page - First Black 4-star General, First black 3-star Admiral

4th page - Black people are important team workers with the Ford administration

5th page - This election vote for continued Black progress, - Vote Republican

7th page - Tuesday, November 2nd, Vote the Ford ticket

8th page - On Tuesday, Nov 2nd, vote for Black progress - Vote Republican

*Keep Freedom in Your Future With U.S. Savings Bonds*

At the bottom of the 1st page are the following notations:

A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission. Washington, D.C. This communication is not authorized by any candidate and is a project of Black Voters For Republican Congress.

Printed and Distributed by  
NATIONAL CRUSADER NEWSPAPER  
57 Dee Street, S.E.  
Washington, D.C. 20003  
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Phone (202) 548-0500

Paid For By  
B V F  
Republican Congress  
53 D Street, S.E.  
Washington, D.C. 20003  
Clay Claiborne, Treasurer

Our inquiry developed that Mr. Clay Claiborne of 49 D Street, S.E., Washington, D.C., as the treasurer for Black Voters for Republican Congress Committee, was solely responsible for assembling the political document in question.

The document was printed by Comprint Printing Company, Gaithersburg, Maryland. 25,000 were printed at a cost of \$3400.00.

Mr. Claiborne was furnished the 286 photographs from Mr. John Calhoun, Special Assistant to the President.

Mr. Calhoun had obtained the pictures as a result of a memorandum he had addressed on April 5, 1976, to Public Affairs Information Directors, requesting five photographs of all blacks serving in a policy-making position, to include those in GS-15 or higher with correct titles only (no grades), prior to April 16. The memorandum indicated that the photographs were to be used in connection with bicentennial celebrations.

The political document was never circulated. All but a few of the 25,000 copies are stored in a room adjacent to Mr. Claiborne's office. Mr. Claiborne could not afford circulation on a national scale. He,

therefore, sought help from the Republican National Committee, and the Committee to elect President Ford. Both committees turned down using the document on the basis that it was inappropriate.

In addition Mr. Claiborne was advised by his law firm "Kramer Heptner and Becker" that the document was probably in violation of the Federal election laws and should not be circulated. He was told that his committee was only registered to help elect congressman but not a presidential candidate. Mr. Claiborne has not gotten rid of the documents because on advice of counsel he wants to be able to prove they were not circulated.

I would close with a letter to Congressman Clay.

UNITED STATES GOVERNMENT

U.S. CIVIL SERVICE COMMISSION

*Memorandum*

Subject: Political Activity Inquiry: 286 Federal Employees

Date: December 14, 1976

From: Lynn R. Collins  
Deputy Assistant General CounselIn Reply Refer To:  
GC: LEG 4  
LRC: dhp

Your Reference:

To: Carl F. Goodman  
General Counsel

This is a supplement to the report of investigation submitted by Philippe M. Neff on November 30, 1976.

Agency Contacts

During the course of the inquiry, the Veteran's Administration reported that they had furnished the photographs of 22 Black Employees in response to a memorandum of April 5, 1976, received from John Calhoun, Special Assistant to the President. Similar information was received from the Department of Interior, the National Aeronautics and Space Administration, the Department of Health, Education and Welfare, and the Department of Housing and Urban Development. In some instances, the agencies already had suitable photographs of the employees on file; for those not on file, however, they asked the employees to have an official photograph taken, advising them that it was to be used for purposes of Bicentennial displays. The agencies contacted indicated that they were not aware that the photographs were to be used for any other purpose. NASA also provided a copy of the report of their investigation conducted at Mr. Clay's request.

Employees Contacted

The following employees whose photographs appeared in the "Partners in Progress" brochure were contacted and stated essentially as follows:

Ms. A. Joyce Skinner, Coordinator, Womens' Program, Department of Housing and Urban Development advised that she was aware that she did have an official photograph on file with the agency. However, she said that she was not personally contacted relative to release of her photograph either for the campaign brochure or for any Bicentennial displays.

Ms. Glendora M. Putnam, Deputy Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development advised essentially the same as Ms. Skinner, i.e., that she had an

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official photograph on file but had not been contacted about release for purposes of the political brochure or any Bicentennial display.

Ms. Joy G. Schulerbrandt, Chief, Center for Studies of Child and Family Mental Health, National Institutes of Mental Health, Department of Health, Education, and Welfare stated that she was informed that her photograph was to be used in connection with a Bicentennial display. She did not authorize use of the photograph for any political purpose.

Dr. James R. Ralph, Chief, Center for Minority Groups Mental Health Program, National Institutes of Mental Health, Department of Health, Education, and Welfare advised that he had not been asked nor had he authorized the use of his photograph in connection with the brochure. He acknowledged that he understood it was to be used for purposes of a Bicentennial display.

Mr. Ernest Russell, Director, Administration and Management, National Institute of Education, Department of Health, Education, and Welfare stated that he was aware of a request for photographs to be used for purposes of Bicentennial displays, he was not aware that his photograph had actually been released. He did not authorize the use of the photograph for political purposes.

Mr. J. Emerson Harper, General Engineering Washington Liaison, Alaska Power Administration, Office of the Secretary, Department of Interior advised that sometime in the Spring of 1976, he received a telephone call from the Department's Office for Equal Opportunity requesting that he provide a photograph for purposes of the Bicentennial. He identified the photograph which appears in the brochure as the one he provided in response to the above request. He stated that he was not aware of the "Partners in Progress" brochure and had never authorized the release of his photograph for any such purpose.

Mr. Edward E. Shelton, Director, Office for Equal Opportunity, Office of the Secretary, Department of Interior stated that he had no knowledge of how his photograph or those of any other Department employees might have been released in connection with the brochure. He disclaimed any knowledge of his office having made a request of Mr. Harper to furnish a photograph, although he acknowledged that it was possible someone in the office had done it without his knowledge. He indicated that the types of photographs appearing in the brochure are not the same type as photographs used by his office in making up EEO displays.

Mr. James M. Trent, Branch Chief, Bureau of Reclamation, Department of Interior advised that in the Spring of 1976, he was called by a Mr. Hardy Jones, EEO Officer for the Bureau of Reclamation, relative to having an official photograph taken. Mr. Jones reportedly indicated to Mr. Trent that the request had come from a JoAn Taylor in the Department's Office for Equal Opportunity. Mr. Trent contacted Ms. Taylor for more details since he had some concern about the purpose for which the photograph might be used. He was specifically concerned that it might be used for political purposes since he recalled having seen a brochure similar to the current one sometime during the Nixon administration. Ms. Taylor apparently assured him that it was to be used for a non political purpose in connection with the Bicentennial. A Bureau of Reclamation photographer arranged to take the photograph in Mr. Trent's office. Mr. Trent stated that he first learned about the brochure from an article in the Washington Star by Carl Rowan. He received a call from "a friend" saying, in effect, "I see you made the brochure . . . ." Trent then obtained a partial copy of the brochure from the same "friend." He recontacted JoAn Taylor, who in turn referred him to a person in the Secretary's office [name not recalled] who he found out had since retired. He then called National Crusader Newspaper and finally spoke with a person named Claiborne. At first, according to Trent, Mr. Claiborne acted as though he didn't know what Trent was talking about. However, when Trent indicated that he had a partial copy of the brochure, Claiborne registered surprise and, as Trent recalls, stated something to the effect, "That package should not have gotten on the street - if is not being distributed." Mr. Trent did not ask Claiborne specifically how Claiborne obtained Trent's photograph.

NOTE: Ms. JoAn Taylor, Program Assistant, Program Evaluation and Development Branch, Office for Equal Opportunity (Federal Employment), Department of Interior, was interviewed and stated that in April 1976, she had been instructed by her Branch Chief, Mary Wright, to obtain copies of photographs of certain Black employees. According to Ms. Taylor, Ms. Wright indicated that she had received the request from Ms. Virginia Hart, who has subsequently retired, in the Office of Communications, Office of the Secretary. Ms. Taylor called the designated employees, including Messrs. Trent and Harper, to arrange to obtain their photographs. When she had obtained all of the photographs, she took them to Virginia Hart in the Secretary's Office.

Mr. James R. Yancey, Director of Equal Employment Opportunity, Veterans Administration, advised that he had been contacted by Mr. Frank Hood, Director of Information Services, in April 1976,

and requested to assist in obtaining photographs of high-level Blacks in the V.A. to be sent to the White House in connection with some sort of Bicentennial program. He further advised that he had never been consulted about the use of the photographs for any other purpose, and would certainly not have provided them had he known they would be released for political purposes.

Mr. Raymond Toney, Staff Assistant to the Associate Assistant Administrator for Personnel, Veterans Administration, stated that his photograph had been provided for the purpose of a Bicentennial program. He did not authorize its use for any other purpose, more particularly, any political purpose.

In addition to the above, NASA inspectors interviewed 15 NASA employees whose photographs appeared in the brochure, and found that none of those employees had any prior knowledge that their photographs were to be used for any political purpose.

The information obtained from the agencies and the employees contacted confirms the information obtained by Mr. Neff, i.e., that the agencies furnished the photographs in response to a specific request from the White House, and that neither the agencies nor the employees were aware that the photographs might be used for political purposes and did not authorize such use.

#### ADDENDUM

The Department of Agriculture was also contacted, but was unable to furnish any additional substantive information. They apparently have not yet determined the basis upon which photographs of their employees were released.

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