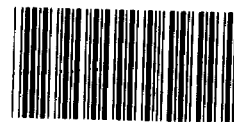


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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
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STATEMENT OF
JAMES F. HINCHMAN
DEPUTY GENERAL COUNSEL
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
ENERGY AND COMMERCE COMMITTEE
HOUSE OF REPRESENTATIVES
ON
MICHAEL K. DEEVER'S COMPLIANCE WITH THE
ETHICS IN GOVERNMENT ACT



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Mr. Chairman and Members of the Subcommittee

At your request we have conducted a preliminary investigation of certain allegations concerning Michael K. Deaver's compliance with the post-employment laws. You were specifically concerned about his representation of the government of Canada in view of reports that he had participated in the Administration's decision to adopt a Canadian proposal for the United States and Canada each to appoint a Special Envoy on Acid Rain. Because the information we developed to respond to your request indicates a possible violation of the post-employment laws and a need for further investigation, we have referred our findings and relevant documents to the Department of Justice.

In brief, it appears that Mr. Deaver, while serving as White House Deputy Chief of Staff and Assistant to the President, participated in an Administration decision to invoke the Special Envoy process by which the United States and Canada have attempted to resolve their differences over acid rain. After leaving Federal employment, Mr. Deaver represented the Canadian government in a meeting with the U.S. Special Envoy for Acid Rain at which differences between the United States and Canada over the contents and issuance of the Special Envoy's report were discussed. Two provisions of the Federal post-employment laws--18 U.S.C. 207(a) and 207(b)(ii)--call into question his representational activities. Given the nature of his official responsibilities

while at the White House, his activities also raise a question under a third provision in 18 U.S.C. 207(b)(i). In addition, there is a question whether Mr. Deaver's appearance before the Special Envoy on behalf of the Canadian government was a violation of 18 U.S.C. 207(c).

In conducting our review we obtained information from the Office of the Counsel to the President concerning the U.S. Special Envoy's status as a government official and Mr. Deaver's involvement as a White House official in decisions leading to appointment of a Special Envoy. We interviewed a number of officials involved in those policy decisions as well as the U.S. Special Envoy and members of his staff. Although we obtained a statement from Mr. Deaver's attorney regarding his involvement in the acid rain issue and the decision to appoint a Special Envoy, we did not interview Mr. Deaver.

We also contacted the Canadian Embassy to discuss Mr. Deaver's representational activities. The Ambassador and the Deputy Chief of Mission confirmed some information that had been provided to the press, but declined to discuss the substance of Canadian discussions with Mr. Deaver for reasons relating to Canada's sovereign immunity.

At the outset I would like to stress that our inquiry into these matters was merely a preliminary investigation. We have concluded only that there is enough basis for believing the post-employment laws may have been violated to warrant referring the matter to the Department of Justice. That Department is currently conducting a further investigation. On the basis of their investigation appropriate law enforcement officials then will determine what further steps should be taken.

BACKGROUND

In December 1984, Administration officials began preparations for a summit meeting between President Reagan and Canadian Prime Minister Brian Mulroney to be held on March 17 and 18, 1985. One agenda item for the summit was the issue of "acid rain"--acid deposition that occurs when emissions of sulfur and nitrogen are transported through the atmosphere, transformed by atmospheric processes into acidic compounds, and then deposited again on earth in either wet or dry form. Administration officials were aware that the Canadians, having taken the position that one-half of the acid rain affecting eastern Canada originates in the United States, wanted the United States to make a strong statement on acid rain and commit funds toward eliminating the problem.

Some within the Administration opposed any U.S. commitment. They believed that the research which had been done was not sufficient to determine the precise causes of acid rain and whether it was a serious problem. Others contended that the information available was nevertheless sufficient to justify some action. After attempting to negotiate a joint U.S.-Canadian statement on acid rain, officials in the Department of State concluded on March 2, 1985, that such a statement was not possible before the summit and suggested, as an alternative, a previous Canadian proposal that each country appoint a Special Envoy to study and report on the problem before a 1986 summit.

The proposal to appoint Special Envoys was controversial within the Administration. Opponents, represented by the Domestic Policy Council and the Office of Management and Budget, believed the appointment of a U.S. Envoy would imply too strong a commitment to action. Proponents, represented by the Department of State and the National Security Council, believed it would be worthwhile to have an independent party study the issue and offer policy alternatives. Officials from various agencies debated the proposal in a March 6, 1985 meeting in the White House. Senior White House staff also discussed the issue at a number of informal meetings.

At the summit on March 17, 1985, President Reagan and Prime Minister Mulroney announced the selection of Special Envoys to examine the acid rain issue. Prime Minister Mulroney appointed William Davis, former Premier of Ontario, as the Canadian Special Envoy; the President appointed Drew Lewis, then Chairman of Warner Amex Cable Communications, Inc., and former Secretary of Transportation, to serve as his Special Envoy for Acid Rain. According to the Joint Statement issued at the time of their appointment, the Envoys were to:

- pursue consultation on laws and regulations that bear on pollutants thought to be linked to acid rain;
- enhance cooperation in research efforts, including that for clean fuel technology and smelter controls;
- pursue means to increase exchange of relevant scientific information; and
- identify efforts to improve the U.S. and Canadian environment.

On January 8, 1986, the Special Envoys reported their findings in the Joint Report of the Special Envoys on Acid Rain. Among other

things, they recommended that the U.S. government implement a 5-year, \$5 billion control technology commercial demonstration program to be funded half by the Federal government and half by industry. President Reagan has since endorsed this and other recommendations in the report.

POST-EMPLOYMENT LAWS

The post-employment laws applicable to former Federal employees are codified in 18 U.S.C. 207 and implemented by regulations of the Office of Government Ethics published at 5 C.F.R. 737. They consist of four separate restrictions on representational activities before non-legislative components of the Federal government. Two of the restrictions apply to all former officers and employees of the Executive branch, independent agencies, and the government of the District of Columbia. The other two restrictions, added by the Ethics in Government Act of 1978, apply only to former officials who occupied positions defined by statute or designated in the implementing regulations as "senior employee positions."

The restrictions applicable to all former employees are limited to matters in which they played some role while employed by the government. Subsection 207(a) imposes a lifetime restriction on representing any other person before the government

in connection with a "particular matter involving specific parties" if the former employee participated "personally and substantially" in that same matter as a government employee. Subsection 207(b)(i) imposes a 2-year restriction on the same type of representational activity in connection with a "particular matter involving specific parties" if that same matter was "actually pending under [a former employee's] official responsibility" within 1 year prior to the termination of that responsibility.

A former senior employee is subject to additional restrictions. Under subsection 207(b)(ii), a former senior employee who participated "personally and substantially" in a "particular matter involving specific parties" may not represent or aid, counsel, advise, consult or assist in representing any other person by his personal presence at any appearance before the Federal government concerning that same matter for 2 years. Under subsection 207(c), known as the "no-contact ban," there is a 1-year restriction on a former senior employee's representation of anyone before his/her former department or agency on any "particular matter" which is pending before that department or agency or in which it has a direct and substantial interest. The statute gives the Director of the Office of Government Ethics authority to designate a statutory agency or bureau within a

department or agency as a separate department or agency for the purpose of limiting the applicability of the 1-year no-contact ban. For example, because of such designations within the Department of Defense, the no-contact ban applicable to a former senior employee of the Army does not limit his representational activities before the Navy. In 1984, the Office of Government Ethics designated nine components of the Executive Office of the President as separate agencies. For example, the White House Office and the Office of Policy Development together are one separate agency.

THE SPECIAL ENVOY PROCESS AS A
PARTICULAR MATTER INVOLVING
SPECIFIC PARTIES

There is precedent for considering the Special Envoy process a "particular matter involving specific parties" within the scope of 18 U.S.C. 207. From the stage of the preliminary internal discussions concerning the possibility of appointing a Special Envoy up to the final communication of the Special Envoys' findings in their Joint Report, this process would appear to meet the criteria set forth in the Office of Government Ethics regulations that a particular matter involve the "same basic facts, related issues, the same or related parties, time elapsed, the same confidential information and the continuing existence of an important Federal interest." The Department of Justice has

recognized that two nations may be the "specific parties" to a particular matter within the meaning of 18 U.S.C. 207. For example, Justice found that the 1979 Panama Canal Treaty was a particular matter to which the signatories, the United States and Panama, were specific parties. Viewed as "discrete and isolatable transactions between identifiable parties," the development of U.S. policy leading up to the Canal negotiations, the negotiations themselves, and subsequent proceedings concerning the treaty's implementation all were considered by the Department of Justice to involve the same particular matter to which the United States and Panama were parties.

MR. DEAVER'S ROLE IN THE
SPECIAL ENVOY PROCESS

The information we obtained indicates that Mr. Deaver may have participated personally and substantially in the decision to appoint a Special Envoy for Acid Rain and thus may have been subject to the limitations on representation with respect to the Special Envoy process imposed by 18 U.S.C. 207(a) and (b)(ii). Mr. Deaver was a senior employee of the White House Office and, according to the statement his attorney provided to the White House, shared general responsibility with the Assistant to the National Security Affairs for overseeing preparations for the 1985 U.S.-Canadian summit. Mr. Deaver's interest in the issue of acid rain was described to us by some Administration officials as an

interest in resolving the issue prior to the summit and removing it as a potential stumbling block to the resolution of matters of greater importance to the United States.

According to the statement provided by Mr. Deaver's attorney, Mr. Deaver recalled having met with Canadian representatives in his White House capacity on two occasions to discuss the summit. Mr. Deaver reported through his attorney that the subject of acid rain may have been discussed during a White House meeting with the Canadian Ambassador to the United States and the Prime Minister's representative on December 11, 1984. He also recalled that the subject of acid rain and the Special Envoy proposal may have been discussed when he and the Ambassador met privately on March 12, 1985. A member of the National Security Council staff recalled that Mr. Deaver also met with the Prime Minister's representative on February 28, 1985, and, according to that staff member, it was after this meeting that Mr. Deaver became a supporter of the Special Envoy approach. The Canadian Embassy told us that Mr. Deaver and the Prime Minister's representative met on several occasions to prepare for the summit.

Several officials stated that the Special Envoy proposal was discussed in at least two formal meetings that Mr. Deaver attended while a White House employee. On March 2, 1985, Mr. Deaver

attended a "trip meeting" on the Canadian summit during which an official of the Department of State raised both the acid rain issue and the Special Envoy approach. Four days later, on March 6, 1985, Mr. Deaver attended a meeting of the summit planning group which he recalled included a discussion of the advantages and disadvantages of the Special Envoy approach. In addition to these formal meetings, the Special Envoy proposal is said to have been discussed on an ongoing basis during the 8 a.m. White House senior staff meetings that occurred almost daily over the 2-week period prior to the March 17-18 summit. Two officials who participated in both the formal and informal meetings stated that Mr. Deaver participated in those discussions by endorsing or actively supporting the Special Envoy approach.

While Mr. Deaver's attorney stated that Mr. Deaver made no decision regarding acid rain and did not select Mr. Lewis to be the U.S. Special Envoy, he stated that Mr. Deaver recalled having attended the March 6 meeting and having discussed with a senior White House official two potential appointees to the Special Envoy position. In addition, according to Mr. Deaver's attorney, he recalled having attended a senior staff meeting that occurred within a week after the March 6 meeting during which the subjects of acid rain and the forthcoming summit were discussed.

The statement also indicated that Mr. Deaver may have attended other meetings involving acid rain or the Special Envoy prior to the March 17-18 summit.

Thus, Mr. Deaver's participation in the determination to appoint the Special Envoy appears to have been personal, and there is precedent for regarding his input as "substantial participation." For example, the Department of Justice has recognized the role of a former Department of State official in formulating the United States position with respect to a Treaty as substantial even though many others participated and even though the particular issues he addressed may have been procedural. The Office of Government Ethics has similarly regarded subsection 207(a) as encompassing personal and substantial participation in the formative stages of particular matters and has recognized that a finding of substantiality should be based not only upon the effort devoted to the matter by an employee, but upon the importance of that effort as well. Given Mr. Deaver's endorsement of the Special Envoy approach, his discussion concerning potential appointees and his position of influence at the White House, Mr. Deaver's participation in this particular matter appears to have been significant and thus substantial within the meaning of the post-employment laws.

Mr. Deaver's responsibilities as a White House official also may have subjected him to the limitations on representation imposed by 18 U.S.C. 207(b)(i) with regard to a matter that was actually pending under his official responsibility within the year prior to the effective date of his resignation. The White House Personnel Office told us that no official statement describes the duties and responsibilities of the Deputy Chief of Staff and Assistant to the President. However, Mr. Deaver's responsibilities have been characterized by the Deputy Assistant to the President for Administration as providing advice to the President and coordinating the President's schedule. The statement provided by Mr. Deaver's attorney reported that Mr. Deaver shared overall responsibility for the U.S.-Canadian summit but that other White House officials had specific responsibility for the acid rain issue. Mr. Deaver has publicly characterized his role in White House meetings on acid rain as part of his official White House duties. Given the apparently broad scope of Mr. Deaver's White House duties, it may be that the issue of whether the United States should agree to appoint a Special Envoy for Acid Rain was a matter that was "actually pending" under his official responsibility within the year prior to his resignation.

MR. DEAVER'S REPRESENTATION OF CANADA
IN A MEETING WITH THE U.S. SPECIAL ENVOY

Mr. Deaver's actions on behalf of the government of Canada may have violated 18 U.S.C. 207(a), (b)(i), and (b)(ii). In his role as U.S. Special Envoy for Acid Rain, Mr. Lewis was an officer of an agency or department of the United States. Mr. Deaver's participation in a meeting with the U.S. Special Envoy appears to have been representation of the type covered by subsections (a) and (b)(i), and his very presence at that meeting appears to constitute assistance in representation by personal presence, which is covered by subsection (b)(ii).

Mr. Deaver left his position at the White House on May 10, 1985, and, shortly thereafter, established Michael K. Deaver and Associates, a public relations firm with offices in Washington, D.C. The Canadian Embassy said the Ambassador first discussed employing Mr. Deaver on May 16, 1985, and decided to hire him in July 1985, at which time Mr. Deaver began working for the government of Canada. In September 1985, the firm of Michael K. Deaver and Associates entered into an agreement to represent the Canadian government in exchange for a retainer of \$100,000 (plus \$5,000 in expenses). The retainer agreement covers the period from July 1, 1985, to June 30, 1986, and the first payment in the amount of \$50,000 was made on November 7, 1985.

On October 25, 1985, Mr. Deaver accompanied Canadian officials to the River Club in New York City, where he participated in a breakfast meeting with Mr. Lewis. Mr. Lewis was accompanied by an officer of Warner Amex Cable Communications who assisted him in his duties as the U.S. Special Envoy. Canadian representatives included the Ambassador to the United States and Canada's Special Envoy on Acid Rain.

According to Mr. Lewis and the Warner Amex official, the participants discussed U.S.-Canadian differences over the content and timing of a Special Envoy report. With regard to content they said the Canadians pressed for the report to include a dollar commitment by the U.S. government, a goal for substantive progress on acid rain reduction and regulatory reform. Mr. Lewis described his intentions in these discussions as an effort to lower Canadian expectations. According to both U.S. participants, Mr. Deaver did not participate in or contribute to discussions of the substantive content of the report.

As to matters of timing, Mr. Lewis said that the Canadians favored release of the report just prior to the next summit, then scheduled for March 1986. Mr. Lewis explained that he was committed to release of the report prior to February 1986, at which time he planned to leave Warner Amex to assume the

Chairmanship of the Union Pacific Railroad. Mr. Lewis recalled that Mr. Deaver agreed that the report should be released earlier than the March summit. The Warner Amex official recalled that Mr. Deaver offered the possibility of rescheduling the summit for an earlier date and, although she believed that Mr. Deaver was going to pursue that possibility, she did not know whether he had done so.

The Department of Justice has described the representation prohibited by subsections 207(a) and (b)(i) as including representations in regard to matters other than major disputes, so long as they involve at least "inchoate adversariness" or potentially divergent views of the government and the party being represented. The October 25 meeting was held to resolve distinct differences between U.S. and Canadian views and, thus, involved an element of controversy. Mr. Deaver's participation in the discussion took place at a time that he was under a written agreement to represent Canada. His participation thus appears to constitute acting as agent or otherwise representing Canada before an official of a department or agency within the meaning of 18 U.S.C. 207(a) and (b)(i).

Regardless of the extent or importance of Mr. Deaver's contribution to the discussions that took place during the October 25 meeting, his very presence at that meeting appears to constitute assistance in representation by personal presence at a formal or informal appearance before an officer of a department or agency of the United States and may violate 18 U.S.C. 207(b)(ii). That subsection of the statute is intended to prevent a former senior employee from making unfair use of his prior governmental position by prohibiting all forms of assistance in the representation of another when personally present at an appearance.

APPLICABILITY OF THE 1-YEAR
NO-CONTACT BAN UNCLEAR

As a former senior employee, Mr. Deaver was subject to the 1-year no-contact ban imposed by 18 U.S.C. 207(c). He was assigned to the White House Office which, together with the Office of Policy Development, has been designated by the Office of Government Ethics as a separate statutory component of the Executive Office of the President. Therefore, for Mr. Deaver the no-contact ban prohibited only his contacts with the White House Office and the Office of Policy Development. There are questions as to whether the U.S. Special Envoy for Acid Rain was an official of one of those offices and whether Mr. Deaver's appearance before him on behalf of the Canadian government may have violated this ban.

There are some indications that the Special Envoy was a Department of State official. His position description indicates that he was a Foreign Affairs Officer within the Department of State's Bureau of European and Canadian Affairs. We were advised that the Department of State reimbursed a small amount of the travel expenses incurred in the course of his duties. In addition, the Special Envoy had three meetings with Department of State officials during the fact-gathering stage of his investigation. Other than these limited dealings, however, the Department of State appears to have played no particular role in the Special Envoy mission. Mr. Lewis served for a fee of \$1; most staff and clerical support were furnished without charge to the government by Warner Amex. According to Mr. Lewis, Warner Amex bore most of the travel expenses incurred by him and his staff.

The role traditionally served by an employer appears to have been served, at least in part, by the White House Office and the Office of Policy Development. Mr. Lewis was appointed to a position officially described as "Special Envoy of the President for Acid Rain." He received an appointment letter dated March 14, 1985, from the Assistant to the President for National Security Affairs in which he was advised that the full resources of the White House, as well as those of the Department of State, were at his disposal. Although Mr. Lewis declined the White House offer

of clerical assistance, he was furnished a White House pass and provided an office in room 227 of the Old Executive Office Building which was used as his mailing address. This room was adjacent to the office occupied by an employee of the White House Office of Policy Development who furnished technical support to Mr. Lewis and helped him arrange meetings. Mr. Lewis and his staff stated that they used this government office from five to ten times to make telephone calls. The White House advised us that certain representational expenses incurred by the Special Envoy were paid out of White House funds.

According to Mr. Lewis, he operated almost independently of traditional government structures and reported only to the President. The Joint Report of the Special Envoys was directed and submitted in final form to the President at the White House on January 8, 1986. It was not reviewed in draft form by any government official. Mr. Lewis coordinated his efforts with the White House Chief of Staff and the Assistant to the President for Policy Development, and met with them on several occasions to keep them apprised of the status of his work. His meetings with these and other White House officials far outnumbered his Department of State contacts.

These circumstances raise a question as to whether Mr. Lewis was an officer of the Department of State or whether he was, in fact, an officer within the White House Office and the Office of Policy Development. Under similar circumstances involving an individual who served as the President's Personal Representative, the Office of Government Ethics found that the Representative was an officer within the Executive Office of the President even though administrative support and staffing were provided by other departments of the government. If Mr. Lewis was an officer of the White House Office and the Office of Policy Development, Mr. Deaver's participation in the October 25 meeting may have violated 18 U.S.C. 207(c), regardless of the extent of his participation in or official responsibility for the decision to appoint the Special Envoy. We have no information, however, concerning Mr. Deaver's understanding of Mr. Lewis' position within the government.

CONCLUSION

We believe the information outlined above warrants referring this matter to the Department of Justice for further investigation and we have today made that referral.