

APR 23 2002

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:

Friends of Don Sherwood and John A.

Brady, as treasurer

Don Sherwood for Congress and John A.

Brady, as treasurer

Donald L. Sherwood

Roger A. Madigan

Commonwealth of Pennsylvania

MUR 5082

SENSITIVE

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

Take no further action against all respondents; send an admonishment letter to Don Sherwood for Congress and John A. Brady, as treasurer; report the matter over to the appropriate Pennsylvania authorities; and close the file.

II. BACKGROUND

A former staff member of Pennsylvania state senator Roger Madigan alleges that she was ordered to perform political activities for Don Sherwood's 1998 congressional campaign as part of her official job duties. Senator Madigan and his wife, Peggy Madigan, both served in official roles for Sherwood's 1998 congressional campaign. The former staff member, Connie Van Horn, asserts that Mrs. Madigan directed her to perform numerous services for the Sherwood campaign, which she performed both during and after her normal working hours. Van Horn also claims that Senator Madigan knew of and consented to these campaign activities. Both Senator and Mrs. Madigan deny the allegations.

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General Counsel's Report #2

1 In the First General Counsel's Report, this Office stated that if Van Horn's allegations are
2 true, and if the value of her services exceeded \$1,000, then Sherwood's 1998 committee (Don
3 Sherwood for Congress) may have accepted and failed to report an excessive in-kind
4 contribution. Likewise, if the alleged activities continued during the 2000 election, then
5 Sherwood's 2000 committee (Friends of Don Sherwood) may also have accepted and failed to
6 report an excessive contribution. Accordingly, on April 3, 2001, the Commission found reason
7 to believe that Don Sherwood for Congress and Friends of Don Sherwood and John A. Brady, as
8 treasurer of these committees ("the Sherwood Committees"), violated 2 U.S.C. §§ 441a(f) and
9 434(b).¹

10 To investigate this matter, this Office interviewed Connie Van Horn, who has since
11 submitted an affidavit detailing her account of the facts in this matter. See Attachment 1—"Van
12 Horn Aff."² This Office also interviewed Senator Madigan's wife, Peggy Madigan, and the
13 Senator's chief of staff, Philip DiMartile.³ This Office prepared a Report of Investigation
14 ("ROI") for each person interviewed. See Attachment 2—"P. Madigan ROI"; Attachment 3—
15 "DiMartile ROI". Additionally, Senator Madigan and the Sherwood Committees have submitted

¹ The Commission also found no reason to believe Connie Van Horn violated the Act and closed the file with respect to her. The Commission took no action on the recommendation of this Office to find reason to believe that the Commonwealth of Pennsylvania violated 2 U.S.C. § 441a(a)(1)(A.) The Commission also took no action on the recommendation of this Office to find no reason to believe that Senator Madigan violated the Act.

² Connie Van Horn also submitted other documents relevant to the investigation, including a copy of her diary, correspondence with Mrs. Madigan and other campaign workers, as well as state personnel records. These documents, along with a report of this Office's interviews with her, are available for review in the Office of General Counsel.

³ This Office notes that both Connie Van Horn and Senator Madigan have been extremely cooperative with the investigation. Van Horn agreed to two telephone interviews and sent this Office a number of materials that assisted with the investigation. Likewise, Senator Madigan responded fully to the Commission's discovery orders, and he made his wife and chief of staff available for telephone interviews.

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materials in response to the Commission's subpoena and order. See Attachment 4—"Sherwood Response";⁴ Attachment 5—"Madigan Response."⁵

This Office believes that while the evidence generally supports the reason to believe findings against the Sherwood Committees, there is an insufficient basis to either proceed to the next stage of the enforcement process or to continue the investigation. Further investigation likely will not resolve the disputed issue of whether Mrs. Madigan actually authorized—or even had the authority to authorize—Van Horn's campaign activities. Additionally, the value of Van Horn's services did not exceed \$6,000. Therefore, this Office recommends that the Commission exercise its discretion and take no further action against the respondents and report the matter over to the appropriate Pennsylvania authorities.

III. SUMMARY OF INVESTIGATION

A. Introduction

Connie Van Horn was employed by Senator Madigan from December 1991 through February 2000. Van Horn worked out of the Towanda district office, and she performed various clerical and constituent services. Aside from seasonal interns, Van Horn was the only person working in the Towanda office. Her normal working hours were from 9:00 A.M. to 5:00 P.M.,

⁴ Unlike Van Horn and Senator Madigan, the Sherwood Committees' cooperation with this Office's investigation was less than satisfactory. In addition to submitting incomplete responses to the Commission's subpoena and order, Sherwood's 1998 committee (Don Sherwood for Congress) answered the questions directed to Sherwood's 2000 committee (Friends of Don Sherwood) and vice versa. Despite a written request by this Office, the Sherwood Committees refused to correct this problem or to supplement their cursory responses. Given the information received from Mrs. Madigan, who was the primary agent of the Sherwood Committees in connection with these events, there is no need to pursue subpoena enforcement against the Sherwood Committees.

⁵ In addition to a written response, Senator Madigan produced numerous documents related to Sherwood's campaign, including the 1998 and 2000 campaign manuals for Bradford County. Only the written response is included in Attachment 5; the other materials are available for review in the Office of General Counsel.

1 for a total of 37.5 hours per week; her salary was approximately \$17,000 per year. (Madigan
2 Response at ¶ 1; Van Horn Aff. at ¶¶ 1-3.)

3 During the course of her employment, Van Horn regularly interacted with Senator
4 Madigan's wife, Peggy Madigan, and the two became friends. (Van Horn Aff. at ¶ 1; P. Madigan
5 ROI, pg. 4.) Mrs. Madigan has always been very active in local and state Republican politics,
6 from volunteering on campaigns to serving as the state president of the Pennsylvania Council of
7 Republican Women. (P. Madigan ROI, pp. 2-3.) Van Horn was not politically active before her
8 employment with the Senator; although she had volunteered for non-political organizations, she
9 had never worked on a campaign. (Van Horn Aff. at ¶ 4.)

10 From 1992 through 1997, Van Horn assisted Mrs. Madigan in numerous political
11 activities, from organizing campaign events to attending political meetings. (Van Horn Aff. at
12 ¶ 5; P. Madigan ROI, pg. 5.) Van Horn asserts that Mrs. Madigan ordered her to assist in these
13 political activities, which occurred both during and after work hours. (Van Horn Aff. at ¶ 5.)
14 According to Mrs. Madigan, however, Van Horn asked to be included in the political activities
15 and volunteered her time. (P. Madigan ROI, pp. 4-5.) Mrs. Madigan also denies that she ever
16 told Van Horn to perform political activities while at work. (P. Madigan ROI, pg. 6.)

17 Van Horn said that because the political work Mrs. Madigan directed her to perform
18 greatly inconvenienced her, she complained to the Senator's chief of staff, Phil DiMartile.
19 According to Van Horn, DiMartile responded by telling her to "keep the Senator's wife happy."
20 (Van Horn Aff. at ¶ 6.) DiMartile, who has been working for Senator Madigan for over 18 years,
21 denied that Van Horn ever complained to him about Mrs. Madigan. (DiMartile ROI, pp. 2, 4.)
22 In fact, he said that if he had heard that Mrs. Madigan was having Van Horn perform political

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1 activities during normal working hours, he would have taken action to stop the activities.

2 DiMartile did admit telling Van Horn to "keep the Senator's wife happy," but he said that he
3 generally tells that to everybody in the office. (*Id.*)

4 **B. The 1998 Sherwood Campaign**

5 Senator Madigan served as one of two chairpersons of Don Sherwood's 1998
6 congressional campaign. Senator Madigan described his position as "an honorary post rather
7 than a working position." (Madigan Response, pg. 4, at ¶ 10.) The Senator's wife, Peggy
8 Madigan, worked as a coordinator for the Sherwood campaign in Bradford County. (*Id.*) Mrs.
9 Madigan stated that she worked very hard for Sherwood's 1998 campaign, running the county
10 committee meetings, distributing campaign materials, attending campaign events, and interacting
11 with the Sherwood campaign headquarters. (P. Madigan ROI, pp. 3, 4, 6, 8-11.)

12 As with previous political activities, Connie Van Horn asserts that Mrs. Madigan directed
13 her to assist with the 1998 Sherwood campaign. Van Horn claims she did not have a choice but
14 to comply with Mrs. Madigan's directions and that Mrs. Madigan told her to perform campaign
15 activities both on and off duty. Notwithstanding this assertion, Van Horn also states that she
16 enjoyed working on the campaign. (Van Horn Aff. at ¶¶ 7, 9.) Using the amount of hours Van
17 Horn estimates she worked on the campaign, this Office calculated that Van Horn spent
18 approximately 40% of her normal working hours performing campaign activity for Sherwood
19 from May through November of 1998.

20 Mrs. Madigan denies that she ordered Van Horn to assist with the Sherwood campaign.
21 Rather, Mrs. Madigan says that Van Horn asked to become involved and that Van Horn would
22 initiate projects on her own. Further, Mrs. Madigan states that Van Horn would become upset if

1 she were not invited to participate in campaign activities. (P. Madigan ROI, pp. 4-5, 9.) Finally,
2 Mrs. Madigan denied knowing that Van Horn worked on campaign activity during her normal
3 working hours:

4 I didn't know she was doing things at work. I wouldn't do anything that
5 would hurt the candidates or my husband. I suspect little things get done on
6 and off. That's the way all campaigns work. I never even thought about this
7 until this matter came up. (P. Madigan ROI, pg. 6.)

8 Each of the campaign activities Van Horn claims that Mrs. Madigan ordered her to work on will
9 be examined below.⁶

10 *1. Bradford County Committee Meetings*

11 The Bradford County grassroots committee consisted of local supporters of Sherwood.
12 The committee met regularly during the campaign: once in March, three or four times in April,
13 twice in May, once in August, twice in September, and three or four times in October. (Van
14 Horn Aff. at ¶ 10; P. Madigan ROI, pp. 6-7.) Van Horn and Mrs. Madigan attended nearly all of
15 these meetings, which occurred in the evenings and lasted approximately three hours. Jerry
16 Morgan, Sherwood's campaign manager, regularly attended the meetings, and Sherwood himself
17 occasionally visited. (Van Horn Aff. at ¶ 11; P. Madigan ROI, pp. 3, 7.)

18 Van Horn says she took notes at the committee meetings, and the notes were later
19 distributed to everyone in attendance, including Jerry Morgan.⁷ (Van Horn Aff. at ¶ 11.) The
20 day after committee meetings, while at work, Van Horn said she would type the minutes using

⁶ This Office obtained specific information about the following events from both Van Horn and Mrs. Madigan. The Sherwood Committees did not respond to the Commission's order to provide details about these campaign events. Rather, they provided only a general statement that "Connie Van Horn attended rallies, participated in grassroots meetings and various other campaign activity." (Sherwood Response, pg. 8, at ¶ 7.)

⁷ The Commission ordered the Sherwood Committees to produce these minutes, yet Jerry Morgan, on behalf of the Sherwood Committees, responded, "This question assumes that minutes were taken. The Respondent is without knowledge to affirm this assumption." (Sherwood Response, pg. 2, at ¶ 1.) Neither Van Horn nor Mrs. Madigan possess copies of these minutes.

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1 the office computer. According to Van Horn, Mrs. Madigan directed her to perform these tasks.
2 (Van Horn Aff. at ¶ 12.) Mrs. Madigan agrees that Van Horn took notes at the meetings and that
3 the minutes of previous meetings were usually distributed at subsequent meetings. However,
4 Mrs. Madigan claims that she never told Van Horn to type the minutes at the office. Further,
5 Mrs. Madigan stated that the minutes were not always typed before being distributed. (P.
6 Madigan ROI, pp. 4, 7.)

7 Van Horn also claims she would make 100 copies of the minutes on the office copier,
8 using paper supplied by Mrs. Madigan. (Van Horn Aff. at ¶ 12.) Mrs. Madigan initially stated
9 that she was unaware that the minutes were copied at the office. However, Mrs. Madigan later
10 acknowledged bringing in her own paper, admitting that she or Van Horn might have run copies
11 there. (P. Madigan ROI, pg. 7.) Van Horn estimates that after each committee meeting she spent
12 one hour at work preparing the minutes. (Van Horn Aff. at ¶ 12.)

13 *2. Reviewing Newspapers*

14 Van Horn states that she spent about one hour per day at work reviewing three daily and
15 six weekly newspapers to discover community events that Sherwood should attend. Van Horn
16 also stated that she would fax relevant articles to Jerry Morgan at campaign headquarters. Once
17 again, Van Horn claims that Mrs. Madigan directed her to perform these activities. (Van Horn
18 Aff. at ¶ 13.) Mrs. Madigan stated that she did not remember instructing Van Horn to review
19 newspapers. Instead, Mrs. Madigan said that all members of the grassroots committee would
20 review the newspapers on their own time and discuss articles of interest at the next meeting.
21 Mrs. Madigan also stated that she was not aware Van Horn faxed articles to campaign
22 headquarters. (P. Madigan ROI, pp. 7-8.)

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3. Activities in the Madigan Home

Van Horn states that she performed a significant amount of campaign work while at the home of Senator and Mrs. Madigan during her normal working hours. These activities included making phone calls and preparing mailings. Van Horn also says that both Senator and Mrs. Madigan were present while these activities transpired. (Van Horn Aff. at ¶ 14.) Mrs. Madigan confirms that campaign work occurred at her home, but said Van Horn did not spend a significant amount of time there. Mrs. Madigan also said that Van Horn came over only during lunch and that the atmosphere was social because other ladies from the neighborhood were present. Later in the interview, however, Mrs. Madigan acknowledged that Van Horn sometimes voluntarily stayed beyond lunch to assist with campaign activities. (P. Madigan ROI, pp. 8-9.)

4. Delivering Campaign Materials

On an almost daily basis from May through November 1998, Van Horn states that she left work during the day to deliver campaign materials. Again, Van Horn claims that Mrs. Madigan instructed her to perform these tasks. Van Horn also says that individuals often came to the Senator's office to pick up campaign materials from her. On average, Van Horn estimates she spent one and one half hours per day delivering these campaign materials. (Van Horn Aff. at ¶ 15.)

Mrs. Madigan confirmed that Van Horn often delivered campaign signs, but she denied that Van Horn delivered materials during the day. Rather, Mrs. Madigan said she waited until Van Horn was off work before picking her up to deliver materials. Mrs. Madigan also asserted that no campaign materials were stored at the Senator's office and that nobody picked up materials from the office. When asked where Van Horn received the materials to distribute, Mrs.

1 Madigan said that they were stored at a local restaurant and that Van Horn kept some in the trunk
2 of her car. (P. Madigan ROI, pg. 8.)

3 *5. Get-Out-the-Vote Activities*

4 During the month of October 1998, Van Horn states that she occasionally left the office
5 to register voters or to assist people in requesting absentee ballots. Van Horn claims that Mrs.
6 Madigan would give her specific instructions on where she should travel. Van Horn estimates
7 she spent about three hours on these activities. (Van Horn Aff. at ¶¶ 16-17.) At first, Mrs.
8 Madigan stated that she did not remember asking Van Horn to register or assist voters. However,
9 when told the name of a specific individual that Van Horn had allegedly assisted, Mrs. Madigan
10 acknowledged that she asked Van Horn to assist this particular voter. Mrs. Madigan added her
11 impression that this activity had occurred during lunchtime. (P. Madigan ROI, pg. 8.)

12 *6. One-Time Campaign Activities*

13 Van Horn states that she planned or participated in a number of Sherwood campaign
14 events at the direction of Mrs. Madigan. These events included working at a Sherwood
15 campaign booth at a local festival, planning fundraisers, decorating a float for a parade, and
16 organizing a trip to a campaign debate, among other things. (Van Horn Aff. at ¶¶ 18-25.) In
17 interviews with this Office and in her affidavit, Van Horn provided specific details about each
18 event, included the number of hours she spent working on the activities. These activities are
19 summarized in tables on pages 16-17.

20 Van Horn's involvement with the campaign events varied greatly. For example, on
21 October 31, 1998, the Sherwood campaign held a large fundraiser/rally that was attended by
22 hundreds of people. Van Horn states that she spent time at work planning this event, including

1 ordering supplies, food, and finding volunteers to assist. (Van Horn Aff. at ¶ 23.) For other
2 events, however, such as a fundraising breakfast on October 29, 1998, Van Horn simply attended
3 the event. (Van Horn Aff. at ¶ 22.) Additionally, the time Van Horn spent on these activities
4 occurred both during and after her normal working hours. Regardless of when the activities
5 occurred, however, Van Horn asserts that she did not have a choice but to assist Mrs. Madigan.

6 Overall, Mrs. Madigan confirmed that Van Horn participated in the activities that Van
7 Horn claims she did. However, Mrs. Madigan denies that she ever told Van Horn to plan a
8 campaign event while at work or to use office resources. Additionally, for some of the activities,
9 Mrs. Madigan denies that she told Van Horn to plan events. Rather, Mrs. Madigan said that Van
10 Horn organized some projects on her own initiative. For example, Mrs. Madigan did not
11 remember a trip to a campaign debate that Van Horn claims to have organized, saying, "If she did
12 that, she did it on her own." (P. Madigan ROI, pg. 9.)

13 **C. The 2000 Sherwood Campaign**

14 Van Horn states that she did not participate in any manner with Sherwood's reelection
15 campaign in 2000. (Van Horn Aff. at ¶ 27.) Van Horn says that in January 2000, she indicated
16 to Mrs. Madigan that she was not interested in participating again. (Van Horn Aff. at ¶ 26.) Mrs.
17 Madigan confirms that Van Horn told her that she did not want to participate in the campaign,
18 though Mrs. Madigan was not sure exactly when Van Horn communicated this to her. (P.
19 Madigan ROI, pg. 10.) Mrs. Madigan also states that she herself was not nearly as involved in
20 Sherwood's 2000 campaign as she was in 1998. (P. Madigan ROI, pg. 4.)

D. Van Horn's Firing

The newspaper articles attached to the complaint suggested that Van Horn may have been fired for refusing to assist in Sherwood's 2000 campaign; Van Horn was fired shortly after she claims to have told Mrs. Madigan that she would not work on Sherwood's reelection campaign. Mrs. Madigan, however, says that she did not ask her husband to fire Van Horn. Further, Mrs. Madigan states that she was surprised when she learned that Van Horn had been fired. (P. Madigan ROI, pg. 5.)

Phil DiMartile, the Senator's chief of staff who actually fired Van Horn, has explained that there were many problems with Van Horn during the past couple years of her employment, including failing to get along with others and "shoddy work." (DiMartile ROI, pp. 3-5.) In late 1999, DiMartile said he learned from the Senate computer services director that 80% of the program files had been deleted from the computer in the office where Van Horn worked. DiMartile described this incident as "the last straw," and after consulting Senator Madigan, he fired Van Horn on February 7, 2000. DiMartile said that he was aware of a falling out between Van Horn and Mrs. Madigan in the summer of 1999, but that was not a reason for Van Horn's termination. (DiMartile ROI, pp. 3-5.)

Van Horn, in an interview with this Office, confirmed that DiMartile told her that she was being fired for abuse of computer equipment. Van Horn, though, admitted only to erasing a fundraising list for Senator Madigan from the office computer in August 1999.⁸ Further, Van Horn thought the issue was resolved in November 1999 when she claims to have spoken with

⁸ In the interview with this Office, Van Horn stated that she alone had compiled the fundraising list for Senator Madigan over seven years, so she felt that she could erase it. Van Horn also added that she remembered another senator who was investigated for using his office for fundraising, so she thought erasing the list was appropriate as well.

1 Senator Madigan about the troubles she was having with Mrs. Madigan.⁹ According to Van
2 Horn, the Senator told her she was doing good work and that she should just avoid Mrs.
3 Madigan.

4 IV. ANALYSIS

5 There is no dispute that Van Horn played a significant role assisting Mrs. Madigan in
6 Sherwood's 1998 campaign in Bradford County. Indeed, this Office was able to confirm that
7 Van Horn worked on nearly all the projects she claims to have done.¹⁰ The primary disagreement
8 centers on whether Van Horn was required to perform those services during work hours as part of
9 her official job duties for Senator Madigan. Because Van Horn was usually the only person
10 working in the district office, it is difficult to find witnesses to the alleged activities.
11 Additionally, it is difficult to contradict Senator Madigan's claim that he was unaware of any
12 activities that occurred during working hours. Finally, it is difficult to prove that Mrs.
13 Madigan—as an agent of the Sherwood Committees—knew the full scope of Van Horn's
14 activities.

15 The following analysis first addresses who can be held responsible for any in-kind
16 contributions conferred on the Sherwood Committees as a result of Van Horn's activities. Next,
17 the analysis proceeds to examine the evidence that corroborates Van Horn's allegations. Third,
18

⁹ An entry in Van Horn's diary on November 18, 1999 reads, "Had long talk with Senator."

¹⁰ Overall, this Office found Van Horn's account to be credible. Van Horn gave complete, specific answers to this Office's inquiries and sometimes limited the scope of her involvement to levels less than this Office initially thought. In contrast, Mrs. Madigan frequently gave vague and incomplete answers to this Office's questions, usually answering with "I don't remember." When this Office would present Mrs. Madigan with specific information obtained from other sources, Mrs. Madigan would suddenly remember the detail and give an explanation. Furthermore, Mrs. Madigan appeared determined not to implicate her husband in any wrongdoing.

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1 the value of Van Horn's services is estimated to evaluate the scope of the alleged violation.

2 Finally, the analysis examines relevant state laws.

3 **A. Responsibility for Any In-Kind Contributions**

4 Even if there were conclusive evidence to corroborate the allegation that Mrs. Madigan
5 instructed Van Horn to provide services to the Sherwood campaign during work hours, it is
6 unclear who could be held liable for any resulting contribution. The Act defines "contribution"
7 to include providing something of value to a political committee or paying compensation for the
8 personal services of someone who works for a political committee without charge. See 2 U.S.C.
9 § 431(8)(A.) In the present matter, the Commonwealth of Pennsylvania paid for Van Horn's
10 salary.

11 Mrs. Madigan was not an employee of the Commonwealth of Pennsylvania, and
12 according to the Senator's chief of staff, Mrs. Madigan had no role in the operation of the
13 Senator's offices. (DiMartile ROI, pg. 5.) Moreover, the chief of staff made clear that
14 employees are prohibited from performing campaign activities during normal working hours.
15 (*Id.*) Therefore, if Mrs. Madigan told Van Horn to work on the Sherwood campaign, Mrs.
16 Madigan likely did not have actual authority to do so.

17 Even if Mrs. Madigan had apparent authority to give instructions to Van Horn, the
18 Commission would have difficulty establishing liability against Senator Madigan or
19 Pennsylvania unless they knew or should have known of the activities. Equally difficult would
20 be pursuing Sherwood's 1998 committee, especially if the Commission cannot establish liability
21 against any contributor. Although Mrs. Madigan was an agent of Sherwood's 1998 committee
22 and her knowledge can be imputed to the committee, this Office does not have sufficient

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1 evidence to prove that Mrs. Madigan actually knew that Van Horn regularly performed campaign
2 activities during working hours.

3 Mrs. Madigan acknowledged that Van Horn may have performed some campaign
4 activities during normal working hours. But Mrs. Madigan adamantly asserts that she never
5 ordered Van Horn to perform those activities. One possible explanation for the conflicting
6 accounts is that Van Horn may have subjectively believed she did not have a choice but to assist,
7 while Mrs. Madigan may have subjectively believed that Van Horn enjoyed volunteering.
8 Additionally, Mrs. Madigan may have issued instructions to Van Horn believing that Van Horn
9 would perform the activities during her lunch hour or after work, with no distraction from her
10 official duties.¹¹

11 **B. Corroborating Van Horn's Allegations**

12 Van Horn provided this Office with documents that support her account. For example,
13 Van Horn's diary indicates that she spent a considerable amount of time working for the
14 Sherwood campaign.¹² See Attachment 6—selected entries from Van Horn's diary. Some diary
15 entries indicate that Van Horn and Mrs. Madigan worked on the campaign during working hours.
16 For example, on Monday, May 18, 1998, Van Horn wrote, "Peggy & I worked on
17 campaign all day & part of nite." Yet most of the entries that appear to relate to the Sherwood
18 campaign occurred during nights and weekends. Thus, although the diary confirms that Van

¹¹ For example, Van Horn claims to have spent one hour per day reviewing the newspapers delivered to the Senator's office. Yet if Mrs. Madigan was under the impression that Van Horn regularly reviewed the newspapers notwithstanding the campaign, then Mrs. Madigan may have believed that Van Horn would not deviate from her official duties by also looking for articles of interest for Sherwood.

¹² Van Horn submitted her entire diary to this Office, which covered the five-year period from 1995 through 1999. The entries for 1998, during the time of the Sherwood campaign, do not appear to be any different than entries for other years. Thus, the diary provided by Van Horn appears to be authentic.

1 Horn actively participated in the campaign, it does not show whether Mrs. Madigan ordered her
2 to perform campaign activities during working hours.

3 Van Horn also provided a copy of a letter Mrs. Madigan faxed to her immediately
4 following Sherwood's victory in the May primary election. See Attachment 7. The letter appears
5 to have been written after a dispute between Van Horn and Mrs. Madigan, as Mrs. Madigan
6 apologizes to Van Horn and thanks her for her efforts in the campaign. The letter reads in part:

7 I know how hard you worked for this election. All you gave up, all you did. All
8 the good and trying times we have had together, the running all over with
9 materials, the calling constantly, the time you gave it. You didn't have to. You
10 did it and we had such fun together. . . . Again, I am sorry from the bottom of my
11 heart that I have hurt you. Have no different thoughts, Connie, than that every
12 single person in the campaign knows you worked your head off and did a super
13 job and appreciates you. . . .

14 This letter supports Van Horn's claim that Mrs. Madigan knew she was heavily involved
15 in the Sherwood campaign. However, the letter also lends support to Mrs. Madigan's belief that
16 Van Horn happily volunteered to work on the campaign. Regardless, the letter does not provide
17 evidence that Mrs. Madigan instructed Van Horn to work on the Sherwood campaign from
18 Senator Madigan's office.

19 **C. Value of Van Horn's Services**

20 Assuming that Van Horn actually performed services for the Sherwood Committees as
21 part of her official job duties, one must calculate the value of those services to determine the
22 amount of any in-kind contribution. This Office has prepared the following two tables that
23 summarize Van Horn's activities and estimate the value of her services during the primary and

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1 general elections.¹³ For the purposes of this analysis, the chart assumes that all of Van Horn's
 2 stated activities would constitute a contribution to the Sherwood campaign. Van Horn has
 3 confirmed that the estimated number of activities and hours used in the chart are accurate.
 4

Summary and Value of Van Horn's Activities for the Primary Election

Dates	Activity	On duty Hours	Estimated On Duty Value	Off duty Hours	Estimated Off duty Value
Apr-May	Attending Committee Meetings & Preparing Minutes	5	\$44.20	15	\$198.90
Apr-May	Reviewing Newspapers & Clipping Articles	40	\$353.60	0	\$0.00
Apr-May	Working at the Madigan Home	50	\$442.00	0	\$0.00
May	Distribution of Campaign Materials	15	\$132.60	0	\$0.00
	Totals	110	\$972.40	15	\$198.90
	Office/Equipment Value		\$265.60		
	ESTIMATED TOTAL VALUE:	\$1,238.00 (on duty only)		\$1,436.90 (Including off duty)	

¹³ To calculate the value of Van Horn's on-duty time, this Office divided her annual salary of \$17,246 by 52 (weeks in a year), then by 37.5 (hours per week she worked), to arrive at \$8.84 per hour. Because Van Horn states that but for her employment with Senator Madigan, she would not have been campaigning for Sherwood outside of her normal working hours, a strong argument can be made that Van Horn was not volunteering when she campaigned for Sherwood outside of her normal working hours. Therefore, this Office estimates the value of Van Horn's time outside of her normal working hours to be \$13.26 per hour, or time and a half of her normal salary. In addition, this Office contacted local businesses in Pennsylvania to determine the fair value of Van Horn's use of office equipment. Copying costs were calculated at 8¢ per copy; computer use at \$12.00 per hour, plus a \$1.00 printing fee; faxing at \$3.00 for two pages; and storage at \$53.00 per month. Due to a lack of personnel records, the charts do not take into account any vacation or leave that Van Horn used.

Summary and Value of Van Horn's Activities for the General Election

Dates	Activity	On duty Hours	Estimated On Duty Value	Off duty Hours	Estimated Off duty Value
Jun-Nov	Reviewing Newspapers & Clipping Articles	105	\$928.20	0	\$0.00
Jun-Nov	Distributing Campaign Materials	82.5	\$729.30	0	\$0.00
Jun-Nov	Working at the Madigan Home	106	\$937.04	0	\$0.00
Aug-Oct	Attending Committee Meetings & Preparing Minutes	7	\$61.88	21	\$278.46
Aug 28	Staffing a campaign booth at Riverfest	0	\$0.00	8	\$106.08
Sept	Planning and Attending BBQ Fundraiser	3	\$26.52	9	\$119.34
Oct	Constructing a Float and Attending Parade	10	\$88.40	3	\$39.78
Oct	Organizing a Trip to the Scranton Debate	25	\$221.00	6	\$79.56
Oct	Attending a Fundraising Breakfast	3	\$26.52	0	\$0.00
Oct	Planning & Attending Rally/Fundraiser at Faye's Sugar Shack	8	\$70.72	6.5	\$86.19
Oct	Get-out-the-vote Activities	3	\$26.52	0	\$0.00
	Totals	352.5	\$3,116.10	53.5	\$709.41
	Office/Equipment Value		\$585.60		
	ESTIMATED TOTAL VALUE:		\$3,701.70 (on duty only)		\$4,411.11 (including off duty)

1 Sherwood's 1998 committee was permitted to receive contributions not exceeding \$1,000
 2 per election per person. 2 U.S.C. § 441a(a)(1)(A.) At most, therefore, Sherwood's 1998
 3 committee received an excessive contribution of \$436.90 for the primary election and \$3,411.11
 4 for the general election as a result of Van Horn's services. Again, these figures represent the
 5 maximum possible contribution. Further analysis might conclude that certain activities do not
 6 constitute a contribution under the Act. For example, although Van Horn claims to have spent
 7 considerable time reviewing newspapers for the Sherwood campaign, she may have been
 8 required to review those newspapers anyway as part of her regular duties for Senator Madigan.
 9 Thus, further investigation may lead to a decrease in the overall value of Van Horn's services.

1 Although Sherwood's 1998 committee may have received an excessive in-kind
2 contribution resulting from Van Horn's services, the limited value of those services does not
3 justify further investigation. To attempt to resolve the dispute over whether Mrs. Madigan
4 ordered Van Horn to work on the Sherwood campaign while at work, this Office would need to
5 travel to Pennsylvania to interview other campaign workers and to depose the respondents.
6 Moreover, even if further investigation was warranted, this Office would likely be unable to
7 resolve the difficult issues relating to Mrs. Madigan's authority over Van Horn and whether Van
8 Horn's subjective interpretation of Mrs. Madigan's instructions varied from Mrs. Madigan's
9 intent.

10 Therefore, based on all the reasons stated, this Office recommends the Commission send
11 an admonishment letter to Sherwood's 1998 committee, Don Sherwood for Congress and John
12 A. Brady as treasurer. This Office further recommends the Commission exercise its discretion to
13 take no further action against Friends of Don Sherwood, Don Sherwood for Congress, and John
14 A. Brady, as treasurer of these committees. Finally, due to the unresolved issue of who knew of
15 Van Horn's alleged activities, this Office recommends the Commission take no action against the
16 Commonwealth of Pennsylvania, Roger Madigan, and Don Sherwood.

17 **D. Possible State Law Violations**

18 The complaint in this matter was also addressed to a number of Pennsylvania authorities.
19 Indeed, a number of Pennsylvania laws appear to apply to the facts in this matter. For example,
20 the code of ethics for members of the Pennsylvania state legislature states that members shall not
21 use or attempt to use their official position to secure unwarranted privileges or exemptions for
22 themselves or others. *See* Pa. Stat. Ann. tit. 46, § 143.4 (West 1969.) Likewise, the Public

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1 Official and Employee Ethics Act prohibits public officials and employees from using the
2 authority of public office in a manner that constitutes a conflict of interest. *See* 65 Pa. Cons. Stat.
3 Ann. § 1101 et seq. (West 2000.) Finally, another law prohibits public officers from demanding
4 something of value from subordinates with the understanding that the same may be used for
5 political purposes. *See* 25 Pa. Cons. Stat. Ann. § 2374 (West 2000.)

6 The aforementioned laws are investigated respectively by the Senate Committee on
7 Ethics, the State Ethics Commission, and the Attorney General. This Office is not aware whether
8 these authorities have taken any action on the allegations in the complaint. Nonetheless, this
9 Office believes that these agencies should be made aware of the results of the Commission's
10 investigation so the agencies may decide for themselves whether to pursue the issues raised.
11 Therefore, this Office recommends that the Commission report this matter over to the
12 Pennsylvania State Senate Committee on Ethics, the Pennsylvania State Ethics Commission, and
13 the Pennsylvania Attorney General.¹⁴

14 **V. DISCLOSURE OF MATERIALS FOR THE PUBLIC RECORD**

15 Consistent with the Commission's treatment of materials to release to the public in MUR
16 5119 pending the resolution of the appeal in *American Fed'n of Labor and Congress of Indus.*
17 *Orgs. v. Federal Election Comm'n*, 177 F. Supp.2d 48 (D.D.C. 2001), *appeal docketed*, No. 02-
18 5069 (D.C. Cir. Feb. 28, 2002), this Office intends to provide the complainant, the respondents,
19 and the public with copies of only the certification of the Commission's votes and dispositive
20 General Counsel's Reports.

¹⁴ Should the Commission report this matter over to Pennsylvania authorities, this Office will send them only the dispositive General Counsel's Reports that will be placed on the public record. Upon request, this Office will also provide the agencies with access to the investigative file, though with a caution that the materials may be subject to the Act's confidentiality provisions regarding public disclosure.

1 **VI. RECOMMENDATIONS**

- 2 1. Send an admonishment letter to Don Sherwood for Congress and John A. Brady, as
3 treasurer, but take no further action;
- 4 2. Take no further action against Friends of Don Sherwood and John A. Brady, as
5 treasurer;
- 6 3. Take no action against the Commonwealth of Pennsylvania;
- 7 4. Take no action against Roger A. Madigan;
- 8 5. Take no action against Donald L. Sherwood;
- 9 6. Report the matter over to the Pennsylvania State Senate Committee on Ethics, the
10 Pennsylvania State Ethics Commission, and the Pennsylvania Attorney General; and
- 11 7. Close the file.

4/23/02

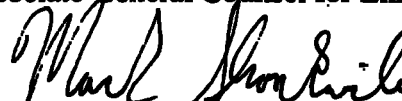
Date



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