Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

THE WHITE HOUSE

WASHINGTON

July 1, 1975

Dear Congressman Clancy:

This letter follows my letter to you of May 20 concerning my referral of your inquiry to the Office of Legal Counsel in the Department of Justice.

I understand now that the Office of Legal Counsel has taken no action because Mr. Russell E. Train wrote you on May 12 concerning the matter on which you had asked for information.

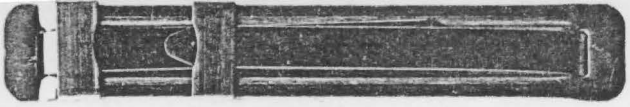
I trust that Mr. Train's letter has served your purpose. However, if there is any further assistance which I may provide, please let me know.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

The Honorable Donald D. Clancy
House of Representatives
Washington, D. C. 20515



Justice
(re Federal Court System)

July 1, 1975

MEMORANDUM FOR: THE ATTORNEY GENERAL

FROM: RODERICK HILLS

Attached is an interesting memorandum which I find quite helpful. It was prepared by Ken Lazarus. Our present thought is to give consideration to a number of matters affecting the federal court system and to discuss with you a set of priorities. Potential subjects include:

(1) Possible reductions in the use of three-judge courts;
(2) The expanded use of Magistrates;
(3) Limitations on diversity jurisdiction;
(4) "Pooling" of judicial resources;
(5) Cooperative federal/state initiatives;
(6) Additional judgeships;
(7) Judicial salaries and benefits;
(8) The respective roles of the Judiciary and the Congress in the rule-making process;
(9) The possible introduction of "judicial impact statements;"
(10) Greater administrative efficiency.

Obviously, you may be well started on some of these matters and we may have little to add, others may be the subject of an inter-agency effort to which we will have little to add, and others may not be worth doing. I would, however, appreciate a chance to discuss it with you at your convenience to determine a sintelligent approach.

7/14/75

THE WHITE HOUSE

WASHINGTON

I sent a copy to Jan

THE WHITE HOUSE

WASHINGTON

July 3, 1975

MEMORANDUM FOR: Jim Lynn
Jack Marsh
Max Friedersdorf
Bob Hartmann
Phil Buchen ✓

FROM: Jim Cannon

The attached is self-explanatory.

I would appreciate your observations, comments and recommendations by 5:00 p.m., Monday, July 7.

THE WHITE HOUSE

WASHINGTON

DRAFT

July 3, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: Jim Cannon

SUBJECT: "Saturday Night Specials"

Two issues have developed in the course of our efforts to draft legislation implementing the portion of your Crime Message recommending the prohibition of the manufacture and sale of "Saturday Night Specials."

I. "Saturday Night Specials" -- Definition

As you know, the Gun Control Act of 1968 prohibits, among other things, the importation of handguns not suitable for sporting purposes (i.e., so-called "Saturday Night Specials"). Under the regulations implementing the statutory prohibition, "Saturday Night Specials" are defined on the basis of concealability, quality and safety. Cost is not a factor. Thus, the prohibition applies not only to cheap (i.e., inexpensive), poorly constructed handguns, but to certain expensive, highly concealable handguns as well.

With only minor exceptions, the draft bill which the Department of Justice and the Bureau of Alcohol, Tobacco and Firearms have forwarded for clearance adopts the definition developed under the 1968 Act.

As you will recall, during the Congressional leadership meeting prior to the transmittal of your Crime Message, a brief discussion was had on this issue. At that time, Senator Hruska spoke very strongly of his concern that cost be a central element in your definition of "Saturday Night Special."

The issue raised for your consideration is whether the definition of "Saturday Night Special" should be modified in order to introduce the element of cost.

The arguments pro and con may be summarized as follows:

PRO:

-- Unless the definition incorporates the element of price, it is unlikely that Senator Hruska will introduce the bill.

-- An adjustment in definition can still be consistent with your announced intention to eliminate commerce in cheap, easily concealable handguns.

-- The chance for success of the entire gun control package would likely be enhanced by this change.

-- Very expensive, albeit easily concealable, handguns are not generally the type of weapons involved in street crime.

CON:

-- Such a change would, no doubt, be interpreted by the press and political opponents as a retreat from current law, since current law prohibits the importation of some small yet expensive handguns.

-- The establishment of a maximum cost test would create a major loophole in the law which would allow persons to import, manufacture and/or sell highly concealable, poor quality and/or unsafe weapons at high prices. Moreover, a cost test would appear to discriminate against the poor.

-- Aside from the aesthetic interests of gun buffs, small yet expensive weapons have no valid sporting purpose.

-- The Bureau of Alcohol, Tobacco and Firearms reports that a meaningful cost test would be difficult to administer.

OPTIONS:

1. Redraft the definition to include the element of cost.

   [Recommendations]

2. Go with the Justice/ATF draft.*

   [Recommendations]

DECISION:

Option 1 _____
Option 2 _____

---

* If you decide to go with the current draft, you may wish to bring Senator Hruska in for a meeting prior to sending the legislation to the Congress.

II. "Saturday Night Specials" Buy-Back

It has been suggested that your bill authorize Treasury to purchase all "Saturday Night Specials" held by manufacturers or dealers on the effective date of the legislation. The Bureau of Alcohol, Tobacco and Firearms estimates that there are approximately 100,000 "Saturday Night Specials" in the pipeline at any given moment, with an average value of $25.00 per weapon. Thus, a program to purchase manufacturer and dealer inventories could cost the Federal government $2.5 million.

The arguments pro and con may be summarized as follows:

PRO:

-- This proposal is entirely consistent with the thrust of your Crime Message to remove "Saturday Night Specials" from circulation.

-- Compensating manufacturers and dealers for inventories rendered useless by a new law is certainly equitable and, arguably, required by law.

-- Absent such a program, the Administration could be accused of contributing to massive dumping of "Saturday Night Specials" by manufacturers or dealers attempting to clear their shelves at the last minute.

-- The program is relatively inexpensive.

CON:

-- Technically, this is a new spending program.

-- Adoption of this program could create pressure to extend the buy-back feature to persons other than dealers and manufacturers owning "Saturday Night Specials"(at a cost of anywhere from $25 million to $250 million).

-- Compared with the 10 to 15 million "Saturday Night Specials" already in circulation, an additional 100,000 is but a drop in the bucket.

OPTIONS:

1. Endorse the buy-back program.

   [Recommendations]

2. Do not endorse the buy-back program.

   [Recommendations]

DECISION:

Option 1 _____

Option 2 _____

THE WHITE HOUSE

WASHINGTON

July 7, 1975

MEMORANDUM FOR: JIM CANNON

THROUGH: PHIL BUCHEN P.W.B.

FROM: KEN LAZARUS

SUBJECT: "Saturday Night Specials"

This is to suggest that the draft memorandum to the President on the referenced subject include at the bottom of page 2 prior to the caption "Discussion", the following paragraph:

> "Note: ATF and Justice are currently drafting language changes in the bill and/or section-by-section analysis to authorize the transfer of a small number of highly concealable yet expensive weapons between licensed collectors only. This approach would suffer none of the infirmities noted above and may be acceptable to Senator Hruska. The results of this effort and Senator Hruska's reaction to it will be available at our meeting on the subject."

ATF and Justice will have this draft language available tomorrow, and I shall discuss the matter with Senator Hruska tomorrow afternoon. Therefore, it might be best to schedule a meeting on the subject on Wednesday.

THE WHITE HOUSE

WASHINGTON

July 3, 1975

MEMORANDUM FOR: Jim Lynn
Jack Marsh
Max Friedersdorf
Bob Hartmann
Phil Buchen ✓

FROM: Jim Cannon

The attached is self-explanatory.

I would appreciate your observations, comments and recommendations by 5:00 p.m., Monday, July 7.

THE WHITE HOUSE

WASHINGTON

DRAFT

July 3, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: Jim Cannon

SUBJECT: "Saturday Night Specials"

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The issue raised for your consideration is whether the definition of "Saturday Night Special" should be modified in order to introduce the element of cost.

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-- Such a change would, no doubt, be interpreted by the press and political opponents as a retreat from current law, since current law prohibits the importation of some small yet expensive handguns.

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   [Recommendations]

2. Go with the Justice/ATF draft.*

   [Recommendations]

DECISION:

Option 1 _____
Option 2 _____

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-- Compared with the 10 to 15 million "Saturday Night Specials" already in circulation, an additional 100,000 is but a drop in the bucket.

OPTIONS:

1. Endorse the buy-back program.

   [Recommendations]

2. Do not endorse the buy-back program.

   [Recommendations]

DECISION:

Option 1 _____

Option 2 _____

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 8, 1975

TO: DONALD RUMSFELD
JAMES CONNOR
JERRY JONES
RICHARD PARSONS
JAMES CANNON
JAMES LYNN
ALAN GREENSPAN
RICHARD CHENEY
JAMES CAVANAUGH
PHILIP BUCHEN ✓

FROM: ROBERT GOLDWIN RG

Attached are two more items on the Crime Message. The one from the Economist is a mixed review, but the one by Max Lerner is of exceptional importance, in my opinion, because of his strong liberal leanings and influence among liberals.

I draw two lessons:

1. We can influence liberals as well as conservatives with soundly argued middle-of-the-road programs.

2. We must follow-up on the Crime Message by urging state and local authorities to take the actions advocated in the Yale Law School speech and the Crime Message.

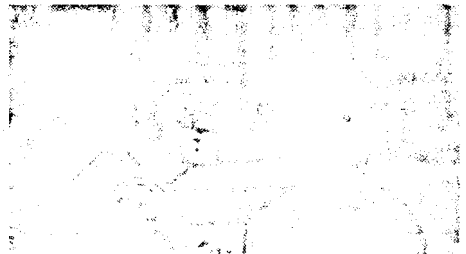
Attachments

THE WORLD

American Survey

Ford plays the crime buster

Washington, DC.



The conventional wisdom is that any Nixon—in order not to offend the

CHICAGO SUN TIMES
Fri., July 4, 1975
P. 26

MIL

FORD AIMS AT CRIME
Max Lerner

SAN FRANCISCO — President Ford's new anticrime program, developed with the help

THE WHITE HOUSE

WASHINGTON

July 15, 1975

MEMORANDUM FOR

The Honorable Richard L. Thornburgh
Assistant Attorney General
Criminal Division

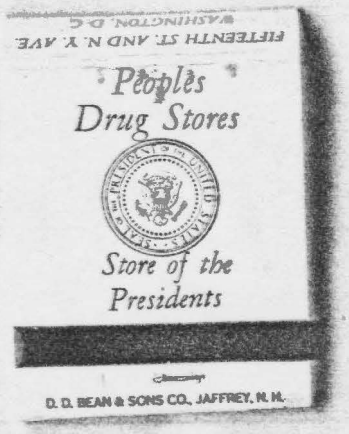
The enclosed matches were recently brought to the attention of this office by a member of the White House staff. Inasmuch as this appears to be a use of the Seal of the President that is inconsistent with 18 U.S.C. 713 and E.O. 11649, I bring this matter to your attention for such action as you may deem appropriate. This office has not given permission for this use of the Seal.

Please contact Barry Roth of my staff if you require additional information in this regard.

P.W.B.

Philip W. Buchen
Counsel to the President

Enclosures



Justice

THE WHITE HOUSE

WASHINGTON

July 21, 1975

MEMORANDUM FOR

Office of the Attorney General
Department of Justice

The attached correspondence from Mr. James Martin Dixon dated July 5, 1975, concerning the alleged suppression of FBI reports is forwarded to you for appropriate consideration. It has not been acknowledged by this office.

P.W.B.

Philip W. Buchen
Counsel to the President

Mr. Hugh E. Kline
Clerk of Court
United States Court of Appeals
for the District of Columbia Circuit
Washington, D. C. 20001

July 5, 1975
P. O. Box C
Waupun, Wisc.
53963

In Re: James Martin Dixon v. Jean Coates, et al
No. 75-8039

Dear Mr. Kline:

On May 12, 1975, I mailed (4) motions for permission to appeal to this Court, and the following week your deputy clerk, Mr. Daniel M. Cathey, filed the motion under the above number.

If you are not going to give the motions to Chief Judge David L. Bazelon for review, I would appreciate your telling me so that I may seek other legal remedies.

Frankly, your withholding the motions this long from Chief Judge Bazelon shows that you were instructed to do so by Attorney General Edward H. Levi or one of his assistants.

I have no bones to pick with you, Mr. Kline, or to pick with Mr. Levi. But by this time, I know Mr. Levi or one of his top assistants has found out that Mr. J. Stanley Pottinger, the Director of the Civil Rights Division and his top assistant, have been suppressing FBI reports and U.S. Attorney's reports that the FBI Agent, Tom Michalski, and I prepared and sent to the Department of Justice over 2 years ago!

Not only is the game up for Mr. J. Stanley Pottinger and his top assistant, the four defendants in the Supreme Court of the United States, and other corrupted federal officials, but also the game is up for the Department of Justice!

The Department of Justice knows that I was extradited illegally, kidnapped, and incarcerated illegally - because it had the reports a year in advance! For years and years, I have given the Department of Justice reports, and it has not done a goddamn thing!

Therefore, I am personally going to see that the Department of Justice has the biggest scandal since reconstruction days - if it does not come out from under the rug by July 15, 1975!

Very truly yours,

James Martin Dixon

James Martin Dixon

cc: Mr. Philip Buchen
White House Counsel
The White House
Washington, D. C.

Mr. Edward H. Levi
Attorney General
Department of Justice
Constitution Ave. & 10th St. NW
Washington, D. C. 20530

Justice

July 25, 1975

Dear Congressman Broomfield:

This is in further reply to your letter of May 21, 1975, signed jointly with eight other members of Congress concerning the Justice Department's role in connection with Bradley v. Milliken. Your letter noted that at that time no reply had been received to your earlier letter of April 10, 1975, to the Attorney General.

We have since obtained a copy of the Attorney General's reply to you of June 5, 1975, and have obtained further oral reports from the Department of Justice on the progress of that litigation.

The President's views in general about the deficiencies of forced busing as a remedy to overcome unconstitutional discrimination in educational opportunities are well-known, and we will continue to follow developments in this case with interest. However, whenever it comes to issues presented by a particular case in litigation, questions of whether and how they should be addressed are properly within the judgment of the Attorney General, in whom the President has great confidence. Your views as expressed both to the Attorney General and the President are nevertheless helpful and are welcomed.

Sincerely,

Philip W. Buchen
Counsel to the President

The Honorable William S. Broomfield
House of Representatives
Washington, D.C. 20515

PWB:ki

ITEM WITHDRAWAL SHEET
WITHDRAWAL ID 01243

Collection/Series/Folder ID	:	001900267
Reason for Withdrawal	:	DR,Donor restriction
Type of Material	:	COR,Correspondence
Creator's Name	:	Buchen, Philip
Receiver's Name	:	Geerdes, Franklin
Description	:	Matter concerning Thomas Moore.
Creation Date	:	07/29/1975
Date Withdrawn	:	06/23/1988

THE WHITE HOUSE

WASHINGTON

TO: PHIL BUCHEN

FROM: ROGER SEMERAD

For your information

(The attached is being referred to the Dept. of Labor for draft reply)

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
111 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604
AREA CODE 312 431-9000
CABLE ADDRESS: INTERLEX

CALIFORNIA OFFICE
1801 CENTURY PARK EAST
LOS ANGELES, CALIF. 90067
AREA CODE 213 277-7200

WASHINGTON, D.C. OFFICE
1819 H STREET, N.W.
WASHINGTON, D.C. 20006
AREA CODE 202 872-1300

August 4, 1975

RS-1

The President
The White House
Washington, D. C.

Mr. President:

The United States Court of Appeals for the Seventh Circuit has recently rendered a decision (in McDaniel vs. The University of Chicago and Argonne [National Laboratory], 512 F.2d 583) which could grievously affect all governmental agencies which enter into contracts which might be even arguably construction contracts subject to the Davis-Bacon Act. 40 U.S.C. §276a, et seq. These effects will be (a) the disruption of the orderly processes long established for the government's administration of its contracts, and (b) the substantial increase in the cost of construction and other services, to the government.

The Seventh Circuit, overruling the District Court decision of Judge Philip Tone, held that an employee of The University of Chicago, at its Argonne National Laboratory facility, could bring an action in his own name, for claimed underpaid "prevailing" wages, despite the fact that the Davis-Bacon Act, consistent with a clearly manifest congressional purpose, forecloses that privilege. This circumvention of the government's control over the enforcement and implementation of its contracts could result in sheer chaos.

We represent The University of Chicago and have filed a Petition for Writ of Certiorari. Despite the singular importance of the issue involved, the Supreme Court's case burden may result in its inadequate appreciation of the vital concern that governmental contracting agencies have in the ultimate disposition of the case.

Thus, I am taking this unusual step of undertaking to advise all governmental agencies (which themselves may not be fully aware of the decision's potential impact), through the Office of the Chief Executive, of their interest in this matter and to afford them an opportunity to express their views in respect of the pending Petition. Should any such agencies wish to give their support to that Petition, we would be happy to afford them the benefit of our experience.

Respectfully yours,

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON

By Wilfred F. Rice, Jr.
Partner

WFR:ms

THE WHITE HOUSE

WASHINGTON

August 12, 1975

MEMORANDUM FOR: JAMES SCHLESINGER
BRENT SCOWCROFT
JIM CONNOR
RODERICK HILLS
JIM WILDEROTTER

FROM: PHILIP BUCHEN P.W.B.

Recently I sent you pages 11-18 of an address prepared by Attorney General Levi to be delivered before the American Bar Association on August 13. This is the portion of the address which deals with warrantless electronic surveillance, but I neglected to designate the source of the material I sent you. So that you may have the complete address, I am attaching a copy of the full text.

Attachment

THE WHITE HOUSE

WASHINGTON

August 14, 1975

Dear Senator Byrd:

This is in further response to your letter of July 25 on behalf of Mrs. Eva Scott concerning the efforts of the Commission on the Observance of International Women's Year for support of the Equal Rights Amendment.

I have requested the views of the Department of Justice concerning such activities, and I will contact you again once we are advised in this regard.

Your inquiry is appreciated.

With best wishes,

Sincerely,

Roderick M. Hills
Counsel to the President

The Honorable Harry F. Byrd, Jr.
United States Senate
Washington, D. C. 20510

Justice

August 20, 1975

MEMORANDUM FOR

LEON ULMAN
DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

The attached correspondence from Congressman Whitehurst requesting reconsideration of the classification of Mr. Charles Turrisi, a member of the Federal Council on Aging, as a "reemployed annuitant" under the Civil Service laws, has been acknowledged by this office. Although, I do not believe that the letter from Chairman Brademas justifies any change from your previous opinion on this question, we would appreciate your responding directly to Congressman Whitehurst on this matter.

Your assistance is appreciated.

Barry N. Roth
Assistant Counsel

August 20, 1975

Dear Mr. Whitehurst:

This is in response to your letter of August 14, 1975, in which you request my reconsideration of the classification of Mr. Charles Turrisi, a member of the Federal Council on Aging, as a "reemployed annuitant" under the Civil Service laws. This request is based upon a letter from Congressman Brademas, Chairman of the House Subcommittee on Select Education, that the Subcommittee did not intend, when it created the Council, to discriminate against former Federal employees by forcing them to bear the costs of participation in the Federal Council's activities.

I have referred your letter to the Office of Legal Counsel at the Department of Justice for appropriate consideration and response directly to you on this matter.

Your inquiry is appreciated.

Sincerely,

Philip W. Buchen
Counsel to the President

The Honorable G. William Whitehurst
House of Representatives
Washington, D. C. 20500

bcc: Max Friedersdorf
Leon Ulman, OLC
PWB/
Barry Roth/ 8/20/75

OFFICE OF
ASSISTANT ATTORNEY GENERAL

August 21, 1975

To - Philip W. Buchen

From - Michael M. Uhlmann

I thought you ought to know about this, especially as Mr. Smith's letter gives every indication that they intend to make some cheap political hay out of it.

PHILIP A. HART
MICHIGAN

COMMITTEES:
COMMERCE
JUDICIARY

United States Senate

WASHINGTON, D.C. 20510

Justice file

August 18, 1975

Honorable Edward H. Levi
Attorney General of the United States
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

In accordance with the Clemency Program established by the President last September, you directed the U.S. Attorneys of the various states to review all outstanding selective service cases and to dismiss those lacking prosecutive merit. The January 1975 list furnished to Senator Kennedy contained the names of those individuals who the Justice Department would continue to prosecute. Those individuals whose names appeared on the October list but not on the January list would not be prosecuted and their cases would be dismissed.

While this procedure has been of tremendous value to those whose cases were dismissed, it appears that the standards for determining "prosecutive merit" and the quality of the review undertaken by the various U.S. Attorneys varied widely. It has come to my attention that of the 60 selective service cases pending in the Western District of Michigan, no cases were dismissed, although one was rendered moot because the individual involved died. Compared with a dismissal of 31 of the 44 cases (70%) pending in the Western District of Wisconsin, or 50 of the 81 cases (62%) in Colorado, one is struck that the quality of the cases involved cannot explain such vast discrepancies. Even within the State of Michigan, the Eastern District saw fit to dismiss some 32% of the pending cases, reducing the original 260 individuals to 178.

Enclosed is a copy of a letter sent to me by William G. Smith of the California law firm Smith, Kogan, Honig and Smith which provides the information for this inquiry. That letter includes the tables from which the statistics cited above were taken. Your prompt inquiry into the discrepancies raised by this information, both in Michigan and elsewhere, would be most appreciated as would any remedies you may be able to suggest. Mr. Smith recommends the appointment of an independent prosecutor to review the case load in Michigan's Western District, and your comments on this would be most helpful.

With best wishes,

Sincerely,

Philip A. Hart

Philip A. Hart

Enclosure

MITH KOGAN HONIG & SMITH ATTORNEYS AT LAW
Carol K. Smith, Michael L. Kogan, Barbara Honig, William G. Smith

August 13, 1975

Senator Phillip A. Hart
United States Senate
Senate Office Building
Washington, D.C. 20510

Dear Senator Hart:

Our office has received a grant from the National Council of Churches to represent all Selective Service registrants charged with violations of the Selective Service Act during the Vietnam conflict. The American Civil Liberties Union in New York City has received a similar grant, and we have divided our responsibilities by agreeing that our office would handle cases arising west of the Mississippi and the A.C.L.U. would take those cases arising east of the Mississippi. I know that you have taken an active interest in Amnesty legislation currently pending before Congress, and I thought that you might be interested in some of the information we have developed in the course of our work. Also, as the Senator from Michigan, I thought you would be particularly interested in information we have developed concerning Selective Service cases pending in the Federal Courts in your State.

As part of our project, we have received copies of materials supplied to Senator Kennedy in October, 1974 and January, 1975 by the Department of Justice. By way of background information, the Department of Justice supplied to Senator Kennedy a list of all Selective Service registrants in the United States who were charged with violations of the Selective Service law in October, 1974. After the list was supplied, the Attorney General directed each U.S. Attorney in the United States to review his outstanding Selective Service case load and to dismiss any case lacking prosecutive merit. The review directed by the Attorney General was to be completed in January, 1975, so that a revised list of Selective Service registrants under indictment could be supplied to Senator Kennedy. Following the review directed by the Attorney General, a new list of Selective Service registrants charged with violations of the law was supplied to Senator Kennedy on January 24, 1975. It was specified that the list was complete and that it contained the names of all Selective Service registrants eligible for Clemency under the President's Clemency program, other than late or non-registrants. Furthermore, it was specifically agreed by Attorney General Levi that any individual not named on the list could not be prosecuted and that any outstanding indictment, etc. relating to any individual whose name was inadvertantly left off of the list would be dismissed.

As a result of the assurances received from Attorney General Levi

2 Sunset Boulevard, Metamorphosis Building, Los Angeles, California 90026, Telephone (213) 413-4430

to the effect that the January, 1975 list was complete and final and that each U.S. Attorney had reviewed his outstanding Selective Service case load to dismiss those cases lacking prosecutive merit, our office undertook a project to test the validity of the assurances and to determine the degree of compliance by each U.S. Attorney with the instructions received from the Attorney General. This project involved a comparison of the list of Selective Service registrants charged with a violation of the law in October, 1974 with the list of such persons supplied to Senator Kennedy in January, 1975. Presumably, those individuals whose cases were dismissed for lack of prosecutive merit would be included on the October list, but not on the January list. Since each list identified the Federal District Court in which the person was pending charges for a violation of the Selective Service law, it was a simple matter to determine which U.S. Attorneys had in fact followed the instructions of the Attorney General to dismiss cases lacking prosecutive merit, and which had not. The results of our survey were quite startling. I have attached a copy of a table summarizing our survey, indicating the percentage of cases dismissed by each U.S. Attorney in the United States following their review of cases for prosecutive merit.

Of particular importance to you, as Senator from Michigan, is the fact that the U.S. Attorney in Grand Rapids, Michigan demonstrated the least degree of compliance with the instructions from Attorney General Levi, in comparison with all other U.S. Attorneys in the United States. According to our count, there were 60 Selective Service cases pending in Grand Rapids, Michigan as of October, 1974 and 59 pending as of January 24, 1975. The difference of one case is explained by the fact that one defendant charged with a violation of the Selective Service law died; apparently, death is the only factor considered by the U.S. Attorney in Grand Rapids in determining whether to dismiss an indictment. Since the January list was compiled, it is possible that other cases have been dismissed, but the record of the U.S. Attorney in Grand Rapids is dismal by any standard. We should also point out that the list supplied to Senator Kennedy in October, 1974 did not purport to be completely accurate and the statistical table we have attached reflects some inaccuracies in the October list. Nevertheless, some interesting comparisons can be made.

For example, you will note that the U.S. Attorney in San Francisco, California saw fit to dismiss approximately 92% of his outstanding Selective Service case load between October, 1974 and January, 1975, while the U.S. Attorney in Grand Rapids was determining that all of his case load retained prosecutive merit. Thus, in October, 1974, there were 434 Selective Service cases pending in San Francisco and 60 pending in Grand Rapids. By January, 1975, there were only 38 Selective Service cases pending in San Francisco, but 59 remaining in Grand Rapids. It would be appreciated if your office could make

appropriate inquiries with the Attorney General of the United States to determine why so few cases were dismissed in Grand Rapids in comparison with San Francisco. It seems inconceivable to me that the U.S. Attorney in San Francisco could determine that 434 cases in his District lacked prosecutive merit while the U.S. Attorney in Grand Rapids was making a determination that all 59 of his cases should be retained. Obviously, an entirely different standard was used in San Francisco as compared with Grand Rapids, and the fugitive Selective Service registrants from Michigan who are now living in Canada, Sweden or underground in the United States have a right to know why such different standards have been applied to their cases.

We have heard consistent rumors that various right-wing groups in the Grand Rapids area have a degree of influence in the Grand Rapids office of the U.S. Attorney which is unhealthy in a democratic society. Although we have been unable to verify these rumors, the attached statistical table suggests that the Department of Justice should appoint an independent prosecutor to examine the Selective Service case load in Grand Rapids, since the incumbent United States Attorney in that City seems unable to perform that task in a fair and impartial manner. We are sending a copy of this letter to the local newspaper in Grand Rapids in the event that they wish to assign an enterprising young reporter to this story to determine why the U.S. Attorney in their city has acted so improperly.

Thank you for your attention to this matter.

Very Truly Yours

William G. Smith
Attorney at Law

WS:ws
encls.
cc's: Werner Veit, Editor, Grand Rapids Press
John P. Milanowski, United States Attorney, Grand Rapids, Mich.

PERCENTAGE OF CASES DISMISSED BY U.S. ATTORNEYS FOLLOWING RECEIPT OF INSTRUCTIONS FROM ATTORNEY GENERAL LEVI TO DISMISS ALL SELECTIVE SERVICE CASES LACKING PROSECUTIVE MERIT (ARRANGED ACCORDING TO DEGREE OF COMPLIANCE WITH THE INSTRUCTIONS FROM ATTORNEY GENERAL LEVI, WITH THOSE DISTRICTS DEMONSTRATING GREATEST DEGREE OF BAD FAITH IN FOLLOWING INSTRUCTIONS LISTED FIRST)

NAME OF DISTRICT	NUMBER OF CASES DISMISSED	NUMBER OF CASES REMAINING AS OF 1/24/75	PERCENTAGE OF CASES DISMISSED
1. W. Dist. Mich. (Grand Rapids)	-0-	59	0%
2. District of Columbia	-0-	38	0%
3. W. Dist. of Oklahoma (Oklahoma City)	-0-	16	0%
4. W. Dist. of Virginia (Roanoke)	-0-	16	0%
5. W. Dist. of Louisiana (Shreveport)	-0-	12	0%
6. New Mexico	-0-	11	0%
7. N. Dist. of Mississippi (Oxford)	-0-	10	0%
8. South Dakota	-0-	10	0%
9. E. Dist. of Texas (Tyler-Beaumont)	-0-	10	0%
10. W. Dist. of Tenn. (Memphis)	-0-	9	0%
11. E. Dist. of Louisiana (New Orleans)	-0-	8	0%
12. N. Dist. of Oklahoma (Tulsa)	-0-	8	0%
13. Mid. Dist. of Tenn. (Nashville)	-0-	8	0%
14. Delaware	-0-	7	0%
15. So. Dist. of West Virginia (Charleston)	-0-	7	0%
16. No. Dist. of West Virginia (Wheeling)	-0-	6	0%

	NAME OF DISTRICT	NUMBER OF CASES DISMISSED	NUMBER OF CASES REMAINING AS OF 1/24/75	PERCEI OF CA DISMI
17.	So. Dist. of Alabama (Mobile)	-0-	5	0%
18.	So. Dist. of Mississippi (Jackson)	-0-	5	0%
19.	Wyoming	-0-	5	0%
20.	W. Dist. of Arkansas (Fort Smith)	-0-	4	0%
21.	Mid. Dist. of Alabama (Montgomery)	-0-	2	0%
22.	E. Dist. of Oklahoma (Muskogee)	-0-	1	0%
23.	Guam	-0-	1	0%
24.	So. Dist. of Ohio (Columbus, Cinc. & Dayton)	3	91	3%
25.	Mid. Dist. of Pennsylvania (Scranton, Harris. & Lewisburg)	1	38	3%
26.	Hawaii	1	35	3%
27.	E. Dist. of Washington (Spokane & Yakima)	1	29	3%
28.	W. Dist. of Pennsylvania (Pittsburg)	3	69	4%
29.	Nebraska	2	43	4%
30.	Montana	1	27	4%
31.	Utah	1	25	4%
32.	Mid. Dist. No. Carolina (Greensboro)	2	37	5%
33.	Nevada	2	23	8%
34.	No. Dist. of Georgia (Atlanta)	8	69	10%
35.	No. Dist. of Indiana (Fort Wayne, Hammond & So. Bend)	6	54	10%
36.	Maryland	7	59	11%

NAME OF DISTRICT	NUMBER OF CASES DISMISSED	NUMBER OF CASES REMAINING AS OF 1/24/75	PERCEN OF CAS DISMIS
37. Idaho	3	21	12%
38. Kansas	2	15	12%
39. W. Dist. of Texas (San Antonio & El Paso)	4	27	13%
40. No. Dist. of Iowa (Sioux City & Waterloo)	3	20	13%
41. Mid. Dist. of Georgia (Macon)	2	13	13%
42. New Hampshire	3	19	14%
43. W. Dist. of Kentucky (Louisville)	3	18	14%
44. E. Dist. of No. Carolina (Raleigh)	2	12	14%
45. Vermont	1	6	14%
46. W. Dist. of New York (Buffalo & Rochester)	29	170	15%
47. No. Dist. of Ohio (Cleveland & Toledo)	35	176	17%
48. E. Dist. of Illinois (E. St. Louis & Danville)	4	19	17%
49. Arizona	13	60	18%
50. No. Dist. of Florida (Pensacola & Tallahassee)	4	18	18%
51. E. Dist. of Kentucky (Lexington)	3	14	18%
52. Minnesota	12	51	19%
53. Central Dist. of Calif. (Los Angeles)	110	441	20%
54. So. Dist. of New York (New York City)	74 (see footnote)	288	20%
55. No. Dist. of New York (Syracuse & Albany)	11	45	20%
56. So. Dist. of Florida (Miami)	44	164	21%

	NAME OF DISTRICT	NUMBER OF CASES DISMISSED	NUMBER OF CASES REMAINING AS OF 1/24/75	PERCENTA OF CASES DISMISSE
57.	Alaska	3	11	21%
58.	W. Dist. of No. Carolina (Ashville & Charlotte)	3	11	21%
59.	No. Dist. of Texas (Dallas-Ft. Worth & Lubbock)	6	21	22%
60.	So. Dist. of Indiana (Indianapolis)	12	41	23%
61.	North Dakota	3	10	23%
62.	No. Dist. of Illinois (Chicago)	61	194	24%
63.	Rhode Island	23	68	25%
64.	Connecticut	59	157	27%
65.	Mid. Dist. of Florida (Jacksonville, Tamp. & Orlando)	27	73	27%
66.	South Carolina	5	13	28%
67.	Massachusetts	78	190	29%
68.	E. Dist. of Pennsylvania (Philadelphia)	42	101	29%
69.	W. Dist. of Washington (Seattle & Tacoma)	21	51	29%
70.	E. Dist. of California (Sacramento & Fresno)	50	116	30%
71.	New Jersey	33	73	31%
72.	E. Dist. of Michigan (Detroit & Bay City)	82	178	32%
73.	No. Dist. of Alabama (Birmingham)	6	13	32%
74.	So. Dist. of Iowa (Des Moines)	9	18	33%
75.	E. Dist. of Arkansas (Little Rock)	4	8	33%
76.	So. Dist. of Georgia (Augusta & Savannah)	2	4	33%

	NAME OF DISTRICT	NUMBER OF CASES DISMISSED	NUMBER OF CASES REMAINING AS OF 1/24/75	PERCENT OF CASE DISMISS
77.	So. Dist. of Illinois (Springfield & Peoria)	19	34	36%
78.	So. Dist. of Texas (Houston, Laredo & Brownsville)	31	51	37%
79.	Maine	13	21	38%
80.	So. Dist. of California (San Diego)	39	61	39%
81.	E. Dist. of Missouri (St. Louis)	27	42	39%
82.	Oregon	43	64	40%
83.	W. Dist. of Missouri (Kansas City)	20	28	42%
84.	E. Dist. of Virginia (Alexandria, Rich. & Norfolk)	41	53	44%
85.	E. Dist. of New York (Brooklyn)	227 (see footnote)	226	50%
86.	Canal Zone	1	1	50%
87.	E. Dist. of Wisconsin (Milwaukee)	29	22	57%
88.	Puerto Rico	44	30	60%
89.	Colorado	50	31	62%
90.	E. Dist. of Tennessee (Knoxville & Chattanooga)	4	2	66%
91.	W. Dist. of Wisconsin (Madison)	31	13	70%
92.	No. Dist. of California (San Francisco)	434	38	92%
93.	Mid. Dist. of Louisiana (Baton Rouge)	1	0	100%

Notes: A total of approximately 30% of all cases on the October, 1974 list were dismissed or otherwise disposed of before the January, 1975 list was compiled. In the above table, the Median percentage is 17% and the mode is 0%. For New York City, the dismissal rate includes cases the U.S. Attorney was forced to dismiss because he left many names of the January list by mistake. The data for some of the larger distric such as Brooklyn is very incomplete, and the dismissal rates are prob

The Virgin Islands had no dismissals or cases on l

Justice Dept.

Thusday 9/4/75

1:20 At Mr. Buchen's request, call Bill Baroody's office to tell him that Mr. Buchen has talked with the Attorney General and Charlie Morin can call the Attorney General now.

THE WHITE HOUSE

WASHINGTON

August 29, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: WILLIAM J. BARODY, JR.

Per our conversation last evening, I would appreciate it if you would call the Attorney General on Monday or Tuesday to alert him to the fact that Charlie Morin will be calling on behalf of Frank Fitzsimmons to seek an appointment. Morin represents Fitzsimmons and indicates that he is quite upset with press allegations that he is linked to the mafia and he wants to meet with the Attorney General to offer full cooperation in any investigation that he may wish to conduct.

Morin is awaiting a call back as to whether we have contacted the Attorney General before he places his call.

ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

Department of Justice
Washington 20530

September 25, 1975

Mr. Philip W. Buchen
Counsel to the President
The White House
Washington, D. C.

Dear Mr. Buchen:

The attached letters have been sent to Peoples Drug Stores and D. D. Bean and Company asking them to cease and desist from the manufacture, sale, or distribution of matchbooks of the type referred to this Division by your memorandum of July 15, 1975.

Sincerely,

Richard L. Thornburgh

RICHARD L. THORNBURGH
Assistant Attorney General

Enclosures

RLT:CWB:RGA:cap

Mr. James M. Schwarz
House Counsel
Peoples Drug Stores
6315 Bren Mar Drive
Alexandria, Virginia 22312

Dear Mr. Schwarz:

It has come to my attention that the Peoples Drug Store at Fifteenth and New York Avenue, Washington, D.C. distributes matchbooks which display a reproduction of the Presidential seal along with the words "Store of the Presidents."

I must advise that the reproduction of the Presidential seal without authority constitutes a violation of federal law, specifically, 18 U.S.C. 713(b) and regulations promulgated thereunder, specifically, Executive Order 11649, 37 F.R. 3625, February 18, 1972.

Peoples Drug Stores distribution of matchbooks which display a reproduction of the Presidential seal appears to violate 18 U.S.C. sections 713(b) and 2, which call for both civil and/or criminal sanctions. Peoples Drug Stores is hereby requested to cease and desist from further distribution of any article which uses the reproduction of the Presidential seal, including the distribution of any matchbooks presently in stock or on order.

cc: Philip W. Buchen
Counsel to the President
The White House
Washington, D. C.

If I have a letter from you indicating the voluntary cessation of such activity, no further action will be taken by this office. I trust that I will hear from you by return mail.

Sincerely,

RICHARD L. THORNBURGH
Assistant Attorney General
Criminal Division

By:

CARL W. BELCHER
Chief, General Crimes Section

/Goodell, Charles

4:45 p.m. Tuesday, September 30, 1975

Charlie Goodell is scheduled to meet with the Criminal Division of Justice on this matter today and as soon as we hear from Justice we will report back to you.

Dudley

9/29 checking w/ Justice

Pending with Dudley

Exemption from
Foreign Agents
Registration for Goodell

THE WHITE HOUSE

WASHINGTON

August 25, 1975

MEMORANDUM FOR: DUDLEY CHAPMAN

FROM: PHILIP BUCHEN P.W.B.

SUBJECT: Charles Goodell

Attached is a copy of a memorandum from Charles E. Goodell to me of July 14, which I had referred to Nino Scalia on July 17. On August 22, I had a call from Charles Goodell saying that the corporation of which he is Chairman was intending to register under the Foreign Agents Registration Act and to do so on August 27th. He also said under those circumstances, he would immediately like an appropriate document signed in behalf of the President to exempt Charles Goodell from the penalty provisions of the Act. On the same day, I got the attached memorandum from Leon Ullman of the Office of Legal Counsel, which does not seem to be wholly consistent with Goodell's request, but maybe the simplest thing to do is to have you prepare an exemption from me to sign in behalf of the President. If you see any objections to this manner of proceeding, please let me know.

Attachments

DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

Department of Justice
Washington, D.C. 20530

Justice

AUG 22 1975

MEMORANDUM FOR PHILIP W. BUCHEN
Counsel to the President

Re: Status of Charles E. Goodell under the Foreign Agents Registration Act

This responds to your memorandum of July 17, 1975, concerning the possible applicability of the Foreign Agents Registration Act to Chairman Goodell of the Presidential Clemency Board. In view of the responsibility of the Criminal Division for Foreign Agents Registration matters, we referred your memorandum, upon receipt, to that Division for initial consideration. The Criminal Division has advised us as follows:

The threshold question of whether Mr. Goodell has an obligation to register under the Act cannot be resolved at this time because the corporation whose activities are at issue here and of which Mr. Goodell serves as Chairman of the Board has not as of yet provided the Criminal Division with certain information it has requested in order to make a determination. Even if it is determined that the corporation has an obligation to register, it does not necessarily follow that Mr. Goodell would have to register. The determination of Mr. Goodell's obligation to register would depend upon the activities he engages in on behalf of the corporation's foreign principals. A determination in this regard must also await the submission of the requested information by the corporation. If it is determined that Mr. Goodell is required to register, then a copy of a certification that his employment as a "special Government employee" is in the national interest must be filed along with his registration statement.

In view of the absence of complete information at this time, we have discussed with the Criminal Division the question of the proper timing for Mr. Goodell to obtain certification in the event it is later determined that he must register. The Criminal Division advises us that a certification made either prior or subsequent to that determination would be satisfactory, and would be so even if made after Mr. Goodell leaves government service upon the dissolution of the Presidential Clemency Board. Accordingly, there is the option of either now providing Mr. Goodell with a certification to be used in the event it is subsequently determined that he has an obligation to register or awaiting that determination and providing Mr. Goodell with a certification if it becomes necessary that he have one.

The certification provision, which is contained in 18 U.S.C. 219, requires that the "head of the employing agency" certify that the particular employment is required in the national interest. In the context of the conflict of interest laws the President has delegated his authority to make similar determinations under sections 205 and 208(b) of title 18, United States Code, to the Counsel to the President. See 3 CFR 100.735-32. Any certification which may be required under 18 U.S.C. 219 in connection with Mr. Goodell's employment should be made by the President or his authorized delegate.

Leon Ulman

Leon Ulman
Acting Assistant Attorney General
Office of Legal Counsel

cc: Kevin T. Maroney
Deputy Assistant Attorney General
Criminal Division

Justice

THE WHITE HOUSE

WASHINGTON

July 17, 1975

MEMORANDUM FOR: ANTONIN SCALIA
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

Would you please review and advise me on the issues in the attached memo. Therein, Chairman Goodell of the Presidential Clemency Board discloses that he may possibly be subject to the Foreign Agents Registration Act which prohibits his employment as Chairman of the Presidential Clemency Board unless he is provided with a certification that his employment as a "special Government employee" is in the national interest.

Thank you.

P.W.B.

Philip W. Buchen
Counsel to the President

THE WHITE HOUSE

WASHINGTON

July 17, 1975

MEMORANDUM TO: PHILIP W. BUCHEN

FROM: JAY T. FRENCH

In Ken's absence, I reviewed and discussed with Dudley the attached memo from Chairman Goodell. Dudley and I recommend that you sign the attached memo to Nino Scalia.

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE
WASHINGTON, D.C. 20500

July 14, 1975

MEMORANDUM FOR: Philip W. Buchen

FROM: Charles E. Goodell, Chairman

SUBJECT: My Status under Foreign Agents Registration Act of 1938.

Recently, it has been brought to my attention that a corporation of which I am Chairman of the Board may be engaged in activities which require its registration pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §611 et seq. The activities involve representation of foreign clients primarily in France and Germany. The corporation was requested in mid-June to provide the Department of Justice with a description of its activities on behalf of one of its foreign clients. As Chairman of the Board of the corporation and as a member of the law firm which represents it, I myself would automatically be required to register if the corporation must register.

There is a general statutory prohibition on officers and employees of the U.S. Government acting as agents of foreign principals. However, "special Government employees," as this term is defined in 18 U.S.C. §202, are not subject to this prohibition if the head of the employing agency certifies that employment of the "special Government employee" is required in the national interest.

The above cited prohibition is contained in 18 U.S.C. §219. It reads as follows:

> "Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United Sates, including the District of Columbia, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

"Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with Section 6 of the Foreign Agents Registration Act of 1938, as amended." (emphasis added)

My understanding of the procedures under the Registration Act is that the date of a determination of a requirement to register does not serve as the date that the party became obligated to register. That obligation arises when a party in part acts as an agent. In other words, a November 1975 registration may be based on a relationship that began back in January 1975. Thus, if it evolves that the corporation must register, any conflict with the statute and my present position already exists, and has existed, irrespective of the fact that the Justice Department will not make a decision until later.

Quite obviously, none of my responsibilities under the clemency program would involve any conflict of interest as contemplated, I believe, by the requirements of the Foreign Agents Registration Act. It may well be that no registration will even be indicated. Nonetheless, I don't want to expose the President to any allegation that there has been a technical violation of law within his Adminiministration Nor do I wish to violate the law, technically or otherwise.

I have had my staff review 18 U.S.C. §219, but as you know this is not our specialty. I would appreciate your confirming my understanding of the way to proceed. If you agree, it would appear necessary that the President, as the "head" of this agency, make a determination that my position as Chairman is "in the national interest" and has been since the date of my swearing in.

THE WHITE HOUSE

WASHINGTON

July 1, 1975

MEMORANDUM FOR: CHARLES GOODELL

FROM: PHILIP BUCHEN P.W.B.

SUBJECT: Conflict of Interest Inquiry

I am advised that the Department of Justice has responded directly to your inquiry of June 20, regarding your status as a government employee.

This is to confirm the fact that, at the time of your original appointment to the Presidential Clemency Board, it was not contemplated that your service would involve a period in excess of 130 days during the following 365 days.

This completes our review of this matter.

THE WHITE HOUSE

WASHINGTON

July 1, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS KL

SUBJECT: Charles Goodell/
Conflict of Interest Question

As you will recall, Charles Goodell recently requested your advice as to whether he is a "regular officer or employee" or a "special government employee" for purposes of Federal conflict of interest provisions, 18 U.S.C. Secs. 202, et. seq. (incoming at Tab A). The latter designation is necessary if Mr. Goodell is to continue in the practice of law to the extent the U. S. is a party in any judicial or administrative proceeding in which he is involved.

I asked the Office of Legal Counsel at Justice to respond directly to this inquiry (Tab B). The question of whether one is a "special" as opposed to a "regular" government employee turns on a good-faith estimate of the anticipated duration of service at the time of appointment -- an estimate in excess of 130 days confers the status of "regular" employee.

It is clear that Mr. Goodell's original appointment did not anticipate service in excess of 130 days. The fact that an original estimate turns out to be inaccurate is inapposite to the designation. The attached memo from you to Mr. Goodell (Tab C) would complete action on this matter.

PRESIDENTIAL CLEMENCY BOARD
THE WHITE HOUSE
WASHINGTON, D.C. 20500

June 20, 1975

MEMORANDUM FOR: Philip W. Buchen
FROM: Charles E. Goodell, Chairman

RE: Conflict-of-Interest Provisions as They Relate to My Status as a Government Employee.

A problem has arisen concerning my status as a member of the Presidential Clemency Board. I have not yet been properly designated as either a "regular officer or employee" of the U.S. Government or as a "special Government employee" for purposes of the conflict-of-interest laws. This designation is important because it affects my continuing private legal practice. I would appreciate your attention to this matter so my present status can be cleared up.

In September I asked the Justice Department to advise me concerning the conflict of interest laws which relate to my status as Chairman of the Presidential Clemency Board. The relevant statutes are 18 U.S.C, 202-209, with special emphasis on Section 205. Recently, I also asked my legal staff to look into the matter, and they have provided me with the following information.

In brief, all officers and employees of the U.S. in the executive, legislative, or judicial branch are subject to the conflict of interest provisions contained in 18 U.S.C., 205 (see Tab B). This section provides that a "regular officer or employee" of the U.S. Government, i.e., one appointed or employed to serve, with or without compensation, for more than 130 days in any period of 365 days, may not, except in the discharge of his official duties, represent anyone else before a court or government agency in a matter in which the U.S. is a party or has an interest. However, a "special Government employee," i.e., one who is appointed or employed, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, does not have the same restraints imposed upon him as a regular officer or employee. A special Government employee is only precluded from representing anyone else before a court or government agency in a matter in which the U.S. is a party or has an interest if he has at any time participated personally and substantially for the Government in the same matter.

For purposes of properly categorizing an employee of the U.S. Government as either a "regular officer or employee" or as a "special Government employee," I want to bring to your attention the following information contained in Chapter 735, Appendix C, of the Federal Personnel Manual. This information specifically relates to sections 202, 203, 205, 207, 208, and 209 of Title 18, United States Code. It reads as follows:

> Each agency should observe the following rules in obtaining and utilizing the services of a consultant, adviser, or other temporary or intermittent employee:
>
> (a) At the time of his original appointment and the time of each appointment thereafter, the agency should make its best estimate of the number of days during the following 365 days on which it will require the service of the appointee. A part of a day should be counted as a full day for the purposes of this estimate, and a Saturday, Sunday or holiday on which duty is to be performed should be counted equally with a regular work day.
>
> (b) Unless otherwise provided by law, an appointment should not extend for more than 365 days. When an appointment extends beyond that period, an estimate as required by paragraph (a) should be made at the inception of the appointment and a new estimate at the expiration of each 364 days thereafter.
>
> (c) If an agency estimates, pursuant to paragraph (a) or (b), that an appointee will serve more than 130 days during the ensuing 365 days, the appointee should not be carried on the rolls as a special government employee and the agency should instruct him that he is regarded as subject to the prohibitions of sections 203 and 205 to the same extent as if he were to serve as a full-time employee. If it is estimated that he will serve no more than 130 days during the following 365 days, he should be carried on the rolls of the agency as a special Government employee and instructed that he is regarded as subject only to the restrictions of sections 203 and 205 described in paragraphs 1 and 2 above. Even if it becomes apparent, prior to the end of a period of 365 days for which an agency has made an estimate on an appointee, that he has not been accurately classified, he should nevertheless continue to be considered a special Government employee or not, as the case may be, for the remainder of the 365-day period." (emphasis added)

In view of the above cited provisions, it would appear that whether an individual working for the U.S. Government is a "regular officer or employee" or a "special Government employee" depends on the nature of the individual's original appointment. When I was appointed Chairman of the Clemency Board, the Board was only empowered to consider requests for executive clemency from individuals who submitted their applications no later than January 31, 1975. When the Clemency Board was initially established, it was anticipated that as Chairman I would meet with the rest of the Board members three times a week, twice each month. The Board was expected to process all clemency applications no later than March 15, 1975, and submit its final recommendations to the President no later than December 31, 1975, at which time it was to cease existing. After March 15, 1975, it was anticipated that I would need to meet with other Board members and members of my staff only on an occasional basis, if at all.

Since at the time of my original appointment it was expected that the Clemency Board would finish most of its work by March 15, 1975, I believe that it is accurate to state that there was no expectation I would serve on the Clemency Board for more than 130 working days.

In view of the circumstances existing at the time the Clemency Board was created, I believe that I properly should have been designated as a "special Government employee." To date, however, I have not been designated either as a "special Government employee" or a "regular Government employee." I would appreciate it if you could confirm that my status as of September 15, 1974, was that of a "special Government employee," thereby resolving any questions that might arise under the conflict statutes.

This becomes a matter of some urgency, because we are trying to close our financial account by the end of the fiscal year. I believe the matter could be decided after July 1 and I be paid the next fiscal year, but I am far from a budgetary expert and am repeating only what I have been told. At any rate, I stopped putting in payroll vouchers March 2, at which point I had accumulated 80 days with the Clemency Board. Through June 30, my total days on the Clemency Board will be about 150. Obviously, with the Clemency Board going full time through the summer, it will be considerably higher than that by September.

I would appreciate your thoughts on this matter and an opportunity to discuss it with you if you feel it is necessary.

Department of Justice
Washington, D.C. 20530

June 27, 1975

Lawrence M. Baskir, Esq.
General Counsel
Presidential Clemency Board
The White House
Washington, D. C. 20500

Dear Mr. Baskir:

This responds to your letter of June 26, relating to the conflict-of-interest laws as they involve the status of Charles E. Goodell, Chairman of the Presidential Clemency Board, as a Government employee. For reasons to be discussed, we conclude that it was proper to designate Mr. Goodell as a special Government employee as that term is defined by 18 U.S.C. 202.

That section provides that the term "special Government employee" means "an officer or employee of the executive branch . . . who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis . . . ." Congress intended that a special Government employee in general would be subject to less restrictive conflict-of-interest prohibitions than are regular employees. This intention is reflected by the specific differences in treatment for each type of employee under 18 U.S.C. 203, 205 and 209.

Beginning with the effective date of the conflict-of-interest statute in January 1963, the Department of Justice has taken the position that if, at the threshold of employment, an agency estimates in good faith that the employee will serve no more than 130 days during the following 365 days, he should be carried on the rolls of the agency as a special Government employee. Similarly, it has been the

Department's view that if it becomes apparent prior to the end of the period, the estimate turns out to be inaccurate, the employee may nevertheless continue to be considered as a special Government employee for the remainder of the 365-day period. That interpretation is expressly embodied by the Civil Service Commission in its Federal Personnel Manual, p. 735-C-1, of November 9, 1965, as revised July 1969.

From the memorandum of June 20, 1975, from Mr. Goodell to Mr. Buchen, attached to your inquiry, it appears that when he was appointed to the Clemency Board on September 16, 1974, the Board was empowered to consider requests for executive clemency only from individuals who submitted their applications no later than January 31, 1975. It was anticipated that Mr. Goodell would meet with his fellow Board members not more than three times a week, twice each month. It was also expected that the Board would complete its processing of all clemency applications no later than March 15, 1975. After that date, it was anticipated that Mr. Goodell would meet with Board members and members of his staff only on an occasional basis, if at all. Under Executive Order 11803 creating the Board, its final recommendation to the President must be submitted no later than December 31, 1976.

On the basis of the above facts, there is no doubt that if Chairman Goodell had been designated as a special Government employee on September 16, 1974, this would have been a good-faith estimate and entitled Chairman Goodell to that same status even though later events indicated that this was an erroneous estimate. Mr. Goodell, however, was not designated either as a "special Government employee" or as a regular Government employee. We assume this was an inadvertence. In our opinion, the basic 130-day test can be applied in the light of what a good-faith estimate would have been, even though it was not reduced to writing when Mr. Goodell was appointed. We conclude that Mr. Goodell's status as of the date of his appointment was that of a special Government employee.

Sincerely,

Leon Ulman

Leon Ulman
Acting Assistant Attorney General
Office of Legal Counsel